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HIS IMPERIAL MAJESTY NICOLAS II.

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B

INTERNATIONAL ARBITRATION.

INTERNATIONAL TRIBUNALS.

A COLLECTION OF THE VARIOUS SCHEMES WHICH
HAVE BEEN PROPOUNDED; AND OF INSTANCES
IN THE NINETEENTH CENTURY.

BY

W. EVANS DARBY, LL.D.

Secretary of the Peace Society.

FOURTH EDITION.

CONSIDERABLY ENLARGED.

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TO
HIS IMPERIAL MAJESTY NICOLAS II.,
EMPEROR OF ALL THE RUSSIAS,

This Book

IS
BY HIS MAJESTY'S GRACIOUS PERMISSION
MOST RESPECTFULLY DEDICATED.

PIA VOTA.

Viro egregio, W. E. DARBY, LL.D., ex corde missa.

O, UTINAM sævi subeant fastidia belli,
Gentibus ; ut toto regnet in orbe quies !
Exsulet ut terris gladio, Bellona cruento
Efferat : dein, populos PAX veneranda regat.
Arbitrio gentes dirimant ut semper amico
Lites ; et voveant * tristibus arma deis.
Ecce, preces conjunge tuas, mitissime, nostris ;
Migret ut æternum diva maligna. Vale.

W. S. Y.

xxviii./ix./oo.

* Tristibus deis : diis inferis.

PREFACE.

THE present work was compiled, in the first instance, at the request of a Special Committee of the International Law Association, which was appointed, at the Brussels Conference, October 1st, 1895, to study the question of an International Court of Arbitration, and to report at the next Conference. When the Committee met to fulfil its commission, the Convener was requested to examine and report upon the various published schemes for the composition of a Court of Arbitration; such report to be printed and circulated among its members. This first draft was submitted to the Committee, and an edition of a thousand copies was printed by the Association and issued jointly with the Peace Society. Copies, suitably bound, were presented to the various Rulers of the civilised world, by most of whom an acknowledgment was sent, and appreciation expressed. It was followed by an appendix containing additional matter.

In anticipation of the meeting of the Peace Conference at The Hague these two publications were combined and issued as a second edition by the Peace Society. Copies were distributed, through the courtesy of M. de Staal, among the delegates to The Hague Conference, who spontaneously and generously testified to its usefulness.

This third edition has been considerably enlarged, and no pains have been spared to secure its completeness and accuracy. It is commended to the acceptance of the general public in the

hope that the subject of which it treats may become still more a topic of popular study and discussion, and that the compilation may be increasingly useful. Should this hope be realised, it will be largely due to the generous initiative of the magnanimous young ruler who sits on the Russian throne, and to the new impetus given by the labours of the Conference which assembled at The Hague under his auspices, which, whatever the critics may say, have lifted the question into fresh altitudes, and have marked the beginning of a new era, in which the deliberations of reason and the reign of law shall be substituted for the arbitrament of the sword (falsely so called), and the *lex talionis*.

The portrait of His Imperial Majesty is by permission, from a photograph by Messrs. W. & D. Downey, of Ebury Street, S.W.

PREFACE TO THE FOURTH EDITION.

THE recent progress of the Arbitration movement, in which this work has had its due share, the increasing study of the question, and the exhaustion of a large issue, all call for a new edition. The book has proved its usefulness, and has been distributed widely by the Peace Society. It is the only contribution, from outside sources, which is specifically acknowledged in the Official Report of The Hague Conference as having been of service in its deliberations. Later, at the request of the Peruvian Government, copies were furnished for the use of the members of the Peace Conference of the American States in Mexico. The work of that Conference, forming, as it does, the complement of what was done at The Hague, makes some

additions to such a collection necessary, and, in order to render this as complete as possible, a number of earlier schemes have been added.

The original intention, as explained in the earlier preface, was simply to collect a few sets of Rules and Projects for International Tribunals, which might form the basis, or furnish suggestions for the creation, of a new set of Rules by the International Law Association. Additions were made, and it was felt that a further extension of the collection of actual examples might be useful, not only in such tasks as both that Body and The Hague Conference were engaged in, but also for the general study and promotion of International Arbitration. This proved to be the case, and the work which resulted had in turn to be embodied.

Further research, however, showed that there is existing a mass of material in the literary, political, and diplomatic work done in connection with International Arbitration during the past three hundred years, and that any adequate and useful publication must include a fair representation of these. So the work has grown to its present size. It does not profess to contain all the regulations which are to be found in treaties and treatises, but it does profess to be fairly comprehensive and complete in its representation as to all phases and facets of Arbitration facts and forms; at any rate to be sufficiently complete for its purpose, namely, that of being an authoritative guide both in the study of the question and in the further application of the practice.

Only a small and representative selection of the treaties which have provided for Arbitration, and for Arbitration Procedure, could be included here. Readers will find the extracts referring to Arbitration of most of those which have followed the Jay Treaty of 1794 to the present time reproduced in H. La Fontaine's considerable volume, "Pasicrisie

Internationale," which has appeared (in 1902) since our last Edition; for those of the earlier period they are referred to the various Collections of Treaties which have been published.

The volume will also serve another and very necessary purpose. It is too often taken for granted, and even urged as an objection, that Arbitration is a very modern method of settling international difficulties, which began with, say, the Alabama Arbitration, or which, at any rate, had its rise a few years previously, in the series of Popular Peace Congresses held in Great Britain and on the Continent, which are still spoken of as the beginning of the movement, and also that its idea is the monopoly of the philanthropic and fanatical few. This book will correct this impression, for it will show that International Arbitration is not a thing of yesterday, that it has had a recognised and even prominent place in the international proceedings of what is emphatically *the modern period of History*, and that while it had its origin in the far past, it has been practised with increasing frequency, in these latest centuries. The Peace Society, therefore, has not been offering a cunningly devised and untried method of political procedure, when it has advocated International Tribunals as a substitute for the Field-gun and the Ironclad.

It is hoped that in this larger form the usefulness of the book will be increased, and that it will come to be considered indispensable by all students and workers in the great cause of International Peace.

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INTERNATIONAL TRIBUNALS.

THE AMPHICTYONIC COUNCIL.

As this is the first institution of the kind known to history, and as it has been generally referred to as a model of what is desirable, some account of it is necessary.

1.—THE ASSOCIATION.

The Council was the deliberative assembly of an Association formed among independent neighbouring tribes of Greece, for the regulation of their mutual intercourse. There were many such associations in ancient Greece. There was one, however, which gradually expanded into so comprehensive a character, and acquired so marked a predominance over the rest as to be called The Amphictyonic Assembly or League.

2.—ITS ORIGIN.

This Association had its origin in a gathering of tribes, which met at Anthela, a little town in the famous Pass of Thermopylæ, to worship Demeter (Ceres), but at a very early time the temple of Delphi and the worship of Apollo were connected with it.

3.—ITS MEMBERS.

The Association was composed of those tribes which, at any rate after the invasion of Thessaly by the Thesprotians, dwelt in the immediate neighbourhood of the Pass. These originally numbered twelve, each of which might include several independent States, for the tribes are variously enumerated by different authors.

4.—ITS ANTIQUITY.

“Such festival-associations or amphictyonies,” says Curtius, “are coeval with Greek history, or may even be said to constitute the first expressions of a common national history.”

The League was supposed to be very ancient, as old even as the name of Hellēnes, for its founder was said to be Amphictyōn, the son of Deucalion and brother of Hellēn, the common ancestor of all Greeks. Its origin is, therefore, obscure.

5.—ITS NAME.

The name denotes a body referred to a local centre of union. The Greek word Amphictyones meant literally “dwellers around,” but in a special sense was applied to populations which, at stated times, met at the same sanctuary to keep a festival in common, and to transact common business.

6.—ITS EXTENT.

The Association consisted of twelve sub-races out of the number which made up entire Hellas. At first it comprehended most of the Greek States north of the Isthmus, although in the 14th century B.C., Acrisius, King of Argos, was, according to Strabo, said to have brought the Confederacy into order, and fixed the number of its members, the distribution of the votes in the Council, and the nature of the Causes which were to be subject to its jurisdiction. The Dorian conquest, which was subsequent to this event, greatly extended the salutary influence of the Amphictyonic League. For the Dorians, being constituent members, continued to attend its meetings after they had settled beyond the mountainous isthmus of Corinth. All the provinces which they conquered, gradually assumed the same privilege. The League thus became representative of the whole Grecian name, consisting not only of the three original tribes of Ionians, Dorians and Æolians, but of the several sub-divisions of these tribes, and of the various communities formed from their miscellaneous combination.

7.—ITS OBJECT.

Primarily the League is said to have been a confederacy entered into by the petty princes of the provinces of the northern districts of Thessaly, which were peculiarly exposed to the dangerous fury of invaders, for their mutual defence (Marm. Oxon, E.S.). But this institution, which had been originally intended to prevent foreign invasion, was found equally useful in promoting domestic concord (Dr. Gillie's "History of Ancient Greece," I., 14). Grote, however, describes the Council as "an ancient institution, one amongst many instances of the primitive habit of religious fraternisations, but wider and more comprehensive than the rest—at first purely religious, then religious and political at once, lastly more the latter than the former." (*Grote*, II. 253.)

8.—THE COUNCIL.

The affairs of the whole Amphictyonic body were transacted by a Congress, or "Council," composed of deputies sent by the several States, according to rules established from time immemorial.

9.—ANNUAL ASSEMBLIES.

Two meetings of this Council were regularly convened every year, one in the spring, at Delphi, the other in the autumn, near Anthela, where it was held at a temple of Demeter. At each meeting the deputies visited both centres.

Here, says Freeman ("Hist. of Fed. Gov.," p. 101), "a body of Greeks, including members from nearly all parts of Greece, habitually met to debate on matters interesting to the whole Greek nation, and to put forth decrees which, within their proper sphere, the whole Greek nation respected."

10.—POPULAR ASSEMBLY.

Besides the Council, which held its sessions either in the temple or in some adjacent building, there was an Amphictyonic As-

sembly (*ἐκκλησία τῶν Ἀμφικτυονῶν*), described by Æschines (*Ctes.* § 1247), which met in the open air, and was composed of persons residing in the place where the Congress was held, and of the numerous strangers who were visiting it from curiosity, business, devotion, or other reason.

It would seem, however, that this Assembly was called together only in extraordinary cases, as when its aid was required for carrying into execution the measures decreed, or, when it was thought necessary, to appoint an extraordinary Convention in the interval between two regular times of meeting.

II.—RIGHT OF REPRESENTATION.

The order in which the right to send Representatives to the Council, was exercised in the various States composing one Amphictyonic tribe (which as a unit was entitled to representation), was, perhaps, regulated by private arrangement; but unless one State usurped the whole right of its tribe, it is manifest that a petty tribe, forming but one community, had greatly the advantage over States in the same tribe, such as Sparta or Argos, which could only be represented in their turn, and but rarely in proportion to the importance of the tribe to which they belonged. This right would have been of still less value if it had been shared among all the colonies of an Amphictyonic tribe; and this was the case with the Ionians, but the Æolian and Dorian colonies seem not to have claimed the same privilege. (*Thirlwall.*)

12.—MEMBERS OF THE COUNCIL.

These consisted of delegates from each of the twelve races (or if the Hellenes be treated as a race, they must be called sub-races), who were known as Hieromnemones (*i.e.*, wardens of holy things) and Pylagoræ.

At Athens three Pylagoræ were annually elected, and one Hieromnemon was appointed by lot; the practice of other States is not known.

13.—THEIR FUNCTIONS.

The duties of these deputies are very difficult to determine. According to one author, who gives as his authority Suidas (*Ad Voc.*), these were respectively entrusted with the religious and civil concerns of their constituents. Thirlwall says that the latter (the Pylagoræ) was the body entrusted with the power of voting, while the office of the former (the Hieromnemes) consisted in preparing and directing their deliberations, and carrying their decrees into effect. Grote says that the twelve members of the League sent sacred deputies, including a chief, called the Hieromnemon, and subordinates called the Pylagoræ (II. 248). Dr. Abbott ("A History of Greece," p. 28) says: "The deputies were themselves of two classes, the Hieromnemes and the Pylagori. The first were chosen by lot, twenty-four in number; one for each of the twenty-four votes, which they alone were competent to give. The Pylagori, on the other hand, whose number was not fixed, were orators elected for the especial purpose of supporting the interests of their States by their eloquence or skill in debate. The Hieromnemes formed the Assembly in the stricter sense, but they could call the Pylagori before them, and occasionally they summoned a universal Assembly of all the members of the tribes present at the time. But neither the Pylagori nor the Assembly could reverse the decision of the Hieromnemes." Dr. Oscar Seyffert says that, "besides protecting and preserving their two common sanctuaries, and celebrating, from the year 586 B.C. onwards, the Pythian Games, the League was bound to maintain certain principles of international right," and that, when violations of the sanctuaries or of popular right took place, the Assembly could inflict fines or even expulsion, and that a State that would not submit to the punishment had a "holy war" declared against it.

14.—THE OATH.

The original objects, or at least, the character of the institution, seems to be faithfully expressed in the terms of the oath preserved by Æschines, which bound the Members of the League not to destroy any Amphictyonic town, not to cut off any

Amphictyonic town from running water, but to punish to the utmost of their power those who committed such outrages; and if any one should plunder the property of the god, or should be cognizant thereof, or should take treacherous counsel against the things in the temple, to punish him with foot and hand and voice and by every means in their power.

“Je jure,” disait chaque député, “de ne jamais détruire aucune des villes du corps des Amphictyons, de ne pas détourner le lit des fleuves, et de ne pas empêcher l’usage de leurs eaux courantes ni en temps de paix ni en temps de guerre. Et si quelque peuple enfreint cette loi, je lui déclarerai la guerre et je détruirai ses villes. Que si quelqu’un pille les richesses du dieu, ou se rend complice en quelque manière de ceux qui toucheront aux choses sacrées, ou les aide de ses conseils, je m’emploierai à en tirer vengeance de mes pieds, de mes mains, de ma voix et de toutes mes forces.” (*Calvo*, 3rd Ed., I. 622.)

15.—VOTING.

The constitution of the Council rested on the theory of a perfect equality among the tribes represented by it. Each tribe had two votes in the deliberations of the Congress. Each had originally only one, but with the growth of the Ionians and Dorians, and the division of Locris into two sections, it became necessary to make a change. The original vote was therefore doubled (or split) so that each tribe which remained solid had two votes, but in the case of those which were divided, one vote was assigned to each of the two sections.

16.—DECISIONS.

The decisions of the Council, says Lempriere (“*Class. Dict.*”), “were held sacred and inviolable, and even arms were taken up to enforce them.” When violations of the sanctuaries, or of popular right, took place, the Assembly could inflict fines, or even expulsion, and a State that would not submit to the punishment had a “holy war” declared against it. Such a war was dreaded even in Athens: “You are bringing war into Attica, *Æschines*,” was the taunt of Demosthenes, “an Amphictyonic war.” The

Council had no organised means of enforcing its decrees ; still it always had partisans, who undertook the duty.

17.—LATER HISTORY.

By such a war, for instance, the Phocians were expelled (B.C. 346), and their two votes given to the Macedonians ; but the expulsion of the former was withdrawn because of the glorious part they took in defending the Delphian temple when threatened by the Gauls in 279 B.C., and at the same time the Ætolian community which had already made itself master of the sanctuary was acknowledged as a new member of the League. The decree against Phocis was carried out by Philip of Macedon. That the institution by this time had lost its original character and become a political instrument is shown by the fact that a Council summoned by Philip, numbering 200, ratified all his transactions and declared the kingdom of Macedon the principal member of the Hellenic body.

Two years later (344 B.C.) Philip procured a decree of the Amphictyonic Council, requiring him to check the insolence of Sparta and to protect the defenceless communities which had so often been the victims of her tyranny and cruelty ; and in 339 B.C. Philip was appointed general of the Amphictyonic forces.

In 191 B.C. the number of members amounted to seventeen, who, nevertheless, had only twenty-four votes, seven having two votes each, the rest only one.

Under the Roman rule the League continued to exist, but its action was now limited to the care of the Delphian temple. It was reorganised by Augustus, who incorporated the Malians, Magnetians, Ænians and Pythians with the Thessalians, and substituted for the extinct Dolopes the city of Nicopolis in Acarnania, which he had founded after the battle of Actium.

The last notice we find of the League is in the 2nd century A.D.

18.—COUNCIL NOT A NATIONAL ASSEMBLY.

The Amphictyonic Council, says Abbott (Part II., 29), was not a national assembly ; it neither conducted the policy of Greece, nor had it power to settle disputes between great cities.

Nor was the Association national in the sense that it included the whole of Greece. Freeman says that the Amphictyonic Council represented Greece as an Ecclesiastical Synod represented Western Christendom, not as a Swiss Diet or an American Congress represents the Federation of which it is the common legislature (*Hist. of Fed. Gov.*, p. 98), but he is careful to add (p. 102), "The Amphictyons were a religious body, but they were not a clerical body"; that is, they were not officially a religious body. There is nothing to indicate that it in any sense corresponded to what is known as a Tribunal of Arbitration, or that the principle of Arbitration was applied or even recognised by it.

19.—BUT A PEACE ORGANISATION.

The Association, says Abbott, was as powerless as any other to prevent strife and bloodshed among the members, some of whom, such as the Phocians and Thessalians, were deadly enemies. But a number of adjacent tribes could not meet together twice a year to share in a common sacrifice, and, it might be added, to discuss common interests, without feeling that they were united by a peculiar tie. This feeling was shown in the oath. And the oath was not wholly without effect; it marked a departure from the savage warfare depicted in the Homeric poems, and it supplied the Greeks with an ideal, which was present to their minds, even when they failed to act up to it. The political philosophers of the fourth century, when regulating the practice of war among the Greeks, proceeded on the lines laid down in the Amphictyonic oath. The Hellenes were to quarrel "as those who intend some day to be reconciled"; they were to "use friendly correction," and "not to devastate Hellas, or burn houses, or think that the whole population of a city, men, women and children, were equally their enemies, and therefore to be destroyed." (*Abbott*, Part II., p. 20.)

20.—AND AN EFFECTIVE ONE.

Historians deplore the fact that the Amphictyonic Council seldom had the ability to execute its sentences, and therefore

pronounce it "almost powerless for good" and even mischievous. But Professor Curtius gives expression to a juster estimate of its influence, which even others cannot wholly overlook. "The terms of the Amphictyonic oath," he says, "are first attempts at procuring admission for the principles of humanity in a land filled with border feuds. There is as yet no question of putting an end to the state of war, still less of combining for united action; an attempt is merely made to induce a group of States to regard themselves as belonging together, and on the ground of this feeling to recognise mutual obligations, and in the case of inevitable feuds at all events, mutually to refrain from extreme measures of force."

But the action of the Council as a factor in Greek life, existing as it did from the earliest ages to the second century A.D., was even more influential.

f "In case of dispute between the Amphictyones, a judicial authority was wanted to preserve the common peace, or punish its violation in the name of the god. But the insignificant beginning of common annual festivals gradually came to transform the whole of public life; the constant carrying of arms was given up, intercourse was rendered safe, and the sanctity of temples and altars recognised. And the most important result of all was, that the members of the Amphictyony learnt to regard themselves as one united body against those standing outside it; out of a number of tribes arose a nation which required a common name to distinguish it and its political and religious system from all other tribes. And the federal name fixed upon by common consent was that of Hellenes, which, in the place of the earlier appellation of Graeci, continued to extend its significance with every step by which the federation advanced. The connection of this new national name with the Amphictyony is manifest from the circumstance that the Greeks conceived Hellen and Amphictyony, the mythical representatives of their nationality and fraternal union of race, as nearly related to and connected with one another." (*Curtius*, "History of Greece," Vol. I., 116, 117.)

THE GRAND DESIGN OF HENRY IV. 1603.

(Translated from Sully's *Memoirs*, new ed., 1822, Vol. VI., pp. 129 et seq.)

I.—THE OBJECT.

The object of the New Plan was to divide proportionately the whole of Europe between a certain number of Powers, which would have had nothing to envy one another for on the ground of equality, and nothing to fear on the ground of the Balance of Power.

II.—THE NUMBER OF STATES.

Their number was reduced to fifteen, and they were of three kinds, viz. :—Six great hereditary monarchical Powers ; five elective monarchies, and four sovereign republics. The six hereditary monarchies were France, Spain, Great Britain, Denmark, Sweden, and Lombardy. The five elective monarchies, the Empire, the Papacy, Poland, Hungary, and Bohemia. The four republics ; the Republic of Venice (seigniorial), the Republic of Italy (which in the same way may be called ducal, because of its dukes), the Swiss Republic (Helvetian or Confederated), and the Belgian Republic (provincial).

III.—THE LAWS AND STATUTES.

The laws and statutes calculated to cement the union of all these members, and to maintain amongst them the order once established ; the reciprocal oaths and pledges as regards religion and politics ; the mutual assurances for the liberty of commerce ; the measures for making all these divisions with equity, to the general contentment of the parties ; all these can be understood without any enlarging further on Henry's precautions. Only small difficulties of detail could arise which would be easily met in the General Council representing the States of all Europe, whose establishment was undoubtedly the happiest possible idea for the introduction of reforms, such as time renders needful in the wisest and most useful institutions.

IV.—THE GENERAL COUNCIL.

The model of this General Council of Europe had been founded on that of the ancient Amphictyons of Greece, with the modifica-

GRAND DESSEIN DE HENRI IV. 1603.

(Mémoires du Duc de Sully, VI., 129 et seq.: mot pour mot.)

I.—L'OBJET

L'objet du nouveau plan était de partager avec proportion toute l'Europe, entre un certain nombre de puissances, qui n'eussent eu rien à envier les unes aux autres du côté de l'égalité, ni rien à craindre du côté de l'équilibre.

II.—LE NOMBRE DES ETATS

Le nombre en était réduit à quinze, et elles étaient de trois espèces, savoir : six grandes dominations monarchiques héréditaires, cinq monarchiques électives, et quatre républiques souveraines. Les six monarchiques héréditaires étaient la France, l'Espagne, l'Angleterre ou Grande-Bretagne, le Danemark, la Suède et la Lombardie ; les cinq monarchiques électives, l'Empire, la Papauté ou le Pontificat, la Pologne, la Hongrie, et la Bohême ; les quatre républiques, la république de Venise, (ou seigneuriale), la république d'Italie, qu'on peut de même nommer ducale, à cause de ses ducs, la république suisse, helvétique ou confédérée, et la république belge (autrement provinciale).

III.—LES LOIS ET LES STATUTS

Les lois et les statuts propres à cimenter l'union de tous ces membres entre eux, et à y maintenir l'ordre une fois établi ; les sermens et engagemens réciproques, tant sur la religion, que sur la politique ; les assurances mutuelles pour la liberté du commerce ; les mesures pour faire tous ces partages avec équité, au contentement général des parties ; tout cela se sous-entend de soi-même, sans qu'il soit besoin que je m'étende beaucoup sur les précautions qu'avait prises Henri, à tous ces égards. Il ne pouvait survenir au plus que quelques petites difficultés de détail, qui auraient été aisément levées dans le conseil général représentant comme les états de toute l'Europe, dont l'établissement était sans doute l'idée la plus heureuse qu'on pût former, pour prévenir les changemens que le temps apporte souvent aux réglemens les plus sages et les plus utiles.

IV.—LE CONSEIL GÉNÉRAL

Le modèle de ce conseil général de l'Europe, avait été pris sur celui des anciens Amphictyons de la Grèce, avec les modifications

tions suitable to our usages, climate, and the end of our policy. It consisted of a certain number of commissioners, ministers, or plenipotentiaries from all the Powers of the Christian Republic, continually assembled as a Senate to deliberate on affairs as they arose, to occupy themselves with discussing different interests, to pacify quarrels, to throw light upon and oversee the civil, political, and religious affairs of Europe, whether internal or foreign. The form and procedure of this Senate would have been more particularly determined by the votes of the Senate itself. The advice of Henry was that it should be composed, *e.g.*, of four commissioners for each of the following Powers: The Emperor, the Pope, the Kings of France, Spain, England, Denmark, Sweden, Lombardy, Poland, the Venetian Republic, and of two only for the other republics and lesser Powers, which would have made a Senate of about seventy persons, whose election might have been renewed every three years.

V.—THE PLACE OF MEETING.

As to the place, it would have to be decided whether it was more suitable for the Council to be permanent or movable, divided into three parts or united. If it were divided into parts, of twenty-two magistrates each, their residence might be in three places, which would be like so many convenient centres, such as Paris or Bourges for one, Trent or Cracow, or their environs, for the two others. If it were judged more expedient not to divide them, the place of meeting, whether fixed or movable, should be pretty near the centre of Europe, and consequently be fixed in one of the fourteen following towns: Metz, Luxembourg, Nancy, Cologne, Mayence, Trèves, Frankfort, Wirtzbourg, Heidelberg, Spire, Worms, Strasbourg, Bâle, Besançon.

VI.—MINOR COUNCILS.

I think that besides this General Council it would still have been suitable to form a certain number of smaller ones, for the special convenience of different cantons. By making six, one would have had them placed, *e.g.*, at Dantzic, Nuremburg,

convenables à nos usages, à notre climat, et au but de notre politique. Il consistait en un certain nombre de commissaires, ministres ou plénipotentiaires, de toutes les dominations de la république chrétienne, continuellement assemblés en corps de sénat pour délibérer sur les affaires survenantes, s'occuper à discuter les différens intérêts, pacifier les querelles, éclaircir et vider toutes les affaires civiles, politiques et religieuses de l'Europe, soit avec elle-même. soit avec l'étranger. La forme et les procédures de ce sénat, auraient été plus particulièrement déterminées par les suffrages de ce sénat lui-même. L'avis de Henri était qu'il fût composé, par exemple, de quatre commissaires, pour chacun des potentats suivans, l'empereur, le pape, les rois de France, d'Espagne, d'Angleterre, de Danemark, de Suède, de Lombardie, de Pologne, la république vénitienne ; et de deux seulement, pour les autres républiques et moindres puissances, ce qui aurait fait un sénat d'environ soixante-dix personnes, dont le choix aurait pu se renouveler de trois ans en trois ans.

V.—LE LIEU

A l'égard du lieu, on déciderait s'il était plus à propos que ce conseil fût permanent, qu'ambulatoire, divisé en trois, que réuni. Si on le partageait par portions de vingt-deux magistrats chacune, leur séjour devait être dans trois endroits qui fussent comme autant de centres commodes, tels que Paris ou Bourges, pour l'une ; Trente ou Cracovie, ou leurs environs, pour les deux autres. Si on jugeait plus expédient de ne point le diviser, le lieu d'assemblée, soit qu'il fût fixe ou ambulatoire, devait être à peu près le cœur de l'Europe, et être par conséquent fixé dans quelqu'une des quatorze villes suivantes : Metz, Luxembourg, Nancy, Cologne, Mayence, Trèves, Francfort, Wirtzbourg, Heidelberg, Spire, Worms, Strasbourg, Bâle, Besançon.

VI.—DES CONSEILS MOINDRES

Je crois qu'outre ce conseil général, il eût encore convenu d'en former un certain nombre de moindres, pour la commodité particulière de différens cantons. En en créant six, on les aurait placés, par exemple, à Dantzick, à Nuremberg, à Vienne en

Vienna, in Germany ; at Bologna, in Italy ; at Constance ; and the last in the place most convenient for the kingdoms of France, Spain, and England, and the Belgian Republic, which it more particularly concerned.

VII.—APPEAL TO THE GENERAL COUNCIL.

But, whatever were the number and the form of these special Councils, it was of the utmost utility that they should have recourse by appeal to the Great General Council, whose decisions should have the force of irrevocable and unchangeable decrees, as being considered to emanate from the united authority of all the Sovereigns, pronouncing as freely as absolutely.

VIII.—POLITICAL OBJECTS

The political part of the Plan . . . was to despoil the House of Austria of all its possessions in Germany, Italy, and the Netherlands—in a word, to confine it to the kingdom of Spain, bounded by the Atlantic, the Mediterranean and the Pyrenees, leaving to it, for equality with the other Powers, Sardinia, Majorca, Minorca (and other islands on these coasts), Canary Isles, the Azores, Cape Verde Island, with its possessions in Africa ; Mexico, with the American islands which belong to it ; countries which would of themselves suffice to found great kingdoms ; and finally, the Philippines, Goa, the Moluccas, and its other Asiatic possessions.

IX.—CONQUERED COUNTRIES.

One precaution to take in relation to all conquered countries would be to form out of them new kingdoms, which would be declared joined to the Christian Republic, and which would be apportioned to different Princes, carefully excluding those who already held rank among the Sovereigns of Europe.

X.—EXPENSES.

It only remains that the Powers should tax themselves for the maintenance of armed forces, and for all the other things necessary to make the plan succeed, until the General Council should specify all these amounts.

Allemagne, à Bologne en Italie, à Constance, et le dernier dans l'endroit jugé le plus commode pour les royaumes de France, d'Espagne et d'Angleterre, et la république belge, qu'il regardait plus particulièrement.

VII.—APPEL AU CONSEIL GÉNÉRAL

Mais quels que fussent le nombre et la forme de ces conseils particuliers, il était de toute utilité qu'ils ressortissent par appel au grand conseil général, dont les arrêts auraient été autant de décrets irrévocables et irréformables, comme étant censés émaner de l'autorité réunie de tous les souverains, prononçant aussi librement qu'absolument.

VIII.—LA PARTIE DU DESSEIN POLITIQUE

La partie du dessein purement politique . . . c'était de dépouiller la maison d'Autriche de l'empire de tout ce qu'elle possède en Allemagne, en Italie, et dans les Pays-Bas ; en un mot, de la réduire au seul royaume d'Espagne renfermé entre l'Océan, la Méditerranée et les Pyrénées, auquel on aurait laissé seulement, pour le rendre égal aux autres grandes dominations monarchiques de l'Europe, la Sardaigne, Majorque, Minorque et autres îles sur ces côtes ; les Canaries, les Açores et le Cap-Vert, avec ce qu'il possède en Afrique ; le Mexique, avec les îles de l'Amérique qui lui appartiennent ; pays qui suffiraient seuls à fonder de grands royaumes ; enfin, les Philippines, Coa, les Moluques, et ses autres possessions en Asie.

IX.—LES PAYS CONQUIS

Une précaution unique à prendre, par rapport à tous les pays conquis, eût été d'y fonder de nouveaux royaumes, qu'on déclarerait unis à la république chrétienne, et qu'on distribuerait à différens princes, en excluant soigneusement ceux qui tiendraient déjà rang parmi les souverains de l'Europe.

X.—DES FRAIS

Il n'est question que d'engager chacun d'eux à se taxer lui-même pour l'entretien des gens de guerre, et pour toutes les autres choses nécessaires à la faire réussir, en attendant que le conseil général eût spécifié toutes ces valeurs.

REMARKS ON THE "GRAND DESSEIN" OF
HENRI IV.

Sully's Memoirs are the only source of information respecting Henry IV.'s Grand Project ("Les Mémoires de Sully sont le seul monument qui ait conservé à la postérité le détail du grand dessein de Henri IV. ; Ed. 1822, Vol. VI., p. 97, Note). These the Duc de Sully began to dictate to his Secretaries shortly after Henry's death in 1610. Only the first two volumes, which cover the years 1570 to 1605, were completed during Sully's lifetime; but after his death the unfinished portion was transcribed and completed by his two Secretaries and Jean Laboureur. The first edition was published in 1638, fifteen years after Eméric Crucé, also a Frenchman, had published the book in which he advocated the establishment at Venice of an International Court of Arbitration. A new edition was published at Rouen in 1649. The first is in four parts, which form as many volumes, although in some libraries they are found united in two volumes only. The first and second of the four parts were printed at *Amsterdam*, that is at the Château de Sully, without date or printer's name. This is commonly called the Green Letter Edition, because the vignette and some of the letters were in green. (*Ib.*, preface, pp. xvii. and xxx.)

Henry's project was undoubtedly, and necessarily, the work of his Minister, Sully. Nys says that the so-called Grand Dessein is purely and wholly the product of Sully's brain ("*Etudes de Droit International et de Droit Politique*," par Ernest Nys, Brussels and Paris, 1896, p. 302). This does not, of course, lessen the value of the project. Princes are dependent on their Ministers, and the scheme was no less Henry's because the literary form was Sully's. The author of an old treatise which exists amongst the MSS. of the Royal Library, and which is

apparently the oldest record that we have of that period, does not doubt that the project would have been fully carried into execution had Henry lived. Later, Péréfixe (pp. 384, etc., Edition de Ledoux, 1822), who has given a very good abridgment of it in the third part of his history of Henry the Great, says positively that it would have been carried, and furnishes proofs of it. (*Ib.*, Vol. VI., p. 98.)

The question was opened with Elizabeth as early as the year 1596, for Sully, referring to his interview with her, on one of his visits to London, says: "Elle me rappela ce qui s'était passé à ce sujet en 1596, entre le roi et les ambassadeurs anglais et hollandais, et me demanda si ce prince ne persistait pas toujours dans les mêmes sentimens, et pourquoi il différait tant à mettre la main à l'œuvre." (*Ib.*, Vol. III., p. 131.) Negotiations were continued with Elizabeth later, for Sully says again: "Il le communiqua néanmoins par lettres à Elisabeth; et ce fut ce qui leur inspira une si forte envie de s'aboucher en 1601, lorsque cette princesse vint à Douvres, et qu'il s'avança jusqu'à Calais." (*Ib.*, Vol. VI., p. 106.) Both the views of that Princess and her hope of the prospect of the success of the scheme are expressed in the continuation of this passage. "Je la trouvai fortement occupée des moyens de faire réussir ce grand projet; et malgré les difficultés qu'elle imaginait dans ces deux points principaux, la conciliation des religions et l'égalité des puissances, elle me parut ne point douter qu'on ne pût le faire réussir. . . . Elle disait encore qu'il aurait été à souhaiter qu'il eût pu s'exécuter par toute autre voie que par celle des armes, qui a toujours quelque chose d'odieux; mais qu'elle convenait que du moins on ne pouvait guère le commencer autrement." This is most interesting. "Une très-grande partie des articles," he continues, "des conditions et des différens arrangemens est due à cette reine, et montre bien que du côté de la pénétration, de la sagesse et de toutes les autres qualités de l'esprit, elle ne cédait à aucun des rois les plus dignes de porter ce nom." (*Ib.*, pp. 106-7.)

Sully's first reference in this passage is supported by contemporary documents, and applies to what was even then a definite

and extensive movement. This appears from the following extract, which is given verbatim :—

A Treaty of Alliance and League between Henry the IV., King of France, Elizabeth Queen of England, and the United Provinces of the Low Countries, to defend themselves against Spain. Done at the Hague, the 31st of October, 1596.

“II. That as soon as this can be conveniently done, and that within the next year 1597, there shall be a General Congress assembled and held by the Deputies of the different Confederates, and other Kings, Princes, Lords and States, who shall join in the foresaid League, at such a Day, Time and Place as the said King of *France*, and the said Lady, the Queen of *England* shall think convenient ; there to deliberate and resolve upon the means to be made use of in order to attack the said King of *Spain*, and make an Invasion into his Kingdoms and Lands, at the common Cost, Charge, Forces, and Endeavours of the said Confederates, to advise together about the Execution and Fulfilment of the said League and Confederacy, with all that depends thereupon.”

A General Collection of Treatys, Manifesto's, etc., from the year 1495, to the year 1712. Second Edition, London, M.DCC.XXXII. Vol. II., p. 114.

After Elizabeth's death the matter was still pursued with her successor, James I. (*Ib.*, Vol. III., p. 408.) The arrangements with other princes are well summarised by Rousseau ; in fact, the progress of the great scheme was only cut short by the dagger of Ravallac.

Like the Amphictyonic Council, which was avowedly taken as its model, the Grand Dessein had no direct purpose of International Arbitration. Incidentally, references are made to its adoption ; and these are most significant as foreshadowing the modern idea of permanent Arbitration, but this was not its object.

Henry IV. of France intended to form a “very Christian republic” (*république très chrestienne*). It was to consist of fifteen sovereignties, with the power of each so nicely adjusted that neither would be tempted to take up arms against its

neighbours for fear that the others would attack it. To accomplish this a readjustment of European Powers would be necessary, of which the requisite changes in the North of Germany were to be made through the Arbitration of the Kings of France, England, Lombardy, and of the Republic of Venice. ("Toutes ces cessions, échanges et transports au nord de l'Allemagne devaient être faits à l'arbitrage des rois de France, d'Angleterre, et de Lombardie, et de la république de Venise" (Vol. VI., pp. 128, 9).)

Switzerland, with the addition of Franche-Comté, Alsace, the Tyrol, and other dependencies, was to be formed into a republic, governed by a council or senate, of which the Emperor, the German Princes, and the Venetians were to be appointed arbitrators. ("La Suisse, accrue de la Franche-Comté, de l'Alsace, du Tyrol et autres dépendances, aurait été érigée en république souveraine, gouvernée par un conseil ou sénat, dont l'empereur, les princes d'Allemagne et les Vénitiens auraient été nommés sur-arbitres" (*Ib.*, pp. 124, 5).)

Henry proposed, in case of a disagreement over the election of the Emperor or the King of the Romans, that the differences should be referred "to the Arbitration of the Pope, the Kings of England, Denmark, and Sweden, of the Venetians and the cantons of Switzerland, such of the three as they would wish to choose." ("En l'arbitrage du pape, des rois d'Angleterre, Dennemarc et Suède, des Vénitiens et des cantons de Suisse, tel des trois qu'ils voudront choisir" ("Eméric Crucé," by T. W. Balch, 1900, p. 19).)

Finally, each of the fifteen sovereign members of the Christian Republic were to send delegates to a General Council, which should decide all causes of dispute that might arise between the different sovereignties, and fix the amount of the contribution which each Power should make towards the maintenance of the army and navy of the Confederation. Sully thought that the forces raised by the confederated Powers would be sufficiently strong to restore and maintain the Empire, as he writes to Henry, in its ancient "rights, liberties, and privileges, which is the

principal object of your designs" ("droit, libertez et privileges, qui est le principal but de vos desseins" (*Ib.*, p. 22).)

Three religions, and three only, were to be recognised in Europe, the Roman Catholic, the Reformed, and the Lutheran. The passage in which Sully defends this part of the project is as follows:—

"As each of these three religions is at the present time established in Europe, so that it does not appear that any one of the three can be destroyed, and as experience has shown the uselessness and the danger of any such attempt, there is nothing better to do than to leave all three in existence, and even to strengthen them in such a way, however, that this indulgence should not in the future open the door to all sorts of capricious imagination in the way of false dogmas, which should, on the contrary, be carefully stamped out at their very birth. God, by visibly supporting what the Catholics are pleased to call the new religion, teaches us to behave in this way, which is in conformity with the precepts and the examples of Holy Writ."

[“Chacune de ces trois religions se trouvant aujourd’hui établie en Europe, de manière qu’il n’y a aucune apparence qu’on pût venir à bout d’y en détruire aucune des trois, et que l’expérience a suffisamment montré l’inutilité et les dangers de cette entreprise, il n’y a rien de mieux à faire, que de les y laisser subsister toutes trois, et même de les fortifier ; de manière cependant que cette indulgence ne puisse dans la suite ouvrir la porte à tout ce que le caprice pourrait faire imaginer de faux dogmes, qu’on doit avoir un soin particulier d’étouffer dans leur naissance. Dieu, en paraissant visiblement soutenir ce qu’il plaît aux catholiques d’appeler la nouvelle religion, nous enseigne cette conduite qui n’est pas moins conforme aux préceptes de la sainte écriture, que confirmée par ses exemples.” (*Ib.*, Vol. VI., pp. 113-114).]

Concerning its object, Sully, in a letter to the King, referring to the “Grand Dessein,” says that it was “first to reduce the whole House of Austria to a dominion so well adjusted and composed in such due proportion that it would deliver all the Christian states and dominions from the fears and apprehensions

that it has always given them cause to cherish, of being oppressed and enslaved by it; and, secondly, that all those belonging to that House should be induced by adequate reasons to forsake their former extortionate covetousness, so that they may no longer plan injuries to any one—a state of mind to which it seems impossible ever to bring them so long as they possess a number of states and kingdoms beyond those included in their Spanish dominions. [“La première, a reduire toute la Maison d’Autriche à une domination si bien ajustée et proportionnellement composée, qu’elle delivre tous les états et dominations chrestiennes des craintes et apprehensions qu’elle leur a tousjours donné sujet de prendre d’estre opprimez et asservis par elle; et la seconde, que tous ceux de cette Maison soient persuadez, par raisons convenables, à se départir de leur anciennes aviditez pleines d’extorsion, afin qu’ils ne pensent jamais à choses dommageables à autrui; à quoy il semble impossible de les pouvoir faire resoudre, tant qu’ils possederont une quantité d’estats et de royaumes outre ceux que contiennent les Espagnes.”] (*Nouvelle Collection des Mémoires*, etc. — Duc de Sully — Paris, 1837, p. 425).]

Seeing, therefore, that the plan of Henry IV. and his Minister Sully, was not to settle the differences of European nations by means of Arbitration, but to overthrow the power of the House of Hapsburg by means of a league of the other European states, and that its fundamental thought was armed force, not Peace, the “Grand Dessein” cannot be looked upon as the beginning of the modern movement towards the organisation of International Arbitration. (See Nys, p. 306, and T. W. Balch, p. 18.)

ÉMÉRIC CRUCÉ ON AN INTERNATIONAL COURT OF ARBITRATION.

Born at Paris about 1590; died in 1648.

The originator of the modern idea of permanent International Arbitration was probably a Frenchman — Eméric Crucé. In 1623 he published a small book entitled “Le Nouveau Cynée.” It is comprised of 226 pages, without reckoning the preface and the table of contents. The only known copy of this remarkable book is in the Bibliothèque Nationale, Paris. Though not large, it is filled with close reasoning. The book itself is not altogether unknown, for it is cited by historians. In it, says T. W. Balch, “Crucé presented what was probably the first real proposal of substituting International Arbitration for war as the court of last resort for nations.” As early, however, as the beginning of the twelfth century GEROHUS had propounded his idea for International Arbitration, and this, it would appear, was really the commencement of the movement.

FROM THE PREFACE.

“This book would gladly make the tour of the inhabited world, so as to be seen by all the kings, and it would not fear any disgrace. having truth for its escort, and the merit of its subject, which must serve as letters of recommendation and credence.”

I.—THE BENEFITS OF PEACE.

I. A PRUDENT POLICY.

“There are those,” he says, “who care so little for strangers that they think it prudent policy to sow among them divisions, in order to enjoy a more secure quiet. But I think quite differently,

ÉMÉRIC CRUCÉ.
(EMERICUS CRUCÆUS.)

Il naquit à Paris vers 1590 ; il y mourut en 1648.

LE TITRE DE SON OUVRAGE EST :

*Le
Nouveau Cynée
Ou
Discours d'Estat
representant les occasions et moyens
d'establis une paix generale, et la liberté du
Commerce par tout le monde.
Aux Monarques et Princes
souverains de ce temps.*

Em. Cr. Par.

A Paris

*chez Jacques Villery, au Palais sur
le perron Royal
M.DC.XXIII.*

Avec Privilège du Roy

DE LA PREFACE.

“Ce livre feroit volontiers le tour de la terre habitable, afin d'estre veu de tous les Roys, et ne crandroit point aucune disgrâce, ayant la verité pour escorte, et le merite de son subject, qui luy doit servir de lettres de recommandations et de creance.”

I.—LES BIENFAITS DE LA PAIX.

1. UNE PRUDENTE POLITIQUE.

“Il y en a,” dit-il, “qui se soucient si peu des estrangiers qu'il estiment une prudente politique de semer parmy eux des divisions, afin de jouir d'un repos plus assuré. Mais je suis bien

and it seems to me that when one sees the house of his neighbour burning or tumbling down, that one has as much cause for fear as for compassion, because human society is a body all of whose members have a common sympathy, so that it is impossible that the sickness of one shall not be communicated to the others. Therefore this little book contains a universal [insurance] policy, useful to all nations alike, and agreeable to those who have some ray of reason and sentiment of humanity."

2. THE REAL CAUSES OF WAR.

"The evil passions of princes are," according to Eméric Crucé, "the real causes of wars, and yet all have an interest in enjoying the benefits of Peace. Without doubt there are considerable hindrances, but why should not kings engage, and urge their subjects to do useful work?"

3. THE MOST USEFUL OCCUPATION.

"And among occupations which then, is, the most useful? That which contributes to the comforts of a monarchy. . . . In short, there is no employment to compare in utility with that of the merchant who legitimately increases his resources by the expenditure of his labour, and often at the peril of his life, without injuring any one; in which he is more praiseworthy than the soldier whose advancement depends only upon the spoliation and destruction of another."

II.—COMMERCE.

1. THE ESTABLISHMENT OF COMMERCE.

"Supposing that we could obtain a universal Peace, the finest fruit of it would be the establishment of commerce: and on that account (partāt) monarchs should make provision so that their subjects can traffic without fear, both by sea as well as by land: which every person will be easily able to do in his particular capacity."

d'un autre avis et me semble quand on voit brûler ou tomber la maison de son voisin qu'on a subject de crainte autant que de compassion, vu que la société humaine est un corps dont tous les membres ont une sympathie, de manière qu'il est impossible que les maladies de l'un ne se communiquent aux autres. Or, ce petit livre contient une police universelle, utile indifféremment à toutes les nations et agréable à ceux qui ont quelque lumière de raison et sentiment d'humanité."

2. LES CAUSES VÉRITABLES DES GUERRES.

Les mauvaises passions des princes sont, d'après Eméric Crucé, les causes véritables des guerres, et cependant tous ont intérêt à jouir des bienfaits de la paix. Sans doute, il y a des obstacles apparents, mais pourquoi les rois n'engageraient-ils pas, ne pourraient-ils pas leurs sujets à faire d'utile besogne ?

3. L'OCCUPATION LA PLUS UTILE.

Et parmi les occupations, quelle est donc la plus utile ? "Ce qui apporte des commodités à une monarchie, . . . Bref, il n'y a mestier comparable en utilité à celui de marchand qui accroist légitimement ses moyens aux despens de son travail et souventefois au péril de sa vie, sans endommager n'y offenser personne : en quoy il est plus louable que le soldat dõt l'avancement ne dépend que des déspoüilles et ruines d'autrui." (*Le Nouveau Cynée*, page 30.)

II.—LE COMMERCE.

I. L'ÉTABLISSEMENT DU COMMERCE.

"Si tant est que nous puissions obtenir une paix universelle, dont le plus beau fruit est l'établissement du commerce ; et partât les Monarques doivent pourveoir, a ce que leur subjects puissent sans aucune crainte trafiquer tant par mer que par terre : ce qu'un chacun pourra aisement faire en son estat particulier."— (*Le Nouveau Cynée*, page 32.)

2. FACILITIES OF TRANSIT.

“Watch must be kept to facilitate the means of communication, not only on the great rivers but also on the smaller, and to render these latter capable of carrying boats, since that underlies all convenience of commerce, so much so that those who have no river, form waterways by artificial means, like the Brabant people, who have dug a canal from Brussels to the Scheldt, in order to communicate more easily with Antwerp.”

Crucé proposed to join the seas by means of canals, and asked that works should be carried out with that object in Languedoc, recalling the fact that these had been already promised by Francis I. He points out as a useful work the clearing of waste lands in such countries as Provence and Languedoc, in France, which bear witness to incredible neglect.

3. SAFEGUARDING THE SEAS.

He desired the destruction of haunts of pirates, such as Algiers in Barbary, and he asked that ships of war should safeguard “the highways of the sea.”

“What pleasure it would be,” he exclaims, “to see men go freely here and there and hold intercourse with one another, without any scruples of country, ceremonies, or other such diversities, as if the earth were, as she really is, a dwelling place (cité) common to all !

“Only the savages could oppose such a policy ; but if they wish to continue their brutal ways of living, they will be blockaded, attacked, and killed like poor beasts in their lairs.”

III.—THE PRACTICAL ARTS.

By the side of commerce (“la negotiation”) he placed the practical arts, such as those of the architect, jeweller, watchmaker, the manufacture of silk and linen, and the other mechanical arts, which, he considers, are in no way inferior to the liberal arts in inventiveness and expertness, and which surpass them in usefulness.

2. LA FACILITATION DES COMMUNICATIONS.

“ Il faut veiller à faciliter les communications non seulement des grosses rivières, mais encore des moindres, et rendre celles-ci capables de porter bateaux, attendu qu'en cela gist toute la commodité du commerce, si bien que ceux qui n'ont aucune rivière font venir des eaux par artifice, comme les Brabançons qui ont creusé un canal depuis Bruxelles jusques à l'Escaut, afin de communiquer plus aisément avec Anvers.”—(*Le Nouveau Cynée*, page 33.)

L'auteur propose de joindre les mers ; il demande que des travaux soient exécutés à cet effet en Languedoc ; il rappelle que déjà François I^{er} les promettait. Il signale comme une œuvre utile le défrichement des terres incultes ; en France, des pays comme la Provence, le Languedoc, témoignent d'une incroyable négligence.

3. “ LES CHEMINS DE LA MER.”

Il veut la destruction des repaires des corsaires, tels qu'Alger en Barbarie, et il demande que des navires assurent “ les chemins de la mer.”—(*Le Nouveau Cynée*, pages 41-42.)

“ Quel plaisir,” s'écrie-t-il, “ seroit-ce de voir les hommes aller de part et d'autre librement et communiquer ensemble, sans aucun scrupule de pays, de ceremonies ou d'autres diversitez semblables, comme si la terre estoit ainsi qu'elle est veritablement, une cité commune à tous ! ”

“ Les sauvages seuls pourront s'y opposer, mais s'ils veulent continuer leur façon brutale de vivre, on ira les bloquer, assaillir et tuer comme pauvres bestes dans leurs gistes.”

III.—L'INDUSTRIE.

A coté du commerce, de “ la negotiation,” se placent des metiers, comme l'architecture, l'orfevrie, l'horlogerie, les ouvrages de soie, les toiles et les autres arts mécaniques, qui, selon l'auteur du *Nouveau Cynée*, ne le cèdent guère en invention ou subtilité aux arts libéraux, et qui les surpassent en utilité.

IV.—THE EXACT SCIENCES.

The exact sciences come next. Eméric Crucé gives the first place amongst these to medicine and mathematics, which “have regard to the utility of life.” The pursuit of these he would reserve for those men who are distinguished by the nobility of their birth or by the acuteness of their intellect.

These, then, are some occupations which princes might give to their subjects in order to prevent them from troubling the public quietude through idleness. In this way would disappear the causes and pretexts of war which might present themselves in the interior of states.

V.—HUMAN FRATERNITY AND SOLIDARITY.

To the objection that the diversity of nations will provoke dissensions and conflicts, Crucé replies :—

“Why should a Frenchman wish harm to an Englishman, a Spaniard, or an Indian? I cannot wish it when I consider that they are men like me, that I am subject, like them, to error and sin, and that all nations are bound together by a natural, and, consequently, indissoluble bond, which prevents a man from considering another a stranger, unless he follows the common and inveterate opinion which he has received from his predecessors.”

VI.—RELIGIOUS TOLERATION.

He affirms the principles of religious toleration with unusual force.

He also sets forth the absolute necessity of toleration.

VII.—THE PROPOSED ORGANISATION.

All this leads up to the definite conclusion that general Peace is possible, that internal obstacles may disappear, and that neither diversities of nation nor differences of religion are legitimate causes of war.

“Suppose,” he says, “that Peace is signed to-day, and that it is published to the whole world; how do we know that posterity will ratify the articles? Wills are changeable, and the actions of the men of the present time do not bind their successors. To

IV.—LES SCIENCES.

Viennent aussi les sciences. Eméric Crucé met au premier rang des sciences la médecine et les mathématiques, qui “regardent l'utilité de la vie.” Il en réserve la culture aux hommes distingués par la noblesse de leur race ou par la subtilité de leur esprit.

Il est donc des occupations que les princes pourront donner à leurs sujets afin d'empêcher que, par oisiveté, ils ne troublent le repos public. Ainsi disparaissent les causes et les prétextes de guerre qui peuvent se présenter à l'intérieur des Etats.

V.—LA FRATERNITÉ ET LA SOLIDARITÉ HUMAINES.

Que si l'on objecte que la diversité de pays provoquera des dissensions et des luttes, Crucé répond :

“Pourquoy moy qui suis François voudray-je du mal à un Anglois, Espagnol ou Indien? Je ne le puis quand je considère qu'ils sont hommes comme moy, que je suis subject comme eux à erreur et péché, et que toutes les nations sont associées par un lien naturel et conséquemment indissoluble, qui fait qu'un homme ne peut reputer un autre estrangier, si ce n'est en suivant l'opinion commune et invétérée qu'il a reçue de ses prédécesseurs.”

VI.—LA TOLÉRANCE RELIGIEUSE.

Les principes de tolérance religieuse sont affirmés avec une rare vigueur. Il expose aussi la nécessité absolue de la tolérance.

VII.—L'ORGANISATION DE LA PAIX PERPÉTUELLE.

La conclusion est précise, c'est que la paix générale est possible, que les obstacles intérieurs peuvent disparaître et que ni diversité de nation, ni différence de religion ne constituent des causes légitimes de guerre.

SON PLAN :

“Posez le cas que la Paix aujourdhuy soit signée, qu'elle soit publiée en plein theatre du monde : Que scavons-nous si la posterité en voudra emologuer les articles? Les volôtez sont

close the door to this objection it suffices to remember what we have said about the causes of war, which, not being considerable, for the reasons given above, there is nothing which can occasion the rupture of a Peace. Nevertheless, to prevent the inconveniences of this, it would be necessary to choose a city where all sovereigns should perpetually have their ambassadors, in order that the differences which might arise should be settled by the judgment of the whole assembly. The ambassadors of those who would be interested would plead there the grievances of their masters, and the other deputies would judge concerning them without prejudice ("passion"). And to give more authority to the judgment, advice also should be taken from the great republics, who would likewise have their agents in the same place. I say 'great republics,' like those of the Venetians and the Swiss, and not those small lordships (seigneuries) which cannot maintain themselves, and depend upon the protection of another. So that if any one should refuse to abide by the award of such a notable company, he would incur the disapprobation of all the other princes, who would find satisfactory means of bringing him to reason. Then the most suitable place for such an assembly is the territory of Venice, because it is practically neutral and indifferent towards all princes; added to this, it is near the most important monarchies of the earth—those of the Pope, the two Emperors, and the King of Spain. It is not far from France, Tartary, Muscovy, Poland, England, and Denmark. As for Persia, China, Ethiopia, and the East and West Indies, they are lands far distant, but navigation remedies that inconvenience, and for such a good object a long voyage would not be declined."

VIII.—THE UNIVERSAL UNION.

Crucé contemplated a universal union that should include even Persia, China, Ethiopia, the West Indies, the East Indies, indeed all the world. A delicate question presented itself, how to determine the order of rank and precedence. Without fixing anything, he *suggested* a solution which is worth the trouble of reporting.

muables, et les actiōs des hommes de ce temps n'obligent pas leurs successeurs. Pour clore le passage à ceste obiection, il suffit se rememorer de ce que nous avōs dit touchant les causes de la guerre, lesquelles n'estans pas considerables pour les raisons cy-dessus alleguees, il n'y a riē qui puisse occasionner la rupture d'une paix. Neantmoins, pour en prevenir les inconveniens, il seroit necessaire de choisir une ville où tous les Souverains eussent perpetuellement leurs ambassadeurs, afin que les differēs qui pourroient survenir fussent vuidez par le iugement de toute l'assemblee. Les ambassadeurs de ceux qui seroient interrez exposeroyent là les plaintes de leurs maîtres, et les autres deputez en iugeroient sans passions. Et pour autoriser d'avantage le iugement, on prendroit advis des grandes Republicques, qui auroiēt aussi en ce mesme endroiet leurs agens. Je dis grandes Republicques, comme celle des Venitiens et des Suisses, et nō pas ces petites Seigneuries, qui ne se peuvent maintenir d'elles mesmes, et dependent de la protection d'autrui. Que si quelqu'en cōtrevenoit à l'arrest d'une si notable cōpagnie, il encourroit la disgrace de tous les autres Princes, qui auroient beau moyen de le faire venir à la raison. Or le lieu le plus commode pour une telle assemblee c'est le territoire de Venise, pource qu'il est cōme neutre et indifferent à tous Princes ; ioinct aussi qu'il est proche des plus signalees Monarchies de la terre, de celles du Pape, des deux Empereurs, et du Roy d'Hespagne. Il n'est pas loing de Frāce, de Tartarie, Moschouie, Polongne, Angleterre et Dannemarch. Quant à la Perse, la Chine, l'Ethiopie, et Indes orientales et occidentales, ce sont pays bien reculez, mais la navigation supplee ceste incommodité, et pour un si bon subiect, on ne doit point refuser un long voyage.—(*Le Nouveau Cynée*, pages 60-61.)

VIII.—L'UNION UNIVERSELLE.

L'union proposée par Eméric Crucé est universelle. Elle embrasse tous les pays y compris la Perse, la Chine, l'Ethiopie, les Indes occidentales et orientales. Une question délicate se présente : comment régler le rang et la préséance. Sans rien im-

The order which, according to him, it might be convenient to adopt was as follows :—

First.—The Pope. Among the motives adduced is the respect due to ancient Rome.

Second.—The Sultan of Turkey, because of “the majesty, power, and happiness of his empire,” and also on account of the memory of the ancient Eastern Empire, of which Constantinople was the capital.

Third.—The Christian Emperor.

Fourth.—The King of France.

Fifth.—The King of Spain.

Sixth.—Then the claims of the Kings of Persia and China, of Prester John the Precop (*sic*) of Tartary, and the Grand Duke of Muscovy have to be arranged.

Next the importance and order of precedence of the Kings of Great Britain, Poland, Denmark, Sweden, Japan, and Morocco, the Great Mogul, and the other monarchs of India and Africa equally demanded attention. They are advised to refer to the judgment of the other princes, and then, if the opinion be equal, he proposes to remit the final decision to the agents of the republics. He indicates, however, other expedients, and proposes specially to give the first place to the first comer, or to the oldest, or again *à tour de rôle*.

IX.—THE INITIATIVE.

Crucé was not blind to the fact that if some one did not take the initiative the projects of permanent Peace and free trade could never be realised. In his opinion there were two potentates who could broach the subject to the sovereigns of the world—the Pope to the Christian princes and the King of France to the Mohammedan rulers, for he alone had credit and reputation among them.

Crucé wrote: “Only let them publish Peace, *By Order of the King!* These words will make them drop their arms from their hands.”

References :—

Etudes de Droit International et de Droit Politique, by Ernest Nys.
London and Paris : 1896.

Emeric Crucé, by Thomas Willing Balch. Philadelphia : 1900.

poser, l'auteur suggère une solution. Elle vaut la peine d'être rapportée. Voici l'ordre qu'il conviendrait, selon lui, d'adopter :

- 1^o Le pape. Parmi les motifs invoqués figure le respect dû à la Rome antique ;
- 2^o L'empereur des Turcs. Motifs : La majesté, puissance et félicité de son empire." Autre motif, le souvenir de l'ancien empire d'Orient, dont Constantinople fut la capitale ;
- 3^o L'empereur chrétien ;
- 4^o Le roi de France ;
- 5^o Le roi d'Espagne ;
- 6^o Ici, la position est à débattre entre les rois de Perse, de la Chine, le prêtre Jean, le Precop (*sic*) de Tartarie, et le Grand duc de Moscovie.

Les rois de la Grande-Bretagne, de Pologne, de Danemark, de Suède, de Japon, de Maroc, le Grand Mogol, et les autres monarques des Indes et d'Afrique pourront contester également au sujet de la préséance. Il leur est conseillé de s'en rapporter au jugement des autres princes, et, s'il y a balance égale, l'auteur propose de remettre la décision finale aux agents des républiques. Il signale, du reste, d'autres expédients et propose notamment d'attribuer la première place au premier arrivé, ou bien au plus ancien, ou bien encore à tour de rôle.

IX.—L'INITIATIVE.

Crucé ne se cache point que si quelqu'un ne prend l'initiative, les projets de paix perpétuelle et de liberté commerciale ne pourront jamais se réaliser ; à son avis, deux hommes peuvent s'entretenir auprès des chefs d'Etat ; le pape pour les princes chrétiens et le roi de France pour les mahométans, car celui-ci a seul crédit et réputation auprès de ces derniers. Il écrit : " Qu'on publie seulement la paix *De par le Roy!* Ces paroles leur feront tomber les armes des mans."—(*Le Nouveau Cynée*, page 81.)

A SOCIETY OF SOVEREIGNS.

BY ERNEST LANDGRAVE OF HESSE-RHEINFELS, 1666.

It is interesting to find that another sovereign than Henry IV.—a German prince—though of less dignity, followed the same course. “The late Landgrave, Ernest of Hesse-Rheinfels,” says Leibnitz in his *Observations*, “who had commanded armies with distinction in the great German war, after the Peace of Westphalia betook himself to religious controversy and literary culture. He then left the Protestants, brought about a disputation between Father Valeriano Magni, a Capuchin monk, and Doctor Habercorn, a celebrated theologian of the Confession of Augsburg, and, during his leisure, which he signalised by *incognito* travels, he occupied himself with writing several works in German, French, and Italian, which he had printed and gave to his friends. The most important of these was in German, and was entitled *The Discreet Catholic*, in which he reasoned freely, and often very judiciously, on subjects of theological controversy. But since this book contained some delicate passages, he communicated it to very few persons, but he made an abridgment of it which appeared in booksellers’ shops. There was in this book a project similar to that of the Abbé St. Pierre, which was published nearly half a century later; but this did not appear in the abridgment.

“The Tribunal of the ‘Society of Sovereigns’ was to be established at Lucerne. Although I had the honour of being acquainted with this prince for only a short time before his death, he confided to me his long cherished ideas, and entrusted me with a copy of this work, which is very rare.

“But I confess that the authority of Henry IV. is worth more than all the rest. And although he may be suspected of having

LA SOCIÉTÉ DES SOUVERAINS

PAR

LANDGRAVE ERNEST DE HESSE-RHEINFELS, 1666.

“ Feu M^r le Landgrave *Ernest de Hesse-Rheinfels*,” dit Leibniz dans ses *Observations*, “ qui avoit commandé des armées avec réputation dans la grande guerre d’Allemagne, s’appliqua aux controverses de Religion et aux belles connoissances après la Paix de Westphalie. Il quitta ensuite les Protestans, fit tenir un Colloque entre le Père *Valeriano Magni*, Capucin, et le Docteur *Habercorn*, célèbre Théologien de la Confession d’Augsbourg, et s’avisa dans son loisir, qu’il distinguoit par des voyages faits *incognito*, de faire plusieurs ouvrages en Allemand, en François et en Italien, qu’il faisoit imprimer et donnoit à ses amis. Le plus considerable étoit en Langue Allemande, intitulé : *le Catholique discret*, où il raisonneit librement, et souvent très-judicieusement, sur les controverses Théologiques. Mais comme ce Livre contenoit des endroits délicats, il le communiquoit à très peu de personnes, et il en fit un Abregé qui parut dans les boutiques des Libraires. Il y avoit dans cet ouvrage un Projet approchant de celui de M^r l’Abbé *de St. Pierre*, mais il n’est pas dans l’Abregé.

“ Le Tribunal de la Société des Souverains devoit être établi à Lucerne. Quoique je n’eus l’honneur d’être connu de ce Prince que peu de tems avant sa mort, il me fit part de ses vieilles pensées, et il me confia un exemplaire de cet ouvrage qui est assez rare.

“ Mais j’avoue que l’autorité de *Henri IV.* vaut mieux que toutes les autres. Et quoiqu’on le puisse soupçonner d’avoir eu

had in view more the overturning of the House of Austria than the establishing of a Society of Sovereigns, yet it is evident that he thought this project acceptable, and it is undoubted that if the powerful sovereigns proposed it, the others would receive it willingly. But I do not know whether the lesser princes would dare to propose it to the great ones."

The German prince, says Nys, whose biography and work Leibnitz thus sketches in a few lines, was born at Cassel, the 6th December, 1623. He was the younger son of that remarkable man, Maurice le Savant. He had travelled much in his young days, and had taken part in the Thirty Years' War, during which he had fought in the ranks of the Protestants. In 1659 he found himself at the head of all the possessions of the collateral branch of Hesse-Rothembourg. His time was thenceforth divided between the administration of his estates, religious controversies, and travelling. He died at Cologne, May 12th, 1693.

He was converted to Catholicism in 1652, but he by no means abdicated his intellectual independence, and thus it was that, in 1666, he published the book to which Leibnitz refers. The edition was a very small one, consisting of only forty-eight copies, which the author distributed to his friends, and which he quickly withdrew from circulation, taking care, however, to make an abstract whose tendencies were less pronounced than those of the original work.

In his *Observations* on the Project for a Permanent Peace, which are attached by Leibnitz to a letter addressed by him to the Abbé de Saint Pierre (see Leibnitii, *Opera omnia*, Tom V., pp. 56 *et seq.*), he recalls the fact that there was *one* prince who had cherished the ideas of Universal Peace, viz., the Landgrave Ernest de Hesse-Rheinfels.

At the end of *The Discreet Catholic* is found a "Project of Permanent Peace." The Landgrave wished to establish a "Society of Sovereigns," but he admits only Catholic princes into his union. He proposes to establish a tribunal, which was to be situated in the town of Lucerne, which was equidistant from the two great Catholic Powers, Austria and France. He

plus en vûe de renverser la Maison d'Autriche, que d'établir la Société des Souverains, on voit toujours qu'il a cru ce Projet recevable : et il est constant que si les puissans Souverains le proposoient, les autres le recevraient volontiers. Mais je ne sai, si les moindres oseroient le proposer aux grands Princes." (*Opera omnia Leibnitii nunc primum collecta . . . studio Ludovici Dutens, Genevæ MDCCLXVIII, Tom. V. 57.*)

Le prince allemand, dit Nys (*Etudes, etc., pp. 306-7*) dont Leibniz esquisse ainsi en quelques lignes la biographie et l'œuvre, naquit à Cassel, le 6 décembre 1623. Il était le fils puiné de l'homme remarquable qui fut Maurice le Savant. Il avait beaucoup voyagé dans sa jeunesse et il avait pris part à la guerre de Trente ans où il combattit dans les rangs des protestants. En 1659, il se vit à la tête de toutes les possessions de la branche collatérale de Hesse-Rothembourg. Son temps se partagea depuis lors entre l'administration de ses États, les controverses religieuses et les voyages. Il mourut à Cologne, le 12 mai 1693.

Il s'était converti au catholicisme en 1652, mais il n'avait nullement abdiqué son indépendance intellectuelle et c'est ainsi qu'en 1666, il publia le livre dont parle Leibniz. Le tirage avait été très restreint ; il avait été de quarante-huit exemplaires que l'auteur distribua à ses amis et qu'il ne tarda pas à retirer de la circulation, en ayant soin toutefois de faire un *Extrait* dont les tendances étaient plus modérées que celles de l'œuvre primitive.

Dans ses *Observations* sur le projet d'une paix perpétuelle qui sont jointes à la lettre adressée par Leibniz à l'abbé de Saint-Pierre, Leibniz rappelle qu'un prince a eu des idées de pacification générale ; ce prince est le landgrave Ernest de Hesse-Rheinfels.

A la fin du *Catholique discret* se trouve un projet de paix perpétuelle. Le landgrave veut établir une "Société des Souverains," mais il n'admet dans son union que les princes catholiques ; il propose d'établir un tribunal et il lui donne comme siège la ville de Lucerne, située à égale distance des

suggests the idea of creating for the Emperor a position of independence, as the Holy Roman Emperor, at the expense of the clergy, whose property is too considerable, and whose superfluity should, according to him, be devoted to that individual on whom devolve the functions of supreme ruler, the inspirer of general policy, and military commander.

THE TITLE.

The complete title of this remarkable book was :—

Der so warhaffte als ganz aufrichtig und discret-gesinnte Catholischer, d.i. Tractat oder Discours von einigen so ganz raisonnablen und freyen also auch moderirten Gedancken, Sentimenten, Reflexionen und Concepten über den heutigen Zustand der Religions-Wesen in der Welt: durch eine der Römisch-Catholischen Religion mit Mund und Herzen redlich zugethane Persohn, also aufgesetzt und verfasst, alles alleinig zu grösseren Ehren Gottes des Almächtigen angesehen. Non nisi Bonis placere cupio. Beati qui esuriunt et sitiunt justitiam, d.i. welche gern sehen das alles zu Gottes Ehr und fein der Raison nach in der Welt hergienge. Gedruckt in einen solchen Stadt daselbsten es an Catholischen kirchen gewiss nicht ermangelt.

deux grandes puissances catholiques : l'Autriche et la France ; il suggère l'idée de créer à l'empereur une situation indépendante dans le Saint Empire romain, aux dépens du clergé dont les biens sont trop considérables et dont le superflu doit, selon lui, être attribué à celui à qui incombent les fonctions de chef suprême, d'inspirateur de la politique générale, de chef militaire.

LE TITRE.

Le long titre peut se résumer comme suit : Le "catholique sincère et discret," ou discours des sentiments, idées, réflexions raisonnables, libres et modérées sur l'état actuel de la religion dans le monde par une personne qui est fermement attachée au catholicisme romain. La ville où, selon le texte allemand, "il ne manque certes pas d'églises catholiques" et où l'ouvrage a été imprimé est Cologne.

Leibniz aussi dit : (Vide supra v. 406-7) "Ernestus, Hassiæ Landgrafius, ille ipse mutata religione celebris, librum Germanicum satis spissum edidit, titulo : *Discret-Catholischer*, in quo utriusque partis vitia æquali et Romanæ Curix inuisissima libertate perstrinxit. Liber ille in manibus paucorum versatur, neque enim habere possunt, nisi quibus ille donaverit."

A COUNCIL OF REFERENDARIES.

BY CHARLES, DUKE OF LORRAINE.

1688.

Nearly a century after the Grand Project of Henry IV. had been mooted, the same problem was approached from a different standpoint by another sovereign, Charles, Duke of Lorraine, who wrote about the time of the English Revolution of 1688. The object of Charles, while similar to that of Henry, was to be reached by the opposite path, for, in his Political Testament—an appendix contains his scheme—he expresses the wish that the House of Austria should profit by that event, and argues that if the arms of France were directed against the Princes of the Rhine, the reduction of their strength would be sure to conduce to the grandeur of that House, which would by that means become Sovereign in the Empire.

He, therefore, frames an elaborate plan, which is attached as an appendix to his so-called "*Will*," for the conduct of affairs in the European States when Peace was secured by the supremacy of Austria.

Like Henry's scheme it aimed at founding a supremacy upon force, and Arbitration is introduced only incidentally.

The scheme, however, is both interesting, instructive, and germane to the purpose of this book, for though the organisation it proposed to create can hardly be called a "tribunal," or in the strictest sense "international" (except as an imperial instrument for conducting international affairs), it has some unique features, which may not be found elsewhere, and which may be useful nevertheless, in the development of the idea of an International Tribunal.

The gist of the scheme was that the King of Hungary, on becoming Emperor, should form a Council of Referendaries, or Academy of Politicians, for the purpose of maintaining his supremacy and governing his empire.

IDÉE DU TESTAMENT

DE

CHARLES, DUC DE LORRAINE ET DE BAR.

1688.

L'auteur, qui écrivait lorsque la révolution d'Angleterre, arrivée en 1688, s'accomplissait, veut que la maison d'Autriche profite de cet événement, auquel on intéressera la Hollande, pour *attirer de ce côté les principales forces de la France et en disposer mieux ses affaires en Italie*. C'est sur cette partie qu'il veut que l'Empereur dirige toute son attention, sans se soucier de défendre efficacement les princes du Rhin, contre lesquels on aura provoqué les armes de la France, *leur affaiblissement devant toujours concourir à la grandeur de la maison d'Autriche*, qui se rendra par là souveraine dans l'Empire, et se servira des Allemands pour asservir l'Italie.

* * * * *

Le testateur n'oublie pas de tracer un vaste plan de commerce avec l'Angleterre, la Hollande, la Suède, le Danemark, l'Espagne et le Portugal, dont l'Italie serait le centre, avec les banques qu'il place à Prague, à Vienne, à Trieste et à Gratz. Dans tous ces arrangements, il n'est pas question de la France, qu'on semble exclure, puisqu'on n'en parle pas

Enfin, l'auteur de cet écrit recommande expressément, comme chose très-importante, *quand un homme sera admis dans la famille, aussitôt après son serment, de lui communiquer ce testament politique*

ANNEXE.

Instruction sur les négociations étrangères et domestiques.

* * * * *

1. The membership of this body shall consist of thirteen politicians, and they shall annually choose from among themselves a Referendary of State, who shall be commissioned during his year of office to be the spokesman of his Companionship in the Cabinet of the Sovereign, so that he may be thoroughly enlightened on all matters which are under consideration, and that he may be reciprocally informed by him of all those questions which ought to be agitated in this Companionship.

2. The business of these new Councillors, or State Referendaries, shall be a weekly discussion, on a fixed day, of some matter which has been proposed for their consideration, or which, in default of that, they themselves have raised. Two individuals shall speak, one on the affirmative side, the other on the negative, in regard to the decision which shall have been previously arrived at on the subject by a majority of votes.

The speeches shall be in writing, which they shall be able to read, and of which a copy shall then be taken into the Cabinet of the Prince, in order that his time may be occupied in investigating its claims to the main considerations of his Council. All the Aulic Councillors, and the sons of Ministers, of twenty-one years of age and upwards, shall be admitted to the discussion but only as listeners; even those of the Regency under the same conditions, in order that these young statesmen may instruct themselves more fully by the labour of these expert politicians.

3. This new organisation shall depend upon and confer with, the Prince alone. Its secrecy shall be inviolable on both sides, and whatever the announcements which may be published of its differing sentiments, it is not fitting that the proceedings should indicate those who have held the affirmative or the negative at the time that the President takes the vote in order to form the decision, which ought always to be determined only by those thirteen, or by those of the Companionship who are not absent.

4. Merit shall be the only ground of admission, even without birth, and a vacancy in the number shall be filled up only by the choice of individuals distinguished by their acuteness. They

1. Je crois que pour bien faire, le roi de Hongrie arrivant à l'Empire, doit former une Académie de treize politiques, qui se choisissent entre eux un référendaire d'Etat annuel, qui soit chargé pendant son année de porter la parole de sa compagnie dans le cabinet du Souverain, afin qu'il puisse être éclairé à fond sur toutes les matières qui sont sur le tapis, et qui en soit réciproquement instruit de toutes celles qui doivent s'agiter dans cette compagnie.

2. L'occupation de ces nouveaux conseillers ou référendaires d'Etat doit être une discussion par chaque semaine, à jour précis, sur quelque matière qui leur aura été proposée, ou à son défaut qu'ils se seront proposée entre eux. Deux particuliers parleront, l'un pour l'affirmative, et l'autre pour la négative, de la décision qui en aura été reçue préalablement à la pluralité des voix.

Ce discours sera par écrit, qu'ils pourront lire, et ensuite sera porté en copie dans le cabinet du Prince, pour y employer du temps à s'instruire des raisons qui peuvent l'ériger en chef de son conseil.

Tous les conseillers auliques et les enfants des ministres, âgés de vingt et un ans et au-dessus y seront admis, mais pour écouter seulement ; même ceux de la régence aux mêmes conditions, afin que ces jeunes hommes d'Etat s'instruisent plus à fond par le travail de ces habiles politiques.

3. Ce nouvel établissement ne doit dépendre, et ne doit conférer qu'avec le Prince seul. Le secret y doit être inviolable de part et d'autre, et quelque déclaration qui y paraisse des sentiments partagés, il n'est pas à propos que l'agitation indique ceux qui ont tenu la négative ou l'affirmative dans le temps que le référendaire en chef est allé aux avis, pour former la décision qui doit toujours être réglée entre eux treize seulement, ou entre ceux de la compagnie qui ne sont pas absents.

4. Il n'y faut admettre que du mérite, même sans naissance, et ne remplir le nombre vacant que par le choix des sujets déféré à à leur pénétration. Ils présenteront donc au Souverain trois su-

shall then present to the Sovereign three persons whom they shall declare to be the most capable of all those with whom they are acquainted. The Sovereign shall choose one of them to be the first to fill the vacant place, but the other two shall without fail have their turn after they have once gained this vote of the Political Academy.

5. Thirty thousand florins shall be allotted to them as annual wages, viz., a thousand florins a year to each member, and double that amount to him who shall be chosen their President—that absorbs fourteen thousand; two thousand for the copying clerks, subordinate to an appointed secretary, with an under-secretary to take his place in his absence; four thousand for the petty annuities which they shall give to those who are beginning to take an interest and to get on in politics—that makes twenty thousand; and the ten thousand remaining ought to be made use of, either for rendering assistance to any one of them who may need funds to go where he may be sent, or for treating them, in particular with little assistances which may secure their vigilance by that increase of benefit.

6. Whenever a Minister has to be sent to an important Court, he shall be required to choose under him a member of the Academy, to whom he shall give only his board and his place in his coach, and he shall communicate to him without reserve everything that takes place, and all that is under deliberation, so that he may have his opinion about it in writing.

7. Whoever shall be chosen to go under a Minister into a foreign Court shall enjoy his ordinary salary, which shall be remitted to him at an appointed time; he shall preserve entire subordination towards the Minister with whom he is associated, and shall keep himself in communication with the Political Council which he has left in the State, so as to gather from it the information which is necessary to him for the better counselling of him whom he assists; and, on his part, he shall send, month by month, advices to his Assembly of the observations and the discoveries which he shall make in the policy and principles of the Court where he may chance to be, and these shall

jets qu'ils affirmeront être les plus capables de tous ceux qu'ils connaissent. Ce souverain en choisira un pour remplir le premier la place vacante ; mais les deux autres viendront infailliblement à leur tour, dès qu'une fois ils auront acquis ce suffrage à l'Académie politique.

5. Il leur faut assigner trente mille florins de gages annuels ; savoir, mille florins à chacun par an, et le double à celui qui sera élu pour leur chef, ce qui en remplit quatorze mille ; deux mille pour les expéditionnaires des copies, subordonnés à un secrétaire déclaré, avec un sous-secrétaire, pour être présent en son absence ; quatre mille pour les petites pensions qu'ils feront à ceux qui commencent à prendre goût, et à s'avancer dans les affaires, ce qui fait vingt mille, et les dix mille restants doivent être employés, ou pour donner un secours à un d'eux qui passe où l'on l'envoie, ou pour les régaler en particulier de petits secours qui assurent leur vigilance par ce surcroît de bienfait.

6. Dès qu'on voudra envoyer un ministre dans une cour considérable, il sera obligé de choisir en second un homme de cette compagnie, auquel il ne donnera que sa table et place dans son carrosse, en lui communiquant exactement tout ce qui se passe, et tout ce qui se délibère, pour en avoir son sentiment par écrit.

7. Celui qui sera choisi pour aller en second dans une cour étrangère, jouira de ses appointements ordinaires, qui lui seront transférés à point nommé, gardera une entière subordination avec le ministre avec lequel il confère, et aura correspondance avec le Conseil de politiques qu'il a laissé dans l'Etat, afin d'en tirer les lumières qui lui sont nécessaires pour bien conseiller celui qu'il assiste, et réciproquement enverra de mois en mois des instructions à son assemblée, des observations et des découvertes qu'il fera dans la politique, et dans les maximes de la cour où il se trouve ; ce qui sera communiqué exactement à tous les membres de ce nouveau corps, afin qu'ils s'enfoncent dans les affaires par les affaires mêmes.

be communicated in detail to all the members of this new body, so that they may be occupied with actual business.

8. Whoever shall have been associated with a Minister in any particular Court shall never return to it, except as a principal with an associate under him, as above, whereby the Ministers will be compelled on pain of exile from the Court and other penalties greater still, to have them regarded there as persons of note and in the confidence of the Cabinet, so that they may not be eventually discredited by their fault to the prejudice of the State.

9. Whoever shall have spent some years under a Minister at a celebrated Court shall be sent as principal to an inferior Court, or, with another Minister, never with the same, to some other Court of consequence, in order that merit may imperceptibly support birth, and procure itself its advantages and *entrées*, and that birth may be forced to acquire merit, or at any rate, the State be absolved from having to trust to people who may compromise it by their arrogance whilst pretending to be extremely useful to it.

10. There will never be more than six principal Courts with which negotiations can cause good or evil consequences.

The various Courts and the characteristics of the men who should be sent to them are then set forth as follows :—

1. That of Constantinople
2. That of Poland
3. That of Rome
4. That of England

The one who comes from England should be employed in Holland

5. That of Sweden

This one will do well to pass on into Denmark

6. The Court of France

This one will be able to pass into Portugal and Spain without difficulty

11. When all those subordinate to Ministers return to their places they shall be allowed at least one year's rest before they

8. Celui qui aura été en second en quelque cour avec un principal ministre, n'y retournera jamais, si ce n'est en premier avec un second, comme ci-dessus ; par où les ministres seront obligés de les y faire considérer comme des gens de marque et du secret du cabinet, afin qu'ils n'y soient pas dans la suite avilis par leur faute, au préjudice de l'Etat, sur peine d'un exil de cour, et d'autres punitions encore plus grandes.

9. Celui qui aura passé ces années en second dans une cour célèbre, sera renvoyé en premier dans une cour subalterne, ou renvoyé avec un autre ministre ; jamais avec le même dans une autre cour de conséquence, afin qu'insensiblement le mérite soutienne la naissance, et s'en procure les avantages et les entrées, et que la naissance soit forcée d'acquérir du mérite, ou au moins l'Etat dispensé de s'assurer sur des gens qui le compromettent par leur fierté, en feignant de lui être extrêmement utiles.

10. Il n'y aura jamais que six cours principales, avec lesquelles les négociations puissent avoir de belles ou de fâcheuses conséquences.

Les Cours différentes et la qualité des hommes qu'il faut y envoyer sont exposés ensuite, c'est-à-dire :

Celle de Constantinople

Celle de Pologne

Celle de Rome

Celle d'Angleterre

Celui qui vient d'Angleterre doit être employé en
Hollande

La Cour de Suède

Celui-ci fera bien de passer en Danemark

La Cour de France

Celui-ci pourra passer en Portugal et en Espagne sans
aucun obstacle

11. Quand tous ces seconds reviendront à leur place, il faut les laisser au moins reposer une année avant que de les renvoyer

are sent to the Courts of Italy or Germany, and their Companionship shall elect them as Chief Referendaries of State, in order that as ordinary spokesmen they may thoroughly advise the Prince of whatsoever they have observed in the Courts which they have just left ; which they may be required to put into writing.

12. During their absence, if the number of the State politicians do not amount to seven, those who remain shall introduce into their weekly political discussions five or six aspirants, judged capable, and already pensioners of this Chamber, as said above. They shall even be presented to the reigning Sovereign in order that he may assure himself of their merits and the good choice of the Chamber in the interests of his service, but they shall not take any part in the decisions (of the Council), or the secret consultations of the Cabinet until they have taken the oath of fidelity and secrecy.

13. When the Sovereign shall deem it expedient he shall make them pass on into the Aulic Council, even into that of the Regency, according to their qualifications. He shall even, in the course of time, be able to raise them still higher if they continue deserving. In that way he will be certain to know everything, to be warned in time, to be well served, and never to be taken by surprise.

14. When the Sovereign shall have advanced a member of the Council to some share in the Ministry, he shall put him under obligation to give in writing, certified under his hand and declared to be true according to his conscience, his conception of all those whom he has left in the Chamber which he has just quitted, so that the Sovereign may know them more intimately. This shall be held secret between the Sovereign and the subject.

15. It will be expedient not to ennoble these new subjects by external distinctions which would always be below their merit. If it turn out as we anticipate, the title of "Confidential Councillor of the Cabinet" will be sufficient to secure an *entrée* everywhere, so that their sons will endeavour to surpass their fathers so as to succeed to their distinctions by the same means,

chez les princes d'Italie ou d'Allemagne, et obliger leur compagnie de les élire pour chefs référendaires d'Etat, afin qu'en portant la parole ordinaire, ils instruisent à fond le Prince de ce qu'ils ont remarqué dans ces cours qu'ils viennent de quitter ; ce qu'on peut même les obliger de donner par écrit.

12. Pendant leur absence, si le nombre des politiques d'Etat n'allait pas jusqu'à sept, ceux qui restent introduiront dans leurs conférences politiques de semaine cinq ou six aspirants jugés capables, et déjà pensionnaires de cette Chambre, comme on l'a dit plus haut ; on les fera de même présenter au Souverain régnant, afin qu'il s'instruise par lui-même de leur mérite et du bon choix de la Chambre en faveur de son service, mais ils n'auront point de part aux décisions ni aux consultations secrètes du cabinet, jusqu'à ce qu'ils aient prêté le serment de fidélité et de secret.

13. Quand le Souverain jugera à propos, il les fera passer dans le Conseil aulique, même dans celui de la régence, selon leur capacité ; il pourra même, par la suite, les élever encore plus haut, s'ils continuent à le mériter. C'est par là qu'il est assuré de tout savoir, d'être averti à temps, d'être bien servi et de n'être jamais surpris.

14. Dès que le Souverain aura avancé un membre du Conseil jusqu'à quelque participation du ministère, il l'obligera de donner par écrit signé de sa main, et affirmé vrai selon sa conscience, l'idée qu'il a de tous ceux qu'il a laissés dans la même Chambre qu'il vient de quitter, afin que le Souverain les connaisse plus intimement, ce qui sera tenu secret entre le Souverain et le sujet.

15. Il est à propos de ne pas ennoblir ces nouveaux sujets par des distinctions extérieures qui seront toujours au-dessous de leur mérite ; s'il est tel qu'on le suppose, le titre de conseiller secret du cabinet suffit pour avoir entrée partout, afin que leurs enfants s'étudient encore de surpasser leurs pères pour succéder à leur distinction par les mêmes voies, et qu'on oblige par là

and in that way the fathers themselves will be obliged to train them in so severe and rigorous a manner that cowardice and indolence, which lay waste the families of quality and the children of the best accredited Ministers, may not overtake them, but that they may escape by the very necessity of maintaining the position of their fathers. This is the sole method remaining to the Sovereigns of to-day of perpetuating the vigilance of the Ministers who are in their service.

16. Three or four of these thirteen politicians might be ecclesiastics, supposing they have great abilities, but neither of these should be employed as an associate under a Minister except in Poland, France, Switzerland, and the Catholic Courts of Italy and Germany.

17. All the commissioners who are appointed in Court to try foreign transactions shall be accompanied by one of these politicians, with a deliberative voice in the assembly, and the same precedence as the individual of the first rank to whom he ought always to be attached as associate under him everywhere, without which precaution the Sovereign will always be the dupe of his Minister.

18. Extraordinary Ambassadors shall be sent to Turkey and Russia, and even elsewhere, very brilliant, magnificent, lavish in expenditure, and, above all, they shall be accompanied by several clear-headed men, well posted up in the inclinations and principles of these peoples, in order to obtain the results which are expected from them according to the exigency.

19. When there shall be any difficult proposition to which a solution is being sought, the Sovereign shall advise with this Chamber of State-politicians before laying it before the Privy or Secret Council, in order that every one may know all that can be foreseen, either in its terms or its issues.

20. Great caution must be exercised in public treaties, rather never to conclude them than to pass over in them what it is not desirable to hold to; but also their infraction must never be permitted when once they have been ratified, in order by this appearance of good faith to win over the confidence of the whole

même les pères à les cultiver d'une manière si sévère et si rigoureuse que la lâcheté et l'indolence, qui désolent les familles de grande qualité et les enfants des ministres les plus accrédités, n'aillent pas jusqu'à eux, mais qu'ils l'évitent par la seule nécessité de soutenir la fortune de leurs pères. C'est la seule méthode qui reste aux Souverains aujourd'hui de perpétuer la vigilance des ministres dans leur service.

16. De ces treize politiques, il pourra y en avoir trois ou quatre ecclésiastiques, supposé qu'ils aient de grands talents, mais il ne les faut jamais employer en second qu'en Pologne, en France, en Suède et chez les princes d'Italie ou d'Allemagne catholiques.

17. Tous les commissaires qu'on assigne en cour pour écouter les négociations étrangères, doivent être accompagnés d'un de ces politiques, avec voix délibérative dans l'assemblée, et le même pas que l'homme de la première qualité, auquel il doit toujours être ajouté en second partout, sans quoi le Souverain sera toujours la dupe de son ministère.

18. Il faut envoyer en Perse et en Moscovie, même ailleurs, des ambassadeurs extraordinaires fort éclatants, magnifiques, d'une grande dépense, et surtout accompagnés de plusieurs bonnes têtes, bien instruites des inclinations et des maximes de ces peuples, pour en tirer le fruit qu'on en espère selon le besoin.

19. Quand il y aura quelque proposition scabreuse, à laquelle il s'agit de répondre, le Souverain fera consulter cette Chambre de politiques d'Etat, avant que de la proposer au conseil privé ou secret, afin que chacun y sache tout ce qu'on peut y entrevoir, soit dans les termes, soit dans les suites.

20. Il faut être extrêmement circonspect dans les traités publics, plutôt ne les finir jamais que d'y passer ce qu'on ne veut pas tenir ; mais aussi ne faut-il jamais en permettre l'infraction dès qu'ils sont ratifiés, afin d'attirer par cet air de bonne foi la

of Europe. There will always be plenty of other means to set it at variance when one takes into one's head to bring it about.

21. It is necessary, at first, whether they will or no, for the Emperor to make himself the arbitrator of all the differences between the Princes of Italy or those of Germany, whatever they may be, and at the least incitement, even that of their looking towards foreign assistance, to overwhelm them without resource, and especially to oppress them by the weight of his actual forces at the least resistance. Even if after this transitory punishment it should become necessary to give up or abandon the prey, no matter; the example of the desolation will restrain the others, and make more docile and submissive those who have lost most in the quarrel.

22. It will be necessary to communicate to all the politicians, immediately after their oath, the political testament which I have given to the Emperor Leopold on behalf of the King of Hungary and his successors in the empire, in order that this young Prince may find persons attached to, and skilled in, his interests, and that they may be able to employ themselves usefully in learning to govern, seeing that has been my intention.

23. Both in Peace and war these politicians shall maintain epistolary communication in foreign countries, but they shall make use of the cipher of the Secretary of the Chamber, which shall be given by the Sovereign, so that it can be certainly ascertained how far their intercourse extends and to what result it tends.

24. As the reigning family will have a great deal of confidence in these wise politicians, their failure in fidelity to it shall be only at the peril of their lives, for if any one shall be convicted of the least treason while abroad, whatever it may be, he shall be hung before the door of the Assembly, his colleagues being obliged to be his judges without appeal. If this infidelity takes place within the State, by some indiscretion, etc., etc., he shall escape with [the loss of] his fortune and shall be banished for life to at least thirty leagues from the Court, without having the prospect of any pension, or he shall be imprisoned for life in a fortified town or

confiance de toute l'Europe ; il y aura toujours assez d'autres moyens de brouiller où on s'avisera de le faire sentir.

21. Il faut d'abord de gré ou de force se rendre l'arbitre de tous les différends entre les princes d'Italie ou ceux d'Allemagne, quels qu'ils soient, et à la moindre invocation, même ménagement de secours étrangers, les accabler sans ressource, et surtout les opprimer du poids de ses forces actuelles dans la moindre résistance ; quand même après cette punition passagère, il faudrait rendre ou abandonner la proie, n'importe, l'exemple de la désolation retient les autres et rend plus dociles et plus soumis ceux qui ont plus perdu à la querelle.

22. Il faut communiquer, incontinent après le serment, à tous les politiques le Testament politique que j'ai donné à l'empereur Léopold en faveur du roi de Hongrie et ses successeurs arrivant à l'Empire, afin que ce jeune Prince trouve des gens remplis et versés dans ses intérêts, et qu'ils puissent s'en servir utilement pour apprendre à régner, puisque ç'a été mon intention.

23. En paix et en guerre ces politiques entretiendront commerce de lettres dans les pays étrangers, mais ils se serviront du chiffre du secrétaire de la Chambre, qui sera donné par le Souverain, afin qu'on puisse assurément découvrir jusqu'où vont leurs intelligences et à quoi elles aboutissent.

24. Comme la Famille régnante aura beaucoup de confiance à ces sages politiques, ils ne lui manqueront de fidélité qu'au danger de leur propre vie ; car si quelqu'un est convaincu de la moindre trahison dans les dehors, quelle qu'elle soit, il sera pendu devant la porte de l'Assemblée, ses confrères étant obligés d'être ses juges sans appel. Si cette infidélité est en dedans de l'Etat, par quelque indiscretion, etc., etc., il en sera quitte pour sa fortune, et sera relégué pour sa vie à trente lieues au moins de la Cour, sans aucune pension à espérer, ou il sera mis en assurance dans une ville forte ou citadelle pour prison perpétuelle, après avoir fait amende honorable devant la porte de son

citadel, after doing public penance before the door of his Assembly, in his shirt, torch in hand, always by the due judgment of his own colleagues, who shall incur the same penalty without any variation, if they do not give their decision according to the purpose of these instructions.

25. Combining these instructions with those which I have given in my Political Testament, there is no probability that the House of Austria will not prosper, that all Europe will not be eager to come under its rule, and that it will not supplant by degrees all those who offer it resistance.

26. Subjects of recently conquered countries, recognised as skilful and proved faithful, shall be admitted to this Chamber, so that each shall meet with a rank in the State proportionate to the merit which heaven has bestowed upon him; they shall be placed under close observation, and admitted to the same rights, and dangers of punishment as above. Thus no one will be indisposed towards the wise government of the ruling family, and that will be avoided which is happening to-day to the Government of Spain, which has for friends neither family connections nor allies, neither acquired subjects nor declared enemies.

Assemblée, en chemise, la torche au poing, toujours par le propre jugement de ses propres confrères, qui encourront la même peine sans y rien changer, s'ils n'en décident selon l'intention de ces instructions.

25. Unissant ces instructions à celles que j'ai données dans mon Testament politique, il n'y a point d'apparence que la maison d'Autriche ne prospère, que toute l'Europe n'ambitionne d'être sous sa domination, et qu'elle ne supplante peu à peu tous ceux qui lui résistent.

26. Il faut admettre dans cette Chambre les sujets des pays nouvellement conquis, reconnus habiles et éprouvés fidèles, afin que chacun trouve un rang dans l'Etat, à proportion du mérite que le ciel lui aura communiqué, les observant de près, aux mêmes droits et dangers de punition que dessus ; par où personne ne sera indisposé contre le sage gouvernement de la Famille dominante, et on évitera ce qui arrive aujourd'hui au gouvernement d'Espagne, qui n'a pour amis ni parents, ni alliés, ni sujets acquis, ni ennemis déclarés.

Signé : CHARLES DE LORRAINE.

WILLIAM PENN'S EUROPEAN DIET, PARLIAMENT,
OR ESTATES, 1693—94.

This scheme, which was given to the world by Penn in his "Essay towards the Present and Future Peace of Europe by the Establishment of an European Dyet, Parliament, or Estates," and first published in 1693-94, is not a reproduction of Henry IV.'s Grand Design. Penn, as indeed he confesses at the close of the Essay, may have owed to it the formal suggestion of his plan, but that is all.

That plan was the creation of a permanent Sovereign Tribunal—an International Parliament or Congress, which should exercise judicial functions as well as deliberative, and also act as a Committee of Safety. The judicial function was the chief feature of this proposed permanent Diet.

Penn's proposals then were :—

Earlier sections of the Essay :—

[SECT. I. *Of Peace, and its Advantages.*]

[SECT. II. *Of the Means of Peace, which is Justice rather than War*]

[SECT. III. *Government, its Rise and End under all Models.*]

[SECT. IV. *Of a General Peace, or the Peace of Europe, and the Means of it.*]

In my first Section, I showed the *Desirableness of Peace*; in my next, the Truest Means of it; to wit, *Justice not War*. And in my last, that this Justice was the Fruit of *Government*, as Government itself was the Result of *Society* which first came from a Reasonable Design in Men of Peace.

1. That the Sovereign Princes of Europe should, for the love of Peace and Order, agree to meet, by their appointed Deputies, in a General Diet, Estates, or Parliament, and there establish Rules of Justice for their mutual observance.

Now if the *Sovereign Princes of Europe*, who represent that Society, or Independent State of Men that was previous to the Obligations of Society, would, for the same Reason that engaged Men first into Society, *vis.*: *Love of Peace and Order*, agree to meet by their Stated Deputies in a *General Dyet, Estates, or Parliament*,

2. That this body should meet yearly, or once in two or three years at furthest, or as they should see cause.

and there Establish Rules of Justice for Sovereign Princes to observe one to another; and thus to meet Yearly, or once in Two or Three Years at furthest, or as they shall see Cause,

3. That it should be styled the Sovereign, or Imperial, Diet, Parliament, or States of Europe.

and to be stiled, *The Sovereign or Imperial Dyet, Parliament or States of Europe.*

4. That before this Sovereign Assembly should be brought all differences depending between one Sovereign and another, that cannot be adjusted by diplomatic means before its sessions begin.

before which Sovereign Assembly, should be brought all Differences depending between one Sovereign and another, that can not be made up by private Embassies before the Sessions begin;

5. That if any of the Sovereignties constituting this Imperial Diet should refuse to submit their claims or pretensions to the Diet, or to accept its judgment, and should seek their remedy by arms, or delay compliance beyond the time specified, all the other Sovereignties, uniting their forces, should compel submission to, and performance of, the sentence and payment of all costs and damages

and that if any of the Sovereignties that Constitute these Imperial States, shall refuse to submit their Claim or Pretensions to them, or to abide and perform the Judgment thereof, and seek their Remedy by Arms, or delay their Compliance beyond the Time prefixt in their Resolutions, all the other Sovereignties, United as One Strength, shall compel the Submission and Performance of the Sentence, with Damages to the Suffering Party, and Charges to the Sovereignties that obliged their Submission. To be sure, *Europe* would quietly obtain the so much desired and needed Peace, to *Her harassed Inhabitants*; no Sovereignty in *Europe* having the Power and therefore can not show the Will to dispute the Conclusion; and, consequently, *Peace* would be procured, and continued in *Europe*.

[SECT. V. *Of the Causes of Difference, and Motives to Violate Peace.*]

[SECT. VI. *Of Titles, upon which those Differences may arise.*]

6. The composition of this Imperial Diet should be by proportionate representation.

[SECT. VII. *Of the Composition of these Imperial States.*]

The Composition and Proportion of this *Sovereign Part*, or *Imperial State*, does, at the first Look, seem to carry with it no small Difficulty what votes to allow for the Inequality of the Princes and States. But with Submission to better Judgments, I can not think it invincible ;

7. The determination of the number of persons or votes for every Sovereignty would not be impracticable if it depended on an estimate of the yearly value of their respective countries.

For if it be possible to have an Estimate of the Yearly Value of the several Sovereign Countries, whose Delegates are to make up this August Assembly, The Determination of the Number of Persons or Votes in the States for every Sovereignty will not be impracticable.

8. This estimate was to be reached "by considering the revenues of lands, the exports and entries at the Custom Houses, the books of rates, and surveys, that are in all Governments, to proportion taxes for their support."

Now that *England, France, Spain, the Empire, &c.*, may be pretty exactly estimated, is so plain a Case, by considering the Revenue of Lands, the Exports and Entries at the Custom Houses, the Books of Rates, and Surveys that are in all Governments, to proportion Taxes for the Support of them, that the least Inclination to the *Peace of Europe* will not stand or halt at this objection. I will, with Pardon on all Sides give an Instance far from Exact ; nor do I pretend to it, or offer it for an Estimate ; for I do it at Random : Only this, as wide as it is from the Just Proportion, will give some Aim to my *Judicious Reader*, what I would be at : Remembering, I design not by any Computation, an Estimate from the Revenue of the Prince, but the Value of the Territory, the Whole being concerned as well as the Prince. And a Juster Measure it is to go by, since one Prince may have more Revenue than another, who has much a Richer Country : Tho' in the instance I am now about to make, the Caution is not so necessary, because, as I have said before, I pretend to no Manner of Exactness, but go wholly by Guess, being but for Example's Sake. I suppose the *Empire of Germany* to send Twelve ; *France*, Ten ; *Spain*, Ten ; *Italy*, which comes to *France*, Eight ; *England*, Six ; *Portugal*, Three ; *Sweedland*, Four ; *Denmark*, Three ; *Poland*, Four ; *Venice*, Three ; the *Seven Provinces*, Four ; *The Thirteen Cantons*, and little *Neighbouring Sovereignities*, Two ; Dukedoms of *Holstein* and *Courland*, One : And if the *Turks* and *Muscovites* are taken in, as seems but fit and just, they will make *Ten apiece more*. The *Whole* makes Ninety. A great Presence when they represent the *Fourth, and now The Best and Wealthiest Part of the Known World ; where Religion and Learning, Civility and Arts have their Seat and Empire.*

9. It is not absolutely necessary that there should be as many Delegates as votes ; for the votes may be given by one Delegate as well as by ten or twelve.

But it is not absolutely necessary there should be always so many Persons, to represent the larger Sovereignties ; for the Votes may be given by one Man of any Sovereignty, as well as by Ten or Twelve :

10. Though the fuller, that is, the *larger*, the assembly is, the more solemn, effectual, and free the debates will be, and its resolutions will carry greater authority.

Tho' the fuller the Assembly of States is, the more Solemn, Effectual, and Free the Debates will be, and the Resolutions must needs come with greater Authority.

11. The place of the first session should be central, as much as is possible ; afterwards as the Assembly itself shall determine.

The Place of their First Session should be Central, as much as is possible, afterwards as they agree.

12. To avoid quarrel for precedence the room may be round, and have several doors to come in and go out at.

[SECT. VIII. *Of the Regulations of the Imperial States in Session.*]

To avoid Quarrel for Precedency, the Room may be Round, and have divers Doors to come in and go out at, to prevent Exceptions.

13. The Assembly may be divided into sections, containing each ten members, each section to elect one of its number to preside over the Assembly in turn.

If the whole number be cast in Tens, each chusing One, they may preside by Turns,

14. All speeches should be addressed to the President, who should collect the sense of the debates and state the question before the vote is taken.

to whom all Speeches should be addressed, and who should collect the sense of the Debates, and state the Question for a Vote,

15. The voting should be by ballot, after the prudent and commendable method of the Venetians.

which, in my Opinion, should be by the *Ballot* after the Prudent and Commendable Method of the *Venetians*: Which, in a great Degree, prevents the ill Effects of Corruption ; because if any of the Delegates of that High and Mighty Estates could be so Vile, False, and Dishonorable, as to be influenced by Money, they have the Advantage of taking their Money that will give it them and of Voting undiscovered to the Interest of their Principles, and their own Inclinations ; as they

that do understand the *Balloting Box* do very well know. A Shrewd Stratagem and an Experimental Remedy against *Corruption*, at least Corrupting: For who will give their Money where they may so easily be Cozened, and where it is Two to One they will be so; for they that will take Money in such Cases, will not stick to Lye heartly to them that give it, rather than wrong their Country, when they know their Lye can not be detected.

16. Nothing should pass except by a three-quarters vote, or at least by a majority of seven.

It seems to me, that nothing in this *Imperial Parliament* should pass, but by Three Quarters of the Whole, at least Seven above the Ballance. I am sure it helps to prevent Treachery, because if Money could ever be a Temptation in such a Court, it would cost a great Deal of Money to weigh down the wrong Scale.

17. All pleadings should be delivered in writing—in the form of *Memorials* and *Journals*, kept by a proper person, in a *trunk* or *chest*, which should have as many different locks as there are sections in the Assembly (“tens in the States”).

All Complaints should be delivered in Writing in the Nature of *Memorials* and *Journals* kept by a proper Person, in a *Trunk* or *Chest*, which should have as many different Locks, as there are *Tens* in the *States*.

18. There should be a secretary for each section (“a clerk for each ten”), and a desk or table for these secretaries in the Assembly.

And if there were a *Clerk* for each *Ten*, and a *Pew* or *Table* for those *Clerks* in the *Assembly*;

19. At the end of every session, one [member] out of each section (“ten”) appointed for the purpose should examine and compare the records of those secretaries (“journals of those clerks”), and then lock them up in the common *trunk* or *chest*.

and at the End of every Session *One* out of each *Ten* were appointed to Examine and Compare the *Journal* of those *Clerks*, and then lock them up as I have before expressed, it would be clear and Satisfactory.

20. Each Sovereignty, if they please, as is but very fit, may have an *exemplification*, or *copy*, of the said *Memorials*, and the *Journals* of *Proceedings* upon them.

And each Sovereignty if they please, as is but very fit, may have an *Exemplification*, or *Copy* of the said *Memorials*, and the *Journal* of *Proceedings* upon them.

21. Rules and regulations of debate will not fail to be adopted

by the Assembly, which will be composed of the wisest and noblest of each Sovereignty, for its own honour and safety.

The *Liberty and Rules of Speech*, to be sure, they can not fail in, who will be *Wisest and Noblest* of each Sovereignty, for its own Honour and Safety.

22. If any difference arise among the Delegates from the same Sovereignty, one of the members forming the majority should take their votes on the question.

If any Difference can arise between those that come from the same Sovereignty that then One of the Major Number do give the Balls of that Sovereignty.

23. It is extremely necessary that every Sovereignty should be represented at the Diet under great penalties, and that none leave the session without permission till all the business be finished; and also that no neutrality in debate should be allowed; "for any such latitude will quickly open a way to unfair proceedings, and be followed by a train both of seen and unseen inconveniences."

I should think it extremely necessary, that every Sovereignty should be present under great Penalties, and that none leave the Session without Leave, till *All* be finished; and that Neutralities in Debates should by no Means be endured: For any such Latitude will quickly open a Way to unfair Proceedings, and be followed by a Train, both of seen, and unseen Inconveniences.

24. The language spoken in the session of the Sovereign Estates must be either *Latin* or *French*. "The first would be very well for civilians, but the latter more easy for men of quality."

I will say little of the *Language* in which the *Session of the Sovereign Estates should be held*, but to be sure it must be in *Latin* or *French*; the first would be very well for Civilians, but the last most easie for Men of Quality.

[SECT. IX. *Of the Objections that may be advanced against the Design.*]

1. The first of them is this, *That the strongest and Richest Sovereignty will never agree to it, and if it should, there would be Danger of Corruption more than of Force one Time or other.*

2. The Second is, *That it will endanger an Effeminacy by such a Disuse of the Trade of Soldiery; That if there should be any Need for it, upon any Occasion, we should be at a Loss as they were in Holland in 72.*

3. The Third Objection is, *That there will be great Want of Employment for younger Brothers of Families; and that the Poor must either turn Soldiers or Thieves.*

4. I am come now to the last Objection, *That Sovereign Princes and States will hereby become not Sovereign; a Thing they will never endure.*

[SECT. X. *Of the real Benefits that flow from this Proposal about Peace.*]

1. Let it not, I pray, be the least, that it prevents the Spilling of so much *Humane and Christian Blood*: For a Thing so offensive to God, and terrible and afflicting to Men, as that has ever been, must recommend our Expedient beyond all Objections.

2. There is another *manifest Benefit* which redounds to *Christendom*, by this *Peaceable Expedient*, *The Reputation of Christianity will in some Degree be recovered in the Sight of Infidels*; which, by the many *Bloody and unjust Wars of Christians*, not only with them, but one with another, hath been greatly impaired.

3. The third Benefit is, that it saves *Money*, both to the Prince and People; and thereby prevents those *Grudgings and Misunderstandings* between them that are wont to follow the devouring Expences of *War*; and enables both to perform *Publick Acts for Learning, Charity, Manufactures, etc.*

4. Our fourth Advantage is, that the *Towns, Cities, and Countries, that might be laid waste by the Rage of War, are thereby preserved.*

5. The fifth Benefit of this Peace, is the *Ease and Security of Trade and Traffick*

6. Another Advantage is, *The Great Security it will be to Christians against the Inroads of the Turk, in their most Prosperous Fortune.*

7. The Seventh Advantage of an *European, Imperial Dyet, Parliament, or Estates, is, That it will beget and increase Personal Friendship between Princes and States*, which tends to the Rooting up of Wars, and Planting Peace in a Deep and Fruitful Soil.

8. Nor is this all the Benefit that would come by this *Freedom and Interviue of Princes*; For *Natural Affection* would hereby be preserved, which we see little better than lost, *from the Time their Children, or Sisters, are Married into Other Courts.*

9. To conclude this Section, there is yet another *Manifest Privilege* that follows this *Intercourse and Good Understanding*, which methinks should be very moving with Princes, viz. *That hereby they may chuse Wives for themselves*, such as they Love, and not by *Proxy* meerly to gratify Interest; and ignoble Motive; and that rarely begets, or continues that *Kindness* which ought to be between Men and their Wives.

THE CONCLUSION.

By the same *Rules of Justice and Prudence*, by which Parents and Masters Govern their Families, and Magistrates their Cities, and Estates their Republicks, and Princes and Kings their Principalities and Kingdoms, *Europe* may obtain and Preserve *Peace among Her Sovereignties*. For Wars are the *Duels of Princes*; and as Government in Kingdoms and States, *Prevents Men being Judges and Executioners for themselves.*

over-rules Private Passions as to Injuries or Revenge, and subjects the Great as well as the Small to the *Rule of Justice*, that Power might not vanquish or oppress Right, nor one Neighbour act an *Independency and Sovereignty upon another*, while they have resigned that Original Claim to the Benefit and Comfort of Society; so this being soberly weighed in the Whole, and Parts of it, it will not be hard to conceive or frame, nor yet to execute the Design I have here proposed.

And for the better understanding and perfecting of the *Idea*, I here present to the *Sovereign Princes and Estates of Europe*, for the Safety and Tranquility of it, I must recommend to their Perusals *Sir William Temple's Account of the United Provinces*; which is an Instance and Answer, upon *Practice*, to all the Objections that can be advanced against the Practicability of my Proposal: Nay, it is an Experiment that not only comes to our Case, but exceeds the Difficulties that can render its Accomplishment disputable. For there we shall find *Three Degrees of Sovereignties to make up every Sovereignty in the General States*. I will reckon them backwards: First, *The States General themselves*; then the *Immediate Sovereignties* that Constitute them, which are those of the *Provinces*, answerable to the *Sovereignties of Europe*, that by their *Deputies* are to compose the *European Dyet, Parliament or Estates* in our Proposal: And then there are the several Cities of each *Province*, that are so many *Independent or Distinct Sovereignties*, which compose those of the *Provinces*, as those of the *Provinces* do compose the *States General* at the *Hague*.

But I confess I have the Passion to wish heartily, that the Honour of Proposing and Effecting so Great and Good a Design, might be owing to *England*, of all the Countries in *Europe*, as something of the Nature of our Expedient was, in Design and Preparation, to the Wisdom, Justice, and Valour, of *Henry the Fourth of France*, whose Superior Qualities raising his Character above those of his Ancestors, or Contemporaries, deservedly gave Him the Stile of *Henry the Great*. For *He was upon obliging the Princes and Estates of Europe to a Political Ballance*, when the *Spanish Faction*, for that Reason, contrived and accomplished *His Murder*, by the Hands of *Ravilliac*. I will not then fear to be censured, for proposing an *Expedient* for the Present and Future *Peace of Europe*, when it was not only the *Design, but Glory of One of the Greatest Princes that ever reigned in it*; and is found Practicable in the Constitution of one of the Wisest and Powerfulest States of it. So that to conclude, I have very little to answer for in all this Affair; because, if it succeed, I have so Little to deserve: For this *Great King's Example tells us it is fit to be done*; and *Sir William Temple's History* shews us, by a Surpassing Instance, *That it may be done*; and *Europe*, by her Incomparable Miseries, makes it now *Necessary to be done*: That my Share is only thinking of it at this Juncture, and putting it into the Common Light for the Peace and Prosperity of *Europe*.

JOHN BELLERS.

AN EUROPEAN STATE. 1710.

Not long after William Penn had published his Essay, another Quaker, John Bellers, of Gloucester, England, in the year 1710, published in London "a small treatise" with the elaborate title of:

"Some Reasons for an European State Proposed to the Powers of Europe. By an Universal Guarantee, and an Annual Congress, Senate, Dyet, or Parliament, to Settle any Disputes about the Bounds and Rights of Princes and States hereafter, with an Abstract of a Scheme formed by King Henry the Fourth of France upon the same Subject, and also a Proposal for a General Council or Convocation of all the different Religious Perswasions in Christendom, (not to Dispute what they Differ about, but) to Settle the General Principles they Agree in: By which it will appear, that they may be good Subjects and Neighbours, tho' of different Apprehensions of the Way to Heaven. In order to prevent Broils & War at home, when foreign Wars are ended."

The author, following William Penn so closely, will serve to illustrate the interest taken at all times, by the Religious Society of which he was a member, in the question of Peace on its practical, quite as much as on its doctrinal, and especially, to them, its authoritative side; his work will show to what an extent the subject occupied the thought of those times.

The pamphlet begins with a short address "To ANNE, Queen of Great Britain, etc." This is followed by a longer one "To the Lords and Commons of Great Britain in Parliament assembled."

"Some Reasons for an European State," addressed "To the Powers of Europe," contains some manly and useful speech, though somewhat unusual to courtly ears. "You are as Vice-

Roy to the great King of Heaven and Earth, to whom you must be accomptable for the Well-governing of the many Millions of your Fellow-Creatures and Subjects. Your Nations are High and Honourable among Mortals, and as you fulfil the will of your Principal, the Sovereign Lord of all Nations, Glorious will be your Rewards in Heaven. Many and Great are the Blessings to Prince and People where the Subjects are Governed in Peace ; but Oppression and War tend to the Poverty and Ruine of Both." Statistics are given to clench the economic argument ; and the Powers are shrewdly reminded that "Where there are no Men there can be no Money nor Women nor Children nor Kingdom, but a Land without Inhabitants." These "Reasons" lead up to

"THE PROPOSAL.

"That at the next General Peace there should be settled an Universal Guarantee, and an Annual Congress, Senate, Dyet, or Parliament, by all the Princes and States of Europe, as well Enemies [in the late war], as Neuters, joynd as one State, with a renouncing of all Claims upon each other, with such other Articles of Agreement as may be needful for a Standing European Law ; the more Amicably to Debate, and the better to explain any obscure Articles in the [Treaty of] Peace, and to Prevent any Disputes that might otherwise raise a New War in this Age or the Ages to come ; by which every Prince and State will have all the Strength of Europe to protect them in the Possession of what they shall Enjoy by the next Peace.

"But in the meanwhile, it's the Interest of the present Confederates, to begin it among themselves ; But Europe being under several forms of Government, and every Country being apt to Esteem their own Form best ; It will require time and Consideration among the Powers concerned, to draw such a Scheme as will suit the Dispositions and Circumstances of them all.

"The several Methods used by the German Dyets, the Union of the Provinces of Holland, the Cantons of Switzerland, the Nature of Guarantees, with the Model of Henry the Fourth, and

the *Fœdus Sacrum* between the Emperor and Venice, shew that Sovereign Princes and States may be United (to Protect a General Peace) yet with the Preservation of their Sovereign's Rights at Home.

“All which considered, I will Propose one Thought towards this Great Design, viz., That Europe should be divided into 100 Equal Cantons or Provinces, or so many, that every Sovereign Prince and State may send one Member to the Senate at least: And that each Canton should be appointed to raise a Thousand Men, or Money, or Ships of equal Value or Charge upon any Public Occasion (or any other Number that may be thought best). And for every Thousand Men, &c., that each Kingdom or State is to raise, such Kingdom or State shall have a Right to send so many Members to this European Senate; whose Powers and Rules should be first formed by an Original Contract among their Principals.

“By which means, the Princes and States of Europe may settle all Disputes among themselves, without Blood or Charge and prevent the Rash from such Dismal Adventures as are the Consequences of War, whilst they must know that every Man in the Senate, hath 1, 2 or 3 Thousand Men to back what he concludes there.

“Which is one Reason why the Members in the Senate should be in Proportion to the Strength of the Country which they represent; That the Strong may not refuse to Associate with the Weak, to preserve the Publick Peace: And whilst Conquest usually goes with the most Numerous as Strongest, they cannot expect an Equaller Sentence by the Sword, than what such a Senate will give, Nor so judge.

“Because that Assembly must go by Arguments (and not Scimitars) grounded upon Reason and Justice, and the Major part of the Senate not being interested in the dispute, will be the more inclined to that Side which hath most Reason with it: Whilst the Greatest Monarchs in time of Peace own themselves Subjects to the Sovereignty of Reason.

“But in War, that Sovereign is Dethron'd and Stript, with Fire

and Sword, and attended with Pestilence and Famine, and all other Mischiefs that can befall Mortals; for then the Enquiry is not, where is Justice? but where they can make the greatest Spoils and Ruine upon their Enemies?

“Now considering Europe as one Government, every Kingdom and State may be limited what Troops or Ships of War they may keep up, that they may be disabled from Invading their Neighbours; for without it, the Peace may be little better than a Truce, if than a Cessation of Arms is, for besides the Hazards of sudden Surprises, The Multitude of Troops that every State will keep up to Watch their Neighbours, will leave them the Third Year of the Peace (if it last so long) under little less Expence than they were at the first Year of the War; Considering the Charges of those Numerous Troops added to the Interest they must pay for the Vast Debts this War will leave them in.

“As the Continuance of Peace is of the Utmost Consequence both to Prince and People, nothing that is needful for such a Union can be too much for a Prince to give up for it.

“The unlimited Will of Monarchs, to Invade their Neighbours, is no more a Privilege to them, than it would be for their Subjects to have Liberty to destroy each other; which is to reduce the Earth to a Desart.

“But as there is a Necessity for raising Governments in Towns and Cities, for preserving the Rights and Properties of their Inhabitants, by a Peaceable deciding their Disputes, and for the same Reason (and defence against their Common Enemies) to join Counties and Provinces into Kingdoms and States.

“So the advantages would be the same and greater to the Kingdoms and States of Europe, if such an Union can be raised by them for deciding of any Disputes which may happen among themselves; That for the future there may be a full Stop to the Effusion of Christian Blood, which hath often been poured out upon small Occasions of Offence.

“Let any Treaty be set afoot that is possible, some Prince or State will complain, whether the Pyrennean, Westphalia, or that of Munster, Aix le Chapelle, Reswick, or the Treaty of Partition, or any other that ever was.

“There can be no righting the People that have been ruined and destroyed by War, nor the Princes they have belonged unto, and the longer the War continues, Injuries will be the more increased; for War always ruins more People than it raiseth, and the Rights of both Princes and People are best preserved in Peace.

“Therefore the best Expedient that can be offered is such a Settlement, as will prevent adding more Injuries by War, to those Irreparable ones already past: After the present Disputes are settled in the best Manner that Time and Circumstances will admit of.

“For as there was hardly ever more blood spilt in Europe in any War, nor so much Money spent as hath been to make this expected Peace, so it would be most unaccountable, to renew this War again, with expectation, to make any amendment to such a Powerful (and therefore Final) Decission, that Europe will be under when the General Peace shall be made.

“Happy will those Princes and States be, who shall be instruments, in settling such a Peace in Christendom; for as it will the better secure their Governments here, it will give them the greater assurance of Crowns eternal hereafter.

“Peace on Earth, and good will towards Men, was the Song sung by the Choir of Angels, at our Saviour’s Birth: So a Peacable disposition, is a qualification of all that shall be fit for their Society, and of those Kingdoms, that shall become the Kingdoms of our Lord and Saviour Jesus Christ.

“The Peace of God be with you, and his Counsel guide you and make the Earth by your means, like the Garden of Eden; that the Wolf may dwell with the Lamb, and the Leopard lie down with the Kid, and the Lion eat Straw like the Ox; and that there may be no destroyer there.”

“THE CHRISTIAN COMMONWEALTH.”

An address follows: “To the Councillors and Ministers of State, of the Kingdoms and States of Europe.”

Another address, “To the Bishops, Confessors, Chaplains,

Presbyters, Ministers, and Teachers in the Kingdoms, and States of Europe," leads up to "A Proposal for a General Council, of all the several Christian Perswasions in Europe," which is mainly of interest to ecclesiastics.

Then follows a discussion of Henry IV.'s scheme, which is interesting mainly as showing the extent to which the "Grand Design" of that great monarch was claiming the attention of thoughtful and large-minded men, even before the Abbé St. Pierre published his elaborate exposition and revision of that scheme. It is entitled: "An Abstract of a Model, for the good, and perpetual repose of Christendom; by that Great Prince, King Henry the 4th of France; as in the Memoirs of the Duke of Sully, and published by the Bishop of Rodez, (once Tutor to the present King, Lewis 14th) in his Life of Henry the 4th."

This "Model," as it appeared to Bellers, centred itself mainly in two ideas:—

1. The Union of all Christendom into *one Body*, to be called, the "Christian Commonwealth."

2. And the *General Council*, which should be called, "the Senate of the Christian Commonwealth," by whose consent "there should be established an Order and Regulation, between Sovereigns and Subjects, to hinder on one side the Oppression and Tyranny of Princes, and on the other side the Tumults and Rebellions of Subjects."

In "The Conclusion" Bellers says: "The Bishop writes, among other helps, this King Henry had gained all the good Pen's in Christendom, as chusing, rather to perswade, than force People: But I have seen nothing upon this subject but what that Author saith; and what hath been writ by the Eminent and Accomplished Gentleman, *William Penn Esq*; Governour of Pensilvania.*"

"* In a small Treatise, Sold by J. Sowle in White-Hart-Court in Gracious Street."

HENRY IV.'S SCHEME,
ELABORATED BY THE ABBÉ SAINT-PIERRE.

The ABBÉ DE ST. PIERRE was born 1658, died 1743.

I.—FUNDAMENTAL ARTICLES.

The present Sovereigns, by their undersigned Deputies, have agreed to the following Articles :—

1. There shall be from this day forward a Society, a permanent and perpetual Union between the undersigned Sovereigns, and, if possible, among all Christian Sovereigns, to preserve unbroken peace in Europe. The Sovereigns shall be perpetually represented by their Deputies in a perpetual Congress or Senate in a free city.

2. The European Society shall not at all interfere with the Government of any State, except to preserve its constitution, and to render prompt and adequate assistance to rulers and chief magistrates against seditious persons and rebels.

3. The Union shall employ its whole strength and care in order, during regencies, minorities, or feeble reigns, to prevent injury to the Sovereign, either in his person or prerogatives, or to the Sovereign House, and in case of such shall send Commissioners to inquire into the facts, and troops to punish the guilty.

4. Each Sovereign shall be contented, he and his successors, with the Territory he actually possesses, or which he is to possess by the accompanying Treaty. No Sovereign, nor member of a Sovereign Family, can be Sovereign of any State besides that or those which are actually in the possession of his family. The

EXTRAIT DU PROJET DE PAIX PERPÉTUELLE DE
M. L'ABBÉ DE SAINT PIERRE. (*Mot pour mot.*)

CHARLES IRÉNÉE CASTEL DE ST. PIERRE, 1658-1743.

I.—ARTICLES FONDAMENTAUX.

Les souverains presens par leurs Députez soussignez sont convenus des articles suivans :

1. Il y aura de ce jour à l'avenir une Société, une Union permanente et perpetuelle entre les Souverains soussignez, et s'il est possible, entre tous les Souverains Chrétiens, dans le dessein de rendre la Paix inaltérable en Europe.

Les Souverains seront perpetuellement representez par leurs Deputez dans un Congrez ou Senat perpetuel dans une Ville libre.

2. La Société Européenne ne se mêlera point du Gouvernement de chaque Etat, si ce n'est pour en conserver la forme fondamentale, et pour donner un prompt et suffisant secours aux Princes dans les Monarchies, et aux Magistrats dans les Republiques, contre les Séditieux et les Rebelles.

3. L'Union employera toutes ses forces et tous ses soins pour empêcher que pendant les Regences, les Minoritez, les Regnes foibles de chaque Etat, il ne soit fait aucun préjudice au Souverain, ni en sa personne, ni en ses droits, soit par ses Sujets, soit par des Estrangers ; et s'il arrivoit quelque Sédition, Révolte, Conspiration, soupçon de poison, ou autre violence contre le Prince ou contre la Maison Souveraine, l'Union, comme sa Tutrice et comme sa Protectrice née, enverra dans cet Etat des Commissaires exprès pour estre par eux informez de la verité des faits, et en même temps des Troupes pour punir les coupables.

4. Chaque Souverain se contentera pour luy et pour ses Successeurs du Territoire qu'il possède actuellement, ou qu'il doit posséder par le Traité cy-joint.

Aucun Souverain, ni aucun Membre de Maison Souveraine ne pourra estre Souverain d'aucun Etat, que de celuy, ou de ceux qui sont actuellement dans sa maison.

annuities which the Sovereigns owe to the private persons of another State shall be paid as heretofore. No Sovereign shall assume the title of Lord of any Country of which he is not in possession, and the Sovereigns shall not make an exchange of Territory or sign any Treaty among themselves except by a majority of the four-and-twenty votes of the Union, which shall remain guarantee for the execution of reciprocal promises.

5. No Sovereign shall henceforth possess two Sovereignities, either hereditary or elective, except that the Electors of the Empire may be elected Emperors, so long as there shall be Emperors. If by right of succession there should fall to a Sovereign a State more considerable than that which he possesses, he may leave that which he possesses, and settle himself on that which is fallen to him.

6. The Kingdom of Spain shall not go out of the House of Bourbon, &c.

* • • • • •

7. The Deputies shall incessantly labour to codify all the Articles of Commerce in general, and between different nations in particular; but in such a manner that the laws may be equal and reciprocal towards all nations, and founded upon Equity. The Articles which shall have been passed by a majority of the votes of the original Deputies, shall be executed provisionally according to their Form and Tenour, till they be amended and improved by three-fourths of the votes, when a greater number of members shall have signed the Union.

The Union shall establish in different towns Chambers of Commerce, consisting of Deputies authorised to reconcile, and to judge strictly and without Appeal, the disputes that shall arise either in relation to Commerce or other matters, between the subjects of different Sovereigns, in value above ten thousand pounds; the other suits, of less consequence, shall be decided, as usual, by the judges of the place where the defendant lives. Each Sovereign shall lend his hand to the execution of the

Les rentes que doivent les Souverains aux particuliers d'un autre Etat, seront payées, comme par le passé.

Aucun Souverain ne prendra le titre de Seigneur d'aucun Péis, dont il ne sera point en actuelle possession, ou dont la possession ne luy sera point promise par le Traité cy-joint.

Les Souverains ne pourront entr'eux faire d'échange d'aucun Territoire, ny signer aucun autre Traité entr'eux que du consentement, et sous la garantie de l'Union aux trois quarts des vingt-quatre voix, et l'Union demeurera garante de l'exécution des promesses reciproques.

5. Nul Souverain ne pourra desormais posséder deux Souverainetes, soit héréditaires, soit électives; cependant les Electeurs de l'Empire pourront être élus Empereurs, tant qu'il y aura des Empereurs.

Si par droit de succession il arrivoit à un Souverain un Etat plus considerable que celui qu'il possède, il pourra laisser celui qu'il possède, pour s'établir dans celui qui luy est échû.

6. Le Royaume d'Espagne ne sortira point de la maison de Bourbon, etc.

* * * * *

7. Les Députés travailleront continuellement à rédiger tous les Articles du Commerce en general, et des differens Commerces entre les Nations particulieres, de sorte cependant que les Loix soient égales et reciproques pour toutes les Nations, et fondées sur l'équité.

Les Articles qui auront passé à la pluralité des voix des Députés presens, seront exécutez par provision selon leur forme et teneur, jusqu'à ce qu'ils soient reformez aux trois quarts des voix, lors qu'un plus grand nombre de Membres auront signé l'Union.

L'Union établira en différentes Villes des Chambres pour le maintien du Commerce, composées de Députés autorisés à concilier, et à juger à la rigueur, et en dernier ressort les procez qui naîtront pour violence, ou sur le Commerce, ou autres matieres entre les Sujets de divers Souverains, au-dessus de dix mille livres; les autres procez de moindre consequence seront décidés à l'ordinaire par les Juges du lieu où demeure le Défendeur: chaque

judgments of the Chambers of Commerce, as if they were his own judgments.

Each Sovereign shall, at his own charge, exterminate his inland robbers and banditti, and the pirates on his coasts, upon pain of making reparation; and if he has need of help, the Union shall assist him.

8. No Sovereign shall take up arms, or commit any hostility, but against him who shall be declared an enemy to the European Society. But if he has any cause to complain of any of the Members, or any demand to make upon them, he shall order his Deputy to present a memorial to the Senate in the City of Peace, and the Senate shall take care to reconcile the difference by its mediating Commissioners; or, if they cannot be reconciled, the Senate shall judge them by arbitral judgment, by majority of votes provisionally, and by three-fourths of the votes definitely. This judgment shall not be given until each Senator shall have received the instructions and orders of his master upon that point, and until he shall have communicated them to the Senate.

The Sovereign who shall take up arms before the Union has declared war, or who shall refuse to execute a regulation of the Society, or a judgment of the Senate, shall be declared an enemy to the Society, and it shall make war upon him, until he be disarmed, and until its judgment and regulations be executed, and he shall even pay the charges of the war, and the country that shall be conquered from him at the close of hostilities shall be for ever separated from his dominions.

If, after the Society is formed to the number of fourteen votes, a Sovereign should refuse to enter thereinto, it shall declare him an enemy to the repose of Europe, and shall make war upon him until he enter into it, or until he be entirely despoiled.

9. There shall be in the Senate of *Europe* four-and-twenty Senators or Deputies of the United Sovereigns, neither more nor less, namely:—*France, Spain, England, Holland, Savoy, Portugal,*

Souverain prêtera la main à l'exécution des Jugemens des Chambres du Commerce, comme si c'étoient ses propres Jugemens.

Chaque Souverain exterminera à ses frais les Voleurs et les Bandits sur ses Terres, et les Pirates sur ses Côtes, sous peine de dédommagement, et s'il a besoin de secours, l'Union y contribuera.

8. Nul Souverain ne prendra les armes et ne fera aucune hostilité que contre celui qui aura été déclaré ennemi de la Société Européenne : mais s'il y a quelque sujet de se plaindre de quelqu'un de ses Membres, ou quelque demande à luy faire, il fera donner par son Député son memoire au Senat dans la Ville de Paix, et le Senat prendra soin de concilier les differens par ses Commissaires Mediateurs, ou s'ils ne peuvent estre conciliez, le Senat les jugera par Jugement Arbitral à la pluralité des voix pour la provision et aux trois quarts pour la definitive. Ce jugement ne se donnera qu'après que chaque Senateur aura reçu sur ce fait les instructions et les ordres de son Maistre, et qu'il les aura communiqué au Senat.

Le Souverain qui prendra les armes avant la declaration de Guerre de l'Union, ou qui refusera d'exécuter un Reglement de la Société, ou un Jugement du Senat, sera déclaré ennemi de la Société, et elle luy fera la guerre, jusqu'à ce qu'il soit desarmé, et jusqu'à l'exécution du Jugement et des Reglemens ; il payera même les frais de la Guerre, et le péis qui sera conquis sur luy lors de la suspension d'armes, demeurera pour toujours séparé de son Etat.

Si après la Société formée au nombre de quatorze voix, un Souverain refusoit d'y entrer, elle le declarera ennemi du repos de l'Europe, et lui fera la Guerre jusqu'à ce qu'il y soit entré, ou jusqu'à ce qu'il soit entièrement dépossédé.

9. Il y aura dans le Senat d'Europe vingt quatre Senateurs ou Députés des Souverains unis, ni plus, ni moins ; scavoir, France, Espagne, Angleterre, Hollande, Savoye, Portugal, Baviere et Associez, Suisse et Associez, Lorraine et Associez, Suede, Dane-

Bavaria and Associates, *Venice*, *Genoa* and Associates, *Florence* and Associates, *Switzerland* and Associates, *Lorraine* and Associates, *Sweden*, *Denmark*, *Poland*, the Pope, *Muscovy*, *Austria*, *Courland* and Associates, *Prussia*, *Saxony*, *Palatine* and Associates, *Hanover* and Associates, Ecclesiastical Electors and Associates. Each Deputy shall have but one vote.

10. The Members and Associates of the Union shall contribute to the expenses of the Society, and to the subsidies for its security, each in proportion to his revenues, and to the riches of his people, and everyone's quota shall at first be regulated provisionally by a majority, and afterwards by three-fourths of the votes, when the Commissioners of the Union shall have taken, in each State, what instructions and information shall be necessary thereupon; and if anyone is found to have paid too much provisionally, it shall afterwards be made up to him, both in principal and interest, by those who shall have paid too little. The less powerful Sovereigns and Associates in forming one vote, shall alternately nominate their Deputy in proportion to their quotas.

11. When the Senate shall deliberate upon anything pressing and imperative for the security of the Society, either to prevent or quell sedition, the question may be decided by a majority of votes provisionally, and, before it is deliberated upon, they shall begin by deciding, by majority, whether the matter is imperative.

12. None of the eleven fundamental Articles above-named shall be in any point altered, without the *unanimous* consent of all the members; but as for the other Articles, the Society may always, by three-fourths of the votes, add or diminish, for the common good, whatever it shall think fit.

II.—IMPORTANT ARTICLES.

1. The Senate shall be composed of one of the Deputies of each of the Voting Sovereigns who shall have signed the Treaty of the twelve Articles mentioned, and afterwards their number shall be augmented by one Deputy from each of the other

mark, Pologne, Pape, Moscovie, Autriche, Curlande et Associez, Hanovre et Associez, Archevêques Electeurs et Associez.

Chacun Deputé n'aura qu'une voix.

10. Les Membres et les Associez de l'Union contribueront aux frais de la Societé, et aux subsides pour la sûreté a proportion chacun de leur revenus et des richesses de leurs Peuples, et les contingens de chacun sera reglez d'abord par provision à la pluralité, et ensuite aux trois quarts des voix, après que les Commissaires de l'Union auront pris sur cela dans chaque Etat les instructions et les éclaircissemens necessaires, et si quelqu'un se trouvoit avoir trop payé par provision, il luy en sera fait raison dans la suite en principal et interest par ceux qui auroient trop peu payé. Les Souverains moins puissans et Associez pour former une voix, alterneront pour la nomination de leur Deputé à proportion de leurs contingens.

11. Quand le Senat deliberera sur quelque chose de pressant et de provisoire pour la sureté de la Societé, ou pour prévenir, ou appraiser quelque Sédition, la question pourra se décider à la pluralité des voix pour la provision, et avant que de délibérer on commencera par décider à la pluralité, si la matiere est provisoire.

12. On ne changera jamais rien aux onze Articles fondamentaux cy-dessus exprimez, sans le consentement *unanime* de tous les Membres ; mais à l'égard des autres Articles, la Societé pourra toujours aux trois quarts des voix y ajoûter, ou y retrancher pour l'utilité commune ce qu'elle jugera à propos.

2.—ARTICLES IMPORTANS.

1. Le Senat demeurera composé d'un des Députez de chacun des Souverains votans qui auront signé le Traité des douze Articles cy-dessus, et dans la suite leur nombre sera augmenté d'un Député de chacun des autres Souverains ; à mesure qu'ils

Sovereigns, in the order in which they shall sign it; and the assembly of the Senate shall provisionally be held at Utrecht.

2. The Senate, in order to keep up a continual correspondence with the members of the Society, and to free them from all cause of fear and distrust one of another, shall always maintain, not only an Ambassador with each of them, but also a Resident in each great province of two millions of subjects.

The Residents shall dwell in the capital cities of those provinces, that they may be perpetual and irreproachable witnesses to the other Sovereigns, that the Prince in whose dominions they reside, has no thought of disturbing the peace and tranquillity.

These Ambassadors and Residents shall all be chosen from among the native inhabitants of the territory of the City of Peace, or those naturalised in that territory.

Each Sovereign shall, as much as lies in his power, facilitate all inquiry concerning things that may be included in the instructions of the Residents, and shall order his Ministers, and his other officers, to give them all the information they shall desire for the public security and tranquillity, to the intent they may every month give an account of things to the Senate, and to the Ambassador of the Senate.

The Residents shall be of the number of those Commissioners whom the Senate shall send to verify the account of the revenues and charges of the Sovereign and of his State, in order to give the definitive regulation of his *Quota*.

3. When the Union shall employ troops against an enemy, there shall be no greater number of soldiers of one nation than of another; but to make the levying and maintaining a great number of troops easy to the less powerful, the Union shall furnish them with what money is necessary, and that money shall be furnished to the Treasurer of the Union by the most powerful Sovereigns, who shall pay, in money, the *surplus* of their extraordinary *quota*.

le signeront, et l'Assemblée du Senat se tiendra par provision à Utrecht.

2. Le Senat pour entretenir une correspondance perpetuelle avec tous les Membres de la Societé, et pour les delivrer de tout sujet de crainte et de défiance les uns des autres, entretiendra toujours non seulement un Ambassadeur chez chacun d'eux, mais encore un Resident par chaque grande Province de deux millions de sujets.

Les Residents demeureront dans les Villes Capitales de ces Provinces, pour estre témoins perpetuels et irréprochables à l'égard des autres souverains, que le Prince dans l'Etat duquel ils résident, ne pense qu'à conserver la Paix et la tranquillité.

Ces Ambassadeurs et ces Residents seront pris d'entre les Habitans naturels du Territoire de la Ville de Paix, ou naturalisez dans ce même Territoire.

Chaque Souverain facilitera, autant qu'il sera en son pouvoir, toutes les informations des choses qui seront dans les instructions des Residents, et il ordonnera ses Ministres, et à ses autres Officiers de leur donner sur toutes leurs demandes tous les éclaircissemens qu'ils desireront pour la sûreté et la tranquillité publique, afin qu'ils puissent en rendre compte tous les mois au Senat, et à l'Ambassadeur du Senat.

Les Residents seront du nombre des Commissaires que le Senat enverra pour verifier le Memoire des revenus et des charges du Souverain et de son Etat, afin de regler son Contingent pour la définitive.

3. Quand l'Union employera des Troupes contre son ennemi, il n'y aura point un plus grand nombre de Soldats d'une Nation que d'une autre : mais pour faciliter aux Souverains moins puissans la levée et l'entretien d'un grand nombre de Troupes, l'Union leur fournira les deniers necessaires, et ces deniers seront fournis au Tresorier de l'Union par les Souverains plus puissans qui fourniront en argent le surplus de leur contingent extraordinaire.

If any Member of the Union should omit to pay duly his extraordinary *quota* in troops or money, the Union shall borrow, make advances, and cause itself to be reimbursed with the interest of the loan by the Sovereign that shall be in default.

In time of Peace, after all the Sovereigns have signed, the most powerful shall keep up no more troops of his own nation than the less powerful, which shall be limited for the latter, who has a full vote, to six thousand men. But a very powerful Sovereign may, with the consent of the Union, borrow and maintain at his own charge in his dominions, other troops for his garrisons, so as to prevent seditions, provided they are all foreign soldiers and officers, and neither those officers nor those soldiers shall, upon pain of being disbanded, invest in any government security, purchase any estate, or marry anywhere but in the country of their nativity.

4. After the united Princes shall have declared war against any Sovereign, if one of his provinces revolt in favour of the Union, that province shall remain divided from its kingdom, and be governed like a Republic, or given as a Sovereignty to that one of the Princes of the Blood whom the province shall have chosen for its head, or to the General of the Union.

Any minister, general, or other officer of the enemy, who shall retire either to a Sovereign who is a Member of the Union, or into the territory of the Union, shall be there protected by the Senate, which, during the war, shall give him a revenue equal to that which he possessed in his own country; and the Union shall not make Peace until it be repaid what it has given him, and until the enemy, when reconciled, has given the Union the value of what the refugee possesses in his own country, that he may choose his habitation elsewhere.

Two hundred of the principal ministers or officers of the enemy who shall have omitted to retire into foreign countries at the beginning of such war, shall be delivered to the Union, and punished with death or imprisonment for life, as disturbers of the Peace of the common country.

Si quelque Membre de l'Union ne fournissoit pas à temps son contingent extraordinaire en Troupes ou en argent, l'Union empruntera, fera les avances, et se fera rembourser avec les interests de l'emprunt ou du prest par le Souverain qui seroit en défaut.

En temps de Paix, après que tous les Souverains auront signé, le plus puissant n'entretiendra pas plus de Troupes de sa Nation que le moins puissant, ce qui sera réglé pour le moins puissant qui a suffrage entier à six mille hommes : mais un Souverain fort puissant pourra du consentement de l'Union emprunter et entretenir à ses frais dans son Etat d'autres Troupes pour ses Garnisons, et pour prevenir les Séditions, pourvû que ce soient tous Soldats et Officiers étrangers, et ni ces Officiers ni ces Soldats ne pourront, sur peine d'estre cassez, acquerir aucune rente, aucun fond, se marier ailleurs que dans le Péis de leur naissance.

4. Apres que les Princes unis auront déclaré la Guerre à un Souverain, si une de ses Provinces se revolte en faveur de l'Union, cette Province demeurera démembrée, et elle sera gouvernée en forme de Republique, ou donnée en Souveraineté à celuy des Princes du Sang que cette Province aura choisi pour son Chef ou au General de l'Union.

Le Ministre, le General ou autre Officier de l'Ennemi qui se retirera ou chez un Souverain Membre de l'Union, ou dans le Territoire de l'Union, y sera protegé par le Senat qui luy fournira pendant la Guerre un revenu pareil à celuy qu'il possedoit dans son Péis, et la Paix ne se fera point que l'Union ne soit remboursée de ce qu'elle luy aura fourni, et jusqu'à ce que l'Ennemi reconcilié ait fourni à l'Union la valeur des biens que le Refugié a dans son Péis, afin qu'il puisse choisir ailleurs son habitation.

Deux cens des principaux Ministres ou Officiers de l'ennemi qui ne se seront pas retirez en Péis étranger au commencement de la Guerre, seront livrez à l'Union, et punis de mort ou de prison perpetuelle, comme Perturbateurs de la Paix de la commune Patrie.

5. The Union shall give useful and honourable rewards to him who shall discover anything of a conspiracy against its interests, and that reward shall be ten times greater than any the discoverer could have expected had he remained in the conspiracy.

6. In order to increase the security of the Union, the Sovereigns, the Princes of the Blood, and fifty of the principal officers and ministers of their State, shall every year, on the same day, renew in their capital city, in the presence of the Ambassador and Residents of the Union, and of all the people, their Oaths, in the form agreed on, and shall swear to contribute as much as they are able, to maintain the General Union, and punctually to cause its regulations to be executed, in order to keep the Peace undisturbed.

7. As there are several lands in America and elsewhere which are inhabited only by savages, and as the Sovereigns of Europe, who have settlements there, ought to have certain, visible, and immutable bounds to their territory, for avoiding occasions of war, the Union shall appoint Commissioners, who shall, on the spot, get information about those limits, and on their report it shall give decision by three-fourths of the votes.

8. When in any one of the States of the Union there shall remain no person capable to succeed the reigning Sovereign, the Union, to prevent disturbances in that State, shall settle, and that, too, if it can, in concert with the then Sovereign, the person who shall succeed him ; but this shall be always in the event of his leaving no children ; and as he may die suddenly, the Union shall, immediately upon his death, either nominate the successor, or turn the Government into a Republic, in case the Sovereign is against having a successor.

III.—USEFUL ARTICLES.

I. SECURITY AND PRIVILEGES OF THE CITY OF PEACE.

The City of Peace shall be fortified with a new inclosure and citadels shall be placed round that new inclosure. There

5. L'Union donnera des recompenses utiles et honorables à celui qui découvrira quelque chose d'une conspiration contre ses interests, et cette recompense sera dix fois plus forte que celle que le Dénonciateur auroit pû esperer en demeurant dans la conspiration.

6. Pour augmenter la sûreté de l'Union, les Souverains, les Princes du Sang et cinquante des principaux Officiers et Ministres de leur Etat renouvelleront tous les ans au même jour dans leur Capitale en presence de l'Ambassadeur et des Residens de l'Union et de tout le Peuple, leurs sermens, selon les Formules dont on conviendra, et jureront de contribuer de tout leur pouvoir à maintenir l'Union generale, et à faire executer ponctuellement ses Reglemens, pour rendre la Paix inalterable.

7. Comme il y a beaucoup de Terres en Amérique et ailleurs qui ne sont habitées que de Sauvages, et qu'il est à propos que les Souverains de l'Europe qui y ont des Etablissemens ayent dans ce Péis-là des bornes cer aines, évidentes et immuables de leur Territoire, pour éviter les sujets de la Guerre, l'Union nommera des Commissaires qui travailleront sur les lieux à l'éclaircissement de ces limites, et sur leur rapport, elle en fera la décision aux trois quarts des voix.

8. Lorsque dans un Etat Membre de l'Union, il ne restera plus personne habile à succeder au Souverain Regnant, l'Union pour prévenir les troubles de cet Etat, reglera, et s'il se peut, de concert avec le Souverain quel doit estre son Successeur, mais toujours sous la condition qu'il ne laisse point d'enfans ; et comme il peut mourir de mort subite, l'Union ne perdra point de temps ou à designer le Successeur, ou à regler le Gouvernement en Republique, en cas que le Souverain ne veuille point de Successeur.

III.—ARTICLES UTILES.

I. SÛRETÉ & PRIVILEGES DE LA VILLE DE PAIX.

La Ville de Paix sera fortifiée d'une nouvelle Enceinte, et on placera des Citadelles au tour de cette nouvelle Enceinte ; il y

shall be in it magazines of provisions, of ammunitions, and of all things necessary for sustaining a long siege or blockade. The Ambassadors of the Union, the Residents, the five Deputies of each Frontier Chamber, and especially the Officers of the garrisons of the city, shall be all as nearly as possible natives or inhabitants, and married in the city and territory of the Union; the soldiers of the garrison shall be enlisted in the same territory, if possible, and the others shall not be enlisted anywhere but amongst the subjects of the Commonwealths of Europe.

The Union by the lessening of the quota will indemnify the States-General of the United Provinces for what they usually draw as subsidies from the Lordship of Utrecht. So, instead of a larger sum, they will pay only 900,000 livres as their quota; and, in order to compensate Individuals of that Lordship for any loss they might suffer through the incorporation of the Sovereignty in the Union, while securing the inhabitants in their Laws, Property, Religion, and Employments, the Union will, in addition, furnish these persons with more profitable and honourable posts, as Ambassadors, Residents, Judges of the Chambers, Consuls, Treasurers, etc., and as to the ordinary taxes due from subjects, they will be diminished by one-half.

2. GENERALISSIMO OF THE UNION.

If the Union enter upon a war against any Sovereign it shall name a *Generalissimo* by a majority of votes; he shall not be of a Sovereign family; he shall be revocable at pleasure; he shall have command over the Generals of the troops of the united Sovereigns; he shall dispose of no employments among those troops; but if any of those Generals, or other General officers, should disobey or fail in their duty, he may have them brought before a Council of War.

The Union, in case there be no prince of the Sovereign family which it shall have conquered, may resolve to give all or part of what it may conquer from the enemy to be erected into a principality for the Generalissimo.

aura des Magasins de vivres et de munitions, et tout ce qui peut être nécessaire pour soutenir un long siège et un long blocus.

Les Ambassadeurs de l'Union, les Résidens, les cinq députez de chaque Chambre Frontiere, et surtout les Officiers des Garnisons de la Ville seront autant qu'il sera possible Natifs ou Habitans et mariés dans la Ville et Territoire de l'Union, les soldats de la garnison seront pris du même Territoire s'il est possible ; et le reste ne pourra être pris que parmi les Sujets des Républiques de l'Europe.

L'Union par la diminution du contingent dedomagera les Etats Generaux des Provinces unies de ce qu'ils tirent ordinairement de subsides de la Seigneurie d'Utrecht ; ainsi au lieu d'une plus grande somme, ils ne payeront que neuf cens mille livres de contingent, et pour dédommager les Particuliers de la même Seigneurie du préjudice qu'ils pourroient souffrir de ce que leur Souveraineté sera incorporée à l'Union, les Habitans seront non seulement conservés dans leurs Loix, dans leurs biens, dans leur Religion, et dans leurs emplois, mais l'Union leur fournira encore des postes plus profitables et plus honorables, comme Ambassadeurs, Résidens, Juges des Chambres, Consuls, Tresoriers et autres, et à l'égard des subsides ordinaires des Sujets, ils seront diminués de moitié.

2. GENERALISSIME DE L'UNION.

Si l'Union entre en Guerre contre quelque Souverain, elle nommera un Generalissime à la pluralité des voix, il ne sera point de Maison Souveraine, il pourra être révoqué toutes fois et quantes, il commandera aux Generaux des Troupes des Souverains unis, il ne disposera d'aucuns emplois parmi ces Troupes ; mais si quelqu'un de ces Generaux ou autres Officiers Generaux déobéissoit ou manquoit à son devoir, il pourra le mettre au Conseil de Guerre.

L'Union en cas qu'il n'y eût point de Prince de la Maison Souveraine vaincûë, pourra se déterminer à donner en Principauté au Generalissime, tout ou partie de ce qu'il pourra conquérir sur le Souverain ennemi.

3. DEPUTIES, VICE-DEPUTIES AND AGENTS.

Every Prince, every State, shall keep in the City of Peace for the whole year round one Deputy, of at least forty years old, and two Vice-Deputies of the same age, to fill up his place in case of absence or sickness ; and two Agents to fill up the place of the Vice-Deputies.

The Vice-Deputies shall in their credentials be distinguished as first and second, in order that the first, in case of illness and absence, may succeed by full right to the rank and office of the absent Deputy ; the Agents shall be likewise distinguished as first and second, in order that the first Agent may perform the duty of the absent Vice-Deputy.

The Princes who shall appoint them, shall in their choice have regard to superiority of parts, capacity in business, knowledge of Public Law and of commerce ; likewise to their character, whether they be moderate, patient, zealous for the preservation of Peace ; as also to their knowledge of the language of the Senate, and especially to their industry and application to labour. Each Prince may recall them, and substitute others, when he shall think fit, and shall not be allowed to employ the same Deputy for above four years together, in that function.

If a Senator is found to be of a temper opposite to peace and tranquillity, the Senate may by two-thirds of its votes declare him incapable to exercise the functions of Senator, and order that his Prince be desired by the Union to nominate another ; and from that day he shall be excluded the Assemblies.

After the first appointment, no one shall be appointed Deputy, but one who has been for two years a Vice-Deputy ; and no one shall be Vice-Deputy who has not been two years Agent in the City of Peace.

Similarly, no one shall be nominated Judge of a Frontier Chamber who has not dwelt two years together in the City of Peace.

4. FUNCTIONS OF THE DEPUTIES.

Each of the Senators or Deputies shall, in his turn, week by week, be Prince of the Senate, Governor or Director of the City

3. QUALITÉS DES DEPUTEZ, DES VICE-DEPUTEZ ET DES AGENS.

Chaque Prince, chaque Etat tiendra dans la Ville de Paix pendant toute l'année un Deputé, au moins de 40 ans, et deux Vice-Député de même âge pour le remplacer en cas d'absence, ou de maladie ; et deux Agens pour remplacer les Vice-Député.

Les Vices-Deputez seront nommez dans les lettres de leur Souverain par premier et second ; afin que le premier en cas de maladie et d'absence succede de plein droit au rang, et à la fonction du Député absent ; les Agens seront de même nommez par premier et second afin que le premier Agent puisse faire la fonction du Vice-Deputé absent.

Les Princes qui les nommeront, auront égard dans leur choix à la supériorité d'esprit, à la capacité dans les affaires, à la connaissance du Droit public et des diverses sortes de commerce, au caractère moderé, patient, zélé pour la conservation de la Paix, à la connaissance de la langue du Senat ; et surtout à l'application au travail : chaque Prince pourra les revoquer, et en substituer d'autres, quand il le jugera à propos, et il ne pourra employer le même Deputé plus de quatre ans de suite dans cette fonction.

Si un Sénateur par son caractere d'esprit se trouvoit opposé à la Paix, et à la tranquillité, le Senat pourra aux deux tiers des voix le déclarer incapable d'en faire les fonctions, et ordonner que le Prince sera prié par l'Union d'en nommer un autre, et de ce jour-là il sera exclû des Assemblées.

Nul ne pourra dans la suite être nommé Deputé, qu'il n'ait été deux ans Vice-Deputé ; nul ne pourra être Vice-Deputé qu'il n'ait été deux ans Agent dans la Ville de Paix.

Nul ne pourra dans la suite être nommé Juge d'une Chambre Frontiere, qu'il n'ait demeuré deux ans de suite à cette Ville de Paix.

4. FONCTIONS DES DEPUTÉS.

Chacun des Sénateurs ou Deputez sera tour à tour, et par semaine Prince du Senat, Gouverneur ou Directeur de la Ville de

of Peace ; he shall preside in the General Assemblies, and in the Council of Five.

There shall be a Council of five Senators appointed to govern the daily affairs that are pressing and important, and that regard the safety of the Senators and of the City of Peace, such as the watchword, orders to seize anyone, etc. The President may not give the watchword, but in their presence, nor shall he give any order without their consent in writing, by a majority of votes.

The Deputy of the Sovereign who shall first have signed the Treaty, shall be the first President of the Senate, and the other Senators shall arrange themselves in the Senate Chamber according to the order of the signatures on the Treaty ; so that he who shall be found upon the seat at the right side of the chair of the President shall succeed him in that dignity, on the day that his enjoyment of it comes to an end ; and the one who retires from that function shall place himself on the left hand of his successor, and shall not be President again till all the members of the Assembly have presided in their turn.

When any Sovereign shall enter into the Union after it is already formed, his Deputy shall not be qualified to be President of the Senate until two months after he has taken his place ; to the intent that he may have time in the Assembly to learn its customs, and the duties of the post he has to fill.

The sitting of Senators in private committees, and in public assemblies, shall be regulated every week by their sitting in the Senate ; so that they who are nearest the Presidency shall have the precedence in the weeks ; but in private visits every one shall be *incognito*, and without any distinction.

5. FORM OF DELIBERATIONS, ETC.

'The Assembly shall not deliberate upon any statement of the case till it be signed by three Senators, who shall certify that it is desirable to examine it. All deliberations shall be conducted in regard to printed statements only, which shall be distributed by the Secretary to all the members. Eight days after the distribution, the Assembly shall decide by a majority of votes, whether

Paix, il présidera aux Assemblées generales, et au Conseil des cinq.

Il y aura un Conseil de cinq Senateurs destiné à gouverner les affaires journalieres, pressantes et importantes, qui regarderont la Sureté des Senateurs, et de la Ville de Paix, le mot du guet, les ordres pour arrêter quelqu'un, etc. Le Prince ne pourra donner le mot qu'en leur presence, n'y rien ordonner que de leur consentement par écrit, à la pluralité des voix.

La Deputé du Souverain qui aura signé le premier le Traité d'Union, commencera par être Prince du Senat, et chacun des autres Senateurs se rangeront dans la Chambre du Senat, par rapport au rang qu'ils auront tenu en signant, en sorte que celui qui se trouvera sur le banc à la droite du Fauteuil du Prince, luy succedera à cette Dignité, le jour que finira l'exercice du premier, et celui qui sortira de fonction se mettra à la gauche de son successeur, et ne redeviendra Président, qu'après que tous les membres de l'Assemblée auront présidé tour à tour.

Lorsque quelque Souverain entrera dans l'Union déjà formée, son Deputé ne pourra être Prince du Sénat que deux mois après la Séance prise; afin que dans l'Assemblée il ait le loisir d'apprendre l'usage de cette Compagnie, et les fonctions de cet emploi.

La Séance des Senateurs dans les Bureaux particuliers, dans les Assemblées publiques, se reglera, chaque semaine, sur la Séance qu'ils prennent dans le Sénat, en sorte que les plus proches de la Principauté auront le pas et la Préséance dans les semaines, où ils en seront plus proches; mais dans les visites particulieres, chacun sera 'incognito', et sans rang marqué.

5. FORME DES DÉLIBÉRATIONS, ETC.

L'Assemblée ne déliberera sur aucun memoire, qu'il n'ait été signé de trois Sénateurs qui certifieront qu'il est à propos de l'examiner, toutes les délibérations se feront sur memoires imprimés, ils seront distribués par le Secretaire à tous les Deputez; huit jours après la Distribution on déliberera dans l'Assemblée à la pluralité, s'il est à propos de faire examiner ce memoire, si la

it is necessary to have the statement examined. If it be resolved to have it examined, the Secretary shall give it to the Chairman of the Committee, whose business it is to take cognisance of the subject matter of the statement. When a statement has been sent to a committee, it shall be examined there according to the procedure agreed upon; the Chairman of the Committee shall give to the Secretary of the Senate the opinion of the Committee, with the grounds thereof; the Secretary shall get copies printed, which he shall distribute to all the Senators. A day shall be appointed by the President of the Senate by a majority of votes, when everyone may give his vote according to the importance of the affair. When the day appointed is come, each Senator shall write down and sign his opinion at the foot of the statement of the case, and shall return it to the Secretary.

On the day of the Assembly, the Secretary shall read *seriatim*, all the opinions of either side in turn, and shall count them. The President shall then, with an audible voice, declare which set of opinions prevail, and the judgment shall be entered at the bottom of the printed statement, which shall be carried into the Secretary's Office by the Chairman of that Committee which had examined the affair. The judgment, or decision, of the Assembly shall be signed by the President, by the members of the Council of Five, and by the Secretary. All these decisions shall be recorded in various registers; whereof a printed copy shall be every year given to each Senator. Care shall be taken to avoid, as much as possible, the mentioning by name, in any judgment, of the Sovereign against whom the award is given; but the Senate shall make a general law upon the particular fact, which is under decision, without naming anyone; and the Sovereign, after that law, shall of himself execute what is decreed in it.

In the first Committee shall be examined the letters of the Ambassadors and Residents of the Union, and the replies to them, after they shall have been approved by the General Assembly; that Committee shall also choose persons to fill up the places of Ambassadors, Residents, Officers of the Frontier Chambers, Councils of the Senate, etc.

réolution passe à l'examen, le Secrétaire le donnera au Président du Bureau, qui a la connaissance de la matière du mémoire.

Le mémoire renvoyé à un Bureau, y sera examiné suivant les formes dont on conviendra, le Président du Bureau donnera au Secrétaire du Sénat l'avis du Bureau avec les motifs, le Secrétaire en fera faire des copies imprimées, qu'il distribuera à tous les Sénateurs, le jour sera marqué par le Prince du Sénat à la pluralité des voix, afin que chacun y puisse apporter son suffrage, selon l'importance de l'affaire; le jour marqué arrivé, chaque Sénateur écrira, et signera son avis au pied du mémoire, et le renverra au Secrétaire.

Au jour de l'Assemblée le Secrétaire lira de suite tous les avis semblables l'un après l'autre, et les comptera; et le Prince dira tout haut à quel avis la chose passe, et le Jugement sera mis au pied du mémoire, apporté à la Secrétairerie par le Président du Bureau, où l'affaire avoit été examinée; le Jugement, ou décision de l'Assemblée sera signé par le Prince, par les Membres du Conseil des cinq, et par le Secrétaire; toutes ces décisions se mettront en divers Registres, dont on donnera tous les ans une copie imprimée à chaque Sénateur, on fera en sorte autant qu'il sera possible d'éviter de condamner nommément un Souverain par aucun Jugement; mais le Sénat fera une Loy générale sur le fait particulier, qui est à décider, sans nommer aucune partie, afin que le Souverain après cette Loy passe de luy-même ce qu'elle ordonne.

Dans le premier Bureau on examinera les lettres des Ambassadeurs et des Résidens de l'Union, et on y fera les réponses après qu'elles auront été approuvées de l'Assemblée générale, on y choisira les Sujets pour remplacer les Ambassadeurs, les Résidens, les Officiers des Chambres Frontières, les Conseils du Sénat, etc.

In the second shall be chosen the Officers of the Garrison, and the affairs of War, if there be any, enquired into ; the choice of a General of the Union shall be there made, and whatever else concerns the troops of the frontiers of Europe.

In the third shall be examined all affairs of Finance, the accounts, and the selection of the officers of Finance.

In the fourth shall be examined the memorials about such regulations as may concern either the Union in general or the City of Peace, and its territory, or the laws of the Frontier Chambers.

Besides these four Standing Committees, there shall be other temporary Committees, formed expressly to reconcile differences between Sovereign and Sovereign. These Committees of Conciliation shall consist of members nominated by letters patent of the Senate by a majority of votes ; the Commissioners of the Committee shall be thanked, and shall receive an acknowledgment in the event of their effecting the conciliation of the parties, and getting them to sign an agreement ; and if they cannot succeed, the Chairman shall give the opinion of the Committee to the General Secretary, who shall distribute printed copies thereof to all the Senators ; so that, being well informed, they may give their opinion, in writing, in full Assembly to the Secretary, and if after the law is made by the Senate for all such cases, the Sovereign who is in the wrong will not submit to the law, then the President of the Senate shall pronounce a judgment by name against the Sovereign whose claim or defence has not approved itself to the other Sovereigns.

This arbitral judgment shall be pronounced by a majority of votes provisionally, and six months afterwards definitively, on a second judgment by three-fourths of the votes ; thus there will be always two judgments upon every dispute.

A time shall be appointed for the votes to be given, and such a time as will admit of the plenipotentiaries of the most distant States receiving the instructions of their Sovereigns. If one or more have not received an answer within the time appointed, the Senate may, by a majority of votes, give further time ; and when

Dans le second on choisira les Officiers de la Garnison, on y examinera les affaires de la Guerre, s'il y en a ; le choix d'un General de l'Union et tout ce qui regardera les Troupes des Frontieres de l'Europe.

Dans le troisième on examinera les affaires de Finances, les comptes, les choix des Officiers de Finances.

Dans le quatrième on examinera les memoires sur les Règlemens, qui peuvent regarder, ou l'Union generale, ou la Ville de Paix et son Territoire, ou les Lois des Chambres Frontières.

Outre ces quatre Bureaux perpetuels, il y aura des Bureaux passagers, formés exprès pour concilier les differents entre Souverain et Souverain : ces Bureaux de conciliation seront composés de membres nommés par lettres du Sénat à la pluralité des voix, les Commissaires de ce Bureau seront remerciés, et auront une gratification, en cas qu'ils parviennent à la conciliation des Parties, et à leur faire signer un accord ; et en cas qu'ils n'y réussissent pas, le Président donnera l'avis du Bureau au Secretaire General, qui en distribuera des copies imprimées à tous les Sénateurs, afin qu'étant informés, ils puissent donner leur avis par écrit en pleine Assemblée au Secretaire, et si après la Loy faite par le Sénat pour tous les cas pareils, il arrivoit que le Souverain qui a tort ne voulût pas deferer à la Loy, alors le Prince du Sénat prononcera un Jugement nommément contre le Souverain, dont la demande, ou la deffense n'aura pas parû juste aux autres Souverains.

Ce Jugement arbitral sera prononcé à la pluralité des voix pour la provision, et six mois après par un second Jugement aux trois quarts des voix, pour la définitive ; ainsi il y aura toujours sur chaque different deux Jugements

Il sera marqué un tems pour donner les suffrages, et un tems tel que les Plenipo'entiaires des Etats les plus éloignés, puissent avoir les instructions de leurs Souverains. Si quelqu'un ou quelques uns n'avoient pas reçu réponse dans le délai prescrit, le Sénat pourra à la pluralité des voix, donner un nouveau délai, après

that has expired it shall proceed to judgment, whether the plenipotentiary that refuses to give his vote be absent or not.

All the Committees shall assemble within the bounds of the President's Palace, unless the health of the Chairman of Committee requires to it to meet at his house.

The Senate, by a three-fourths majority, shall appoint the Chairman and members of the Committees, which shall consist of five Deputies and of ten Vice-Deputies; the Secretary of the Committee shall be a subject of the Union, either by birth or by naturalisation.

The Deputies of the Republics of Holland, Venice, the Swiss, and the Genoese, shall be always of the Council of Five; when a Deputy of one of these Republics shall be President of the Senate, the place that shall be vacant in the Council shall be filled by turns, beginning with the Deputy who shall have last presided in the General Assembly.

The language of the Senate, in which the deliberations shall be made and the printed statements given, shall be the language most in use, and the most common in Europe of all the living languages.

Every Deputy shall have, for the free exercise of his religion, a chapel in his palace, with whatever ministers are necessary; those who are of his religion, whether they be of his nation or of any other, shall there enjoy the same liberty. The Senate shall make very express prohibition, upon pain of imprisonment and greater punishments, according to the circumstances, against any disturbance there, or against turning anything publicly into ridicule, or writing or printing anything against any particular religion in the territory of the Republic. And the turning into ridicule shall be considered public if done in the presence of any person belonging to the religion attacked.

The Union shall endeavour to agree upon the standard and weight of coins, upon the same weights and measures, and upon the same astronomical calculations throughout all Europe; and especially upon the beginning of the year.

lequel il sera procédé au Jugement, soit que le Plenipotentiaire, qui refuse de donner son suffrage, soit present ou absent.

Tous ces Bureaux s'assembleront dans l'Enceinte du Palais du Prince, a moins que la santé du Président d'un Bureau ne demandât que l'on s'assemblât chez lui.

Le Sénat aux trois quarts des voix nommera les Présidents, et les membres des Bureaux qui seront composés de cinq Deputez, et de dix Vice-Deputez ; le Secretaire du Bureau sera Sujet de l'Union, soit par naissance, soit par lettres.

Les Deputez des Républiques de Hollande, de Venise, des Suisses et de Genuës seront toujours du Conseil des cinq, quand un Député d'une de ces Républiques sera Prince du Sénat, la place qui vaquera dans ce Conseil sera remplie tour à tour, à commencer par le Député du Prince qui aura présidé le dernier à l'Assemblée generale.

La langue du Sénat dans laquelle ces délibérations seront faites, les memoires donnez, sera la langue qui se trouve le plus en usage, et la plus commune en Europe, entre les langues vivantes.

Chaque Député aura libre exercice de sa Religion, un Temple dans son Palais, avec les Ministres convenables ; ceux qui seront de sa Religion, soit de sa Nation, soit d'autre Nation, y auront la même liberté : le Sénat fera très expresses deffenses, sous peine de prison, et de plus grandes peines, selon les cas, d'y apporter aucun trouble, d'en tourner quelque chose en raillerie publiquement, et de rien écrire, ou imprimer contre elle dans le Territoire de la République, et ce sera une raillerie censée, publique, quand elle sera faite en presence de quelqu'un de la Religion attaquée.

L'Union tâchera de convenir du titre, et du poids des monnoyes, d'une même livre, d'un même pied, du même calcul astronomique par toute l'Europe ; et surtout au commencement de chaque année.

6. SECURITY OF THE FRONTIERS OF EUROPE.

Not of modern interest.

7. QUOTAS OR ORDINARY REVENUES OF THE UNION.

The Revenue of the Union shall consist of the ordinary quotas payable by each Sovereign; this quota shall be settled provisionally, at the rate of three hundred thousand pounds yearly, which shall be paid by the least powerful Sovereign, who shall have but one vote; the others shall pay in proportion to their revenues; the quota shall afterwards be lessened according to the diminution of the requirements of the Union, which would then have finished its buildings, fortifications, magazines, &c. The quota for the Frontiers of Europe, and the quota in case of war, shall be settled, in proportion, by the Senate.

The quota shall be paid by the General Treasurer of each State in equal parts, the first of each month, to the order of the General Treasurer of the Union, and upon the receipt of his clerk, who shall be residing in the capital city of the State. The clerk shall every month pay the salaries of the Ambassador, of the Residents, and of the Judges of the Frontier Chambers in that State.

The Union shall every month calculate the interest of the sums which shall not have been paid regularly to the Clerk of the Treasurer, in order to repay those who shall have made advances to him.

8. ASIATIC UNION.

The European Union shall endeavour to procure in Asia a Permanent Society, like that of Europe, that peace may be maintained there also; and especially that it may have no cause to fear any Asiatic Sovereign, either as to its tranquillity, or its commerce in Asia.

6. SÛRETÉ DES FRONTIÈRES DE L'EUROPE.

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7. CONTINGENS, OU REVENUS ORDINAIRES DE L'UNION.

Le Revenu de l'Union sera composé du contingent ordinaire que payera chaque Souverain, le contingent sera réglé par provision, à raison de trois cents mille livres par un monnoye presente de France, ou valeur en autre monnoye que payera le Souverain le moins puissant, qui aura seul une voix, les autres payeront à proportion de leurs revenus ; ce contingent sera diminué dans la suite eû égard à la diminution des besoins de l'Union, qui aura alors fait ses bâtimens, ses fortifications, ses magasins, etc. Le contingent pour les Frontières d'Europe, et le contingent en cas de Guerre, seront reglez à proportion par le Sénat.

Le contingent se payera par le Tresorier General de cet Etat, par parties égales, le premier de chaque mois, sur la procuration du Tresorier General de l'Union, et sur la quittance de son Commis, qui résidera dans la Ville Capitale de cet Etat. Ce Commis payera par mois les appointmens de l'Ambassadeur, des Résidens et des Juges des Chambres Frontières.

L'Union reglera par mois les interêts des sommes, qui ne seront pas payées régulièrement au Commis du Trésorier, pour rembourser ceux qui en auront fait les avances.

8. UNION ASIATIQUE.

L'Union Européenne tâchera de procurer en Asie une Societé permanente semblable à celle d'Europe, pour y entretenir la Paix ; et surtout pour n'avoir rien à craindre d'aucun Souverain Asiatique, soit pour sa propre tranquillité, soit pour son Commerce en Asie.

LEIBNITZ ON THE PROJECT FOR PERMANENT PEACE.

Born 1646; Died 1716.

Leibnitz is often cited as an advocate of International Arbitration; but he does not say much about an Arbitration Tribunal, and his labours have contributed but little to the progress of the law of nations.

He wrote to the Abbé St. Pierre a letter on his plan, and also a paper entitled "Observations on the Project for Permanent Peace by the Abbé St. Pierre," attached to the letter, in which he explained his ideas on the whole question, without, however, mentioning an Arbitration Tribunal.

He begins by saying: "I have read carefully the Project of Permanent Peace for Europe, which the Abbé de St. Pierre has done me the honour to send me, and I am persuaded that such a proposal, taken as a whole, is feasible, and that its execution would be one of the most useful things in the world. Although my support is not worth much, I have thought that my sense of obligation compels me not to withhold it, but to add some remarks of my own for the satisfaction of an author of such merit, who must have had much force of character and firmness to have dared, and been able, to oppose with success the crowd of prejudices and the taunts of mockery."

Then, after referring to the *Nouveau Cynée* and the *Tribunal of the Society of Sovereigns*, designed by the Landgrave of Hesse-Rheinfels, and after expressing his preference for the greater authority of Henry's scheme, as already quoted (see page 34), he continues:—

"There have been times when the Popes had partially formed

G. G. LEIBNITZ SUR LE PROJET D'UNE PAIX
PERPÉTUELLE.

Né en 1646; mort en 1716.

Leibnitz est cité souvent comme un avocat d'arbitrage international; mais il ne dit pas beaucoup d'un tribunal arbitral, et ses travaux ont peu contribué au progrès du droit des gens.

Il écrit à l'abbé de St.-Pierre une lettre sur son projet, et aussi un Mémoire intitulé "Observations sur le projet d'une Paix perpétuelle de M. l'abbé de St.-Pierre," attaché à cette lettre, dans lequel il a exposé ses idées sur la question entière, sans mention d'un tribunal d'arbitrage.

Il commence :—"Le Projet de Paix perpétuelle pour l'Europe, que M. l'abbé *de St. - Pierre* m'a fait l'honneur de m'envoyer je l'ai lu avec attention, et je suis persuadé qu'un tel Projet en gros est faisable, et que son exécution seroit une des plus utiles choses du monde. Quoique mon suffrage ne soit d'aucun poids, j'ai pourtant cru que la reconnoissance m'obligeoit de ne le point dissimuler, et d'y joindre quelques remarques pour le contentement d'un Auteur de ce mérite, qui doit avoir beaucoup de réputation et de fermeté, pour avoir osé, et pu s'opposer avec succès à la foule des prévenus et au déchaînement des railleurs."

Ensuite, après des allusions au *Nouveau Cynée* et au *Tribunal de la Société des Souverains* de M. le Landgrave *Ernest de Hesse-Rhinfels*, et après l'expression de sa préférence pour l'autorité de *Henri IV*, comme cité ci-dessus (p. 35) il continue :—

"Il y a eu des tems où les Papes avoient formé à demi quelque

something approaching it by the authority of Religion and the Universal Church," *e.g.*, Popes Gregory IV., Nicolas I., Gregory VII., and Urban II., whom he instances. "We see that the Popes passed for the spiritual chiefs, and the Emperors or Kings of the Romans for the temporal chiefs, as our Golden Bull says, of the Universal Church or Christian Society, and the Emperors should be, as it were, the born generals of it. It was like a law of nations between the Latin Christians for several centuries, and the juriconsults reasoned on that basis. We see examples of it in my *CODEX JURIS GENTIUM DIPLOMATICUS*, and some reflections at the beginning in my Preface."

The rest of the pamphlet is a comment on the scheme, as promised. His Letter is written in a courteous, familiar style, but has nothing of weight in it.

In 1693 Leibnitz published his collection of treaties and other diplomatic documents under the above title; and in the preface he treats of the principles of international law. But his proposal in that is the same. He says:—

"Before the schism of last century I see that it had long been accepted universally (and with good reason) that there should be understood to be a united state of Christian peoples, whose heads should be the Pontifex Maximus in religious matters, and in temporal matters the Emperor of the Romans, who also seemed to have retained as much of the law of the old Roman monarchy as was necessary for the common good of Christianity, while preserving the rights of kings and the liberty of princes. . . . And nothing was more common than for kings, in treaties, to submit themselves to the censure and correction of the Pope, as in the Peace of Bretigny But as human affairs, even the best, are inclined to become corrupt, the Popes began to extend the limits of their authority too much, and to use their power too freely." In the preface of his work "Jurisprudentia," or "Cæsarini Furstenerii (his *nom de plume*) Tractatus de Jure Suprematus," etc. (Leibnitii *Opera Omnia*, vol. IV. 330), he explains these ideas more fully, and says (*inter alia*): "Thus I think that the Cæsarian rank or dignity is a little loftier than is commonly considered; that Cæsar

chose d'approchant par l'autorité de la Religion et de l'Eglise Universelle." Il instance les Papes Grégoire IV, Nicolas I^{er}, Grégoire VII, et Urban II. "On voit que les Papes passoient pour les chefs spirituels, et les Empereurs ou Rois des Romains pour les chefs temporels, comme parle notre Bulle d'Or, de l'Eglise Universelle ou de la Société Chrétienne et les Empereurs en devoient être comme les Généraux nés. C'étoit comme un droit des gens entre les Chrétiens Latins durant quelques siècles, et les jurisconsultes raisoient sur ce pied-là ; on en voit des échantillons dans mon CODEX JURIS GENTIUM DIPLOMATICUS et quelques réflexions là-dessus dans ma Préface."

Le reste de son mémoire, c'est un commentaire sur le Projet, comme promis. Sa lettre est écrite dans un style courtois et familier, mais elle ne contient rien d'aucun poids.

En 1693, Leibnitz publia sa collection de traités et autres actes diplomatiques, sous ce titre ci-dessus, et dans la préface il traite des principes du droit international. Mais son proposal là est la même chose. Dit-il :—

In universum (nec sane præter rationem) ante superioris seculi schisma, placuisse diu vides, ut quædam gentium Christianarum Respublica communis intelligeretur, cujus capita essent in sacris Pontifex Maximus, in temporalibus Imperator Romanorum ; qui et de veteris Romanæ Monarchiæ jure retinuisse visus est, quantum ad commune Christianitatis bonum opus esset, salvo jure Regum, et Principum libertate. Et nihil fuit frequentius, quam ut se Reges in fœderibus censuræ et correctioni Papæ submitterent ; uti in pace Bretigniaca. sed ut in corruptionem proclives sunt res humanæ etiam optimæ, nimis cœpere Pontifices fimbrias extendere et potestate uti licentius.

Dans la Préface de son œuvre, "Jurisprudentia," ou Cæsarini Furstenerii (son nom de plume) Tractatus de Jure Suprematus, etc. (Leibnitii Opera Omnia, Vol. IV. 330), il expose ces idées plus au long ; et dit (*inter alia*) :—

Cæsareum itaque fastigium paulò sublimius esse arbitrator, quàm vulgò sibi persuadent, Cæsarem esse Advocatum, vel potius Caput, aut, si mavis Brachium seculare Ecclesiæ universalis. Totam

is an assistant, or rather head, or, if you prefer it, the secular arm of the universal church. It seeks to unite the whole of Christianity as one republic in which Cæsar has a certain authority. Hence the name of the 'Holy Empire,' which should be co-extensive with the Catholic Church. Cæsar is by birth Emperor, that is leader of the Christians against the infidels. It is especially his duty to settle differences, to call together and preside over councils, and finally by the very authority of his office, to see that the Church and the Christian Republic take no hurt. . . . And so, if action is to be according to law, Cæsar must have a certain authority and primacy, so to speak, in a great part of Europe, corresponding to the Ecclesiastical primacy; and, just as care is taken in our Empire for preserving the public Peace, for collecting military aid against the infidels, for administering justice between the princes themselves, so we know that the Universal Church has given judgment in the cases of princes, has summoned princes to councils, and votes have been taken in the councils as to rank and session, and the councils in the name of Christians have declared wars upon the enemies of the Christian name. *And, if there were a Permanent Council, or if a common senate of the Christian State were to exist, constituted by the Council, then what is now done by treaties, and, as they call them, mediations and guarantees, that would be done by the interposition of public authority issuing from the heads of Christendom, viz., the Pontiff and the Cæsar, by a friendly arrangement, more efficaciously than is now done."*

Christianitatem unam velut Rempublicam componere, in qua Cæsari autoritas aliqua competit. Hinc Sacri Imperii nomen, quod æquè latè ac Ecclesia Catholica quodammodo porrigi debet. Cæsarem esse Imperatorem, id est, Ducem natum Christianorum contra infideles; ipsius esse ante cæteros Schismata componere, Concilia et procurare et moderari et denique ipsa sui muneris autoritate operam dare, ne quid Ecclesia et Respublica Christiana detrimenti capiant.

* * * * *

Itaque si jure agendum est, Cæsari in magna parte Europæ aliqua autoritas et quasi Primatus quidam Ecclesiastico respondens, tribuendus est: et quemadmodum in Imperio nostro de Pace publica tuenda, subsidiis contra infideles conferendis, justitia inter ipsos Principes administranda, cautum est, ita scimus Ecclesiam universalem de causis Principum judicasse, Principes ad Consilia appellasse, in Conciliis de ordine ac sessione pronuntiatum fuisse; Concilia Christianorum nomine bella in Christiani nominis hostes indixisse. Et, si perpetuum esset Concilium, vel constitutus à Concilio communis rei Christianæ Senatus exstaret, tunc quod nunc foederibus, et ut vocant, Mediationibus atque garantiis fit, id interposita autoritate publica à capitibus Christianitatis Pontifice ac Cæsare profecta, amica quidem compositione, efficacius tamen quam nunc fit, transigeretur.

TRIBUNAL OF PERMANENT PEACE.

BY J. J. ROUSSEAU.

Born, 1712 ; died, 1778.

I.—PROJECT OF PERPETUAL PEACE.

Rousseau, in his book, “*Extrait du Projet de Paix Perpétuelle de M. L’Abbé de Saint Pierre,*” has given a lengthy exposition of that scheme, which leads to the following conclusion :—

There follow from this recital three unquestionable truths :—

1. That, with the exception of Turkey, there prevails among all the peoples of Europe a social connection, imperfect but more compact than the general and loose ties of humanity.

2. That the imperfection of this society makes the condition of those who compose it worse than would be the deprivation of all society amongst them.

3. That these primary bonds which render this society harmful, make it at the same time easily capable of improvement, so that all its members may derive their happiness from that which actually constitutes their misery, and change the state of war which prevails among them into an abiding Peace.

He continues :—

Let us now see in what way this great work, begun by fortune, might be achieved by reason, and how the free and voluntary society which unites all the European States, acquiring the force and solidity of a true political body, might change itself into a real confederation. There are from time to time formed among us species of general Diets, under the name of Congresses, where folks solemnly betake themselves from all the States of Europe in

PROJET DE PAIX PERPÉTUELLE

PAR JEAN JACQUES ROUSSEAU.

Né en 1712 ; mort en 1778.

I.—PROJET DE PAIX PERPÉTUELLE.

Dans son Mémoire du Projet de Paix Perpétuelle de M. l'Abbé de Saint-Pierre, Rousseau a donné une Exposition, très ample, de ce projet, qui conduit à cette conclusion :

Il résulte de cet exposé trois vérités incontestables :

1. L'une, qu'excepté le Turc, il règne entre tous les peuples de l'Europe une liaison sociale imparfaite, mais plus étroite que les nœuds généraux et lâches de l'humanité.

2. La seconde, que l'imperfection de cette société rend la condition de ceux qui la composent pire que la privation de toute société entre eux.

3. La troisième, que ces premiers liens, qui rendent cette société nuisible, la rendent en même temps facile à perfectionner ; en sorte que tous ses membres pourroient tirer leur bonheur de ce qui fait actuellement leur misère, et changer en une paix éternelle l'état de guerre qui règne entre eux.

Il continue :

Voyons maintenant de quelle manière ce grand ouvrage, commencé par la fortune, peut être achevé par la raison ; et comment la société libre et volontaire qui unit tous les États européens, prenant la force et la solidité d'un vrai corps politique, peut se changer en une confédération réelle. . . . Il se forme de temps en temps parmi nous des espèces de diètes générales sous le nom de congrès, où l'on se rend solennellement de tous les États de l'Europe pour s'en retourner de même ; où l'on s'assemble

order to go back from them again ; where they assemble to say nothing ; where all public affairs are treated in private ; where they deliberate in common whether the table shall be round or square, whether the hall shall have more or fewer doors, whether such a delegate shall sit with his face or his back to the window, whether such another will travel two inches more or less in a visit, and in regard to a thousand questions of like importance which have been uselessly under discussion for the last three centuries, and are assuredly very worthy to occupy the politicians of our own.

It may happen that the members of one of these Assemblies may, one of these days, be endowed with common sense ; it is not even impossible that they may sincerely desire the public good ; and, for the reasons hereafter set forth, one can even conceive that, after having removed many difficulties, they will have a mandate from their respective sovereigns to sign the General Confederation, which I will suppose contained, in an abridged form, in the five following articles :—

ART. 1.—The Contracting Sovereigns shall establish between themselves a perpetual and irrevocable alliance, and shall appoint plenipotentiaries to hold, in a place to be fixed, a Diet or permanent Congress, in which all differences between the contracting parties shall be regulated and terminated by methods of arbitration or judicature.

ART. 2.—There should be specified : the number of the Sovereigns whose plenipotentiaries shall have votes in the Diet ; those who shall be invited to accede to a treaty ; the order ; the time and the manner in which the presidency shall pass from one to another at equal intervals ; and, finally, the relative quotas of contribution, and the manner of raising them, in order to provide for the common expenses.

ART. 3.—The Confederation shall guarantee to each of its members the possession and government of all the States which he actually holds, whether the succession be elective or hereditary, according as all that may be established by the fundamental laws of each country ; and to do away at a stroke with

pour ne rien dire ; où toutes les affaires publiques se traitent en particulier ; où l'on délibère en commun si la table sera ronde ou carrée, si la salle aura plus ou moins de portes, si un tel plénipotentiaire aura le visage ou le dos tourné vers la fenêtre, si tel autre fera deux pouces de chemin de plus ou de moins dans une visite, et sur mille questions de pareille importance, inutilement agitées depuis trois siècles, et très-dignes assurément d'occuper les politiques du nôtre.

Il se peut faire que les membres d'une de ces assemblées soient une fois doués du sens commun ; il n'est pas même impossible qu'ils veuillent sincèrement le bien public ; et, par les raisons qui seront ci-après déduites, on peut concevoir encore qu'après avoir aplani bien des difficultés ils auront ordre de leurs souverains respectifs de signer la confédération générale que je suppose sommairement contenue dans les cinq articles suivans.

ART. 1.—Par le premier, les souverains contractans établiront entre eux une alliance perpétuelle et irrévocable, et nommeront des plénipotentiaires pour tenir, dans un lieu déterminé, une diète ou un congrès permanent, dans lequel tous les différends des parties contractantes seront réglés et terminés par voies d'arbitrage ou de jugement.

ART. 2.—Par le second, on spécifiera le nombre des souverains dont les plénipotentiaires auront voix à la diète ; ceux qui seront invités d'accéder au traité ; l'ordre, le temps et la manière dont la présidence passera de l'un à l'autre par intervalles égaux ; enfin la quotité relative des contributions, et la manière de les lever pour fournir aux dépenses communes.

ART. 3.—Par le troisième, la confédération garantira à chacun de ses membres la possession et le gouvernement de tous les États qu'il possède actuellement, de même que la succession élective ou héréditaire, selon que le tout est établi par les lois fondamentales de chaque pays ; et, pour supprimer tout d'un coup la source des démêlés qui renaissent incessamment, on con-

the sources of those contests which incessantly spring up, it should be agreed to consider actual possession and the latest treaties as the foundation of all the mutual rights of the Contracting Powers; renouncing for ever, and reciprocally, previous claim to every other; reserving future successions with disputed claims and other rights which may happen, all of which shall be settled by the arbitration of the Diet, without its being permitted to seek their rights by force, or ever to take arms against each other, under any pretence whatsoever.

ART. 4.—The cases shall be specified where any ally breaking the treaty shall be put under the ban of Europe and proscribed as a public enemy, viz., if he refuse to obey the judgments of the Grand Alliance, if he make preparations for war, if he negotiate treaties adverse to the Confederation, or if he take up arms to resist it or to attack any one of the allies.

It shall be also agreed by the same article that war shall be declared and offensive action taken conjointly, and at the common cost, against every state under the ban of Europe until it has laid down its arms, carried out the decisions and regulations of the Diet, repaired the wrongs, repaid the costs, and put right even the warlike preparations contrary to the treaty.

ART. 5. Lastly, the plenipotentiaries of the European Body shall always have the power to frame in the Diet, by a majority of votes in the first instance, and by three-quarters of the votes five years after for their confirmation, on the instructions of their Courts, the regulations which they judge important in order to procure all the advantages possible for the European Republic and for each of its members; but no change shall ever be made in these fundamental five articles except by the unanimous consent of the confederated States.

These five articles, thus abridged and framed as general rules, are, I am aware, subject to a thousand little objections, of which several would require long explanations; but these are easily removed when the need arises, and it is not such things which should be taken into account in an enterprise of such importance as this. When it becomes a question of the police of the

viendra de prendre la possession actuelle et les derniers traités pour base de tous les droits mutuels des puissances contractantes ; renonçant pour jamais et réciproquement à toute autre prétention antérieure ; sauf les successions futures contentieuses, et autres droits à échoir, qui seront tous réglés à l'arbitrage de la diète, sans qu'il soit permis de s'en faire raison par voies de fait, ni de prendre jamais les armes l'un contre l'autre, sous quelque prétexte que ce puisse être.

ART. 4.—Par le quatrième, on spécifiera les cas où tout allié infracteur du traité seroit mis au ban de l'Europe, et proscrit comme ennemi public ; savoir s'il refusoit d'exécuter les jugemens de la grand alliance, qu'il fit des préparatifs de guerre, qu'il négociât des traités contraires à la confédération, qu'il prit les armes pour lui résister ou pour attaquer quelqu'un des alliés. Il sera encore convenu par le même article qu'on armera et agira offensivement, conjointement, et à frais communs, contre tout État au ban de l'Europe, jusqu'à ce qu'il ait mis bas les armes, exécuté les jugemens et réglemens de la diète, réparé les torts, remboursé les frais, et fait raison même des préparatifs de guerre contraires au traité.

ART. 5.—Enfin, par le cinquième, les plénipotentiaires du corps européen auront toujours le pouvoir de former dans la diète, à la pluralité des voix pour la provision, et aux trois quarts des voix cinq ans après pour la définitive, sur les instructions de leurs cours, les réglemens qu'ils jugeront importans pour procurer à la république européenne et à chacun de ses membres tous les avantages possibles ; mais on ne pourra jamais rien changer à ces cinq articles fondamentaux que du consentement unanime des confédérés.

Ces cinq articles, ainsi abrégés et couchés en règles générales, sont, je ne l'ignore pas, sujets à mille petites difficultés, dont plusieurs demanderoient de longs éclaircissemens : mais les petites difficultés se lèvent aisément au besoin ; et ce n'est pas d'elles qu'il s'agit dans une entreprise de l'importance de celle-ci. Quand il sera question du détail de la police du congrès, on

Congress, a thousand obstacles may be found, and ten thousand means of removing them. Here it is a question of examining by the nature of things, whether the enterprise is possible or not.

What, then, should come under examination in order to form a correct judgment of this system? Two questions only.

I. The first is, Whether the Confederation now proposed would surely attain its object, and would be sufficient to give to Europe a solid and permanent Peace.

II. The second, Whether it is the interest of the Sovereigns to establish this Confederation, and to purchase a lasting Peace at such a price.

These two questions Rousseau discusses at length, replying to various objections which he adduces and thoroughly considers reaching ultimately the following conclusion :—

We have seen that all the pretended inconveniences of the State of Confederation, well weighed, resolve themselves into nothing. We now ask if any one in the world dares to say as much of those which follow from the present method of settling the differences between one prince and another by the law of the strongest, that is to say, from the state of a lack of order and of war, which necessarily produces the absolute and mutual independence of all Sovereigns in the imperfect society which prevails among them in Europe.

I. In order that we may be in a better position to weigh these *inconveniences*, I will summarise them in a few words, which I will leave the reader to examine :—

1. No certain right but that of the strongest.
2. Continual and inevitable mutations of the relations between peoples which prevent any of them from being able to settle in its own hands the power which it possesses.
3. No complete security, so long as one's neighbours are not subdued or destroyed.
4. General impossibility of destroying them, considering that while subjugating the nearest you discover others.
5. Precautions and immense expenses to stand on the defensive.

trouvera mille obstacles et dix mille moyens de les lever. Ici il est question d'examiner, par la nature des choses, si l'entreprise est possible ou non.

Que faut-il donc examiner pour bien juger de ce système? Deux questions seulement :

I. La première question est, si la confédération proposée iroit sûrement à son but et seroit suffisante pour donner à l'Europe une paix solide et perpétuelle.

II. La seconde, s'il est de l'intérêt des souverains d'établir cette confédération et d'acheter une paix constante à ce prix.

Ces deux questions l'auteur discute au long, et réplique à des diverses objections qu'il considère parfaitement, venant enfin à cette conclusion :

Nous venons de voir que tous les prétendus inconvéniens de l'état de confédération, bien pesés, se réduisent à rien. Nous demandons maintenant si quelqu'un dans le monde en oseroit dire autant de ceux qui résultent de la manière actuelle de vider les différends entre prince et prince par le droit du plus fort, c'est-à-dire de l'état d'impolice et de guerre qu'engendre nécessairement l'indépendance absolue et mutuelle de tous les souverains dans la société imparfaite qui règne entre eux dans l'Europe.

I. Pour qu'on soit mieux en état de peser ces inconvéniens, j'en vais résumer en peu de mots le sommaire que je laisse examiner au lecteur.

1. Nul droit assuré que celui du plus fort.
2. Changemens continuels et inévitables de relations entre les peuples, qui empêchent aucun d'eux de pouvoir fixer en ses mains la force dont il jouit.
3. Point de sûreté parfaite, aussi longtems que les voisins ne sont pas soumis ou anéantis.
4. Impossibilité générale de les anéantir, attendu qu'en subjuguant les premiers on en trouve d'autres.
5. Précautions et frais immenses pour se tenir sur ses gardes.

6. Want of force and of protection during minorities and rebellions, for when the State is divided who is able to support one of the parties against the other ?

7. Want of security in mutual engagements.

8. No justice ever to be hoped for from others without immense expenses and losses which do not always secure it and for which the disputed object rarely compensates.

9. Inevitable hazard of their States and sometimes of their life in the pursuit of their rights.

10. Necessity of taking part in spite of themselves in the quarrels of their neighbours, and of being engaged in war, when it is least desired.

11. Interruption of commerce and of public resources at the moment when these are the most necessary.

12. Continual danger from a strong neighbour if one is weak, and from a league if one is strong.

13. Finally, the futility of prudence where fortune is supreme ; continual desolation of the peoples ; the weakening of the State, both in successes and reverses ; absolute impossibility of ever establishing a good government, of reckoning on one's own property, and of securing happiness either for oneself or for others.

II. In the same way let us recapitulate the *advantages* of European Arbitration for the confederate princes.

1. Complete security that their present and future differences will be always put an end to without any war ; security incomparably more useful for them than it would be for private persons never to have any lawsuit.

2. Subjects of dispute removed or reduced to a minimum by the annihilation of all previous claims which will compensate for their renunciations and confirm their possessions.

3. Complete and perpetual security, both for the person of the prince, and his family, and his dominions, and for the order of succession fixed by the laws of each country, as much against the ambition of unjust and ambitious claimants as against the revolt of rebel subjects.

6. Défaut de force et de défense dans les minorités et dans les révoltes ; car quand l'État se partage, qui peut soutenir un des partis contre l'autre ?

7. Défaut de sûreté dans les engagements mutuels.

8. Jamais de justice à espérer d'autrui sans des frais et des pertes immenses, qui ne l'obtiennent pas toujours, et dont l'objet disputé ne dédommage que rarement.

9. Risque inévitable de ses États et quelquefois de sa vie dans la poursuite de ses droits.

10. Nécessité de prendre part malgré soi aux querelles de ses voisins, et d'avoir la guerre quand on la voudroit le moins.

11. Interruption du commerce et des ressources publiques au moment qu'elles sont le plus nécessaires.

12. Danger continuel de la part d'un voisin puissant si l'on est foible, et d'une ligue si l'on est fort.

13. Enfin, inutilité de la sagesse où préside la fortune ; désolation continuelle des peuples ; affoiblissement de l'État dans les succès et dans les revers ; impossibilité totale d'établir jamais un bon gouvernement, de compter sur son propre bien, et de rendre heureux ni soi ni les autres.

II. Récapitulons de même les avantages de l'arbitrage européen pour les princes confédérés :

1. Sûreté entière que leurs différends présents et futurs seront toujours terminés sans aucune guerre ; sûreté incomparablement plus utile pour eux que ne seroit, pour les particuliers, celle de n'avoir jamais de procès.

2. Sujets de contestations ôtés ou réduits à très-peu de chose par l'anéantissement de toutes prétentions antérieures, qui compensera les renonciations et affermira les possessions.

3. Sûreté entière et perpétuelle, et de la personne du prince, et de sa famille, et de ses États, et de l'ordre de succession fixé par les lois de chaque pays, tant contre l'ambition des prétendants injustes et ambitieux, que contre les révoltes des sujets rebelles.

4. Perfect security as to the execution of all reciprocal engagements between one prince and another by the guarantee of the European Republic.

5. Perfect and perpetual liberty and security with regard to commerce, as much from one State to another as from each State in remote regions.

6. Total and perpetual suppression of their extraordinary military expenses on land and sea in time of war, and considerable diminution of their ordinary expenses in time of Peace.

7. Perceptible progress of agriculture and of population, of the wealth of the State and the revenues of the Prince.

8. Facility for all those institutions which can augment the glory and authority of the sovereign—public resources and the welfare of the peoples.

I leave, as I have already said, to the judgment of readers, the examination of all these articles, and the comparison of the state of Peace which results from the Confederation with the state of war which results from the European absence of order.

III. If we have reasoned rightly in the exposition of this project, it is proved :

1. That the establishment of permanent Peace depends solely on the consent of Sovereigns, and does not threaten to raise any other difficulty than their resistance.

2. That this establishment would be advantageous to them in every way, and that there is no comparison to be made, even for them, between the inconveniences and the advantages.

3. It is reasonable to presume that their will accords with their interests.

4. Finally that this establishment, once formed on the plan proposed, would be solid and durable, and would perfectly fulfil its objects.

Doubtless it must not be said that the Sovereigns will adopt this project (who can answer for another man's sanity ?), but only that they would adopt it if they consulted their true interests, for it ought to be well noted that we have not supposed men to be such as they ought to be, good, generous, disinterested, and

4. Sûreté parfait de l'exécution de tous les engagements réciproques entre prince et prince, par la garantie de la république européenne.

5. Liberté et sûreté parfaite et perpétuelle à l'égard du commerce, tant d'État à État, que de chaque État dans les régions éloignées.

6. Suppression totale et perpétuelle de leur dépense militaire extraordinaire par terre et par mer en temps de guerre, et considérable diminution de leur dépense ordinaire en temps de paix.

7. Progrès sensibles de l'agriculture et de la population, des richesses de l'État, et des revenus du prince.

8. Facilité de tous les établissemens qui peuvent augmenter la gloire et l'autorité du souverain, les ressources publiques, et le bonheur des peuples.

III. Si nous avons bien raisonné dans l'exposition de ce projet, il est démontré :

1. Premièrement, que l'établissement de la paix perpétuelle dépend uniquement du consentement des souverains, et n'offre point à lever d'autre difficulté que leur résistance.

2. Secondement, que cet établissement leur seroit utile de toute manière, et qu'il n'y a nulle comparaison à faire, même pour eux, entre les inconvéniens et les avantages.

3. En troisième lieu, qu'il est raisonnable de supposer que leur volonté s'accorde avec leur intérêt.

4. Enfin que cet établissement, une fois formé sur le plan proposé, seroit solide et durable, et rempliroit parfaitement son objet.

Sans doute ce n'est pas à dire que les souverains adopteront ce projet (qui peut répondre de la raison d'autrui?), mais seulement qu'ils l'adopteroient s'ils consultoient leurs vrais intérêts : car on doit bien remarquer que nous n'avons point supposé les hommes

desirous of the public welfare from sentiments of humanity, but such as they are, unjust, avaricious and preferring their own interests to everything. The only thing we assume about them is sufficient sense to see what is advantageous to them and sufficient courage to secure their own welfare. If, in spite of all that, this project remains unexecuted, it is not because it is at all chimerical ; it is that men are insane and that it is a kind of folly to be wise in the midst of fools.

II.—JUDGMENT ON LA PAIX PERPETUELLE.

J. J. Rousseau has also written another pamphlet on the same subject under the above title by which its object and character are sufficiently indicated. In this treatise he says :—

If ever a moral truth has been demonstrated, it seems to me that it is the general and particular utility of this project. The benefits which would follow from its execution, not only for each prince, but for each people, and for the whole of Europe, are immense, evident, and unquestionable ; nothing can be sounder or more exact than the reasoning by which the author establishes these points. If the European Republic were realised for a single day, that would be enough to make it permanently lasting, for each one would by experience discover his particular profit in the common welfare.

* * * * *

As to differences between princes, can you expect men to submit to a superior tribunal who dare to boast that they hold their power only by the sword, and who make mention of God Himself only because He is in heaven ? Will Sovereigns submit themselves in their quarrels to judicial methods, which all the rigour of the law has never been able to compel individuals to admit on theirs ? A simple gentleman when offended disdains to carry his complaints before a tribunal of the Marshal of France ; and you would have a king carry his before the European Diet. There is this difference, again, that the one offends against the laws and exposes his life doubly, whereas the other scarcely risks

tels qu'ils devraient être, bons, généreux, désintéressés, et aimant le bien public par humanité ; mais tels qu'ils sont, injustes, avides, et préférant leur intérêt à tout. La seule chose qu'on leur suppose, c'est assez de raison pour voir ce qui leur est utile, et assez de courage pour faire leur propre bonheur. Si, malgré tout cela, ce projet demeure sans exécution, ce n'est donc pas qu'il soit chimérique ; c'est que les hommes sont insensés, et que c'est une sorte de folie d'être sage au milieu des fous.

II.—JUGEMENT SUR LA PAIX PERPÉTUELLE.

J. J. Rousseau a écrit aussi une autre brochure sur le même sujet, avec ce titre, par lequel son but et son caractère sont suffisamment indiqués.

Dans ce traité il dit :

“ Si jamais vérité morale fut démontrée, il me semble que c'est l'utilité générale et particulière de ce projet. Les avantages qui résulteroient de son exécution, et pour chaque prince, et pour chaque peuple, et pour toute l'Europe, sont immenses, clairs, incontestables ; on ne peut rien de plus solide et de plus exact que les raisonnemens par lesquels l'auteur les établit. Réalisez sa république européenne durant un seul jour, c'en est assez pour la faire durer éternellement, tant chacun trouveroit par l'expérience son profit particulier dans le bien commun.

“ Quant aux différends entre prince et prince, peut-on espérer de soumettre à un tribunal supérieur des hommes qui s'osent vanter de ne tenir leur pouvoir que de leur épée, et qui ne font mention de Dieu même que parce qu'il est au ciel ? Les souverains se soumettront-ils dans leurs querelles à des voies juridiques, que toute la rigueur des lois n'a jamais pu forcer les particuliers d'admettre dans les leurs ? Un simple gentilhomme offensé dédaigne de porter ses plaintes au tribunal des maréchaux de France ; et vous voulez qu'un roi porte les siennes à la diète européenne ? Encore y a-t-il cette différence, que l'un pèche

anything but his subjects, and in taking up arms he makes use of a right acknowledged by the whole human race, and for which he claims to be accountable to God only.

* * * * *

I require only, in order to prove that the project of the Christian Republic is not chimerical, to name its first author ; for assuredly Henry IV. was no fool, nor was Sully a visionary. The Abbé St. Pierre felt himself warranted by these great names in reviving their system. But what a difference in the times, the circumstances, the proposal, the manner of doing it, and in the author !

To judge of this difference let us glance at the general situation of affairs at the moment chosen by Henry IV. for the execution of his project. But without anything transpiring of these grand designs, everything marched on in silence towards their execution. Twice Sully went to London ; the party was united in alliance with King James I., and the King of Sweden was pledged on his side ; the league was concluded with the Protestants of Germany ; they were even sure of the Princes of Italy, and all contributed towards the grand object without being able to say what it was, just like workmen who labour separately at the parts of a new machine of which they do not know the form or the use.

To so many preparations, add, for the conduct of the enterprise, the same zeal and the same prudence as had gone to its formation, quite as much on the part of Henry's minister as on his own ; at the head of the enterprise a captain such as himself, while his adversary had nothing more to oppose to him, and you will be able to judge whether anything which might be deemed favourable to success was absent from the promise of his. Without having penetrated his views Europe, attentive to his immense preparations, awaited their results with a kind of terror. A slight pretext was to give rise to this great revolution, a war, which was to be the last, was preparing an immortal Peace, when an event, whose horrible mystery must deepen the terror of it, banished for ever the last hope of the world. The same blow

contre les lois et expose doublement sa vie, au lieu que l'autre n'expose guère que ses sujets ; qu'il use, en prenant les armes, d'un droit avoué de tout le genre humain, et dont il prétend n'être comptable qu'à Dieu seul.

“ Je ne voudrais, pour prouver que le projet de la république chrétienne n'est pas chimérique, que nommer son premier auteur : car assurément Henri IV n'étoit pas fou, ni Sully visionnaire. L'abbé de Saint-Pierre s'autorisoit de ces grands noms pour renouveler leur système. Mais quelle différence dans le temps, dans les circonstances, dans la proposition, dans la manière de la faire, et dans son auteur !

“ Pour en juger, jetons un coup d'œil sur la situation générale des choses au moment choisi par Henri IV pour l'exécution de son projet. . . . Mais sans que rien transpirât de ses grands desseins, tout marchoit en silence vers leur exécution. Deux fois Sully étoit allé à Londres : la partie étoit liée avec le roi Jacques, et le roi de Suède étoit engagé de son côté ; la ligue étoit conclue avec les protestans d'Allemagne ; on étoit même sûr des princes d'Italie, et tous concouroient au grand but sans pouvoir dire quel il étoit, comme les ouvriers qui travaillent séparément aux pièces d'une nouvelle machine dont ils ignorent la forme et l'usage. . . . A tant de préparatifs, ajoutez, pour la conduite de l'entreprise, le même zèle et la même prudence qui l'avoient formée, tant de la part de son ministre que de la sienne ; enfin, à la tête des expéditions militaires, un capitaine tel que lui, tandis que son adversaire n'en avoit plus à lui opposer : et vous jugerez si rien de ce qui peut annoncer un heureux succès manquoit à l'espoir du sien. Sans avoir pénétré ses vues, l'Europe attentive à ses immenses préparatifs en attendoit l'effet avec une sorte de frayeur. Un léger prétexte alloit commencer cette grande révolution ; une guerre, qui devoit être la dernière, préparoit une paix immortelle, quand un événement, dont l'horrible mystère doit augmenter l'effroi, vint bannir à jamais le dernier espoir du monde. Le

which cut short the days of the good King, plunged Europe anew into the eternal wars which she could no longer hope to see come to an end. Be that as it may, there are the means which Henry IV. collected together for forming the same establishment that the Abbé Saint Pierre intended to form with a book.

Beyond doubt permanent Peace is at present but an idle fancy, but given only a Henry IV. and a Sully, and permanent Peace will become once more a reasonable project.

même coup qui trancha les jours de ce bon roi replongea l'Europe dans d'éternelles guerres qu'elle ne doit plus espérer de voir finir. Quoi qu'il en soit, voilà les moyens que Henri IV avoit rassemblés pour former le même établissement que l'abbé de Saint-Pierre prétendoit faire avec un livre.

“Sans doute la paix perpétuelle est à présent un projet bien absurde ; mais qu'on nous rende un Henri IV et un Sully, la paix perpétuelle redeviendra un projet raisonnable.”

GROTIUS ON ARBITRATORS.

HUGO GROTIUS, *or De Groot*, was born 1583, died 1645.

I.—FOR PREVENTING WAR.

There are three ways in which controversies may be prevented from breaking out into war. The first is, Conference ; the third way is by Lot.

Book II. Chap. xxiii. § viii—1. Another way, between parties who have no common judge, is, by reference to Arbitration. As Thucydides says, "*It is wicked to proceed against him as a wrong-doer, who is ready to refer the question to an Arbitrator.*" So, as narrated by Diodorus, Adrastus and Amphiarus referred the question concerning the kingdom of Argos to the judgment of Eriphyle. To decide the question concerning Salamis, between the Athenians and the Megareans, five Lacedæmonian Judges were chosen. In Thucydides, just quoted, the Corcyreans notify to the Corinthians that they are ready to refer the matters in controversy between them to such cities of Peloponnesus as they should agree upon. And Aristides praises Pericles, because, to avoid war, he was willing "*to accept Arbitrators.*" And Isocrates (Aeschines) in his oration against Ctesiphon, praises Philip of Macedon, because he was ready "*to refer his controversies with the Athenians to any impartial State.*"

2. So the Ardeates and the Aricinians in old time, and the Neapolitans and the Nolans later, referred their controversies to the Roman people. And the Samnites in controversy with the Romans referred to common friends. Cyrus makes an Indian King the arbitrator between himself and Assyria. The

HUGO GROTIUS DE ARBITRIS.

Natus 1583—Mortuus est 1645.

I—AD VITANDUM BELLUM.

Tres autem sunt modi, quibus vitare potest, ne controversiae in bellum erumpant. Primum est, colloquium; tertia ratio est per sortem.

Liber II. Caput xxiii. § viii.—1. Alterum est inter eos, qui communem judicem nullum habent, compromissum: *ἐπὶ τὸν δίκας δίδοντα οὐ νόμιμον ὡς ἐς ἀδικοῦντα ἵεναι*, ait Thucydides: *in eum, arbitrium accipere paratus est, nefas ut in injuriosum ire*. Sic de regno Argivo Adrastus et Amphiatius Eriphylae iudicium, permiserunt, narrante Diodoro. De Salamine inter Athenienses et Megarenses lecti iudices Lacedaemonii quinque. Apud dictum modo Thucydidem Corcyrenses Corinthiis significant, paratos se disceptare controversias apud Peloponnesi civitates de quibus inter ipsos convenisset. Et Periclem laudat Aristides, quod, ut bellum vitaretur, voluerit *δικη διαλύεσθαι περὶ τῶν διαφόρων, de controversiis arbitros sumere*. Et Isocrates oratione adversus Ctesiphontem laudat Philippum Macedonem, quod quas habebat cum Atheniensibus controversias, de iis paratus esset *ἐπιτρέπειν πόλει τινὶ ἴση καὶ ὁμοία, arbitrium permittere alicui civitati aequae utrique parti*.

2. Sic olim Ardeates et Aricini, postea Neapolitani et Nolani, controversias suas arbitrio populi Romani permiserunt. Et Samnites in controversia cum Romanis ad communes amicos provocant. Cyrus sibi et Assyrio arbitrum fert regem Indorum

Carthaginians, in their controversies with Masinissa, appeal to an arbitral judgment, in order to avoid war. The Romans themselves in their differences with the Samnites, according to Livy, refer to their common allies. Philip of Macedon, in his disputes with the Greeks, says that he will take the judgment of peoples who are at Peace with both. At the request of the Parthians and Armenians, Pompey appointed Arbitrators to settle their boundaries. Plutarch says that the main office of the Roman *Feciales* was this, "*not to allow an appeal to arms till all hope of a peaceable settlement was lost.*" And Strabo says of the Druids of the Gauls, that "*formerly they were Arbitrators between hostile parties, and often separated without fighting those who were drawn up in warlike array against each other.*" The same writer testifies that the priests in Spain performed the same office.

3. But especially are Christian Kings and States bound to try this way of avoiding War. For, if in order to avoid being subject to the judgments of persons who were not of the true religion, certain arbiters were appointed both by Jews and by Christians, and that course was commanded by Paul, how much more ought it to be done in order to avoid a much greater inconvenience, namely, War. So Tertullian argues somewhere that a Christian may not serve as a soldier, since he may not even go to law; which, however, according to what we have said elsewhere, must be understood with a certain qualification.

4. And both for this reason and for others, it would be useful, and indeed it is almost necessary, that Congresses of Christian Powers should be held, in which the controversies which arise among some of them may be decided by others who are not interested, and in which measures may be taken to compel the parties to accept Peace on equitable terms. This indeed was the office of the Druids of old among the Gauls, as related by Diodorus and Strabo. We read, too, that the Frankish Kings referred to their nobles the judgment of questions concerning the division of the Kingdom.

Poeni in controversiis cum Masinissa, ut bellum vitent, ad judicia provocant. Romani ipsi de controversia cum Samnitibus apud Livium ad communes socios. Et Philippus Macedo in controversia cum Graecis ait se arbitrio usurum populorum, cum quibus pax utrisque fuisset. Parthis et Armeniis postulantis Pompeius finibus regendis arbitros dedit. Fecialium Romanorum hoc praecipuum ait officium fuisse Plutarchus; οὐκ ἔαν στρατεύειν πρότερον ἢ πᾶσαν ἐλπίδα ἱκῆς ἀποκοπῆναι· ne sinerent prius ad bellum venire, quam spes omnis iudicii obtinendi periisset. De Gallorum Druidibus Strabo; ὥστε καὶ πολέμους διήπων πρότερον καὶ παρατάττεσθαι μέλλοντας ἔπαυον· olim et inter bellantes erant arbitri, ac saepe jam acie congressuros diremerunt. Eodem officio functos in Iberia sacerdotes idem testis est.

3. Maxime autem Christiani reges et civitates tenentur hanc inire viam ad arma vitanda. Nam si, ut judicia alienorum a vera religione iudicum vitarentur, et a Judaeis et a Christianis arbitri quidam sunt constituti, et id a Paulo praeceptum, quanto magis id faciendum est, ut majus multo vitetur incommodum, id est, bellum? Sic alicubi Tertullianus augmentatur, non militandum Christiano, ut cui ne litigare quidem liceat: quod tamen, secundum ea, quae alibi diximus, cum temperamento quodum est intelligendum.

4. Et tum ob hanc, tum ob alias causas utile esset, imo quodammodo factu necessarium, conventus quosdam haberi Christianarum potestatum, ubi per eos, quorum res non interest, aliorum controversiae definiantur; imo et rationes ineantur cogendi partes, ut aequis legibus pacem accipiant: quem et ipsum olim apud Gallos Druidum fuisse usum Diodoro ac Straboni proditum. Etiam proceribus suis de regni divisione iudicium permisisse Francos reges legimus.

II.—FOR TERMINATING WAR.

Book III. Chap. xx. § xlv. — I. Of Arbitrations there are two kinds, as Proculus teaches us: one, in which, whether the decision is just or unjust, we must submit to it; which is the rule, he says, whenever there is a reference by formal agreement to an Arbitrator; another, in which the decision is accepted only as the judgment of a fair and just man. Of this we have an example in the opinion of Celsus. "If a freedman," he says, "*has sworn to give as many days' work as his master shall decide, the master's decision is not valid except he judge fairly.*" But this mode of interpreting an oath, though it may be introduced by the Roman laws, is not in agreement with the simple meaning of the words. Still it is true that an Arbitrator may be taken in two different ways, either as a mediator only, as we read that the Athenians were between the Rhodians and Demetrius, or as one whose decision must be absolutely obeyed. And this is the kind of which we are here treating, and of which we have already said somewhat, when we were speaking of the means of preventing War.

2. Although, even with regard to those Arbitrators to whom reference is made by formal agreement, the Civil Law may provide, and in some places has done so, that it shall be lawful to appeal from their decision, and to make complaint of their injustice; yet this cannot have place between kings and peoples. For in their case, there is no superior power which can either bar or break the binding character of the promise. And therefore the sentence must stand, whether it be just or unjust; so that the saying of Pliny may be rightly applied here: "*Every man makes the supreme judge of his case him whom he chooses as umpire.*" For it is one thing to discuss the office of an Arbitrator, and another the obligation resting on those who form the agreement to arbitrate.

§ xlvii. — I. In regard to the office of an Arbitrator, we must consider whether he be elected in the capacity of a Judge or

II.—AD FINEM BELLI FACIENDAM.

Liber III. Caput xx. § xlvi.—1. Arbitrorum Proculus nos docet duo esse genera: unum ejusmodi, ut sive aequum, sive iniquum, parere debeamus, quod observatur, ait, cum ex compromisso ad arbitrum itum est: alterum ejusmodi, ut ad boni viri arbitrium redigi debeat, cujus generis exemplum habemus in Celsi responso: *si libertus, inquit, ita juraverit dare se quot operas patronus arbitratus sit, non aliter ratum fore arbitrium patroni quam si aequum arbitratus sit.* Sed haec jurisjurandi interpretatio, ut Romanis legibus induci potuit, ita verborum simplicitati per se spectatae non convenit. Illud tamen verum manet, utrovis modo arbitrum sumi posse, aut ut conciliatorum tantum, quales Athenienses inter Rhodios et Demetrium fuisse legimus, aut ut cujus dicto parendum omnino sit. Et hoc est genus de quo nos hic agimus, et de quo nonnulla supra diximus cum de cavendi belli rationibus loqueremur.

2. Quanquam vero etiam de talibus arbitris, in quos compromissum est, lex civilis statuere possit, et alicubi statuerit, ut ab iis provocare et de injuria queri liceat; id tamen inter reges ac populos locum habere non potest. Nulla enim hic est potestas superior, quae promissi vinculum aut impediatur, aut solvat. Standum ergo omnino, sive aequum, sive iniquum pronuntiaverint, ita ut Plinii illud huc recte aptes: *summum quisque causae suae judicem facit, quemcunque eligit.* Aliud enim est de arbitri officio, aliud de compromittentium obligatione quaerere.

§ xlvii. — 1. In arbitri officio spectandum, an electus sit in vicem judicis, an cum laxiore quadam potestate, quam arbitri

with some more elastic power such as Seneca deems to be that appropriate to an Arbitrator, when he says "*A good cause had better be referred to a Judge than an Arbitrator, because the former is limited by rules of law which he may not infringe, the latter, being left unrestricted, except by the dictates of his conscience, may diminish or add something, and pronounce his award not as directed by law and justice, but as moved by humanity and mercy.*" Aristotle also says that a just and reasonable man "*will rather have recourse to an Arbitrator than a Judge, because the Arbitrator looks to what is equitable, the Judge to law; the Arbitrator is therefore chosen that equity may prevail.*"

2. In this place *equity* does not mean, as elsewhere, that part of justice which interprets the general terms of the law strictly according to the mind of its author (for this is committed to the Judge also), but it means everything that is better done than not done, even though it may be outside the rules of justice properly so called. But although such Arbiters are frequent in cases between private persons and citizens of the same empire, and are especially recommended to Christians by the Apostle Paul, I. Cor. vi., yet in a doubtful case so much power is not understood to be assigned to them. For in doubtful cases, we are to follow that which is least. And this especially holds between parties who possess supreme power; for these, since they have no common Judge, must be considered to have bound the Arbitrator by the rules by which the office of a Judge is commonly bound.

§ xlviii. — This, however, is to be noted, that Arbitrators chosen by peoples or Sovereign Powers ought to decide concerning the merits of the case, and not concerning possession; for judgments concerning possession belong to Civil Law. By the Law of Nations the right of possession follows ownership. Therefore, while the case is undergoing investigation, no innovation is to be made, both to avoid prejudice, and because recovery is difficult. Livy in his history of the Arbitration between the Carthaginians and Masinissa, says, "*The commissioners did not change the right of possession.*"

quasi propriam vult Seneca, cum dicit: *Melior videtur conditio causae bonae, si ad judicem, quam si ad arbitrum mittitur; quia illum formula includit, et certos, quos non excedat, terminos ponit; hujus libera et nullis adstricta vinculis religio et detrahere aliquid potest et adjicere, et sententiam suam, non prout lex aut justitia suadet, sed prout humanitas et misericordia impulit, regere.*" Aristoteles quoque ἐπιεικῶς, id est, aequi et commodi hominis esse ait, εἰς εἰαίταν κἄλλον ἢ εἰς ἱκὴν βούλεσθαι ἔναι, *malle ire ad arbitrum quam in jus*, rationem adjiciens, ὁ γὰρ εἰαιτητῆς τὸ ἐπιεικὲς ὄρῳ. ὁ δὲ ἱκαστῆς τὸν νόμον. καὶ τούτου ἔνεκα εἰαιτητῆς εἰρήθη ὅπως τὸ ἐπιεικὲς ἰσχύη: *nam arbiter id quod aequum est respicit, judex legem: imo arbiter ejus rei causa repertus est, ut valeret aequitas.*

2. Quo in loco aequitas non proprie significat, ut alibi partem illam justitiae, quae legis sonum generalem ex mente auctoris adductius interpretatur (nam haec et judici commissa est) sed omne id, quod rectius fit quam non fit, etiam extra justitiae proprie dictae regulas. Sed tales arbitri sicut inter privatos et ejusdem imperii cives frequentes sunt, et specialiter Christianis commendantur ab Apostolo Paulo, I. Cor. vi., ita in dubio non debet tanta potestas concessa intelligi: in dubiis enim, quod minimum est, sequimur; praecipue vero id locum habet inter summam potestatem obtinentes, qui cum judicem communem non habeant, arbitrum censendi sunt adstrinxisse iis regulis, quibus judicis officium adstringi solet.

§ xlvi. — Illud tamen observandum est, arbitros lectos a populis aut summis potestatibus de principali negotio pronuntiare debere, non de possessione: nam possessoria judicia juris civilis sunt: jure gentium possidendi jus dominium sequitur. Ideo, dum causa cognoscitur, nihil est innovandum, tum ne praejudicium fiat, tum quia difficilis est recuperatio. Livius in historia disceptatorum inter populum Carthaginiensem et Masinissam, *legati, inquit, jus possessionis non mutarunt.*

PUFENDORF
ON THE WAY OF DECIDING CONTROVERSIES IN
THE LIBERTY OF NATURE.

SAMUEL, BARON VON PUFENDORF, *born 1631, died 1694.*

I.—WHAT IS DUE TO OTHERS IS WILLINGLY TO BE
PERFORMED.

By the Law of Nature men are required voluntarily to fulfil, and mutually to render, those things, which for any reason whatsoever are due to others.

It is inhuman and brutish indeed, not to be satisfied with anything less than the blood of an offender, and when a misunderstanding has once arisen to cherish it for ever.

II.—IN A STATE OF NATURE THERE IS NO JUDGE.

But all men are not so benevolently disposed as to be willing of their own accord to perform their duty ; and, besides, controversies may arise about the certitude and amount of a debt, the valuation of a given damage, the competency to exercise certain rights, the determination of boundaries, the interpretation of agreements, and other contentious matters. In such matters, among those who live in the liberty of nature, there is provided no judge, who, by virtue of his authority, may determine and adjust the disputes that arise. For the rest though every man in that state, may either neglect or defend his own right, may put aside or follow up an injury, yet he cannot in his own affair give sentence so as to oblige him, with whom he has the controversy, to abide by it. For although he may desire to the utmost, and even protest upon oath, that he will give judgment according to

PUFENDORFIUS
DE MODO LITIGANDI IN LIBERTATE NATURALI.

I.—QUAE ALIIS DEBENTUR ULTRO SUNT IMPLENDA.

Id equidem lex naturalis requirit, ut homines ultro praestent, et exhibeant invicem ea, quae quocunque nomine aliis debent.

Inhumanum quippe et belluinum est, non nisi reposito laedenti dolore velle adquiescere, et susceptas semel inimicitias in aeternum alere.

II.—IN STATU NATURALI JUDEX NON DATUR.

Enimvero praeterquam quod non omnibus mortalibus ea est ingenii bonitas, ut officium ultro velint explere, aliquando etiam super certitudine ac quantitate debiti, taxatione damni dati, competentia, et exercitiis certorum jurium, super regundis finibus, interpretatione pactorum, aliisque praetensionibus controversiae oriuntur. Heic igitur inter eos, qui in naturali libertate vivunt, judex non datur, qui lites exortas pro imperio definiat et componat.

De caetero licet in illo statu penes quemque sit, negligere, an tueri suum jus, necessitare an exsequi injuriam velit: non tamen de suo negotio sententiam ferre potest, qua stare teneatur is, qui cum ipsi controversia intercedit. Nam si vel maxime cupiat, idque vel juratus protestetur, se pronunciaturum, quod sibi justum

what seems to him right, yet since the other may have an equal respect for his own opinion, if they happen to disagree, nothing can be done on account of their equality, which is incidental to a state of nature.

III.—CONTROVERSIES, WHICH CANNOT BE DECIDED BY CONFERENCE, ARE TO BE REFERRED TO ARBITRATORS.

The Law of Nature by no means allows any one to assert by arms the right he has determined by his own judgment, and to make the sword the arbiter of his own controversies before milder methods have been attempted.

Therefore the parties ought first to endeavour by some friendly discussion, at a meeting between themselves or their agents, to compose the difference. Very often, indeed, after arms have been taken up, and the inflexibility of temper has been broken by the evils of war, the difference is, according to the usual custom, adjusted by discussion and agreement.

But if neither a discussion between the parties can put an end to the controversy, nor either is disposed to entrust to a decision by lot what he thinks is based on valid reasons, the only thing to be done is to refer to an Arbitrator, to whose award both parties mutually bind themselves by agreement to adhere.

IV.—NO COVENANT CAN EXIST BETWEEN AN ARBITRATOR AND THE CONTENDING PARTIES.

The Arbitrator, it is evident, is chosen because every man's judgment, by reason of that natural affection which each bears to himself, is suspected to be partial to his own cause.

He must, therefore, before everything else, take care not to show more favour to one than the other, except so far as arises from the merits of the case.

Therefore it is manifest that no one can with propriety be chosen arbitrator in any case wherein there may seem to be more hope of personal advantage or credit through the success

fuerit visum: cum tamen alter pari dignatione suam sententiam aestimare queat, ubi eas contingat discrepare, propter æqualitatem, status naturalis comitem, nihil agetur.

III.—CONTROVERSIA, QUAE COLLOQUIO INTER PARTES EXPEDIRI NEQUEUNT, AD ARBITROS SUNT DEFERENDA.

Haut quidquam tamen lege naturali concessum est quod quisque suo ex iudicio definivit, jus statim armis asserere controversiarumque suarum arbitrum Martem sumere antequam molliora media fuerint tentata. Inde primo omnium conandum, an per amicam disceptationem, congressis inter se partibus, aut earundem mandatariis, controversia componi queat.

Quanquam et saepissime, postquam armis fuit certatum, animorumque rigor belli malus est fractus, controversia per tractatus et transactionem componi soleat.

Enimvero ubi nec partium disceptatio exitum controversiae invenire potest, neque sorti committere placet, quod solidis rationibus subnixum existimatu, proximum est, ut ad arbitrum eatur, cujus sententia quod utique stare velint, partes sese pacto invicem adstringant.

IV.—INTER ARBITRUM ET PARTES NON INTERCEDIT PACTUM.

Scilicet sumitur iste, quia cujuslibet de sua causa iudicium suspectum habetur propter insitum illum amorem, quo quis in se suaque regulariter propendet. Igitur id cum primis observabit arbitrer, ut ne plus favoris adversus unum quam alterum ostendet, nisi quantum ex meritis causae oritur.

Sed et ob id ipsum patet, neminem recte posse capi arbitrum in ea causa, cui commodi vel gloriae peculiaris spes major adparet ex victoria unius partis, quam alterius, seu cujus peculiariter

of one party rather than the other, or in which it is specially to his interest that one should, by any means, gain the case. Otherwise he cannot so strictly observe the impartiality and neutrality which are necessary.

Hence it follows that no agreement or promise should exist between the Arbitrator and the Parties whereby he may be prejudiced in favour of either of them ; nor ought he to have any other reward for his sentence than the satisfaction of having judged well.

The reason of this is not so much that the law of nature, which can acquire no obligation by any such agreement, enjoins upon the Arbitrator the duty of judging according to justice, as that, by such a course, the object of having recourse to an arbitrator would be frustrated, and there would be no finality.

It follows further from this, that the agreement to arbitrate ought to be framed absolutely that the parties are willing to abide by the award pronounced by the Arbitrator ; and not on the condition that he pronounces a just award. Else should either of the contending parties raise a doubt as to the equity of the award, the question would have to be submitted to another Arbitrator, who would investigate that issue ; and if again doubt were raised, another Arbitrator would have to be appointed and so on without end.

It is also manifest that there cannot be any appeal from Arbitrators, because there is no superior Judge who can revise their award. This principle prevails in States, where parties have voluntarily agreed to refer to an Arbitrator, provided the case be such as it does not interest the Government to have settled. If, however, it is anywhere permissible to make such an appeal it is by reason of some positive law.

But when it is said that the parties ought to abide by the award of the Arbitrator, whether he has given it justly or not, that must be accepted with some reservation. For though we cannot recede from an agreement to arbitrate because the award is given against us, whatever hopes we had cherished, yet the award of the Arbitrator will surely not be binding if it manifestly appears that

interest, unum quocunque modo causam obtinere. Alias enim indifferentiam illam, et velut medietatem ita accurate observare non poterit.

Ex quo etiam consequitur, nullum pactum aut promissum debere intercedere in tea arbitrum, et partes, cujus vi iste teneatur praeter merita causae pronunciare in gratiam partis alterutrius.

Nec aliud sententiae ipsius pretium esse debet, quam bene judicasse.

Cujus rei ratio non tam haec est, quod alias per legem naturæ sit injunctum arbitro pronunciare, quod justum sibi visum fuerit; cujus legis obligationi nihil queat ex pacto accedere; quam quod hoc modo finis arbitri summi reddatur irritus, ac fiat progressus in infinitum.

Ex quo itidem patet, pactum quo partes in arbitrum committunt, pure conceptum esse debere, quod velint stare ea sententia, quam arbiter pronunciaverit; non autem sub hac conditione, siquidem aequam iste sententiam pronunciaverit. Nam hoc modo, ubi super aequitate sententiae alteruter litigantium dubium moveret, ad alium foret arbitrum eundem, qui super ista cognosceret. De cujus aequitate si iterum ambigeretur, alius esset constituendus arbiter; et sic in infinitum.

Ceterum id manifestum est, ab arbitris non posse provocari; cum nullus sit superior iudex, qui sententiam eorum corrigere queat. Id quod etiam in civitatibus obtinet, ubi partes ultro in arbitrum compromiserint; siquidem disceptetur super causa, quam quocunque modo componi rectorum civitatis nihil intersit. Quod si tamen alicubi ab hisce quoque licet provocare; id ex jure positivo est.

Quod autem dicitur, standum esse sententia arbitri, sive aequum, sive iniquum pronunciaverit, id cum grano salis est accipiendum. Nam uti ideo quidem a compromisso resilire non licet, quod contra nos fuerit pronunciatum, utut ipsi largius de nostra causa sperabamus; ita tunc sane arbitri sententia nos non stringet, si manifeste adpareat, ipsum cum altera parte

he was in collusion with the other party, or was corrupted by a bribe from him, or entered into an agreement for our detriment.

For he who openly attaches himself to either side cannot any longer sustain the character of an Arbitrator.

But this also is clear, if more Arbitrators than one are chosen, it is better to have an uneven number, for if on giving sentence there should be an equality of votes, the case could not be concluded.

V.—ARBITRATORS IN A CASE OF DOUBT ARE BOUND TO JUDGE BY LAW.

The paragraph of Grotius (pp. 126, 128) on this point is considered, and it is added :—

If it be doubtful under which of these two qualifications (whether as a judge or with wider powers) the Arbitrator be chosen, it is presumed that he will be subject to those rules which have to be followed by a judge, since it is for want of a judge and judicature that he is chosen ; and in a case of doubt we must follow that which is least. Besides, it is easier for either party to suffer injury at the hands of an Arbitrator who has wider powers than of one who has been entrusted with more limited functions.

For the rest it is manifest, that as he who passes judgment between fellow citizens, judges, as a matter of course, according to the civil law, to which the litigants are subject, so he who is about to pronounce judgment between those who do not acknowledge the same Civil laws will have as his rule the law of nature ; unless the parties themselves subject their case to the positive Laws of a particular State.

VI.—ARBITRATORS ARE NOT TO DECIDE IN REGARD TO POSSESSION.

See Grotius, p. 128.

colludere, aut ab eadem donis corruptum, aut pactum in fraudem nostram inivisse. Nam qui aperte ad alterutram sese partem adplicat, arbitri personam gerere amplius nequit. Sed et hoc patet, si plures uno arbitri sumantur, praestare, ut sint numero impari, ne si ipsis dissentionibus pares sint sententiae, res non possit invenire exitum.

V.—ARBITRI IN DUBIO INTELIGUNTUR ADSTRACTI JURE.

In dubio (*i.e.* in vicem judicis, an vero cum laxiore aliqua potestate) tamen praesumitur arbitrum ad regulas judici sequendas obligatum, quippe cum ob defectum fori et indicis ille sumtus sit; et in dubio id, quod minimum est, sequamur. Facilius autem est, ut quis laedatur, si arbitro laxo, quam strictior facultas sit concessa. Caeterum illud manifestum est, uti qui inter cives jus dicit, regulariter sequitur leges civiles, quibus litigantes sunt subjecti, ita qui pronuntiaturus est inter eos, qui communes leges civiles, non agnoscunt, jus naturale pro norma habebit. Nisi ipsae partes actum suum ad certae civitatis leges positivas attemperarint.

VI.—ARBITRIS NON SUFFICIT PRONUNCIASSE SUPER POSSESSIONE,

(*Vide Grotium in loco.*)

VII.—CONCERNING MEDIATORS.

Mediators, as they are termed, who of their own accord interpose between contending parties and nations, either preparing for, or already waging war, and who endeavour by their authority, their arguments and their entreaties, to bring them to a peaceful settlement and a prudent application to law, are not strictly speaking Arbitrators.

These cannot be peremptorily rejected without the greatest inhumanity, seeing they have such a sacred purpose, even though they should appear to be intimately allied to either party. For in any case, it is in my power to accept or refuse what is offered to me by others ; and it is the especial function of friends when they cannot take part in the dispute, to endeavour to bring it to an amicable composition.

VIII.—WHAT IF DOCUMENTS BE LOST ?

The form and procedure of conducting the pleadings carried on before Arbitrators will be best determined by common sense, according to the particular circumstances of the case. For it would be impertinent to lay down prescriptions how each party should open his case ; how to state the question ; how, after the arguments on both sides have been weighed, the sentence ought to be pronounced. This only needs to be said, that if the contention on the part of either side cannot be sustained in any other way than by documents, and they are lost, nothing remains but for the Arbitrator, with the consent of the other party, to administer an oath. I say, *with the consent of the other party* ; for in the liberty of nature, no one is obliged to make the issue of his cause depend upon the conscience of his opponent.

IX.—OF WITNESSES.

Arbitrators have this in common with judges, that in regard to matters of fact they ought to treat alike the bare and unattested

VII.—DE MEDIATORIBUS PACIS.

Arbitri tamen proprie dicti non sunt mediatores, quos vocant qui litigantibus, bellumque parantibus aut jam gerentibus ultro sese interponunt, eosque autoritate, rationibus, precibus ad pacifice transigendum, litesque sapiendas permovere nituntur. Hos cum tam sanctum propositum prae se ferant, praefracte rejicere summa inhumanitas foret; ne quidem ex eo solum praetextu, quod cum altera parte ipsis peculiaris quaedam conjunctio videatur intercedere. Nam penes me utique est, quantum ea, quae ab istis offeruntur, velim admittere: et amicorum solet hoc praecipuum esse munus, ut ubi ipsi mecum in litem descendere nolunt, ad amicam compositionem eandem deducere laborent.

VIII.—QUOD SI INSTRUMENTA FUERINT AMISSA?

Formam et processum disceptationum coram arbitris institutarum ipsa communis ratio satis designat, perspecta cujusque negotii indole. Sic ut putidum foret multis praescribere, quo modo partes intentionem suam debeant proponere, quomodo status controversiae formandus, quomodo post expensa utriusque partis argumenta sententia demum sit concipienda. Illud duntaxat monendum, ubi intentio alterutrius alia ratione, quam per instrumenta probari nequeat, et vero illa sint amissa, arbitro nihil superesse quam ut uni partium cum consensu alterius juramentum deferat. *Cum consensu alterius*, dico. Nam in libertate naturali alias nemo videtur teneri, ut ex adversæ partis conscientia causam suam suspendat.

IX.—DE TESTIBUS.

Illud arbitri cum iudicibus habent commune, quod circa quæstiones facti adversus nudam et injuratam assertionem partium

assertions of both parties, *i.e.*, when they firmly adhere to contradictory statements, to believe neither. But when autographs, accounts, and genuine documents cannot be produced in evidence, judgment will then have to be given according to the testimony of witnesses.

The witnesses again ought, therefore, not to be favourably disposed towards either party, so that it shall not seem likely that either favour or hatred and a desire of revenge should have more weight with them than their conscience.

Therefore as my adversary may take exception to my relatives as witnesses, so may I to my avowed enemies. Indeed, sometimes, near relations are excused from giving evidence in a case, upon a principle of humanity, lest they should be forced to offer violence either to their affections or to their conscience.

Lastly, it is thoroughly in accordance with reason that no case whatsoever should be decided on the testimony of any one single witness.

X.—OF THE EXECUTION OF THE SENTENCE.

With regard to the execution of the award there is not much that we may add ; for in a state of nature, if any one does not of his own accord fulfil what is due to another, the latter may by all the forces and arms that he has himself, or that his friends may supply him with, procure the execution. How far such proceeding may be carried will be shown more fully later, when we treat of war. Here it may be merely observed, that in such an execution, I not only become the owner of the thing adjudged to me, when by any method whatsoever I have taken possession of it, but even if I cannot get possession of the thing itself, I may, when the execution is made, seize upon anything else I can which amounts to the same in value (the estimated charges of the execution itself being included), so as to become its owner.

æquales sese debeant præbere, *i.e.*, cum contradictoria simul vera asseverent, neutri credere. Sed ubi signa rationesque et incorrupta instrumenta in cognitionem veritatis haut perducunt, secundum effata testium sententia erit ferenda.

Testes porro ergo alterutram partem non oportet ita esse affectos, ut probabile videri queat, gratiam ipsos aut odium, vindictæque libidinem, ante conscientiam habere.

Igitur uti adversarius meos necessarios, sic et ego professores meos inimicos recte possum rejicere. Quanquam interdum per humanitatem a testimonis in causa necessarii sui excluduntur propinqui, ne vel affectus suos, vel conscientiam lædere cogantur.

Denique et id rationi optime congruit, ne unius testimonium ad causæ cujuslibet decisionem valeat.

X.—DE EXECUTIONE REI JUDICATÆ.

Circa executionem rei judicatæ non est quod multa addamus, cum in statu naturali, ubi ab altero non expletur ultro, quod debetur, sibi quisque suis, sociorumque viribus et armis executionem faciat; quæ quousque progredi possit, inferius, ubi de bello agemus, latius ostendetur. Illud duntaxat heic monendum, in ejusmodi executione me non solum fieri dominum rei mihi adjudicatæ, postquam ejusdem possessionem quocunque modo apprehendi; sed etiam, si ista potiri nequeain, me aliam rem posse, quæ tantundem valet, arripere (computatis simul impensis in ipsam executionem factis) cum hoc effectu, ut ejus rei fiam dominus.

VATTEL ON ARBITRATION.

EMMERICH VATTEL, *born 1714, died 1767.*

In Book II. Chap. xviii. § 329, of his work "The Law of Nations," Monsieur de Vattel says:—

When Sovereigns cannot agree about their pretensions, and are nevertheless desirous of preserving or restoring peace, they sometimes submit the decision of their disputes to Arbitrators chosen by common agreement.

When once the contending parties have entered into an Arbitration Agreement, they are bound to abide by the sentence of the Arbitrators ; they have engaged to do this, and the faith of treaties should be religiously observed.

If, however, the Arbitrators, by pronouncing a sentence evidently unjust and unreasonable, should forfeit the character with which they were invested, their judgment would deserve no attention ; the parties had appealed to it only with a view to the decision of doubtful questions. Suppose a board of Arbitrators should, by way of reparation for some offence, condemn a sovereign State to become subject to the State she has offended, will any man of sense assert that she is bound to submit to such decision ? If the injustice is of small consequence, it should be borne for the sake of Peace ; and if it is not absolutely evident, we ought to endure it, as an evil to which we have voluntarily exposed ourselves. For if it were necessary that we should be convinced of the justice of a sentence before we would submit thereto it would be of very little use to appoint Arbitrators.

There is no reason to apprehend that, by allowing the parties a liberty of refusing to submit to a manifestly unjust and unreasonable sentence, we should render Arbitration useless ; and this

DE L'ARBITRAGE, PAR M. DE VATTEL.

1714.—1767.

Dans Livre II., Chap. xviii., § 329, Monsieur de Vattel dit :—

Quand les souverains ne peuvent convenir sur leurs prétentions et qu'ils désirent cependant de maintenir, ou de rétablir la paix, ils confient quelquefois la décision de leurs différens à des arbitres choisis d'un commun accord.

Dès que le compromis est lié, les parties doivent se soumettre à la sentence des arbitres : elles s'y sont engagées ; et la foi des traités doit être gardée.

Cependant, si par une sentence manifestement injuste, contraire à la raison, les arbitres s'étoient eux-mêmes dépouillés de leur qualité, leur jugement ne mériteroit aucune attention ; on ne s'y est soumis que pour des questions douteuses. Supposez que des arbitres, pour réparation de quelque offense, condamnent un Etat souverain à se rendre sujet de l'offense ; aucun homme sensé dira-t-il que cet Etat doit se soumettre ? Si l'injustice est de petite conséquence, il faut la souffrir pour le bien de la paix ; et si elle n'est pas absolument évidente, ou doit la supporter comme un mal auquel on a bien voulu s'exposer. Car s'il falloit être convaincu de la justice d'une sentence pour s'y soumettre, il seroit fort inutile de prendre des arbitres.

On ne doit pas craindre qu'en accordant aux parties la liberté de ne pas se soumettre à une sentence manifestement injuste et déraisonnable, nous ne rendions l'arbitrage inutile ; et cette

decision is by no means contrary to the nature of the submission or of the Arbitration agreement. There can be no difficulty in the affair, except in the case of a vague and unlimited agreement in which they have not precisely specified the subject of the dispute or marked the limits of their conflicting pretensions. It may then happen, as in the example just alleged, that the Arbitrators will exceed their power, and pronounce on what has not been really submitted to their decision. Being called in to determine what satisfaction a State ought to make for an offence, they may condemn her to become subject to the State she has offended. But she certainly never gave them a power so extensive, and their absurd sentence is not binding. In order to obviate all difficulty and cut off every pretext of which fraud might take advantage, it is necessary that the Arbitration agreement should precisely specify the subject in dispute, the respective and opposite pretensions of the parties, the demands of the one and the objections of the other.

These are what are submitted to the decision of the Arbitrators, and it is upon these points alone that the parties promise to abide by their judgment. If, then, their sentence be confined within these precise bounds, the disputants must acquiesce in it. They cannot say that it is manifestly unjust, since it is pronounced on a question which they have themselves rendered doubtful by the discordance of their claims, and which has been referred, as such, to the decision of the Arbitrators. Before they can evade such a sentence they must prove, by incontestable facts, that it was the offspring of corruption or flagrant partiality.

Arbitration is a very reasonable mode, and one that is perfectly conformable to the law of nature, for the decision of every dispute which does not directly concern the safety of the nation. Though the claim of justice may be mistaken by the Arbitrators, it is still more to be feared that it will be overpowered in an appeal to arms.

décision n'est pas contraire à la nature de la soumission ou du compromis. Il ne peut y avoir de difficulté que dans le cas d'une soumission vague et illimitée, dans laquelle on n'auroit point déterminé précisément ce qui fait le sujet du différend, ni marqué les limites des prétentions opposées. Il peut arriver alors, comme dans l'exemple allégué tout-à-l'heure, que les arbitres passent leur pouvoir et prononcent sur ce qui ne leur a point été véritablement soumis. Appelés à juger de la satisfaction qu'un Etat doit pour une offense, ils le condamneront à devenir sujet de l'offensé. Assurément cet Etat ne leur a jamais donné un pouvoir si étendu, et leur sentence absurde ne le lie point. Pour éviter toute difficulté, pour ôter tout prétexte à la mauvaise foi, il faut déterminer exactement dans le compromis le sujet de la contestation, les prétentions respectives et opposées, les demandes de l'un et les oppositions de l'autre.

Voilà ce qui est soumis aux arbitres, ce sur quoi on promet de s'en tenir à leur jugement. Alors, si leur sentence demeure dans ces bornes précises, il faut s'y soumettre. On ne peut point dire qu'elle soit manifestement injuste, puisqu'elle prononce sur une question que le dissentiment des parties rendoit douteuse, qui a été soumise comme telle. Pour se soustraire à une pareille sentence, il faudroit prouver par des faits indubitables qu'elle est l'ouvrage de la corruption ou d'une partialité ouverte.

L'arbitrage est un moyen très raisonnable et très conforme à la loi naturelle, pour terminer tout différent qui n'intéresse pas directement le salut de la nation. Si le bon droit peut être méconnu des arbitres, il est plus à craindre encore qu'il ne succombe par le sort des armes.

JEREMY BENTHAM ON AN INTERNATIONAL TRIBUNAL.

Bentham's Scheme is derived from "The Fragments of an Essay on International Law by Jeremy Bentham," published from MSS. bearing date from 1786-1789. These fragments consist of four short Essays :—1. On the objects of International Law. 2. On the subjects ; or personal extent of the dominion of the laws of any State. 3. On War, considered in respect to its causes and consequences. 4. A PLAN FOR AN UNIVERSAL AND PERPETUAL PEACE.

AN INTERNATIONAL CODE, he declares, ought to regulate the conduct of nations in their mutual intercourse. Its objects for any given nation would be—(1) general utility, so far as it consists in doing no injury, and (2) in doing the greatest possible good to other nations, to which two objects, he says, the *duties* which the given nation ought to recognise may be referred ; and (3) general utility, in so far as it consists in not receiving injury, or (4) in receiving the greatest possible benefit from other nations, to which the *rights* it ought to claim may be referred.

But if these rights be violated there is, at present, no mode of seeking compensation but that of *War*, which is not only an evil, it is the complication of all other evils.

The fifth object of an International Code would be to make such arrangements that the least possible evil may be produced by War consistently with the acquisition of the good which is sought for.

"The laws of Peace would be the substantive laws of the International Code : the laws of War would be the adjective laws of the same Code."

PREVENTION OF WAR.

For this he proposes a plan for an universal and perpetual Peace.

This plan is grounded upon two fundamental propositions, both of which he deems indispensable to its success :—

1. The reduction and fixation of the forces of the several nations that compose the European system ;
2. The emancipation of the colonial dependencies of each State.

In treating of these he lays down fourteen Pacific Propositions, which he discusses in detail within the limits of his notes.

The elaboration of the thirteenth of these includes his scheme. It is as follows :—

Proposal XIII.—That the maintenance of such a permanent pacification might be considerably facilitated by the establishment of a Common Court of Judicature for the decision of differences between the several nations, although such Court were not to be armed with any coercive powers.

I. “It is an observation of somebody’s, that no nation ought to yield any evident point of justice to another.

“This must mean, evident in the eyes of the nation that is to judge, evident in the eyes of the nation called upon to yield. What does this amount to? That no nation is to give up any thing of what it looks upon as its rights :—no nation is to make any concessions. Wherever there is any difference of opinion between the negotiators of the two nations, war is to be the consequence.

“While there is no common tribunal, something might be said for this. Concession to notorious injustice invites fresh injustice.”

II. But, “Establish a common tribunal, the necessity for war no longer follows from difference of opinion. Just or unjust, the decision of the Arbiters will save the credit, the honour of the contending party.”

III. “Can the arrangement proposed be justly styled visionary, when it has been proved of it that—

1. “It is the interest of the parties concerned ;

2. "They are already sensible of that interest ;
3. "The situation it would place them in is no new one, nor any other than the original situation they set out from."

IV. "Difficult and complicated Conventions have been [already] effectuated : " *e.g.*, "(1) The Armed Neutrality, (2) the American Confederation, (3) the German Diet, (4) the Swiss League. Why should not the European fraternity subsist as well as the German Diet or the Swiss League ?"

"These latter have no ambitious views. Be it so ; but is not this already become the case with the former ?

"How then shall we concentrate the approbation of the people, and obviate their prejudices ?

"One main object of the plan is to effectuate a reduction, and that a mighty one, in the contributions of the people. The amount of the reduction for each nation should be stipulated in the treaty ; and even previous to the signature of it, laws for the purpose might be prepared in each nation, and presented to every other, ready to be enacted, as soon as the treaty should be ratified in each State.

"By these means the mass of people, the part most exposed to be led away by prejudices, would not be sooner apprised of the measure, than they would feel the relief it brought them. They would see it was for their advantage it was calculated, and that it could not be calculated for any other purpose.

V. "Such a Congress or Diet might be constituted by each Power sending two deputies to the place of meeting : one of these to be the principal, the other to act as an occasional substitute.

VI. "The proceedings of such Congress or Diet should be all public.

VII. "Its power would consist :—

1. "In reporting its opinion.
2. "In causing that opinion to be circulated in the dominion

of each State. Manifestoes are in common use. A manifesto is designed to be read either by the subjects of the State complained of, or by other States, or by both. It is an appeal to them. It calls for their opinion. The difference is, that in that case (of a manifesto) nothing of proof is given ; no opinion regularly made known.

3. "After a certain time, in putting the refractory State under the ban of Europe.

"There might, perhaps, be no harm in regulating as a last resource, the contingent to be furnished by the several States for enforcing the decrees of the Court. But the necessity for the employment of this resource would, in all human probability, be superseded for ever by having recourse to the much more simple and less burthensome expedient of introducing into the instrument by which such Court was instituted a clause, guaranteeing the liberty of the press in each State, in such sort, that the Diet might find no obstacle to its giving, in every State, to its decrees, and to every paper whatever, which it might think proper to sanction with its signature, the most extensive and unlimited circulation."—WORKS, VOL. II., pp. 546 and *seq.*

KANT ON A PERMANENT CONGRESS OF NATIONS

A TRUE PEACE STATUS.

Since the natural state of peoples, like that of individuals, is one that must be abandoned in order to enter a state regulated by law, before this can take place, every public right and every external Mine-and-Thine of States, which can be acquired and preserved by War, are merely *provisional*, and can become effectively authoritative, and so form a true Peace Status, only in a Universal Union of States (by a process analogous to that whereby a people becomes a State). But because so great an extension of such an Association of States over wide districts must render even Government itself, and consequently the protection of every member, at length impossible, and because a number of such Corporations will lead again to a State of War, therefore, *Perpetual Peace* (the final goal of International Law), is really an impracticable idea. The political principles, however, which tend to that result, viz., to such a Union of States as shall serve as continual approximation thereto, are not themselves impossible; but as this approximation is a matter founded upon duty, and consequently upon the rights of men and of States, it is certainly practicable.

A PERMANENT CONGRESS OF NATIONS.

Such a Union of single States, having for its object the preservation of Peace, might be termed the PERMANENT CONGRESS OF NATIONS, to which every neighbouring State might be at liberty to associate itself. Such (at least so far as concerned the formalities of International Law in regard to the maintenance of Peace) was the Diplomatic Conference formed at the Hague during the first half of this century (the eighteenth), where the Ministers of most of the European Courts and even of the

EIN PERMANENTER STAATEN-CONGRESS.

VON IMMANUEL KANT, 1796.

EIN WAHRER FRIEDENZUSTAND.

Da der Naturzustand der Völker ebensowohl, als einzelner Menschen, ein Zustand ist, aus dem man herausgehen soll, um in einen gesetzlichen zu treten, so ist vor diesem Ereigniss alles Recht der Völker und alles durch den Krieg erwerbliche oder erhaltbare äussere Mein und Dein der Staaten blos *provisorisch*, und kann nur in einem allgemeinen *Staatenverein* (analogisch mit dem, wodurch ein Volk Staat wird), *peremptorisch* geltend und ein wahrer *Friedenzustand* werden. Weil aber, bei gar zu grosser Ausdehnung eines solchen Völkerstaats über weite Landstriche, die Regierung desselben, mithin auch die Beschützung eines jeden Gliedes endlich unmöglich werden muss; eine Menge solcher Corporationen aber wiederum einen Kriegszustand herbeiführt; so ist der *ewige Friede*, (das letzte Ziel des ganzen Völkerrechts,) freilich eine unausführbare Idee. Die politischen Grundsätze aber, die darauf abzwecken, nämlich solche Verbindungen der Staaten einzugehen, als zur *continuirlichen Annäherung* zu demselben dienen, sind es nicht, sondern, so wie diese eine auf der Pflicht, mithin auch auf dem Rechte der Menschen und Staaten gegründete Aufgabe ist, allerdings ausführbar.

EIN PERMANENTER STAATEN-CONGRESS.

Man kann einen solchen *Verein einiger Staaten*, um den Frieden zu erhalten, den *permanenten Staatencongress* nennen, zu welchem sich zu gesellen, jedem benachbarten unbenommen bleibt; dergleichen, (wenigstens was die Förmlichkeiten des Völkerrechts in Absicht, auf die Erhaltung des Friedens betrifft),

smallest Republics brought their complaints respecting Acts of War which occurred between them. In this manner they formed the whole of Europe into one federal State, which they accepted as Arbitrator in their political differences. Later on, the Law of Nations, which had vanished from the Cabinets, was preserved merely in books, or was confided to the obscurity of Archives, in the form of deductions, after force had been already employed.

A REVOCABLE ASSOCIATION.

But by a Congress will be here understood only a Voluntary Association of the various States, which should be at all times revocable, and not, like that of the States of America, a Union founded on a formal Constitution, and therefore indissoluble. It is in this way only that the idea can be realised of establishing a public Law of Nations which may determine their differences by a civil method, like the judicial proceedings among individuals (Process) and not by a barbarous one (after the manner of savages), that is to say, by War.—KANT, "Rechtslehre," Part II., § 61.

in der ersten Hälfte dieses Jahrhunderts in der Versammlung der Generalstaaten im Haag noch stattfand ; wo die Minister der meisten europäischen Höfe, und selbst der kleinsten Republiken, ihre Beschwerden über die Befehdungen, die einem von dem anderen widerfahren waren, anbrachten, und so sich ganz Europa als einen einzigen föderirten Staat dachten, den sie in jener ihren öffentlichen Streitigkeiten gleichsam als Schiedsrichter annahmen, statt dessen späterhin das Völkerrecht blos in Büchern übrig geblieben, aus Cabinetten aber verschwunden, oder nach schon verübter Gewalt, in Form der Deductionen, der Dunkelheit der Archive anvertraut worden ist.

EINE ABLÖSLICHE ZUSAMMENTRETUNG.

Unter einem *Congress* wird hier aber nur eine willkürliche, zu aller Zeit *ablösliche* Zusammentretung verschiedener Staaten, nicht eine solche Verbindung, welche (so wie die der amerikanischen Staaten,) auf einer Staatsverfassung gegründet und daher unauflöslich ist, verstanden ; — durch welchen allein die Idee eines zu errichtenden öffentlichen Rechts der Völker, ihre Streitigkeiten auf civile Art, gleichsam durch einen Process, nicht auf barbarische (nach Art der Wilden), nämlich durch Krieg zu entscheiden, realisirt werden kann.—KANT, “Rechtslehre,” II. Theil, § 61.

LE CONGRÈS PERMANENT.

PAR EMM. KANT.

UN VÉRITABLE ÉTAT DE PAIX.

Puisque l'état naturel des peuples, comme celui des hommes en particulier, doit être quitté pour entrer dans un état légal,— avant qu'il en soit ainsi, tout droit des peuples, tout Mien-et-Tien extérieur des Etats qui peut être acquis ou conservé par la guerre, est seulement *provisoire* ; il ne peut valoir *péremptoirement* et devenir un véritable *état de paix* que dans l'universelle *union des cités* (par analogie avec les moyens par lesquels un peuple devient un Etat). Mais comme une trop grande étendue d'une pareille cité de peuples à la surface du globe en rendrait impossible le gouvernement, par conséquent aussi la protection de chaque membre de cette cité universelle, attendu qu'ils sont trop disséminés, trop loin les uns des autres, il ne se forme que des corporations partielles, ce qui entraîne un nouvel état de guerre. Ainsi une *paix perpétuelle* (fin dernière de tout droit des gens) est sans doute une idée impraticable. Mais les principes politiques qui tendent à opérer de telles réunions de cités, comme pour favoriser l'*approximation* sans fin de cet état de paix perpétuelle, ne sont pas eux-mêmes impossibles ; et comme cette approximation est une question fondée sur le devoir, par conséquent aussi une question fondée sur le droit des hommes et des Etats, elle est sans doute praticable.

LE CONGRÈS PERMANENT.

On peut appeler cette *alliance* de quelques *Etats*, pour le maintien de la paix, le *congrès permanent* auquel chaque Etat voisin est libre de s'adjoindre ; ce qui (au moins quant aux formalités du droit des gens à l'égard du maintien de la paix) a

eu lieu dans la première moitié de ce siècle lors de l'assemblée des Etats généraux à La Haye, où les ministres de la plupart des cours de l'Europe et même des plus petites républiques, portèrent leurs plaintes sur les hostilités commises les unes contre les autres, et firent ainsi de toute l'Europe une confédération qu'ils prirent pour arbitre dans leurs différends politiques. Plus tard le droit des gens, abandonné aux écoles, disparut des cabinets, ou fut confié à l'obscurité des archives, sous forme de déductions, après qu'on eut déjà fait usage de la force.

UNE UNION DISSOLUBLE.

Mais, dans un *congrès* de plusieurs Etats, il ne s'agit que d'une union arbitraire, *dissoluble* en tout temps, et non d'une union qui (comme celle des Etats d'Amérique) serait fondée sur une constitution publique, et par conséquent indissoluble. Ce n'est que de cette façon que l'Idée de la fondation d'un droit des gens, au nom duquel se décideraient les intérêts internationaux à la manière civile, c'est-à-dire, comme par un procès, et non d'une manière barbare (celle des sauvages) par la guerre, peut recevoir une exécution.—“Principes Métaphysiques du Droit,” traduit par M. JOSEPH TISSOT, pages 237, 238.

NOTE.—That part of Kant's *Rechtslehre* relating to International Law was also translated into French and published at Paris in 1814, under the title of “*Traité du droit des gens, dédié aux puissances alliées et leurs ministres, extrait d'un ouvrage de Kant.*” See also Kant, “*Doctrine du Droit (Rechtslehre) traduit par Barni § LXI. p. 228.*”

ZUM EWIGEN FRIEDEN.

EIN PHILOSOPHISCHER ENTWURF

VON IMMANUEL KANT.

(Nach der zweiten Ausgabe von 1796).

ERSTER ABSCHNITT,

welcher die Präliminarartikel zum ewigen Frieden unter Staaten enthält.

1.—Es soll kein Friedensschluss für einen solchen gelten. der mit dem geheimen Vorbehalt des Stoffs zu einem künftigen Kriege gemacht worden.

2.—Es soll kein für sich bestehender Staat (klein oder gross, das gilt hier gleichviel) von einem andern Staate durch Erbung, Tausch, Kauf oder Schenkung erworben werden können.

3.—Stehende Heere (*miles perpetuus*) sollen mit der Zeit ganz aufhören.

4.—Es sollen keine Staatsschulden in Beziehung auf äussere Staatshändel gemacht werden.

5.—Kein Staat soll sich in die Verfassung und Regierung eines andern Staates gewalthätig einmischen.

6.—Es soll sich kein Staat im Kriege mit einem andern solche Feindseligkeit erlauben, welche das wechselseitige Zutrauen im künftigen Frieden unmöglich machen müssen; als da sind, Anstellung der Meuchelmörder (*percussores*), Giftmischer (*venefici*), Brechung der Capitulation, Anstiftung des Verraths (*perduellio*) in dem bekriegten Staat etc.

ZWEITER ABSCHNITT,

welcher die Definitivartikel zum ewigen Frieden unter Staaten enthält.

1.—Die bürgerliche Verfassung in jedem Staat soll republicanisch sein.

1. Die erstlich nach Principien der Freiheit der Glieder einer Gesellschaft (als Menschen; ;

2. zweitens nach Grundsätzen der Abhängigkeit Aller von einer einzigen gemeinsamen Gesetzgebung (als Unterthanen; ;

3. und drittens, die nach dem Gesetz der Gleichheit derselben (als Staatsbürger) gestiftete Verfassung ;
ist die republicanische.

2.—Das Völkerrecht soll auf einen Föderalismus freier Staaten gegründet sein.

3.—Das Weltbürgerrecht soll auf Bedingungen der allgemeinen Hospitalität eingeschränkt sein.

ERSTER ZUSATZ.

Von der Garantie des ewigen Friedens.

Das, was diese GEWÄHR (Garantie) leistet, ist nichts Geringeres, als die grosse Künstlerin, NATUR (*natura dædala rerum*).

Ihre provisorische Veranstaltung besteht darin : dass sie

1. für die Menschen in allen Erdgegenden gesorgt hat daselbst leben zu können ;
2. sie durch Krieg allerwärts hin, selbst in die unwirthbarsten Gegenden, getrieben hat, um sie zu bevölkern ;
3. durch eben denselben sie in mehr oder weniger gesetzliche Verhältnisse zu treten genöthigt hat.

ZWEITER ZUSATZ.

Geheimer Artikel zum ewigen Frieden.

Der einzige Artikel dieser Art ist in dem Satze enthalten :
“Die Maximen der Philosophen über die Bedingungen der Möglichkeit des öffentlichen Friedens sollen von den zum Kriege gerüsteten Staaten zu Rathe gezogen werden.”

ANHANG.

I. Über die Misshelligkeit zwischen der Moral und der Politik, in Absicht auf den ewigen Frieden.

II. Von der Einhelligkeit der Politik mit der Moral nach dem transcendentalen Begriffe des öffentlichen Rechts.

* * *

Wenn es Pflicht, wenn zugleich gegründete Hoffnung da ist, den Zustand eines öffentlichen Rechts, obgleich nur in einer ins Unendliche fortschreitenden Annäherung wirklich zu machen, so ist der ewige Friede, der auf die bisher fälschlich so genannten Friedensschlüsse (eigentlich Waffenstillstände) folgt, keine leere Idee, sondern eine Aufgabe, die nach und nach aufgelöst, ihrem Ziele (weil die Zeiten, in denen gleiche Fortschritte geschehen, hoffentlich immer kürzer werden) beständig näher kommt.

KANT'S "PERPETUAL PEACE."

Kant's scheme was published in the year 1795, when the author, accordingly, was 71 years of age. The immediate occasion of its publication was undoubtedly the Congress of Bâle, which took place in the year 1795, and by which the war carried on between Germany and France, for the preceding four years, was brought to a brief termination.

The scheme contains no reference to a Tribunal. It consisted of two sections:—

FIRST SECTION,

which contains the Preliminary Articles for a perpetual Peace between States.

ART. 1.—No conclusion of Peace shall be considered valid which has been made with the secret reservation of material for a future war.

ART. 2.—No State having an independent existence (whether small or large), may be acquired by another State by inheritance, exchange, purchase, or gift.

ART. 3.—Standing armies shall in the course of time be entirely abolished.

ART. 4.—No national debts shall be contracted in connection with the foreign affairs of the State.

ART. 5.—No State shall interfere by force with the Constitution or Government of another State.

ART. 6.—No State at war with another shall permit such hostilities as would make mutual confidence impossible in a

LA PAIX PERPÉTUELLE, PAR EMMANUEL KANT.

Le Projet de Kant a été publié en 1795, quand l'auteur avait 71 ans, et quand la paix de Bâle, signée en 1795, mit fin à la lutte engagée, pendant quatre ans, par la Prusse contre la République française. La traduction française fut faite en 1796, sur la deuxième édition allemande.

Le Projet ne fait pas mention d'un Tribunal. Il comprend deux sections :

PREMIÈRE SECTION.

Articles préliminaires d'une paix perpétuelle entre les Etats.

ARTICLE 1^{er}.—Nul traité de paix ne peut mériter ce nom s'il contient des réserves secrètes qui permettent de recommencer la guerre.

ART. 2.—Nul Etat, qu'il soit grand ou petit, ce qui est ici tout à fait indifférent, ne pourra jamais être acquis par un autre Etat, ni par héritage, ni par échange, ni par achat, ni par donation.

ART. 3.—Les armées permanentes (*miles perpetuus*) doivent entièrement disparaître avec le temps.

ART. 4.—On ne doit point contracter de dettes nationales pour soutenir au dehors les intérêts de l'Etat.

ART. 5.—Aucun Etat ne doit s'ingérer de force dans la constitution ni dans le gouvernement d'un autre Etat.

ART. 6.—On ne doit pas se permettre, dans une guerre, des hostilités qui seraient de nature à rendre impossible la confiance

future peace ; such as the employment of assassins (*percussores*) or poisoners (*venefici*), the violation of a capitulation, the instigation of treason in a State (*perduellio*) against which it is making war, and such like.

SECOND SECTION,

which contains the Definitive Articles for a perpetual Peace between States.

ART. 1.—The civil constitution in every State ought to be republican.

A Republican Constitution is one that is founded—

- (1.) On the principle of the *Liberty* of the members of a society (as men) ;
- (2.) On the principle of the *Dependence* of all on a single common Legislation (as subjects) ;
- (3.) And thirdly, on the law of *Equality* of its members (as citizens).

ART. 2.—International right should be founded on a federation of Free States.

ART. 3.—The rights of men as citizens of the world should be restricted to conditions of universal hospitality.

FIRST SUPPLEMENT OF THE GUARANTEE OF PERPETUAL PEACE.

This guarantee is furnished by nothing less than the great artist Nature herself (*Natura dædala rerum*).

The provisional arrangements of Nature are these :—

- (1.) She has made it possible for men to live in all parts of the earth.

réci-proque quand il sera question de la paix. Tels seraient l'usage que l'on ferait d'assassins (*percussores*), ou d'empoisonneurs (*venefici*), la violation d'une capitulation, l'encouragement secret à la rébellion (*perduellio*), etc. etc.

DEUXIÈME SECTION.

Articles définitifs d'un Traité de Paix perpétuelle entre les Etats.

ARTICLE 1^{er}.—La Constitution civile de chaque Etat doit être républicaine.

Elle seule est établie sur des principes compatibles :

- 1°. Avec la liberté qui doit appartenir à tous les membres d'une société en leur qualité d'hommes ;
- 2°. Avec l'égale soumission de tous à une législation commune comme sujets ;
- 3°. Enfin, avec le droit d'égalité qui appartient à tous et à chacun comme membres de l'Etat.

ART. 2.—Le Droit international doit être fondé sur une fédération d'Etats libres.

ART. 3.—Le Droit cosmopolitique doit se borner aux conditions d'une hospitalité universelle.

PREMIER SUPPLÉMENT

de la garantie de la Paix perpétuelle.

Nous avons pour garant de la Paix perpétuelle l'ingénieuse et grande ouvrière, la Nature elle-même (*natura dædala rerum*).

Voici ses dispositions préparatoires :

- 1°. Elle a mis les hommes en état de vivre dans tous les climats ;

- (2.) She has dispersed them everywhere by means of war, so that they might populate even the most inhospitable regions.
- (3.) By this same means she has compelled them to enter into relations more or less of a judicial character.

SECOND SUPPLEMENT.

SECRET ARTICLE FOR SECURING PERPETUAL PEACE.

The only Article of this kind is contained in the following proposition: *The maxims of philosophers as to the conditions of the possibility of a public Peace must be taken into account by the States that are armed for war.*

APPENDIX.

I. On the disagreement between Morality and Politics in reference to Perpetual Peace.

II. Of the Agreement between Politics and Morality according to the transcendental conception of Public Right.

If it is a duty to bring about a state of Public Right (*i.e.*, a juridical status), if at the same time there is a well-grounded hope of doing so, though only by an approximation that seems altogether indefinite, then is Perpetual Peace, which is to follow the hitherto falsely-named *Treaties of Peace* (strictly speaking, only armistices), no empty idea, but a practical problem which, by being gradually solved, is ever coming nearer to its consummation, because these times of progress are, let us hope, hastening its approach.

- 2°. Elle les a dispersés au moyen de la guerre, afin qu'ils peuplassent les régions les plus inhospitalières ;
- 3°. Elle les a forcés par la même voie à contracter des relations plus ou moins juridiques.

DEUXIÈME SUPPLÉMENT.

Article secret d'un Traité de Paix perpétuelle.

Ici le seul article de ce genre sera le suivant :

“ Les maximes des philosophes sur les conditions qui rendent possible la Paix perpétuelle doivent être consultées par les États armés pour la guerre.”

APPENDICE.

I. De l'opposition qui se trouverait entre la morale et la politique au sujet de la Paix perpétuelle.

II. De l'accord que l'idée transcendante du droit établit entre la politique et la morale.

S'il est de devoir, si même on peut concevoir l'espérance fondée de réaliser, quoique par des progrès sans fin, le règne du droit public, la paix perpétuelle qui succédera aux *Trêves*, jusqu'ici nommées *Traité de Paix*, n'est donc pas une chimère, mais un problème dont le temps, vraisemblablement abrégé par l'accélération de la marche progressive de l'esprit humain, nous promet la solution.

A TRIBUNAL IN EUROPE.

BY CHATEAUBRIAND.

Chateaubriand, in his "Genius of Christianity," which made its appearance in 1802, says:—

"If you take a more extensive view of the influence of Christianity on the political existence of the nations of Europe, you will see that it prevented famines, and saved our ancestors from their own fury, by proclaiming those intervals of Peace denominated the '*Peace of God*,' during which they secured the harvest and the vintage. In popular commotions the Popes often appeared in public like the greatest princes. By rousing sovereigns, sounding the alarm, and forming leagues, they prevented the West from falling a prey to the Turks. This service alone rendered to the world by the Church would entitle her to a religious veneration.

"Men unworthy of the name of Christians slaughtered the people of the New World, and the Court of Rome fulminated its bulls to prevent these atrocities.

"Slavery was authorised by law, and the Church acknowledged no slaves among her children. The very excesses of the Court of Rome have served to diffuse the general principles of the law of nations. When the Popes laid kingdoms under an interdict,—when they made emperors account for their conduct to the Holy See,—they arrogated a power of which they were not possessed, but in humbling the majesty of the throne they, perhaps, conferred a benefit on mankind. Kings became more circumspect—they felt that they had a curb, and the people a protector. The papal rescripts never failed to mingle the voice of nations and the general interests of humanity with particular complaints. *We*

UN TRIBUNAL AU MILIEU DE L'EUROPE

PAR FRANÇOIS-AUGUSTE CHATEAUBRIAND.

Chateaubriand, dans "Le Génie du Christianisme," publié en 1802 (Vol. III., pp. 308-310) a dit : "Si vous voulez considérer plus en grand l'influence du christianisme sur l'existence politique des peuples de l'Europe, vous verrez qu'il prévenoit les famines, et sauvoit nos ancêtres de leurs propres fureurs, en proclamant toutes ces paix, appelées *paix de Dieu*, pendant lesquelles on recueilloit les moissons et les vendanges. Dans les commotion publiques, souvent les papes se montrèrent comme de très-grands princes. Ce sont eux qui, en réveillant les rois, sonnait l'alarme et faisant des ligues, ont empêché l'Occident de devenir la proie des Turcs. Qu'on songe à ce qu'eût été l'Europe sous de pareils maîtres, pour quel nombre incalculable de siècles elle eût été replongée dans la barbarie, et qu'on dise si ce seul service, rendu au monde par l'église, ne mérite pas des autels ?

"Des hommes indignes du nom de chrétiens, égorgoient les peuples du Nouveau-Monde, et la Cour de Rome fulminoit des bulles pour prévenir ces atrocités.* L'esclavage étoit reconnu légitime, et l'église ne reconnoissoit point d'esclaves † parmi ses enfans. Les excès même de la Cour de Rome ont servi à répandre les principes généraux du droit des peuples. Lorsque les papes mettoient les royaumes en interdit, lorsqu'ils forçoient les empereurs à venir rendre compte de leur conduite au saint-siège, ils s'arrogérent un pouvoir qu'ils n'avoient pas ; mais en blessant la majesté du trône, ils faisoient peut-être du bien à l'humanité. Les rois devenoient plus circonspects ; ils sentoient qu'ils avoient un frein et le peuple une égide. Les rescrits des

* La fameuse bulle de Paul III.

† Le décret de Constantin. qui déclare libre tout esclave qui embrasse le christianisme.

have been informed that Philip, Ferdinand, or Henry oppresses his people, etc. Such was the exordium of almost all those decrees of the Court of Rome.

“IF THERE EXISTED IN EUROPE A TRIBUNAL TO JUDGE NATIONS AND MONARCHS IN THE NAME OF GOD, AND TO PREVENT WARS AND REVOLUTIONS, THIS TRIBUNAL WOULD DOUBTLESS BE THE MASTERPIECE OF POLICY AND THE HIGHEST DEGREE OF SOCIAL PERFECTION. The Popes, by the influence which they exercised over the Christian world, were on the point of effecting this object. Montesquieu has ably proved that Christianity is hostile, both in spirit and counsel, to arbitrary power, and that its *principles are more efficacious than honour in monarchies, virtue in republics, and fear in despotic states.* Are there not, moreover, Christian republics which appear to be more strongly attached to their religion than the monarchies? Was it not, also, under the Gospel dispensation that that constitution was formed which Tacitus (*Annals*, lib. IV.) considered as a dream, so excellent did it seem to him? ‘In all nations,’ says that profound historian, ‘either the people, or the nobility, or a single individual governs; for a form of government, composed at once of all three is but a brilliant chimera.’ Tacitus could not foresee that this brilliant chimera would one day be realised among the barbarians whose history he has left us. The passions under polytheism would soon have overturned a government which is preserved only by the accuracy of its counterpoises. The phenomenon of its existence was reserved for a religion which, by maintaining the most perfect moral equilibrium, admits of the establishment of the most perfect political balance.”

pontifes, ne manquoient jamais de mêler la voix des nations et l'intérêt général des hommes, aux plaintes particulières. *Il nous est venu des rapports que Philippe, Ferdinand, Henri opprimoit son peuple, etc.* Tel étoit à-peu-près le début de tous ces arrêts de la Cour de Rome.

“S'IL EXISTOIT AU MILIEU DE L'EUROPE UN TRIBUNAL QUI JUGÉÂT, AU NOM DE DIEU, LES NATIONS ET LES MONARQUES, ET QUI PRÉVÎNT LES GUERRES ET LES REVOLUTIONS; CE TRIBUNAL SEROIT SANS DOUTE LE CHEF-D'ŒUVRE DE LA POLITIQUE, ET LE DERNIER DEGRÉ DE LA PERFECTION SOCIALE. Les papes ont été au moment d'atteindre à ce but.

“M. de Montesquieu a fort bien prouvé que le christianisme est opposé d'esprit et de conseil au pouvoir arbitraire, *et que ses principes font plus que l'honneur dans les monarchies, la vertu dans les républiques, et la crainte dans les états despotiques.* N'existe-t-il pas d'ailleurs des républiques chrétiennes, qui paroissent même plus attachées à leur religion que les monarchies? N'est-ce-pas encore sous la loi évangélique que s'est formé ce gouvernement que Tacite regardoit comme un songe, tant il paroissoit excellent? ‘Dans toutes les nations,’ dit ce grand historien, ‘c'est le peuple, ou les nobles, ou un seul qui gouverne; car une forme de gouvernement, qui se composeroit à la fois des trois autres, n'est qu'une brillante chimère,’ etc.*

“Tacite ne pouvoit pas deviner que cette brillante chimère se réaliseroit un jour chez des sauvages dont il nous a laissé l'histoire.† Les passions, sous le polythéisme, auroient bientôt renversé un gouvernement, qui ne se conserve que par la justesse des contre-poids. Le miracle de son existence étoit réservé à une religion, qui, en maintenant l'équilibre moral le plus parfait, permet d'établir la plus parfaite balance politique.”

* Tac. *An.*, lib. IV.

† In *Vitâ Agricolaë*.

THE ABBÉ GREGOIRE'S PROJECT.

1795.

At the time of the French Revolution, when the love of discussing elementary principles prevailed, the Abbé Gregoire proposed to the National Convention, in April, 1795, a project consisting of twenty-one Articles (*Moniteur*, 1795, No. 217), which was intended as an immutable code of laws, to be accepted by all peoples, and so to govern international intercourse and procedure for all time to come. "His propositions," writes Manning (*Comment*: p. 79) "partook of the general nature of such schemes at that period; they were dangerous when they ceased to be commonplace." They contain no reference, however, to any scheme of International Arbitration. They run as follows:—

Art. 1. "Nations are among themselves in a state of nature: they have, as a bond, universal morality." Art. 2. "All nations are respectively independent and sovereign, whatever may be the number of their population or the extent of their territory." (See *infra*, p. 254, 3rd edition.) Art. 10. "Every nation is mistress of its own territory." (Ib.) Art. 17. "*A nation may undertake war to defend its liberty and its property.*" Art. 21. "Treaties between states are sacred and inviolable."

These, says Manning, are "harmless truisms," but "when he proceeded to declare, Art. 5, that 'The individual interest of a nation is subordinate to the general interest of the human family,' he fell into the pernicious fallacy in political morality, that of discovering the standard of right in the present advantage of the numerical majority, a confusion that would annihilate the rights of small states, and justify the destruction of any nation by a confederacy of many nations."*

On the recommendation of the Committee of Public Safety, the publication, which had been decreed, of the Abbé's project, was suspended, and his scheme was left for more modern reproduction.

* See remarks on the Abbé Gregoire's plan in De Martens' "*Précis Du Droit des Gens*," preface to edition of 1776.

AN INTERNATIONAL TRIBUNAL.

BY JAMES MILL.

(Author of the History of British India.)

In a Volume of Essays on various subjects reprinted from the supplement to the "Encyclopædia Britannica," published in London (1825?) although "not for sale."

The sixth Essay of the series, is one on the "Law of Nations," and in this are set forth the proposals of Mill in regard to an International Tribunal.

These are given in Chapter V., which treats Of the construction of an International Code and an International Tribunal.—How the nations might concur in framing an International Code.—How an International Tribunal should be constructed.—Form of procedure before the International Tribunal.

CHAPTER I.

In the first chapter, he has some useful preliminary remarks:—In the meaning of the word Law, three principal ideas are involved: that of a Command, that of a Sanction, and that of the Authority from which the Command proceeds.

* * * * *

But it is not understood, that one nation has a right to command another. When one nation can be commanded by another, it is dependent upon that other; and the laws of dependence are different from those which we are at present considering. An independent nation would resent, instead of obeying, a command delivered to it by another. Neither can it properly be said, that nations, taken aggregately, prescribe those laws to one another

severally; for when did they ever combine in any such prescription? When did they ever combine to vindicate the violations of them? It is, therefore, clear that the term Command cannot be applied, at least in the ordinary sense, to the laws of nations.

In the next place, it would not seem, that anything, deserving the name of Sanction, belongs to them. Sanction, we have already seen, is punishment. Suppose nations to threaten one another with punishment, for the violation of anything understood to be a law of nations. To punish implies superiority of strength. For the strong, therefore, the law of nations may, perhaps, have a sanction as against the weak, but what can it have as against the strong? Is it the strong, however, or is it the weak, by whom it is most liable to be violated? The answer is obvious and undeniable. As against those from whom almost solely any violation of the laws of nations need be apprehended, there appears, therefore, to be no sanction at all.

If it be said that several nations may combine to give it a sanction in favour of the weak, we might, for a practical answer, appeal to experience. Has it been done? Have nations, in reality, combined, so constantly and steadily, in favour of the law of nations, as to create, by the certainty of punishment, an overpowering motive to unjust powers to abstain from its violation? For, as the laws against murder would have no efficacy if the punishment prescribed were not applied, once in fifty, or a hundred times, so the penalty against the violations of the law of nations can have no efficacy if it is applied unsteadily and rarely.

On the mode in which it has been applied, we may appeal to a great authority. Montesquieu says:—"Le droit public est plus connu en Europe qu'en Asie: cependant on peut dire que les passions des princes—la patience des peuples—la flatterie des écrivains, en ont corrompu tous les principes. Ce droit, tel qu'il est aujourd'hui, est une science qui apprend aux princes jusqu'à quel point ils peuvent violer la justice, sans choquer leurs intérêts." (*Lett. Persanes*, xciv.)

There is a power which, though it be not the physical force either of one state, or a combination of states, applied to vindicate

a violation of the law of nations, is not without a great sway in human affairs. . . . The human mind is powerfully acted on by the approbation or disapprobation . . . of the rest of mankind.

CHAPTER II.

NECESSITY FOR A CODE OF INTERNATIONAL LAW.

In the next chapter (ii. p. 9), he says:—"Two things are necessary to give precision and certainty to the operation of laws within a community. The one is, a strict determination of what the law is; the second, a tribunal so constituted as to yield prompt and accurate execution to the law. It is evident, that these two are indispensable requisites. Without them no penalties can operate with either precision or certainty. And the case is evidently the same whether we speak of the laws which regulate the actions of individual and individual within the state, or those which regulate the actions of one state towards another.

CHAPTER V. (PAGES 27-33).

OF THE CONSTRUCTION OF AN INTERNATIONAL CODE AND AN INTERNATIONAL TRIBUNAL.

From what has been shown, it is not difficult to see what would be the course pursued by nations if they were really actuated by the desire of regulating their general intercourse, both in peace and war, on the principles most advantageous to them all.

Two grand practical measures are obviously not only of primary importance toward the attainment of this end, but are of indispensable necessity to the attainment of it in any tolerable degree. These are, first, the construction of a Code; and, secondly, the establishment of a Tribunal.

I.—THE CONSTRUCTION OF A CODE.

It is perfectly evident, that nations will be much more likely to conform to the principles of intercourse which are best for all, if

they have an accurate set of rules to go by, than if they have not. In the first place, there is less room for mistake; in the next, there is less room for plausible pretexts; and last of all, the approbation and disapprobation of the world is sure to act with tenfold concentration, where a precise rule is broken, familiar to all the civilised world, and venerated by all.

HOW THE NATIONS MIGHT CONCUR IN FRAMING IT.

How the nations of the civilised world might concur in the framing of such a code it is not difficult to devise.

1. They might appoint delegates to meet, for that purpose, in any central and convenient place; where, after discussion, and coming to as full an understanding as possible upon all the material points, they might elect some one person, the most capable that could be found, to put these their determinations into the proper words and form; in short, to make a draft of a code of international law, as effectually as possible providing for all the questions, which could arise, upon the interfering interests between two nations.

2. After this draft was proposed, it should be revised by the delegates, and approved by them, or altered till they deemed it worthy of their approbation.

3. It should then be referred to the several governments, to receive its final sanction from their approbation; but, in the meantime, it should be published in all the principal languages, and circulated as extensively as possible, for the sake of two important advantages:—

(a) The first would be, that the intelligence of the whole world being brought to operate upon it and suggestions obtained from every quarter, it might be made as perfect as possible.

(b) The second would be that the eyes of all the world being fixed upon the decision of every nation with respect to the code, every nation might be deterred by shame from objecting to any important article in it.

4. As the sanction of general opinion is that upon which chiefly,

as we have already seen, such a code must rely for its efficiency, not a little will depend upon the mode in which it is recognised and taught. The recognition should in each country have all possible publicity and solemnity. Every circumstance which can tend to diffuse the opinion throughout the earth, that the people of each country attach the highest importance to such a code, is to themselves a first-rate advantage; because it must be of the utmost importance to them, that all the nations of the earth should behave towards them upon the principles of mutual beneficence; and nothing which they can do can have so great a tendency to produce this desirable effect, as its being generally known that they venerate the rules which are established for its attainment

II.—THE CREATION OF A TRIBUNAL.

But it is not enough that a code should exist; everything should be done to secure a conduct conformable to it. Nothing is of so much importance for this purpose as a tribunal; before which every case of infringement should be tried, the facts of it fully and completely explored, the nature and degree of the infringement ascertained; and from which a knowledge of everything material to the case should be as rapidly as possible diffused throughout the world; before which, also, all cases of doubt should regularly come for determination, and thus wars between nations which meant justly, would always be avoided, and a stigma would be set upon those which justice could not content.

The analogy of the code which is, or ought to be, framed by each state for regulating the intercourse of its own people within its own territory, throws all the illustration which is necessary upon the case of a Tribunal for the international code. It is well known, that laws, however carefully and accurately constructed, would be of little avail in any country, if there was not some organ, by means of which it might be determined when individuals had acted in conformity with them, and when they had not; by which also, when any doubt existed respecting the conduct which in any particular case the law required, such doubt might be

authoritatively removed, and one determinate line of action prescribed. Without this, it is sufficiently evident, that a small portion of the benefit capable of being derived from laws would actually be attained. It will presently be seen how much of the benefit capable of being derived from an international code must be lost, if it is left destitute of a similar organ.

We shall first consider in what manner an international tribunal might be constructed; and, next, in what manner it might be appointed to act.

I. HOW AN INTERNATIONAL TRIBUNAL SHOULD BE CONSTRUCTED.

1. As it is understood that questions relating to all nations should come before it, what is desirable is, that all nations should have equal security for good judicature from it, and should look with equal confidence to its decisions.

2. An obvious expedient for this purpose is, that all nations should contribute equally to its formation; that each, for example, should send to it a delegate, or judge. Its situation should be chosen for its accessibility and for the means of publicity which it might afford; the last being, beyond comparison, the advantage of greatest importance. As all nations could not easily, or would not, send, it would suffice if the more civilised and leading nations of the world concurred in the design, with such a number of the less considerable as would be sure to follow their example, and would be desirous of deriving aid from an instrument of protection, which to them would be of peculiar importance.

3. As it is found by specific experience, and is, indeed, a consequence of the ascertained laws of human nature, that a numerous assembly of men cannot form a good judicatory; and that the best chance for good judicial service is always obtained when only one man judges, under the vigilant eyes of interested and intelligent observers, having full freedom to deliver to the world their sentiments respecting his conduct; the whole of these advantages may be obtained, in this case, by a very effectual

expedient. If precedent, also, be wanted, a thing which in certain minds holds the place of reason, it is amply furnished by the Roman law; according to which, a great number of judges having been chosen for the judicial business generally of the year, a selection was made out of that number, according to certain rules, for each particular case.

4. Every possible advantage, it appears, would be combined in the International Tribunal, if the whole body of delegates, or judges, assembled from every country, should, as often as any case for decision came before them, hold a Conference, and, after mature deliberation, choose some one individual of their body, upon whom the whole duty of judging should, in that case, devolve; it being the strict duty of the rest to be present during the whole of his proceedings, and each of them to record separately his opinion upon the case, after the decision of the acting judge had been pronounced.

5. It would be undoubtedly a good general rule, though one can easily foresee cases in which it would be expedient to admit exceptions, that the judge who is in this manner chosen for each instance of the judicial service, should not be the delegate from any of the countries immediately involved in the dispute. The motive to this is sufficiently apparent.

We apprehend that few words will be deemed necessary to show how many securities are thus provided for the excellence of judicial service.

1. In the first place, it seems impossible to question, that the utmost fairness and impartiality are provided for, in the choice of the judge; because, of the two parties involved in the dispute, the one is represented by a delegate as much as the other, and the rest of the delegates are indifferent between them. In general, therefore, it is evident that, the sinister interest on the two sides being balanced, and there being a great preponderance of interest in favour of nothing but a just decision, that interest will prevail.

2. The best choice being made of a judge, it is evident that he would be so situated, as to act under the strongest securities for

good conduct. Acting singly, he would bear the whole responsibility of the service required at his hands. He would act under the eyes of the rest of the assembled delegates, men versed in the same species of business, chosen on account of their capacity for the service, who could be deceived neither with respect to the diligence which he might exert, nor the fairness and honesty with which he might decide ; while he would be watched by the delegates of the respective parties, having the power of interest stimulating them to attention ; and would be sure that the merits or demerits of his conduct would be fully made known to the whole, or the greater part of the world.

2. FORM OF PROCEDURE BEFORE THE INTERNATIONAL TRIBUNAL.

The judicatory being thus constituted, the mode of proceeding before it may be easily sketched.

1. The CASES may be divided into those brought before it by the parties concerned in the dispute ; and those which it would be its duty to take up when they were not brought before it by any of the parties.

2. A variety of cases would occur, in which two nations, having a ground of dispute, and being unable to agree, would unite in an application to the International Tribunal for an adjustment of their differences. On such occasions, the course of the Tribunal would be sufficiently clear. The parties would plead the grounds of their several claims ; the Judge would determine how far, according to the law, they were competent to support those claims ; the parties would adduce their evidence for and against the facts on which the determination of the claims was found to depend ; the judge would receive that evidence and finally decide. . . . Decision, in this case, it is observable, fully accomplishes its end, because the parties come with an intention of obeying it.

3. Another, and a numerous class of cases, would probably be constituted by those who would come before it, complaining

of a violation of their rights by another nation, and calling for redress. This set of cases is analogous to that in private judicature, when one man prosecutes another for some punishable offence. It should be incumbent upon the party thus applying to give notice of its intention to the party against which it is to complain, and of the day on which it means its complaint should be presented.

4. If both parties are present, when the case comes forward for TRIAL, they both plead according to the mode described in the article JURISPRUDENCE. Evidence is taken upon the decisive facts; and, if injury has been committed, the amount of compensation is decreed. When it happens that the defendant is not present, and refuses to plead, or to submit, in this instance, to the Jurisdiction of the Court, the inquiry should, notwithstanding go on; the allegations of the party present should be heard, and the evidence which it adduces should be received. The non-appearance of the party-defendant should be treated as an article of evidence to prove the truth of its opponent's allegations. And the fact of not appearing should, itself, be treated as an offence against the law of nations.

5. It happens, not infrequently, when nations quarrel, that both parties are in the wrong; and on some of these occasions neither party might think proper to apply to an equitable Tribunal. This fact, viz., that of their not applying to the International Tribunal, should itself, as stated before, be marked in the code as an international offence, and should be denounced as such by the International Tribunal. But even when two offending parties do not ask for a decision from the International Tribunal, it is not proper that other nations should be deprived of the benefit of such a decision. If these decisions constitute a security against injustice from one another, to the general community of nations, that security must not be allowed to be impaired by the refractory conduct of those who dread an investigation of their conduct.

6. Certain FORMS, not difficult to devise, should be laid down, according to which, on the occurrence of such cases, the Tribunal

should proceed. First of all, it is evident that the parties in question should receive intimation of the intention of the Court to take cognisance of their dispute on a certain day. If the parties, one or both, appeared, the case would fall under one of those which have been previously, as above, considered. If neither party appeared, the Court would proceed to estimate the facts which were then within its cognisance.

7. It would have before it one important article of evidence, furnished by the parties themselves, viz., the fact of their non-appearance. This ought to be considered as going far to prove injurious conduct on both sides. The evidence which the Court would have before it, to many specific facts, would be liable to be scanty, from the neglect of the parties to adduce their pleas and evidence. The business of the Court, in these circumstances, would be, to state accurately such evidence, direct or circumstantial, as it had before it; giving its full weight to the evidence contained in the fact of non-appearance; and to pronounce the decision, which the balance of evidence, such as it was, might be found to support.

8. Even in this case, in which the practical effect of a decision of the International Court may be supposed to be the least, where neither party is disposed to respect the jurisdiction, the benefit which would be derived would by no means be inconsiderable. A decision solemnly pronounced by such a Tribunal would always have a strong effect upon the imaginations of men. It would fix, and concentrate the disapprobation of mankind. Such a tribunal would operate as a great school of political morality.

By sifting the circumstances, in all the disputes of nations, by distinguishing accurately between the false colours and the true, by stripping off all disguises, by getting at the real facts, and exhibiting them in the true point of view, by presenting all this to the world and fixing the attention of mankind upon it, by all the celebrity of its elevated situation, it would teach men at large to distinguish. By habit of contemplating the approbation of such a court attached to just proceeding, and its disapprobation to unjust, men would learn to apply correctly their own approbation and

disapprobation; whence would flow the various important effects which those sentiments, justly excited, would naturally and unavoidably produce.

[9.] As, for the reasons adduced at the beginning of this article, the intention should never be entertained of supporting the decisions of the International Court by force of arms, it remains to be considered what means of another kind could be had recourse to in order to raise to as high a pitch as possible the motive of nations respectively to yield obedience to its decisions.

We have already spoken of the effect which would be produced, in pointing the sentiments of mankind, and giving strength to the moral sanction, by the existence of an accurate code, and the decisions themselves of a well constituted tribunal.

To increase this effect to the utmost, publicity should be carried to the highest practicable perfection. The code, of course, ought to be universally promulgated and known. Not only that, but the best means should be in full operation for diffusing a knowledge of the proceedings of the Tribunal; a knowledge of the cases investigated, the allegations made, the evidence adduced, the sentence pronounced, and the reasons upon which it is grounded.

[10.] The book of the law of nations and selections from the book of the trials before the International Tribunal should form a subject of study in every school; and a knowledge of them [should be] a necessary part of every man's education. In this manner a moral sentiment would grow up, which would in time act as a powerful restraining force upon the injustice of nations and give a wonderful efficacy to the international jurisdiction. No nation would like to be the object of the contempt and hatred of all other nations; to be spoken of by them on all occasions with disgust and indignation.

On the other hand, there is no nation, which does not value highly the favourable sentiments of other nations; which is not elevated and delighted with the knowledge that its justice, generosity, and magnanimity are the theme of general applause. When means are taken to make it certain that what affords a

nation this high satisfaction will follow a just and beneficial course of conduct ; that what it regards with so much aversion, will infallibly happen to it, if it fails in the propriety of its own behaviour, we may be sure that a strong security is gained for a good intercourse among nations.

Besides this, it does not seem impossible to find various inconveniences to which, by way of penalties, those nations might be subjected, which refused to conform to the prescriptions of the International Code.

Various privileges granted to other nations in their intercourse with one another might be withheld from that nation which thus demeaned itself in a way so contrary to the general interests. In so far as the withholding of these privileges might operate unfavourably upon individuals belonging to the refractory nations,—individuals who might be little, or not at all, accessory to the guilt—the effect would be the subject of proportional regret. Many, however, in the concerns of mankind, are the good things which can only be attained with a certain accompaniment of evil. The rule of wisdom, in such cases, is, to make sure that the good outweighs the evil, and to reduce the evil to its narrowest dimensions.

We may take an instance first from trivial matters. The ceremonial of other nations might be turned against the nation, which, in this common concern, set itself in opposition to the interests of others. The lowest place in company, the least respectful situation on all occasions of ceremony, might be assigned to the members of that nation, when travelling or residing in other countries. Many of these marks of disrespect, implying injury neither to person nor property, which are checked by penalties in respect to others, might be free from penalties in respect to them. From these instances, adduced merely to illustrate our meaning, it will be easy to see in what manner a number of considerable inconveniences might, from this source, be made to bear upon nations refusing to conform to the beneficial provisions of the international code.

Besides the ceremonial of other nations, means to the same end might be derived from the law. A number of cases might

be found in which certain benefits of the law, granted to other foreigners, might be refused to them. They might be denied the privilege of suing in the courts, for example, on account of anything except some of the higher crimes, the more serious violations of person or property.

[11.] Among other things, it is sufficiently evident, that this Tribunal would be the proper organ for the trial of piracy. When preponderant inconvenience might attend the removing of the trial to the usual seat of the tribunal, it might delegate for that purpose the proper functionaries to the proper spot.

By the application of the principles, which we have thus expounded, an application which implies no peculiar difficulty, and requires nothing more than care in the detail, we are satisfied that all might be done, which is capable of being done, toward securing the benefits of international law.

A FEDERAL SUPREME COURT.

BY JOHN STUART MILL, 1806-1873.

In his treatise on Representative Government, Mr. Mill has the following "considerations" :—

To render a Federation advisable several conditions are necessary.

1. That there should be a sufficient amount of mutual sympathy among the populations.

2. That the separate States be not so powerful as to be able to rely for protection against foreign encroachments on their individual strength.

3. A third condition, not less important than the two others, is that there be not a very marked inequality of strength among the several contracting States.

There are two different modes of organising a Federal Union :—

1. The federal authorities may represent the Governments solely, and then acts may be obligatory only on the Governments as such :

2. Or, they may have the power of enacting laws and issuing orders which are binding directly on individual citizens.

The former is the plan of the German so-called Confederation, and of the Swiss Constitution previous to 1847 ; and it was tried in America for a few years, immediately following the War of Independence. The other principle is that of the existing constitutions of the United States and of the present Swiss Confederacy.

A SUPREME COURT OF JUSTICE.

Under the more perfect mode of federation, where every citizen of each particular State owes obedience to two Governments, that of his own State, and that of the Federation, it is evidently necessary not only that the constitutional limits of the

authority of each should be precisely and clearly defined, but that the power to decide between them in any case of dispute should not reside in either of the Governments, or in any functionary subject to it, but in an umpire independent of both. There must be a Supreme Court of Justice, and a system of subordinate Courts in every State of the Union, before whom such questions shall be carried, and whose judgment on them, in the last stage of appeal, shall be final.

2. Every State of the Union, and the Federal Government itself, as well as every functionary of each, must be liable to be sued in those Courts for exceeding their powers, or for non-performance of their federal duties, and must in general be obliged to employ those Courts as the instrument for enforcing their federal rights.

3. This involves the remarkable consequence, actually realised in the United States, that a Court of Justice, the highest Federal tribunal, is supreme over the various Governments, both State and Federal; having the right to declare that any law made, or act done by them, exceeds the powers assigned to them by the Federal Constitution, and, in consequence, has no legal validity.

4. The tribunals which act as umpires between the Federal and the State Governments naturally also decide all disputes between two States, or between a citizen of one State and the Government of another. The usual remedies between nations, war and diplomacy, being precluded by the federal union, it is necessary that a judicial remedy should supply their place.

5. The Supreme Court of the Federation dispenses international law, and is the first great example of what is now one of the most prominent wants of civilised society, a real International Tribunal.

6. The powers of a Federal Government naturally extend not only to Peace and war, and all questions which arise between the country and foreign Governments, but to making any other arrangements which are, in the opinion of the States, necessary to their enjoyment of the full benefits of union.

THE POSSIBLE MEANS OF PREVENTING WAR IN EUROPE.

BY THE LATE PROFESSOR SIR J. R. SEELEY, K.C.M.G., Litt.D.

(From a Lecture delivered February 28th, 1871.)

Civil Society has for its principal object the prevention of private war, and if war between individuals, between townships, between countries, between particular nations can be prevented, can be permanently abolished, why not between nations generally?

Compared with any properly organised legal system, what is deemed the justice of war is simply deplorable. If there is some justice in war there is not anything like enough of it. A proper legal decision is not one in which justice enters; but one in which nothing but justice enters.

The proper cure for popular indifference is a feasible and statesmanlike scheme of Arbitration, such a scheme as should take account of details, and provide contrivances to meet practical difficulties.

The object of this lecture is to offer some suggestions to those who may wish to find out in what way a system of International Arbitration can practically be realised.

The introduction of such a system involves a vast number of political changes, but is not on that account to be considered Utopian, because a Utopian scheme is not merely a vast one, but one which proposes an end disproportionate to the means at command, whilst the means available here, the forces, the in-

fluences that may be called in for the accomplishment of this work, are as enormous as the difficulty of the work itself.

I. The international system wanted is something essentially different from, and cannot be developed out of, the already existing system by which European affairs are settled in Congresses of the Great Powers.

What is wanted is something in the nature of a Law-court for international differences. Now, a European Concert has nothing of the nature of a Law-court, and when people call it an Areopagus, or apply to it other epithets proper to judicial assemblies, they are surely guilty of an inadvertence which needs only to be briefly indicated. A Law-court may, of course, have many defects, and yet not cease to be a law-court; but the defect of the European Congress is not an incidental and venial, but a radical, and, therefore, fatal defect. What should we think of a judicial bench every member of which was closely connected by interests with the litigants, and on which, in the most important cases, the litigants themselves invariably sat?

That the judges should be avowedly partial is quite enough to strip them of all judicial character; but when the litigants are among the great European powers they are *judges in their own cause*. An ambassador cannot be at the same time a judge; and a Congress of plenipotentiaries cannot possibly be a Law-court. There ought to be no representation of interests on a judicial bench. A good court is, not where both parties are represented on the bench, but where neither is.

II. The system wanted necessarily involves a Federation of all the Powers that are to reap the benefits of it.

We have a problem of Federation before us, and not merely of constituting a law-court. The law-court is not only historically found invariably within the State, but it also takes all its character and efficiency from the State. It is a matter of

demonstration that a State is implied in a law-court, and as a necessary consequence, that an international law-court implies an international State. The nations of Europe must therefore constitute themselves into some sort of federation, or the international court can never come into existence. Judges cannot constitute themselves, and a judicial assembly is inconceivable without a legislative assembly of some kind executing its sentences.

III. In order to be really vigorous and effectual, such a system absolutely requires a federation of the closer kind; that is, a federation not after the model of the late German Bund, but after the model of the United States, a federation with a complete apparatus of powers, legislative, executive, and judicial, and raised above all dependence upon State Governments.

In spite of their one internal war the American Union may be said to have solved the problem of the abolition of war, and we may see there the model which Europe should imitate in her international relations. Now this great triumph of the Union was achieved on the very ground upon which an earlier confederation had conspicuously failed in the same undertaking; and a comparison of the two federations shows that where the federal organisation was lax, and not decisively disentangled from the State organisation, the federation failed; it succeeded when the federal bond was strengthened.

IV. The indispensable condition of success in such a system, is that the power of levying troops be assigned to the Federation only, and be absolutely denied to the individual States.

The special lesson which is taught by the experience of the Americans is, that the decrees of the Federation must not be handed over for execution to the officials of the separate States, but that the Federation must have an independent and separate executive, through which its authority must be brought to bear directly upon individuals. The individual must be distinctly conscious of his obligations to the Federation, and of his member-

ship in it; all federations are mockeries that are mere understandings between governments.

“There has been found hitherto but one substitute for war. It has succeeded over and over again; it succeeds regularly in the long run wherever it can be introduced. This is, to take the disputed question out of the hands of the disputants, to refer it to a third party, whose intelligence, impartiality, and diligence have been secured, and to impose his decision upon the parties with overwhelming force. The last step in this process, the power of enforcing the decisions by the federal union only, is just as essential as the earlier ones, and if you omit it you may just as well omit them too.”

[But, happily, historical fact does not agree with this statement of Professor Seeley; for in the instances of successful arbitration, to which he has just referred, there is not a single one in which force has had to be employed in order to compel obedience to the decision of the arbitrator. This follows from the nature of the reference to Arbitration, in which it is essential that the contending parties should agree together to refer the matter in dispute to Arbitrators, and should, by implication if not formally, as is sometimes done, bind themselves to carry out the award, which then becomes a matter of honour and good faith.—ED.]

ARBITRATION PROCEEDINGS

BY DR. J. C. BLUNTSCHLI.

1867.

1. Parties, between whom differences have arisen, may refer the settlement of their dispute to Arbitration.

2. As a rule, the parties who desire Arbitration have the right of freely appointing the Arbitrator.

3. If the parties cannot agree in the choice of Arbitrators, each of them is allowed to choose an equal number. In the absence of a special agreement, the choice of an umpire is made by the Arbitrators themselves or remitted by them to some neutral person or power.

4. The Arbitral Tribunal, when it is composed of several persons, acts as a corporate body. It hears the parties, examines witnesses and experts, weighs the important facts and considers the evidence.

5. The Tribunal is authorised, in case of doubt, to make to the parties equitable proposals with a view to the adjustment of the difference.

6. The Tribunal decides on the interpretation of the Arbitration Agreement, and, as to its own competency in conformity therewith.

7. The decision of the majority has the force of a decision of the whole Tribunal.

8. The decision of the Tribunal has for the parties the force of an Agreement or Treaty.

SCHIEDSRICHTERLICHES VERFAHREN.

VON DR. J. C. BLUNTSCHLI.

1867.

1. Die streitenden Parteien können auch die Erledigung ihres Streites einem Schiedsgericht übertragen.

2. In der Regel steht es den Parteien, welche ein Schiedsgericht berufen, frei, zu bestimmen, wem das Schiedsrichteramt übertragen werde.

3. Vertragen sich die Parteien nicht über gemeinsam zu ernennende Schiedsrichter, so ist anzunehmen, jede Partei wähle ihre Schiedsmänner frei, aber in gleicher Anzahl, wie die Gegenpartei. Ist nicht verabredet, wie der Obmann zu bezeichnen sei, so steht es den beiderseitigen Schiedsrichtern zu, entweder den Obmann gemeinsam zu wählen oder einem unparteiischen Dritten die Wahl desselben anheim zu geben.

4. Das aus mehreren Personen bestehende Schiedsgericht handelt gemeinsam als Ein Körper. Es vernimmt die Parteien und je nach Umständen auch Zeugen und Sachverständige, prüft die erheblichen Thatsachen und erhebt die erforderlichen Beweise.

5. Das Schiedsgericht gilt im Zweifel als ermächtigt, den Parteien billige Vergleichsvorschläge zu machen.

6. Das Schiedsgericht urtheilt über die Auslegung des Compromisses der Parteien und demgemäss über seine Competenz.

7. Der Spruch der Mehrheit gilt als Spruch des ganzen Schiedsgerichts.

8. Der Spruch des Schiedsgerichts wirkt für die Parteien, wie ein Vergleich.

9. The decision of the Tribunal may be considered, by either of the parties, invalid—

(a) In so far as the Tribunal has exceeded its powers;

(b) Through any dishonest proceeding on the part of the Arbitrators ;

(c) If the Arbitrators have refused to hear the parties or openly violated some other fundamental principle of legal procedure ;

(d) If the substance of the decision is incompatible with International Law or human rights ;

but the arbitral decision cannot be attacked on the ground of its being wrong or unfair towards one of the litigants. The rectification of mere miscalculation remains reserved.

10. In Confederations of States, such as Federal Republics, Monarchies or Empires, the differences which arise between the different States of the Confederation, or between these and the Federal, Central, or Imperial Power, are, as a matter of course, referred either to an Arbitration Tribunal provided for in the constitution, or to the ordinary Federal or, Imperial Tribunal, for disposal and decision. In the first case, the Arbitration Tribunal exercises a jurisdiction derived not merely from the agreement between the parties, but also from the constitution itself.

11. Provision may be made beforehand, in treaties relating to the differences which may arise between independent States, for the mode of nominating the Arbitrators and the procedure to be adopted by them ; and the Tribunal thus constituted will possess an actual jurisdiction.

12. It is reserved for the further development of a genuine International Law, even through the solidarity it secures, to provide generally for the establishment of a regulated Arbitration procedure, particularly in regard to differences arising from claims for indemnity, questions of precedence, and others, which do not affect the existence and the development of the State.

9. Der Spruch des Schiedsgerichts kann von einer Partei als ungültig angefochten werden :

(a.) Wenn und soweit das Schiedsgericht dabei seine Vollmachten überschritten hat.

(b.) Wegen unredlichen Verfahrens der Schiedsrichter.

(c.) Wenn das Schiedsgericht den Parteien das Gehör verweigert oder sonst die Fundamentalgrundsätze alles Rechtsverfahrens offenbar verletzt hat.

(d.) Wenn der Inhalt des Spruchs mit den Geboten des Völker- und Menschenrechts unverträglich ist.

Aber der Schiedsspruch darf nicht aus dem Grunde angefochten werden, dass er unrichtig oder für eine Partei unbillig sei. Vorbehalten bleibt die Berichtigung blosser Rechnungsfehler.

10. In zusammengesetzten Staaten (Staatenbünden, Bundesstaaten, Staatenreichen, Bundesreichen) werden die Streitigkeiten der Einzelstaaten unter sich oder mit der Bundes- oder Central- oder Reichsgewalt je nach Umständen an verfassungsmässige Schiedsgerichte oder an festgeordnete Bundes- oder Reichsgerichte zur Verhandlung und Entscheidung verwiesen. Im erstern Fall übt das Schiedsgericht eine Gerichtsbarkeit aus, welche nicht bloss auf dem Compromiss der Parteien, sondern zugleich auf der Verfassung beruht.

11. Durch Staatenverträge können ebenso für vorgesehene Streitigkeiten, welche unter den von einander unabhängigen Staaten entstehen würden, zum Voraus nähere Vorschriften über ein schiedsrichterliches Verfahren festgesetzt und das Schiedsgericht mit einer wirklichen Gerichtsbarkeit ausgerüstet werden.

12. Der Fortbildung eines gesicherten Völkerrechts bleibt es vorbehalten, auch durch völkerrechtliche Vereinbarungen überhaupt für ein geordnetes schiedsrichterliches Verfahren zu sorgen, insbesondere bei Streitigkeiten über Entschädigungsforderungen, ceremonielle Ansprüche und andere Dinge, welche nicht die Existenz und Entwicklung des Staates selbst betreffen.

ARBITRAGES.

PAR M. LE DOCTEUR J. C. BLUNTSCHLI.

1867.

1. Les parties peuvent remettre à un tribunal arbitral la décision de la question qui les divise.

2. Les parties ont dans la règle le droit de désigner librement celui auquel elles veulent confier les fonctions d'arbitre.

3. Si les parties ne peuvent tomber d'accord sur le choix des arbitres, on admet que chaque partie en nomme le même nombre. A moins de conventions spéciales, les arbitres désignent eux-mêmes un sur-arbitre, ou remettent à un tiers le soin de le désigner.

4. Le tribunal arbitral forme un corps indépendant et agit comme collège, lorsqu'il est composé de plusieurs juges. Il entend les parties, fait comparaître les témoins ou les experts, et rassemble toutes les preuves nécessaires.

5. Le tribunal arbitral est autorisé, dans le doute, à faire aux parties des propositions équitables dans le but d'arriver à une transaction.

6. Le tribunal arbitral statue sur l'interprétation du compromis entre les parties, et par conséquent sur sa propre compétence.

7. La décision est prise à la majorité des voix, et oblige le tribunal entier.

8. La décision des arbitres a pour les parties les mêmes effets qu'une transaction.

9. La décision du tribunal arbitral peut être considérée comme nulle :

(a.) Dans la mesure en laquelle le tribunal arbitral a dépassé ses pouvoirs ;

(b.) En cas de déloyauté et de déni de justice de la part des arbitres ;

(c.) Si les arbitres ont refusé d'entendre les parties ou violé quelque autre principe fondamental de la procédure ;

(d.) Si la décision arbitrale est contraire au droit international. Mais la décision des arbitres ne peut être attaquée sous le prétexte qu'elle est erronée ou contraire à l'équité. Les erreurs de calcul demeurent réservées.

10. Dans les confédérations d'états et dans les républiques ou monarchies fédératives, les difficultés qui s'élèvent entre les divers états de la confédération ou entre ceux-ci et le pouvoir central, sont renvoyées soit à un tribunal arbitral, soit aux tribunaux ordinaires de la confédération. Dans le premier cas, la compétence du tribunal arbitral repose non seulement sur un compromis des parties, mais encore sur la constitution.

11. On peut aussi régler à l'avance, par des traités, le mode de nomination des arbitres et la procédure à suivre pour trancher les difficultés qui pourraient s'élever entre deux états indépendants ; le tribunal arbitral aura dans ce cas de véritables droits de juridiction.

12. Le droit international, en se développant, ne tardera pas à régulariser le mode de nomination des arbitres, et à fixer la procédure à suivre pour aplanir certaines difficultés, spécialement les questions de dédommagements, d'étiquette et autres, qui ne menacent ni l'existence, ni le développement des états.

THE ORGANISATION OF A EUROPEAN FEDERATION.

BY DR. J. C. BLUNTSCHLI.

A glance at the early political history of Europe shows that the idea of the organisation of the European States into a Union has been familiar to its princes and peoples for centuries, and is by no means chimerical ; and a glance at the present conditions of existence amongst the European nations reveals a natural growth of the desire for a better organisation of Europe which shall secure and strengthen both its Peace and its real interests.

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If the great problem of a constitution for the commonwealth of Europe is to be solved, the indispensable principle of its solution is the *careful preservation of the independence and freedom of the Associated States.*

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In order to form a proper organisation, the problems which the Union is called upon to solve must be further discussed.

These problems may be grouped in the following manner:—

1. Establishment and Enunciation of a *Code of International Law, International Legislation.*
2. Preservation of the *Peace of the Nations* and the Exercise of the *Higher International Politics.*
3. Management of matters of International Administration.
4. International Administration of Justice.

DIE ORGANISATION DES EUROPÄISCHEN STATENVEREINES.

VON J. C. BLUNTSCHLI.

Ein Blick auf die frühere Statengeschichte Europas überzeugt uns, dass der Gedanke einer Organisation des europäischen Staatenvereines den europäischen Fürsten und Völkern schon seit Jahrhunderten bekannt und keineswegs ein chimärischer ist; und ein Blick auf die heutige europäische Lebensgemeinschaft zeigt uns ein naturgemässes Wachsthum des Verlangens nach einer besseren Organisation Europas, welche den europäischen Frieden sichere und stärke und die europäischen Interessen wirksam schütze.

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Soll das grosse Problem einer Verfassung für die europäische Statengenossenschaft gelöst werden, so ist die unerlässliche Grundbedingung dieser Lösung die *sorgfältige Wahrung der Selbständigkeit und Freiheit der verbündeten Staaten.*

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Um eine richtige Organisation zu bilden, müssen ferner die Aufgaben erwogen werden, welche der Bund zu lösen berufen ist.

Diese Aufgaben lassen sich übersichtlich nach folgenden Gruppen ordnen :

(1) Festsetzung und Aussprache *völkerrechtlicher Normen, völkerrechtliche Gesetzgebung* ;

(2) *Bewahrung des Völkerfriedens* und Ausübung der *grossen völkerrechtlichen Politik* ;

(3) *Besorgung der internationalen Verwaltungssachen* ;

(4) *Internationale Rechtspflege.*

INTERNATIONAL LEGISLATION AND HIGH POLITICS.

For the enunciation and promulgation of a General International Code, a meeting of the Heads of States or of their ministers or representatives is, in our opinion, not sufficient: but the co-operation and concurrence of the Representative Assemblies, which also represent the opinions and views of the people, is indispensable.

I. The Legislative Organisation must therefore be formed from the Representatives of the collective European Governments, which together form the *European United Council*.

(1.) It might without hesitation be left to each Power to appoint and empower its *Representatives*; also the question whether a State should send one or more Representatives.

(2.) But the *Voting Power* to which each State shall lay claim in the United Council must be constitutionally fixed. It might answer the purpose if each State as a rule had one vote, or the States collected together might have one vote each, and only the Great Powers two.

In the United Council there would then be twenty-four votes, half for the Great Powers, and the other half for the other States.

(3.) The *European House of Representatives* or the *European Senate* which as Representatives of the European peoples, acts side by side with the United Council, should not, in my opinion, be very numerous, if it is to accomplish its work. Only men who are conversant with International Law and High Politics are suitable for it. Such men are all too few.

I would give to each of the Great Powers eight or ten Representatives, and to every other State four or five. This would give an Assembly of ninety-six or one hundred and twenty members.

VÖLKERRECHTLICHE GESETZGEBUNG UND GROSSE POLITIK.

Zur Aussprache und Verkündung allgemeiner völkerrechtlicher Normen (Gesetze) genügt nach unseren heutigen Begriffen nicht der Zusammentritt der Statshäupter oder ihrer Minister und Gesanten, sondern ist die Mitwirkung und Zustimmung von repräsentativen Versammlungen unerlässlich, welche die Meinungen und Rechtsansichten auch der Völker vertreten.

(1) Desshalb wird das Organ für die Gesetzgebung zusammen gesetzt sein müssen : aus Vertretern der sämtlichen europäischen Statsregierungen, welche zusammen den *europäischen Bundesrath* bilden.

Man könnte es ohne Bedenken den Regierungen überlassen, ihre Vertreter zu bezeichnen und zu ermächtigen, gleichviel ob ein Stat einen oder mehrere Vertreter entsendet. Aber die Stimmenzahl, auf welche jeder Stat Anspruch hat in dem Bundesrathe, muss verfassungsmässig bestimmt sein. Es dürfte den Verhältnissen entsprechen, wenn jeder Stat in der Regel Eine Stimme, auch die zusammengesetzten Staten nur Eine Stimme führen und nur die Grossmächte jede zwei Stimmen haben.

In dem Bundesrathe gäbe es dann 24 Stimmen, die eine Hälfte der Grossmächte, die andere Hälfte der anderen Staten.

Das *europäische Repräsentantenhaus* oder der *europäische Senat*, welcher als Vertreter der europäischen Völker dem Bundesrathe an die Seite tritt, darf meines Erachtens nicht sehr zahlreich sein, wenn er seiner Aufgabe gewachsen sein soll. Nur Männer, welche des Völkerrechtes und der grossen politischen Verhältnisse in Europa kundig sind, passen dahin. Solche Männer gibt es nicht allzu viele.

Ich würde jeder Grossmacht etwa acht oder zehn Abgeordnete zutheilen und jedem anderen State vier oder fünf. Das gäbe eine Versammlung von 96 oder 120 Mitgliedern.

(4.) The *Mode of Election* of this European Senate would be left to the individual States ; where, however, the Representatives of the people sit in one or two chambers, these should attend to the election.

(5.) *Actual Voting* in the Council must be according to States, and not according to individual members ; in the Senate, on the other hand, individual voting is possible, and to be preferred. Members of the Council vote according to their instructions and powers ; Senators according to their personal convictions.

(6.) The *difficulty of language* in such an international assembly is not insuperable. In the present state of culture, most educated men understand one or two foreign languages, besides their mother tongue, at least so far as to understand printed matter or a speech. In any case no one should be prevented from speaking in his native tongue. If the speakers wish to be understood by all or even the majority, they will have to speak in French or English or German. These three languages are most widely spread at the present day in Europe, and almost every educated man knows at least one of them. But if by exception a Senator can only speak in his mother tongue, care will have to be taken that his speech shall be translated into one of these universal tongues. This has been the procedure for some time now in Switzerland and at International Conferences.

(7.) The *place* of the sittings of the Senate may be suitably determined by the United Council, and would very well be changed from time to time into different countries. A regular meeting every two or three years is sufficient, as extraordinary meetings may be convened as necessity requires.

(8.) In the interest of the *Independence* of the separate States,

Die Wahl dieser europäischen Senatoren wäre den einzelnen Staten zu überlassen, so jedoch, dass wo Volksvertretungen in Einer oder in zwei Kammern bestehen, diese die Wahl vorzunehmen hätten.

Die Abstimmung im Bundesrathe müsste nach Staten, nicht nach Individuen geschehen, im Senate dagegen wäre die individuelle Abstimmung möglich und vorzuziehen. Die Mitglieder des Bundesrathes stimmen gemäss ihrer Instruktion und Vollmacht, die Senatoren frei nach ihrer persönlichen Ueberzeugung.

Die Schwierigkeit der Sprache einer solchen internationalen Versammlung ist nicht unüberwindlich. Auf der heutigen Bildungsstufe kennen die meisten hochgebildeten Männer ausser ihrer Muttersprache noch eine oder einige fremde Kultursprachen wenigstens so weit, dass sie gedruckte Werke derselben und auch eine Rede verstehen. Es dürfte allerdings Niemandem verwehrt werden, in seiner Muttersprache zu reden. Wenn aber die Redner wünschen, von allen oder doch der Mehrzahl verstanden zu werden, so werden sie französisch oder englisch oder deutsch sprechen müssen. Diese drei Nationalsprachen haben jedenfalls heute in Europa die meiste Verbreitung und fast jeder Gebildete kennt eine derselben. Würde daher ausnahmsweise ein Senator nur in seiner Muttersprache reden können, so wäre dafür zu sorgen, dass seine Rede in einer dieser allgemeinen Sprachen verdolmetscht würde. Man hilft sich in der Schweiz und auf internationalen Konferenzen und Vereinen schon lange auf diese Weise.

Der Ort für die Sitzungen des Senates kann füglich von dem Bundesrathe bestimmt werden und mag schicklich abwechseln zwischen verschiedenen Ländern. Eine regelmässige Versammlung je zu zwei oder drei Jahren ist genügend, da ausserordentliche Versammlungen durch dringende Bedürfnisse gefordert werden können.

Im Interesse der Selbständigkeit der Einzelstaten darf dem

the Council should be subject to no taxation or financial liability, nor to any military liability. The *cost* of the Assembly shall be defrayed by the States in proportion to their voting power. It should, however, be decided what allowance, in addition to travelling expenses, should be made to each Representative, so that in this respect there should be equality.

(9.) International Rules upon which the Council and Senate, each house by a majority of representative votes, are agreed, shall be promulgated by the Council as International Law.

The right of bringing forward a motion in the Council for the publication of an International Law belongs to every Government, and the same applies to the representation of the different nations in the Senate. The decisions in each body must, however, be made by an absolute majority of votes of the representative States and peoples.

(10.) The *presidency* of the Council rotates every year among the Representatives of the Great Powers, that of the Senate may be determined by the free election of the assembly until a new election be made at the next ordinary session. Each Great Power will therefore take precedence in the Council one year in every six. Only formal powers, however, are granted to the President, not essential prerogatives.

(11.) Either a permanent *residence* should be assigned to the Council or a change made every few years amongst a few selected towns; and the same for the general European Bureau. For this purpose the large world-cities are unsuitable, nor should the capital towns of the Great Powers be chosen, but only towns where the inhabitants can exercise no sort of pressure over the discussions, and which, while outside the quiet but real influence of political salons, can yet offer much general information with regard to foreign affairs. Such towns are, *e.g.*, Brussels and Ghent in Belgium, Zurich and Geneva in Switzerland, Baden and Leipzig in Germany, Nancy and Orleans in

Bunde kein Steuerrecht und keine eigentliche Finanzhoheit zukommen, so wenig als eine militärische Hoheit. Die Kosten der Versammlung sind von den Staten beizutragen, je nach ihrem Stimmrechte. Aber es sollte doch bestimmt werden, was für Diäten ausser den Reiseauslagen die Senatoren zu beziehen haben, damit in dieser Hinsicht gleiches Recht gewahrt bleibe.

Völkerrechtliche Normen, über welche sich der Bundesrath und der Senat, jedes Haus mit Mehrheit der vertretenen Stimmen geeinigt haben, werden von dem Bundesrathe als völkerrechtliches Gesetz verkündet.

Jeder Statsregierung müsste das Recht zustehen, in dem Bundesrathe einen Antrag auf Erlassung eines völkerrechtlichen Gesetzes zu stellen, und ebenso jeder Vertretung der verschiedenen Völker in dem Senate. Die Beschlüsse in beiden Körpern werden aber mit absoluter Stimmenmehrheit der vertretenen Staten und Völker gefasst.

Das Präsidium im Bundesrathe wechselt alljährlich unter den Grossmächten, das des Senates kann von der Versammlung frei gewählt werden bis zur Neuwahl in der nächsten ordentlichen Session. Jede Grossmacht würde also in einer Periode von sechs Jahren während eines Jahres den Vorsitz im Bundesrathe einnehmen. Dem Präsidenten sind aber nur formale Befugnisse, nicht sachliche Vorrechte einzuräumen.

Für den Bundesrath ist eine ständige Residenz zu bezeichnen, oder ein mehrjähriger Wechsel zwischen wenigen bestimmten Städten vorzubehalten, ebenso für die gemeinsame europäische Kanzlei. Dafür taugen aber weder grosse Weltstädte noch die Hauptstädte einer Grossmacht, sondern nur Städte, deren Bevölkerung keinerlei Druck auf die Berathung zu üben vermag, auch nicht den stillen aber wirksamen der politischen Salons, und welche doch mancherlei geistige Hülfsmittel bieten für die Kenntniss fremder Zustände. Von der Art wären z. B. die belgischen Städte Brüssel und Gent, die schweizerischen Zürich und Genf, die deutschen Baden-Baden und Leipzig, die

France, Milan and Florence in Italy, and, although a capital city, the Hague in the Netherlands.

II. The *Preservation of the Peace of Nations* and the discussion and decisions in the *affairs of the Higher European Politics* should be entrusted, preferably, to the *United Council* under the guidance of the *Great Powers* but always with the limitation that a new regulation, of permanent effect, shall be also submitted to the Senate for approval.

Hitherto, the difference between the Higher Politics of International Law and the matters of mere international Administration and Justice has been very little considered. To me it appears to be of very decided importance for the constitution of the Union of States. It is very much easier to provide for International Law Institutions, which shall resolve unimportant matters of administration and law suits, than to construct an organisation which shall be called upon to decide supreme questions pertaining to the State.

To the affairs of High Politics belong all questions which concern the existence, the independence, the freedom of States, and on which the conditions of life of the nations, their safety and development, are dependent. If these high interests are threatened, a manly people will put forth its whole strength to protect them, and will always prefer to sacrifice life and property for the maintenance of their right than to submit to the command of any foreign administration or even to the arbitral or judicial award of an international tribunal.

In regard to such questions the commonwealth of all European States, with the co-operation of a European peoples' representation is alone able to form a decisive authority to which the disputing States will submit, and even then only under certain conditions.

Only when the Governments and peoples work together and where possible are united, or at least when an overwhelming majority agree, will that authority be strong enough to reach any

französischen Nancy und Orleans, die italienischen Mailand und Florenz, und, obwohl eine Hauptstadt, Haag in den Niederlanden.

2) Die *Bewahrung* des *Völkerfriedens* und die Berathung und Beschlussfassung in den *Angelegenheiten* der *grossen europäischen Politik* werden vorzugsweise dem *Bundesrathe*, unter Führung der *Grossmächte* anzuvertrauen sein, immer aber mit der Beschränkung, dass eine dauernde Neuordnung auch der Gutheissung des Senates unterbreitet wird.

Bisher ist der Unterschied der grossen Politik im Völkerrechte und der blossen internationalen Verwaltungs- und Justizsachen wenig beachtet worden. Mir scheint er für die Verfassung des Staatenbundes von ganz entscheidender Wichtigkeit zu sein. Es ist sehr viel leichter, für völkerrechtliche Institutionen zu sorgen, welche die kleinen Verwaltungssachen und Prozesse erledigen, als Organe zu schaffen, welche die statlichen Lebensfragen zu entscheiden berufen sind.

Zu den Angelegenheiten der grossen Politik gehören alle Fragen, welche die Existenz, die Selbständigkeit, die Freiheit der Staaten betreffen, von denen die Lebensbedingungen der Völker, ihre Sicherheit und ihre Entwicklung abhängig sind. Wenn diese höchsten Interessen bedroht erscheinen, dann setzen männliche Völker ihre ganze Kraft dafür ein, dieselbe zu schützen und ziehen es noch immer vor, ihr Gut und Blut im Nothfalle für die Behauptung ihres Rechtes zu opfern, als sich einem Gebote irgend einer fremden Verwaltungsbehörde oder selbst dem schiedsrichterlichen oder richterlichen Spruche internationaler Gerichte zu unterwerfen.

Bei solchen Fragen kann nur die Gemeinschaft aller europäischen Staaten unter Mitwirkung einer europäischen Volksvertretung und selbst jene nur unter gewissen Bedingungen zu einer entscheidenden Autorität werden, welcher sich die streitenden Staaten fügen. Nur wenn die Regierungen und Völker zusammen wirken und wo möglich einig werden, oder mindestens eine überwältigende Mehrheit zu Stande kommt, wird jene Autorität stark genug

conclusion. Were the Council to split into nearly equally strong parties, the disputing States would attach themselves to these parties, and a generally recognised result, a new undisputed legal regulation would not be reached.

Therefore if the actual making of decisions is left to the Council, and it reach its decision by a majority, this decision would not be binding unless the decision and assent of the Senate be added.

Were unanimity demanded in the Council, its competency to form a decision would be too circumscribed, nor would a simple majority in such cases be decisive if an important minority, of say six to eight, vote against it.

INTERNATIONAL ADMINISTRATION AND JUSTICE.

It is quite otherwise with the conduct of the *small* matters of International Administration and Justice. I reckon amongst these all regulations respecting international commercial relations, the interpretation of treaties relating to trades and tariffs, regulations referring to streets, railways, post office, telegraph, shipping traffic on the open sea, in harbours, or on rivers, those relating to the extradition of criminals, to questions of the relations of private individuals with the State, to all international individual rights and penalties, to regulations of boundaries, sanitary matters, controversies regarding damages, weights and measures, coinage, ceremonies, etc.

Such matters of administration and justice can be looked after without danger to individual sovereign States by means of general International Institutions. For example, as has already happened, a general Central Bureau for posts and telegraphs or weights and measures may be created and established in any European

werden, um Folge zu bewirken. Würden sich Bundesrath und Senat in nahezu gleich starke Parteien spalten, so würden die streitenden Staten sich an diese Parteien anschliessen und ein allgemein anerkanntes Ergebniss, eine neue unbestrittene Rechtsordnung käme nicht zu Stande.

Wenn daher auch dem Bundesrathe die eigentliche Beschlussfassung überlassen und dieser mit Mehrheit Beschluss fassen würde, so würde dieser Beschluss doch nicht anders rechtsverbindlich und vollziehbar werden, als wenn auch das Gutachten oder die Genehmigung des Senates hinzu käme.

Würde Einstimmigkeit im Bundesrathe gefordert, so würde die Beschlussfähigkeit desselben zu sehr eingeengt. Die einfache Mehrheit kann aber in solchen Fällen auch nicht entscheiden, wenn ihr eine erhebliche Minderheit etwa von 6 bis 8 Stimmen entschlossen entgegen tritt.

INTERNATIONALE VERWALTUNG UND RECHTSPFLEGE.

Ganz anders sind die *kleinen* Angelegenheiten der *völkerrechtlichen Verwaltung* und Justiz zu behandeln. Ich rechne zu diesen alle Anordnungen über internationale Verkehrsverhältnisse, über Auslegung von Handels- und Zollverträgen, über Strassen, Eisenbahnen, Posten, Telegraphenwesen, Schiffahrtsverkehr auf offener See oder in den Seehäfen und auf den Strömen, über Auslieferung von Verbrechern, über die Fragen der Stats- und Landesangehörigkeit von Privaten, das gesammte internationale Privat- und Strafrecht, Grenzregulirungen, Sanitätsinteressen, Entschädigungsstreitigkeiten, Mass und Gewicht, Münzwesen, Ceremoniel u. s. f.

Für solche Verwaltungs- und Justizsachen lässt sich ohne Gefahr für die einzelnen souveränen Staten durch gemeinsame internationale Anstalten sorgen. Es kann so z. B., wie das bereits geschehen ist, ein gemeinsames Centralbureau für die Posten oder die Telegraphen, oder die Masse und Gewichte

town. With equal readiness the so-called Arbitration Clause in agreements may be taken up, and the nature and course of Arbitral procedure be determined. Under special circumstances also for certain disputes permanent international tribunals may be established. The reform of the jurisdiction regulating prize money can be accomplished, for example, and the inconveniences of the Consular jurisdiction removed only by means of International Courts of Justice.

All such Administrative Bureaus are naturally subordinate to the European Council as the representative of all the Governments, and in the same way International Tribunals, with their independence in giving awards, are placed under the superintendence of the Council as regards their external relationships. In the Council the States exchange views, and are able easily to reach an understanding in regard to common resolutions and decisions. In such cases also the simple decision of a majority is sufficient.

Questions of High Politics are comparatively rare. The Council therefore need only come together from time to time, as they deem it desirable. On the other hand matters of administration demand a constant, regular activity, so that one or two regular sittings of the Council yearly will be necessary and useful. For a long time to come two yearly sittings of about three weeks will suffice. But a *permanent Bureau of the Council*, in which all business should be transacted, I consider to be indispensable. This Bureau should be under the direction of the President for the time being, and will have charge of all communications with the different States.

*The cost of these international establishments will be defrayed by the States according to a proportionate scale which takes fair

geschaffen und in irgend eine europäische Stadt verlegt werden. Es kann ebenso unbedenklich in Verträge die sogenannte Schiedsgerichtsklausel aufgenommen und die Art und der Prozessgang des schiedsrichterlichen Verfahrens geordnet werden. Unter Umständen können auch für gewisse Streitigkeiten feste völkerrechtliche Tribunale eingesetzt werden, wie denn z. B. die Reform der Prisengerichtsbarkeit entschieden dahin drängt und dem Uebelstande der Konsulargerichtsbarkeit auch nicht anders als durch internationale Gerichtshöfe abzuhelpen sein wird.

Alle derartigen internationalen Verwaltungsämter und Bureaus sind naturgemäss dem europäischen Bundesrathe, als der Vertretung aller Statsregierungen unterzuordnen und ebenso auch die internationalen Gerichte neben ihrer Unabhängigkeit in dem Urtheile, mit Bezug auf die äusserliche Zusammensetzung und Ordnung der Oberaufsicht des Bundesrathes unterstellt. In dem Bundesrathe tauschen die Staten ihre Meinungen aus und können sie sich leicht über gemeinsame Entschlüsse und Beschlüsse verständigen. In solchen Fällen wird auch ein einfacher Mehrheitsbeschluss genügen.

Verhältnissmässig selten sind die Fragen der grossen Politik. Der Bundesrath wird daher um ihrer willen nur von Zeit zu Zeit zusammen treten müssen. Dagegen die Verwaltungssachen erfordern eine fortgesetzte regelmässige Thätigkeit, so dass wohl alljährlich eine oder ein paar ordentliche Sitzungen des Bundesrathes nöthig oder zweckmässig sein werden. Noch auf lange hin würden jedenfalls zwei jährliche Sitzungen von ein paar Wochen ausreichen. Aber eine *ständige Bundeskanzlei*, in welcher alle Geschäfte mit ihren Akten zusammen laufen, betrachte ich als unentbehrlich. Dieselbe ist der jeweiligen Präsidialmacht bei- und unterzuordnen. Sie besorgt die Einladungen und Mittheilungen an die verbündeten Staten.

Die Kosten für diese internationalen Anstalten werden von den Staten aufgebracht nach einem Vertheilungsmodus, welcher auf die Zahl der Bevölkerung — etwa nach Millionen und auf die

account of the extent of their population and of their commerce and the number of their ships, per million, say, of their inhabitants.

EXECUTION OF THE EUROPEAN DECISIONS.

In ordinary matters of administration and justice the execution of decisions shall be left to the discretion of the various States, or, as far as concerns the imparting of those decisions, to the Bureau of the Council.

Only in one class of cases—which indeed will seldom happen, but, if they do happen, will by their great importance be very difficult to handle—is this provision not sufficient. If, in an exceptional case it is necessary to exercise compulsion against a State, then neither the Bureau nor even the Council itself, is the proper organisation to carry this compulsion into effect, for it has neither the necessary financial means, nor the armies and fleets, without which such compulsion is impossible.

For such cases the co-operation of the Great Powers, which have the ability, is necessary to exercise forcible pressure.

Hence from the United Council now springs the *College of Great Powers*, which guarantees the execution of those decisions of the Council which have been pronounced to be necessary and desirable.

In order to secure the protection of any single State against the oppression of the Great Powers, a stipulation is necessary that only such decisions shall be carried out by force as have been declared in the Senate by a majority of votes to be equitable, and for which a two-thirds majority of the Council, and also of the College of Great Powers, has declared. Under this

Ausdehnung ihrer Verkehrsverhältnisse — Zahl der Seeschiffe — billige Rücksicht nimmt.

VOLLZUG DER EUROPÄISCHEN BESCHLÜSSE.

In den regelmässigen Verwaltungs- und Justizsachen wird der Vollzug den beteiligten Staten anheim zu geben sein, oder so weit es sich um Mittheilung von Beschlüssen handelt, durch die Bundeskanzlei besorgt werden.

Nur in Einer Klasse von Fällen, die freilich selten eintreten, aber wenn sie eintreten, auch durch ihre hohe Bedeutung schwer wiegen, genügt diese Anordnung nicht. Wenn es ausnahmsweise nöthig wird, auch gegen einen Stat einen Zwang auszuüben, dann ist die Bundeskanzlei und selbst der Bundesrath kein geeignetes Organ, um diesen Zwang durchzuführen, denn auch der Bundesrath hat weder die nöthigen Finanzmittel, noch die Heere und Flotten zur Verfügung, ohne welche dieser Zwang unmöglich ist.

Für solche Fälle bedarf es der Mitwirkung der Grossmächte, welche die Macht haben, nach aussen einen gewaltsamen Druck zu üben.

Um desswillen tritt jetzt aus dem Bundesrathe als mächtiger Vollziehungsausschuss das *Kollegium der Grossmächte* hervor und gewährleistet den Vollzug der als nothwendig und vollziehbar erklärten Beschlüsse des Bundesrathes.

Um gegen die Unterdrückung irgend eines Einzelstates durch die Uebermacht der Grossmächte einen Schutz zu gewähren, ist eine Bestimmung nöthig, dass nur solche Beschlüsse nöthigenfalls mit Zwang durchgeführt werden dürfen, welche von dem Senate mit Stimmenmehrheit gebilligt worden sind, und für welche sich eine zwei Drittelsmehrheit im Bundesrathe und zugleich in dem Kollegium der Grossmächte erklärt hat. Unter dieser Voraussetzung schwindet jede Besorgniss vor einem tyrannischen oder

hypothesis all fear of a tyrannical oppression, or wanton procedure, on the part of any Great Power against a single State disappears. No State need fear that any unlawful violence will be exercised against its autonomy or freedom.

The possibility of a European war will not be completely excluded by this constitution any more than the danger of a civil war is quite averted by any State constitution. But they are weighty guarantees for a peaceful, and at the same time just, settlement of all disputes among the peoples. As a rule, actual compulsion will not be necessary, and the prospect of compulsion if not amenable to the judgment and will of Europe, will lead to reflection and to compliance. The very exercise of compulsion has more the character of the execution of a legal verdict than of a battle of parties. Wars will therefore become very rare, and frivolous wars, or wars prompted by ambition or lust of conquest, will become actually impossible. As a rule every State will voluntarily submit to the threefold majority of the collective European Governments in Council, of the European Representatives in the Senate, and of the Great Powers, without venturing a useless opposition, just as private individuals in dispute submit to the decision of a judge.

For European Peace, for the acceptance and development of European International Law, and for European well-being, much better care will be taken through such an organisation than is at present the case; and the independence and freedom of the separate States will remain not merely untouched but more secure than before.

A disarmament and disbanding of all standing armies would be by no means an immediate consequence of this organisation. But the present strain of military burdens, the greatest hindrance to European prosperity, would cease. The dread of war, impend-

herrsüchtigen oder leichtfertigen Vorgehen einiger Mächte wider einen einzelnen Stat. Es braucht dann kein Stat zu fürchten, dass seiner Eigenart und seiner Freiheit eine rechtswidrige Gewalt angethan werde.

Die Möglichkeit eines europäischen Krieges wird durch diese Verfassung nicht völlig ausgeschlossen, so wenig als durch irgend eine Statsverfassung die Gefahr eines Bürgerkrieges ganz beseitigt wird. Aber es sind wichtige Garantien gewonnen für eine friedliche und zugleich für eine gerechte Erledigung aller Streitigkeiten unter den Völkern. In der Regel wird ein wirklicher Zwang entbehrlich werden, und es wird die Aussicht auf den Zwang, wenn ungebührlich dem Urtheile und Willen Europas getrotzt wird, zur Besinnung führen und zur Folge bestimmen. Die Zwangsübung selber hat eher den Charakter der Exekution eines Rechtsurtheiles als den eines Kampfes von Parteien. Die Kriege werden daher sehr selten, und leichtsinnige, ehrsüchtige, eroberungssüchtige Kriege thatsächlich unmöglich werden. In der Regel wird sich jeder Stat der dreifachen Mehrheit der sämtlichen europäischen Regierungen im Bundesrathe, der europäischen Völkervertretung im Senate und der Grossmächte, ohne einen fruchtlosen Widerstand zu wagen, ebenso freiwillig unterordnen, wie die streitenden Privatpersonen dem Urtheilsspruche seines Richters.

Für den europäischen Frieden, für die Geltung und Entwicklung des europäischen Völkerrechtes und für die europäische Wohlfahrt wäre durch eine solche Organisation Europas sehr viel besser gesorgt als gegenwärtig und die Selbständigkeit und Freiheit der einzelnen Staten bliebe nicht bloss unversehrt, sondern wäre gesicherter als bisher.

Eine Auflösung und Entwaffnung aller Statenheere wird keineswegs die unmittelbare Folge dieser Verfassung sein. Aber die heutige Ueberspannung der Militärlasten, das schwerste Hinderniss der europäischen Wohlfahrt, würde aufhören. Die Rücksicht auf drohende Kriege der Zukunft würde nicht mehr

ing in the future, would no longer, as now, consume the taxable powers of the people. Standing armies would gradually decrease, the time of service would at once be reduced, the outlay for arms, fortresses, ships of war, and barracks would be considerably less. The enormous saving thus made would free the citizens from the oppression of taxation, and at the same time provide financial means for the advancement of peaceful culture.

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The need of a solution of this problem becomes every year more pressing.

Whether, and, if so, when, a far-seeing statesman will undertake to develop the idea is not very clear at the present time. But the organisation of the United States of Europe is much less difficult than was the union of the German States into the German Empire, and that it would be at least as fruitful and salutary, and even more efficacious for the development of humanity, is undoubted.

wie gegenwärtig, die Steuerkräfte der Völker aufzehren. Die stehenden Heere würden allmählich vermindert, die Dienstzeit unbedenklich herabgesetzt, die Ausgaben für Waffen, Festungen, Kriegsschiffe, Kasernen sehr erheblich abnehmen. Die enorme Ersparniss an dannzumal unnöthigen Militärausgaben würde die Bürger von dem Steuerdrucke befreien, and zugleich finanzielle Mittel schaffen, um für die friedlichen Kulturinteressen reichlicher sorgen zu können.

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Das Bedürfniss der Lösung des Problemes wird von Jahr zu Jahr dringender empfunden werden.

Ob und wann ein weitsichtiger und weitherziger Statsmann es unternehmen werde, die Idee zu verwirklichen, ist zur Zeit noch unklar. Dass aber die Organisation des europäischen Staatenbundes viel weniger schwierig ist, als die Einigung der deutschen Staaten zu dem deutschen Reiche gewesen ist, aber mindestens ebenso fruchtbar und heilbringend und für die Entwicklung der Menschheit noch wirksamer wäre, ist unzweifelhaft.

Gesammelte Kleine Schriften von J. C. Bluntschli, 1881, Vol. II. pp. 281, 299, 302-312.

A HIGH TRIBUNAL OF ARBITRATION.

By DAVID DUDLEY FIELD.

1872.

NOTICE OF DISSATISFACTION, AND CLAIM OF REDRESS.

532. If any disagreement, or cause of complaint, arise between nations, the one aggrieved must give formal notice thereof to the other, specifying in detail the cause of complaint, and the redress which it seeks.

ANSWER TO BE GIVEN.

533. Every nation, which receives from another, notice of any dissatisfaction, or cause of complaint, whether arising out of a supposed breach of this Code, or otherwise, must, within three months thereafter, give a full and explicit answer thereto.

JOINT HIGH COMMISSION.

534. Whenever a nation complaining of another and the nation complained of do not otherwise agree between themselves, they shall each appoint five members of a Joint High Commission, who shall meet together, discuss the differences, and endeavour to reconcile them, and within six months after their appointment, shall report the result to the nations appointing them respectively.

HIGH TRIBUNAL OF ARBITRATION.

535. Whenever a Joint High Commission, appointed by nations to reconcile their differences, shall fail to agree, or the nations appointing them shall fail to ratify their acts, those nations shall, within twelve months after the appointment of the Joint High Commission, give notice of such failure to the other parties to this Code, and there shall then be formed a High Tribunal of Arbitration, in manner following: Each nation receiving the notice shall, within three months thereafter, transmit to the

nations in controversy the names of four persons, and from the list of such persons the nations in controversy shall alternately, in the alphabetical order of their own names, as indicated in Article 16, reject one after another, until the number is reduced to seven, which seven shall constitute the tribunal.

The tribunal thus constituted shall by writing signed by the members, or a majority of them, appoint a time and place of meeting, and give notice thereof to the parties in controversy; and at such time and place, or at other times and places to which an adjournment may be had, it shall hear the parties, and decide between them, and the decision shall be final and conclusive. If any nation receiving the notice fail to transmit the names of four persons within the time prescribed, the parties in controversy shall name each two in their places; and if either of the parties fail to signify its rejection of a name from the list, within one month after a request from the other to do so, the other may reject for it; and if any of the persons selected to constitute the tribunal shall die, or fail for any cause to serve, the vacancy shall be filled by the nation which originally named the person whose place is to be filled.

EACH NATION BOUND BY TRIBUNAL OF ARBITRATION.

536. Every nation, party to this Code, binds itself to unite in forming a Joint High Commission, and a High Tribunal of Arbitration, in the cases hereinbefore specified as proper for its action, and to submit to the decision of a High Tribunal of Arbitration, constituted and proceeding in conformity to Article 535.

ANNUAL CONFERENCE OF REPRESENTATIVES OF NATIONS.

538. A conference of representatives of the nations, parties hereto, shall be held every year, beginning on the first of January, at the capital of each in rotation, for the purpose of discussing the provisions of this Code, and their amendment, averting war, facilitating intercourse, and preserving Peace.

LEONE LEVI'S DRAFT PROJECT OF A COUNCIL AND HIGH COURT OF INTERNATIONAL ARBITRATION.

1. Having regard to the earnest desire felt and expressed in every country to avert as much as possible the evil of war, by reason of the enormous loss of life and treasure, and of the burden of large armies which it entails; and by reason also of the retarding of civilisation and morals, the disorganisation of industry and commerce, and the disorder in public finances which are its necessary attendants;

2. Having regard to the fact that some wars are caused by passing gusts of passion, some by false rumours or allegations, some by sinister interests of individual men, or of small knots of men, and that in all such cases it is most important to give time for passion to subside, and for truth to be ascertained;

3. Having regard to the many instances in which States have submitted their disputes to the judgment of an Arbitrator or Arbitrators—sometimes a sovereign, sometimes a court of justice, sometimes a committee of jurists, sometimes a congress, sometimes (as in the Alabama Arbitration) publicists and jurists; and to the success and satisfaction which have resulted, in some cases immediately, in others after a short time allowed for irritation to pass away; in all more quickly and completely than after a war;

4. And, having regard to the fact that Arbitration clauses have been inserted in treaties of commerce—(See *Treaties of Commerce and Navigation between the United Kingdom and Italy, June 15, 1885, and Greece, November 16, 1883*)—and to the advantage of providing some permanent organisation for giving effect to the same in all cases where arbitration is decided upon by contending parties, thus avoiding the danger and difficulty of long negotiations or the purpose of creating a new method on the occurrence of every emergency. (See papers on the Reasonableness of

AVANT-PROJET RELATIF À LA CRÉATION D'UN CONSEIL ET D'UNE HAUTE COUR D'ARBITRAGE INTERNATIONAUX DE M. LEONE LEVI.

1. Considérant le désir sérieusement manifesté dans toutes les contrées du monde civilisé, de mettre fin, le plus tôt possibles, aux souffrances qui ont pour cause la préparation de la guerre, la permanence des armées, et, par suite inévitable, l'arrêt de tout progrès, la démoralisation et la ruine publique ;

2. Considérant que les conflits internationaux naissant souvent de prétentions ou d'effervescences momentanées, de fausses nouvelles ou d'ambitions personnelles, il est de la plus grande importance de laisser du temps à la réflexion et à la vérité pour produire leur influence conciliatrice ;

3. Considérant que, dans de nombreuses occasions, les nations ont soumis leurs différends au jugement d'un arbitre ou d'un conseil arbitral, — soit qu'elles aient accepté la décision d'un souverain, d'une Cour de Justice ou d'une assemblée de Jurisconsultes, comme dans le cas célèbre de l'Alabama ; que les sentences rendues ont presque toujours été exécutées à la satisfaction de tous. (Voir GLÜBER, *Droit des Gens*, page 318, note A, avec les précédents y mentionnés) ;

4. Ayant égard à ce fait, acquis à l'histoire des traités de commerce, que la clause d'arbitrage se trouve insérée dans un certain nombre des plus récents. (Voir *Traité de commerce et de navigation entre le Royaume-Uni et celui d'Italie*, 15 juin 1885 ; avec la Grèce, 16 novembre 1883) ; que cette clause a pour avantage à la fois, d'offrir une organisation permanente du tribunal auquel, en cas de contestations, les parties auraient à recourir, et d'éviter les pertes de temps, les difficultés, les dangers d'une Constitution à faire pour chaque cas particulier. (Voir les documents commu-

International Arbitration, read before the Association for the Reform and Codification of International Law, 1886 and 1887, by Henry Richard, Esq., M.P.)

5. The Committees of the Peace Society and of the International Arbitration and Peace Association earnestly urge the Governments of the several States of Europe and America to enter into communication among themselves with a view to appointing a Permanent Council of International Arbitration, a possible form of which is hereinafter suggested.

6. Each State to nominate a given equal number of members, publicists, and jurists, or other persons of high reputation and standing, to constitute a Council of International Arbitration, to undertake the settlement of international disputes by means of mediation or arbitration, and to take measures whereby international differences may be removed or settled in a friendly manner.

7. Such a Council may be formed by any group of States, even two only, for international affairs relating to themselves—*e.g.*, the United Kingdom may agree with the United States of America to form a joint Council, having the same functions upon questions between them as the more comprehensive body provided by Arts. 5 and 6 would have over the larger area of disputes.

8. If such a beginning is once made, even by two States only, it is probable that others will follow the example. And it will be one of the duties of the Council to extend the sphere of its influence beyond its Constituent States as opportunity occurs.

9. The Council will at its first meeting appoint its Secretaries.

10. On the occurrence of any grave dispute between any States represented on the Council, the Secretaries, at the request of any two members of the Council, shall summon a meeting to consider what steps may be adopted for preventing, if possible, a resort to war measures, and for offering the aid of the Council in the shape of Arbitration.

niqués par M. Henry Richard, M.P., à l'Association pour la réforme et la codification de la Loi internationale en 1886 et 1887 en faveur de l'arbitrage entre nations.)

5. Par ces motifs :

Les Comités réunis de la Société de la Paix et de l'Association internationale de l'Arbitrage et de la Paix invitent instamment les gouvernements de tous les États du monde civilisé à se concerter en vue de la constitution d'un Conseil permanent ayant mandat d'arbitrage international, dont les pouvoirs et l'action seraient établis comme suit :

6. Chaque État choisit, parmi ses publicistes, ses jurisconsultes, ses citoyens les plus considérés, les membres en nombre égal (à déterminer) du Conseil international d'arbitrage qui a pour mission de faire cesser les contestations, au moyen de la médiation, de l'arbitrage et des mesures propres à écarter ou à résoudre pacifiquement les difficultés internationales.

7. Conformément à l'esprit du présent avant-projet, on peut donc admettre que la création du Conseil résulterait de la Convention arrêtée entre deux États de recourir à l'arbitrage pour tout différend surgissant entre eux ; et que si, par exemple, le Royaume-Uni convenait avec les États-Unis d'Amérique de former un conseil commun pour l'arbitrage, ce Conseil aurait, dès sa formation, la compétence la plus étendue conformément aux attributions édictées par les articles 5 et suivants.

8. Le Conseil étant constitué par deux ou plusieurs États, il invitera les autres États à élire leurs délégués afin de se les adjoindre.

9. Le Conseil devra, dès sa première réunion, procéder à la désignation de ses secrétaires.

10. Dès qu'il surgira une difficulté entre des États représentés dans le Conseil, les secrétaires, à la requête des deux membres, convoqueront une réunion chargée d'examiner les mesures à prendre immédiatement en vue d'arrêter les préparatifs de guerre et d'offrir les bons offices du Conseil sous forme d'arbitrage.

11. On the occurrence of any grave dispute to which a State not represented on the Council is a party, the Council may be summoned in the same way to consider whether it is feasible and useful to offer the aid of the Council in the shape of Mediation.

12. When the contending States agree to leave their disputes to Arbitration, the Council will appoint some of its members, and some other persons specially nominated by the contending States, to be a High Court of International Arbitration, and its award in the case shall be binding on the contending States.

13. The appointment of the members of the High Court shall be made with special regard to the character and locality of the dispute, and shall terminate on the settlement of the dispute or abandonment of the arbitration.

14. It is not contemplated to provide for the exercise of physical force in order to secure reference to the Council, or to compel compliance with the award of the Court when made. The authority of the Council is moral, not physical. Nevertheless, when the award of its regularly approved Court is set at nought by the contending parties, it shall be the duty of the Council to communicate the facts of the case, and the award of the Court thereon, to all the States represented in the same.

15. Where, likewise, on the occurrence of any dispute, the action of the Council is ignored by either or both, or all the contending States, it will be within the competency of the Council to review the facts in dispute, and to report thereon to the States which it represents.

16. The Council will make rules for its own conduct and for the procedure of the High Court of International Arbitration. The rules adopted in the Alabama Arbitration, and those proposed by the Institute of International Law, may supply valuable suggestions in the framing of the same.

11. En cas de différends survenus entre des États non représentés au Conseil, les Secrétaires, de la même manière, provoqueront une réunion du Congrès pour offrir l'intervention avec l'espoir d'arriver à une médiation.

12. Lorsque les États en désaccord consentiront à soumettre leur différend à l'Arbitrage, le Conseil déléguera un certain nombre de ses membres pour former, avec les personnes désignées à cet effet par les États en litige, une Haute-Cour d'Arbitrage internationale dont la décision sera obligatoire.

13. Pour le choix des membres de la Haute-Cour, à constituer, il y aura lieu de tenir compte de la nature du conflit et de la contrée où il s'est produit. Leur mandat prendra fin aussitôt la sentence rendue ou l'arbitrage abandonné.

14. Aucune force armée ne peut être employée pour contraindre les Etats en litige à s'en rapporter à la décision de la Haute-Cour, ni pour amener l'exécution de la sentence rendue. L'autorité du Conseil est toute morale. Néanmoins, si, après acceptation de la juridiction les parties refusaient de se soumettre au jugement, il serait du devoir du Conseil de donner, à tous les Etats représentés dans ce Conseil, communication du jugement, en point de fait et décision, ainsi que de la constatation du refus d'exécution.

15. De même aussi, dans le cas où l'un ou l'autre des Etats en litige n'aurait pas invoqué l'intervention du Conseil, celui-ci n'en aurait pas moins le devoir de soumettre les faits litigieux à son examen et de faire son rapport aux Etats représentés par lui.

16. Le Conseil établira lui-même les règlements de son action et de la procédure de la Haute-Cour d'arbitrage internationale.

(Les règles adoptées dans l'arbitrage de l'Alabama et celles qui ont été proposées par l'Institut de Droit international fourniront, à cet effet, de précieuses indications.)

17. It is suggested that the seat of the Council shall be a neutral city, such as Berne or Brussels.

18. The appointment of members of Council should be for a definite number of years, provision being made for the appointment by the respective States of new members to fill the place of those who may cease to be members by retirement or death.

19. The cost of maintaining the Council shall be borne equally by every State concurring in its organisation. The cost of any reference to Arbitration shall be borne by the contending parties in equal shares, regardless of the result of the award on the same on the contending parties.

20. The preparation of a Code of International Law will be of great value for the guidance of the Council and High Court of International Arbitration. It will be the duty of the Council to prepare such a Code as far as possible.

LEONE LEVI,

Of Lincoln's Inn, *Barrister at Law*.

October, 1887.

Revised by LORD HOBHOUSE,

October, 1889.

17. On devra, de préférence, choisir pour siège du Conseil une ville située dans un pays neutre : Berne ou Bruxelles, par exemple.

18. Les membres du Conseil nommés pour un nombre d'années à déterminer, seraient remplacés en cas de démission ou de décès.

19. Les dépenses d'entretien du Conseil seront supportées également entre les Etats qui ont concouru à son organisation.

Les frais auxquels chaque décision arbitrale donnera lieu seront répartis également entre les adversaires quel que soit le résultat de l'arbitrage à l'égard de chacun d'eux.

20. La préparation d'un code de droit international sera d'une grande utilité pour guider le Conseil et la Haute-Cour d'Arbitrage International. Ce sera le devoir du Conseil de pousser aussi loin que possible le travail commencé.

LEONE LEVI,

Avocat, Lincoln's Inn.

Octobre, 1887.

Revisé par LORD HOBHOUSE,

Octobre, 1889.

NOTES ON A PERMANENT INTERNATIONAL TRIBUNAL OF ARBITRATION.

BY SIR EDMUND HORNBY.

1. By appointing its Members for a sufficiently long term—*i.e.*, ten years—absolving them from allegiance to any State whilst in office, rendering them capable of re-election (providing them with salaries and retiring pensions sufficient to place them for life beyond the necessity of truckling to Governments), and assuring them a social rank sufficient to satisfy the highest ambition (whilst denying them the power to accept during life any position, honour, or reward), not only will the services of men of the highest educational attainments be secured, but their ambition and talents will be devoted to rendering the tribunal the object of universal confidence and respect.

2. By confiding to them the elaboration of a system of international jurisprudence they will be induced to devote themselves to perfecting it, not only by research and study, but by care in administering and applying it in the special cases submitted to their decision, upon principles which will secure universal acceptance.

3. Although nominated by Governments, the Senators or Judges should in no sense be regarded as the representatives or mouthpieces of Governments; and, having nothing to hope for, and nothing to fear from the authority nominating them, they will alone look for reward in the confidence and esteem their devotion to the interests of humanity in general—as distinguished from more isolated national interests—will earn for them.

4. The Tribunal must itself establish a procedure, having for its sole object the presentment and development of distinct and clear issues upon which its judgment is sought. It must have powers to indicate and procure all such evidence as it considers necessary to enable it fully to elucidate the facts presented. It must safe-

LE TRIBUNAL INTERNATIONAL

PROPOSITION DE SIR EDMOND HORNBY

(Traduction libre.)

1. En donnant aux fonctions de ses membres une durée suffisante et en les dégageant de toute attache avec un État quelconque pendant qu'ils sont en office, en les faisant rééligibles en leur assurant des honoraires suffisants et des pensions libérales, et en leur donnant un rang qui satisfasse à toute légitime ambition, on assurerait au Tribunal la confiance et le respect universels.

2. Chargés d'élaborer une jurisprudence internationale, ils se dévoueraient à son perfectionnement, non seulement par des recherches et des études, mais encore par l'application intelligente des principes de cette jurisprudence aux causes qu'ils auraient à juger.

3. Bien que nommés par les gouvernements, les Sénateurs ou Juges ne pourront pas être considérés comme leurs représentants ou leurs instruments, et comme ils n'auront rien à espérer ni à craindre d'eux, ils ne s'occuperont que des intérêts généraux et humanitaires qui leur seront confiés.

4. La Cour internationale d'arbitrage établira elle-même sa procédure, en ayant pour unique préoccupation de la rendre claire et pratique. Elle indiquera les moyens de preuve qui lui paraîtront nécessaires pour élucider les allégués des parties. Elle empêchera

guard all possibility of masterful will amongst its members prejudicially or mischievously influencing the corporate mind of the tribunal, by a rigid system specially framed to secure the fullest and freest expression of individual thought. Under no circumstances must the judgment be other than that of the Tribunal—be it unanimous or only that of a majority—provision being made for recording the separate or dissenting judgments as interesting memorials of individual opinions, to be published, after a certain lapse of time, when deemed expedient.

5. The *detailed* reasons of an award or judgment should not be given until it has been complied with. With compliance or non-compliance, the Tribunal, however, should have nothing to do. It is *functus officio quoad* the particular case submitted, the moment the award for judgment is communicated, under the seal of the court, by its chief Secretary.

6. The enforcement of an award or judgment is matter of consideration alone for the *Concurring Parties* to the establishment of the tribunal. It is open to them individually or collectively to remonstrate on non-compliance; to compel performance by withdrawal or suspension of diplomatic relations (Consular or trade relations remaining unaffected), by the infliction of a pecuniary penalty, by seizure and occupation of territory, and even in extreme cases, by war.

7. Under no circumstances must any member of the Tribunal enter into communication, direct or indirect, with the Sovereign, Government, or the Press of any nation; the Tribunal, in its corporate character and through its chief Secretary, alone being able to enter into such communications.

8. No member should reside in the country by the Government of which he is nominated. For nine months of each year every member must reside within the College grounds, or within twenty miles thereof.

9. No member of the Tribunal, by virtue of his position, should

toute influence prédominante sur ses membres et assurera la libre expression des opinions individuelles. En aucun cas le jugement ne sera autre que celui de l'unanimité ou de la majorité de la Cour, réserve faite de la mention des votes de minorité, qui pourront être publiés après un certain laps de temps si on le juge à propos.

5. Les considérants d'un jugement ne seront pas donnés avant que le jugement lui-même ait été exécuté. Les membres de la Cour n'auront pas à s'occuper de cette exécution. Ses fonctions cesseront dès que la notification du jugement aura été faite par le Chef-secrétaire sous le sceau du Tribunal.

6. L'exécution d'un jugement sera l'affaire des parties qui auront concouru à la constitution du Tribunal. C'est à elles qu'il incombera de réclamer individuellement ou collectivement contre un refus de se soumettre au jugement et d'en exiger l'exécution, par la rupture, provisoire ou définitive, des relations diplomatiques, par une amende, par la saisie et l'occupation d'un territoire, et, dans des cas extrêmes, par la force armée.

7. En aucun cas un membre du Tribunal ne pourra entrer directement ou indirectement en communication avec le souverain, le gouvernement ou la presse d'un pays ; la Cour seule comme collectivité et par son Chef-secrétaire pourra entretenir des relations de ce genre.

8. Aucun membre de la Cour ne pourra résider dans le pays dont le gouvernement l'a nommé. Durant 9 mois de l'année tout membre de la Cour sera tenu de résider au siège du Tribunal où à 20 milles de ce siège au maximum.

9. En vertu de sa position aucun membre de la Cour ne pourra

be entitled to any official title beyond that of "Senator," but he should be awarded precedence, in every nation, over all laymen not being sovereign rulers.

10. The "Chief Secretary" of the Tribunal should rank on a footing of equality with the principal Secretaries of State of all nations.

11. The site of the College grounds should be declared extra-territorial and neutral, and all persons residing, employed or found therein, should be within the sole jurisdiction of the Tribunal, exercisable, at the discretion of the same, by itself or, at its request, by the judicial authorities of the Government of the State within the territorial boundaries of which the College is situated.

12. To the Government of such State should be entrusted the collection and custody of the funds. Each Concurring State should—in certain fixed proportions to be determined on—contribute towards the maintenance of the Tribunal and College, the payment of salaries and other expenses, and such Government should expend the same in accordance with the requisitions of the Chief Secretary, countersigned by the President of the Tribunal and two members thereof.

13. The Tribunal should consist of not less than thirteen Senators (not necessarily jurists by profession, but statesmen and diplomatists, or men who have filled judicial offices), to be nominated as hereinafter mentioned, and at the commencement of each year such members should elect by ballot one of their number to act as president.

14. There should be appointed a Chief Secretary of the Tribunal, who alone should be in official communication with the Concurring Powers. The duties of this officer should be, amongst others, to regulate the sittings of the Tribunal, to receive all documents, and generally act as keeper of the archives.

15. In addition there should be a Bursar, assistant secretaries,

accepter un autre titre officiel que celui de "Sénateur". Il lui sera accordé en chaque pays la plus haute position après celui du souverain d'un pays.

10. Le Chef-secrétaire sera mis sur le même rang que les principaux secrétaires d'Etat de toutes les nations.

11. Le siège de la Cour sera déclaré ex-territorial et neutre, les employés du Tribunal étant justiciables de lui-même, ou, sur sa demande, placés sous la juridiction de l'Etat dans les limites territoriales duquel le Tribunal a son siège.

12. Le Gouvernement de cet Etat aura à recueillir et à gérer le fonds du Tribunal. Chacun des Etats contractants contribuera, dans des proportions à déterminer, aux frais du Tribunal, au paiement des honoraires et aux autres dépenses. Le gouvernement chargé de la gérance du fonds opérera les paiements sur mandats du Chef-secrétaire visés par le Président et deux membres de la Cour.

13. Le Tribunal se composera, en minimum, de treize Sénateurs, qui ne seront pas nécessairement juristes de profession, mais aussi hommes d'Etat et diplomates ou magistrats ayant rempli des fonctions judiciaires. Ces Sénateurs seront nommés dans la forme prescrite ci-dessous. Chaque année ils éliront un d'entre eux comme président au scrutin secret.

14. Ils nommeront un Chef-secrétaire du Tribunal, qui aura seul à entrer en relations officielles avec les gouvernements contractants. Le Chef-secrétaire aura entre autres à convoquer les séances du Tribunal à recevoir toutes les pièces et à tenir en ordre les archives.

15. Il y aura aussi un caissier, des secrétaires adjoints, un biblio-

a librarian, and such clerks, interpreters, short-hand writers, printers, messengers, servants, etc., as shall be necessary.

16. All and every person employed should on appointment be sworn to keep secret all such information or knowledge as he may acquire by virtue of his office, under penalty of dismissal, forfeiture of pension, and incapability of holding any public appointment anywhere in the service of any one of the Concurring Powers.

17. Every Concurring Nation should be entitled to name one member of the Tribunal, such member not necessarily being a citizen of such nation.

18. In the event of a Concurring Nation not nominating a member, the Tribunal itself should, if the number of members be under thirteen, nominate and by ballot elect a member.

19. Every member of the Tribunal should on his acceptance, and previous to entering on the duties of his office, solemnly renounce and be absolved from allegiance to the country of his birth or adoption, or to the Sovereign of the same, and take an oath to perform his duties without fear, favour, or affection, and with perfect impartiality—undertaking to hold no communication with any Ruler or Government, and not to apply for or receive during life any rank, income, reward, decoration, or office from any Ruler or Government; and any member guilty of infraction of such undertaking should *ipso facto* cease to be a member, and should forfeit all right or title to any pension.

20. The first duty of the Tribunal should be to frame a Code of procedure, providing for the mode in which disputes and differences between nations should be submitted to it.

21. This Code should provide that, immediately on it being shown that any difference cannot be satisfactorily settled by ordinary diplomatic action, as evidenced by the proposal of one of the parties to refer the same to arbitration, the Tribunal be seized with the determination of the same.

thécaire et le nombre voulu d'interprètes, de calligraphes, de commis, de facteurs, etc.

16. Tout employé prêtera serment en entrant en fonctions, de garder le secret sur tout ce qu'il peut avoir appris dans l'exercice de sa charge, sous peine de perdre sa place et sa pension et d'être déclaré incapable de remplir aucun office au service d'un des gouvernements contractants.

17. Toute nation contractante a le droit de nommer un membre du Tribunal, qui ne sera pas nécessairement citoyen de cette nation.

18. Si l'une des nations contractantes ne nomme pas un membre du Tribunal et que le nombre des membres soit inférieur à treize, le Tribunal lui-même fera cette nomination au scrutin secret.

19. En acceptant sa nomination et avant d'entrer en fonctions, tout membre du Tribunal doit renoncer solennellement à tout engagement vis-à-vis de son pays d'origine ou d'adoption, ainsi que vis-à-vis de l'autorité souveraine de ce pays, et en être entièrement libéré ; il doit prêter serment de remplir son office sans crainte, sans favoritisme et avec une parfaite impartialité, en s'engageant à ne solliciter et à n'accepter pendant sa vie, aucun rang, aucun revenu, aucune récompense, aucune décoration et aucun office d'un prince ou d'un gouvernement, sous peine de perdre sa charge de membre du Tribunal, ainsi que tout droit ou titre à une pension.

20. Le premier devoir du Tribunal sera d'élaborer un code de procédure fixant la manière en laquelle les différends entre nations doivent lui être soumis.

21. Ce code stipulera qu'aussitôt qu'on verra qu'un différend ne peut pas être réglé d'une façon satisfaisante par la voie diplomatique et qu'une des parties recourra à l'arbitrage, le Tribunal se considérera comme saisi du litige.

22. From that moment neither party to the difference should directly or indirectly do anything which could be interpreted as an attempt or indication of persistence in the conduct or acts which led to the difference.

23. If the nature of the difference is such that a *modus vivendi* pending the settlement is necessary and cannot be arrived at by mutual agreement, the Tribunal should be requested to arrange the same, each of the two disputant nations sending in writing, within a time to be limited, its view of what the character of the *modus vivendi* should be.

24. On receipt of the same the Tribunal should nominate a Committee of itself, consisting of three members, *not* being of the nationality of the disputants, to arrange the terms of the *modus*, and should, if the same be not accepted, sit as a Court of Appeal from the decision of such Committee, and finally determine the same.

25. The Tribunal should appoint a time within which the disputant powers should prepare and send in their respective cases and counter-cases.

26. On receipt of such cases the Tribunal should consider the same, and therefrom frame distinct issues of facts and law for decision.

27. Such issues should then be communicated to the disputants for their observations and assent. If they agree, then a day should be appointed, when the Tribunal will hear the case. If the parties do not agree on the issues, the hearing must be deferred until, with the assistance of the Tribunal, they are framed to meet the views of the litigants.

28. The disputant Powers should, if either think fit, nominate agents to represent them, as also counsel to argue the respective cases on the hearing.

29. All documents, including cases and counter-cases, may be

22. A partir de ce moment, chacune des parties en cause s'abstiendra de tout acte qui, directement ou indirectement, pourrait être interprété comme une agression de sa part ou comme indiquant qu'elle persiste dans la conduite ou les faits qui ont provoqué le litige.

23. Si le différend est de telle nature qu'un *modus vivendi*, en attendant sa solution, soit nécessaire et ne puisse être fixé à l'amiable, le Tribunal sera invité à le déterminer, après que chacune des nations litigantes lui aura fait connaître par écrit, dans un délai limité, sa manière de voir sur le caractère que doit revêtir le *modus vivendi*.

24. A la réception de ces pièces, le Tribunal nommera une commission de trois membres, dont aucun ne peut être ressortissant d'un des Etats en cause, et la chargera d'arranger les termes du *modus vivendi*; si ce dernier n'est pas accepté, le tribunal siégera comme cour d'appel et prononcera en dernier ressort.

25. Le tribunal fixera aux Etats litigants un terme avant l'expiration duquel ils devront préparer et envoyer leurs mémoires pour et contre.

26. Après réception de ces mémoires, le tribunal les examinera et rédigera un exposé des questions de fait et de droit, soulevées dans l'espèce.

27. Cet exposé sera soumis aux parties pour qu'elles l'acceptent ou fassent leurs observations. S'il est accepté, on fixera le jour où la cause sera appelée. S'il n'est pas accepté, la cause doit être ajournée jusqu'à ce que, avec le concours du Tribunal, il soit rédigé conformément aux vues des parties en cause.

28. Les Etats litigants peuvent, s'ils le jugent à propos, désigner des agents pour les représenter et des avocats pour soutenir leur cause devant le Tribunal.

29. Tous les documents, y compris les mémoires des deman-

in the respective languages of the disputants, but must be accompanied by verified translations in French, and all oral arguments must be in French.

30. The Tribunal should have full power to call for the production of any documents it may require, and for such other evidence as it may desire ; and it should be empowered *proprio motu* to issue commissions for the purpose of obtaining evidence, appoint commissioners, and enable them to administer oaths ; and to receive and consider the evidence thus obtained, if it thinks desirable, in private ; the same being preserved, under the seal of the Court, in the archives thereof.

31. On the settlement of the issues, the Tribunal should possess the power to permit the intervention of third Powers on due and sufficient cause being shown that their interests are affected, or likely to be affected, by any decision the Tribunal may arrive at, and in its decisions on the main issue between the original parties to the dispute the Tribunal should be empowered to make such terms as regards such intervening parties as will safeguard their interests.

32. The mode in which the decisions or judgments of the Tribunal are to be given should be as follows :—

After consultation and discussion, each member of the Tribunal should draw up his judgment in the first instance in *draft*, and each judgment should be identified by a private mark, so that the author of the same should be unknown to his colleagues. Copies of each judgment, unmarked and unauthenticated, should be supplied by the chief Secretary to every member of the tribunal, each member thus having the opportunity of becoming acquainted with the views and opinions of his colleagues before the same are finally settled, without however knowing *whose* views and opinions they are, so that each Senator may have the opportunity of considering such views and opinions, of pointing out fallacies and errors, or correcting or modifying his own views. Then each

deurs et des défendeurs, peuvent être rédigés dans la langue des parties, mais ils doivent être accompagnés de traductions vidimées en langue française et tous les débats oraux doivent avoir lieu en français.

30. Le tribunal a le droit d'exiger la production des documents qu'il juge utiles et des autres moyens de preuves qu'il peut désirer ; il peut nommer de son propre chef des commissions pour s'assurer de certains faits et nommer des commissaires ayant la faculté d'assermenter des témoins ; et de recevoir et apprécier à huis clos les preuves ainsi obtenues. Les rapports de ces commissaires sont conservés dans les archives sous le sceau de la Cour.

31. Dans ses exposés, le Tribunal peut permettre l'intervention de tierces parties lorsqu'il est évident pour lui que leurs intérêts sont ou seront vraisemblablement mis en cause par le jugement qui sera rendu, et, dans la décision sur la partie essentielle du litige entre les litigants primitifs, il a le droit de faire des stipulations en vue de sauvegarder les intérêts des intervenants.

32. Les jugements seront rendus dans les formes suivantes :

Après la consultation et la discussion, chaque membre du Tribunal opinera en première instance par écrit et sous pli cacheté portant un signe connu de lui seul, de telle sorte que ses collègues ne sachent pas quel a été son jugement. Le Chef-secrétaire remettra une copie de ces avis à chacun des membres du Tribunal, de manière à ce qu'il connaisse les opinions de ses collègues avant le vote définitif, sans toutefois savoir lequel d'entre eux a émis tel ou tel avis. De cette façon, chaque Sénateur pourra apprécier ce qu'il y a de juste ou d'erroné dans les appréciations des autres membres de la Cour et aura la possibilité de corriger ou de modifier sa propre opinion. Chaque membre du

member should draw up his *final* judgment, affixing thereto his private mark, and send the same in a sealed envelope to the chief Secretary.

33. The chief Secretary should then, after perusing the same, determine in whose favour the majority of the judgments is, and should draw up from the same minutes, and submit the same to the authors of the majority of the judgments, which minutes as finally settled, should constitute the judgment of the Tribunal.

34. Such judgment should then be officially delivered to the disputants, and within one month of such delivery to all the Concurring Nations. If the judgment be complied with, then the judgments, accompanied by a precis of the case and counter-case, should be communicated *in extenso*, so that every nation may know the views of the Tribunal on the law and the facts.

35. No appeal should lie from such judgment. All the judgments—as well those of the minority as those of the majority, together with the final judgment—should be made matter of record, and should be published, with the names of the respective authors, together with the precis of the case and counter-case, at the end of a term—say—of three years.

36. The Tribunal, besides hearing and deciding judicially matters in difference, should be also prepared at the instance of any two or more nations to express an extra-judicial opinion on any question of law or interpretation of treaties, with the object of preventing differences arising in the future.

37. It should also be ready, in view of Conferences or Congresses of Sovereigns and Statesmen, to suggest modifications and alterations with reference to international law on points of difference which remain unsettled—such as privateering, right of search, neutral rights, blockade, &c., &c.—and on which differences of opinion exist.

38. The Concurring Powers should also confer on the Tribunal in its character of a “College of International Law,” a faculty to

Tribunal émettra ensuite par écrit son jugement *définitif*, en y apposant sa marque particulière et en l'envoyant sous pli cacheté au Chef-secrétaire.

33. Le Chef-secrétaire déterminera la majorité après avoir lu ces avis, au moyen desquels il rédigera le jugement, dont il soumettra le projet aux membres qui ont formé la majorité ; ce projet, après avoir été révisé et approuvé, constituera le jugement définitif du Tribunal.

34. Ce jugement sera alors notifié aux parties litigantes, puis, dans le délai d'un mois, à tous les Etats contractants. Dès qu'il aura été accepté, les avis des membres du tribunal seront portés *in extenso* à la connaissance des Etats avec un résumé de la demande et de la réplique, de manière à ce que chaque nation puisse se rendre compte de l'opinion du Tribunal sur les questions de droit et de fait.

35. Le jugement rendu sera sans appel. Au bout d'un certain temps, trois ans par exemple, les avis de tous les membres du Tribunal, majorité et minorité, feront l'objet d'un rapport, qui sera publié avec les noms des opinants et avec le résumé de la demande et de la réplique.

36. Outre le devoir de trancher par voie juridique les litiges qui lui sont soumis, le Tribunal aura celui d'exprimer, sur la demande de deux ou plusieurs nations, son opinion sur des questions de droit ou sur l'interprétation de traités, en vue de prévenir des litiges dans l'avenir.

37. Il devra aussi se préparer à faire des propositions aux conférences ou congrès de souverains et d'hommes d'Etat pour des modifications aux lois internationales sur des points qui n'ont pas encore été réglés, en matière de lettres de marque, de perquisitions, de droit des neutres, de blocus, etc., et sur lesquels les opinions diffèrent.

38. Les Etats contractants donneront aussi au Tribunal, en sa qualité de " Collège de droit international ", la faculté de conférer

grant the "degree" of "Doctor of International Law," which should only be conferable on students who had obtained the degree of Doctor of Laws, or its equivalent, in the national colleges of the several Concurring Countries, and this degree should rank as the highest degree in the faculties of law, and should entitle the holder thereof to precedence according to date in all courts.

39. Switzerland seems a central and accessible locality in which to locate the Tribunal or college. The building should be worthy of the object, and, since the Senators should be in residence at least nine months of the year, sufficiently spacious to accommodate them and the staff. The site and grounds should be extra-territorialised, the whole being placed under the guardianship of the Republic, the Cantonal Government being entrusted with the necessary funds for the purchase of the selected site, for the erection of the building, and for the disbursement of all the expenses of maintenance.

40. The first cost would hardly exceed a sum of one million sterling, whilst the annual expenditure may be put at about £200,000 a year.

This first cost and annual expenditure might be defrayed by the concurring Powers in proportion and according to their rank as first, second, or third class Powers.

Thus, if for instance, six First-class Powers contributed to the Capital Fund £100,000 each, eight Second-class Powers £50,000 each, and eight or ten Third-class Powers £25,000 each, a sum of £1,200,000 would be provided, sufficient to purchase the site and defray the cost of buildings, &c., &c.

If then these Powers—which may be called the "Concurring Powers"—agreed to contribute each of them annually—the First-class £20,000, the Second-class £10,000, and the Third-class £5,000, an income of £240,000 would be raised, sufficient to provide amply for salaries and all other expenses, as well as to form the nucleus of a Pension Fund.

le grade de " Docteur en droit international ", exclusivement à des étudiants qui ont obtenu le grade de docteur en droit ou son équivalent dans les Universités des dits Etats ; ce grade sera considéré comme supérieur à tous les autres dans les facultés de droit et donnera à celui qui le porte la préséance dans toutes les Cours de justice.

39. La Suisse semble être un point central et accessible pour servir de siège au Tribunal. L'édifice doit être digne de sa destination et suffisamment spacieux pour les juges, qui doivent y résider au moins neuf mois de l'année, et pour le personnel. Il doit jouir de l'exterritorialité et être placé sous la garde de la République. Le gouvernement cantonal doit être pourvu des fonds nécessaires pour l'achat du terrain, pour la construction de l'édifice et pour toutes les dépenses d'entretien.

40. Les premiers frais excéderaient à peine vingt-cinq millions francs et les dépenses d'entretien peuvent être évaluées à cinq millions par année.

Les premiers fonds doivent être fournis par les Etats contractants en proportion de leur rang comme puissances de premier, de second ou de troisième ordre.

Si, par exemple, six puissances de premier ordre contribuent pour 2,500,000 fr. chacune, huit de second ordre pour 1,250,000 fr. et huit ou dix de troisième ordre pour 625,000 fr., on réunira ainsi une somme de 30,000,000 fr., amplement suffisante pour couvrir les frais d'achat du terrain, de construction de l'édifice, etc., etc.

Si ensuite ces puissances, que nous appellerons " puissances contractantes ", consentent à participer annuellement aux frais à raison de 500,000 fr. pour la première classe, 250,000 fr. pour la seconde et 125,000 fr. pour la troisième, cela suffira pleinement pour les honoraires et toutes les autres dépenses, de même que pour former le noyau d'un fonds de pensions.

“CONSERVATORS OF COMMERCE.”

1606.

A Treaty between Henry the IVth., King of France, and James the 1st, King of England, for the Security and Freedom of Commerce between their Subjects. At Paris the 24th of February, and ratify'd by Henry the IVth, the 26th of May, 1606.

“VII. And because it is impossible to provide against particular Complaints, even concerning the Quality of the Merchandizes and Commodities which are transported from the one Kingdom to the other, and prevent the Mistakes and Abuses there committed; it has been agreed, That for the better and readier prevention thereof, his most Christian Majesty shall name two noted *French* Merchants in the City of *Roan* [Rouen], Men of Substance and Experience, who, together with two *English* Merchants of like Quality, who shall be nam'd by the Ambassador of *Great Britain* residing at his most Christian Majesty's Court, shall receive the Complaints of the said *English* Merchants, and remove all Differences that may happen on account of the said Traffick and Commerce, in the said City of *Roan*, and Harbours of the said Province. As also his Majesty of *Great Britain* shall name two noted Merchants in the City of *London*, who, in like manner, together with two *French* Merchants, nam'd by the *French* Ambassador residing at the Court of his Majesty of *Great Britain*, shall do the like, and readily provide against and satisfy all Complaints that may happen on account of the foresaid Traffick and Commerce. And when they cannot agree, the foresaid four Merchants shall agree, upon a fifth *French* Merchant if it be at *Roan*, and upon an *English* Merchant if it be at *London*, so that the Judgment pass'd by

the Plurality of Voices shall be follow'd, and put in execution; and for that effect necessary Powers and Commissions shall be granted them on both sides. And in case there should happen any remarkable Difficulty, fit to be laid before the one or the other Prince, the said Merchants thus deputed on both sides shall respectively acquaint the Council of the one and the other Prince therewith, to have it discuss'd without any Delay

“VIII. The like Establishment shall be made and observ'd in the Cities of *Bourdeaux* and *Caen*, as also in the Cities and Towns of the Kingdoms of *Great Britain* and *Ireland*, in order to provide (thro the means of those who shall be nam'd and deputed) against the Complaints and Difficulties that may happen about the Regulation of the said Traffick and Commerce, in the same Form as above.

“IX. And for the greater Ease of the said Merchants of both sides, it has been propos'd, That the said Merchants, as well *French* as *English*, who shall henceforth be call'd *Conservators of Commerce*, shall be nam'd and deputed from year to year and shall make Oath before the Prior and Consuls, as well of the City of *Roan*, and other Cities of the Kingdom of *France*, where they shall be establish'd, as in the City of *London*, and other Places, where it shall be needful, to acquit themselves well and faithfully of the said Charge; and shall be oblig'd, during the said time, to perform their Office, according as occasion shall require, without exacting anything of the Subjects of either Kingdoms except only for the written Acts and Deeds which the Parties shall be willing to have, for which a reasonable Fee shall be paid.

“X. That all extraordinary Salaries, and other Profits and small Perquisites which the Officers of Places take and demand of the Merchants of the one or other Kingdom, the Guards and Counterguards, Laders and Unladers, Packers, Porters, and in general all others, shall be regulated and moderated by the said Conservators, and a reasonable Tax shall be laid on by them for the same, which shall be sent to the Council of the one and the other Prince, there to be revis'd and settled, and

afterwards publish'd and fix'd on the Cross-ways and publick Places, that so every one concern'd on both sides may certainly know what he ought to pay.

"XI. The Conservators shall also inform themselves particularly of the Franchises and Privileges that any Cities or Burghers of the same pretend in either Kingdom, of the Conveniency and Inconveniency of the same; and shall give an account thereof to both Princes, in order to have them regulated and modify'd, according to the antient Usages of those Places, as it shall be settled in the Council of the said Princes.

"XII. It shall be the Business of the said Conservators to take care of the Weights and Measures in every city of the one and the other Kingdom, that so there may be no Fraud or Abuse on either side; and with regard to Merchandizes, they shall regulate such as they shall judge proper to be inspected and visited.

"XIII. And forasmuch as the chief Complaint made by the Ambassador of *Great Britain*, and the *English* Merchants, is against an Arrest made in the Council of his most Christian Majesty the 21st day of *April*, 1600, bearing a Regulation in the Affair of the Cloth carry'd by the *English* Merchants into the Kingdom of *France*, and especially into the Provinces of *Normandy*, *Bretagne*, and *Guienne*; his most Christian Majesty being willing more and more to satisfy his good Brother the King of *Great Britain*, upon the many Sollicitations made by his Ambassador; desiring also to facilitate the Trade of the said Cloth, yet without any Disadvantage to the Publick; has and does revoke the said Arrest, and has and does for the future discharge the said *English* Merchants of the Confiscation made as well as by this, as by other Arrests and Ordinances occasion'd by the said Cloth-Trade, and has and does permit them to carry back into *England* bad and unfashionable Cloth. And forasmuch as the said *English* Merchants may be vex'd and put to trouble, and their Cloth detain'd and seiz'd, with Damage and Loss of Time in the Contest that may happen about the quality of the said Cloth, it has been agreed, That the said Conservators of Commerce, deputed as above, in case the

Complaint comes to them, shall judg which of the said Cloths are good and fit for the Market, according to their Price and Value, to be sold and laid out, or which of them shall be return'd to *England*, as being bad : and his Majesty shall rely upon their Conscience and Loyalty, holding that acceptable which shall be ordained by them in this matter ; not meaning however that any Duty should be paid at the Removal and Return of the said bad Cloth into *England*."

A General Collection of Treaty's, Manifesto's, etc., from the year 1495, to the year 1712. The Second Edition. London. Printed for J. J. and P. Knapton, etc. etc.. M.DCC.XXXII. Vol. II., pages 150-152.

TREATIES OF WESTMINSTER.

1654-1674.

I.—BETWEEN THE ENGLISH AND DUTCH REPUBLICS.

Concluded April 5, 1654.

Treaty of Peace and Union between Oliver Cromwell, as Protector of England, and the United Provinces of the Netherlands. At Westminster, April 5, 1654.

[Consisted of 33 Articles.]

“XXVIII. Whereas the Ships and Effects of certain *Englishmen* have been seiz'd and detain'd in the Dominions of the King of *Denmark*, since the 18th day of *May*, 1652, 'tis stipulated, agreed and concluded on both sides, and the States General have oblig'd themselves, and do oblige themselves by these Presents, that all and singular the Ships and Goods detain'd as aforesaid, and hitherto remaining in Specie, together with the true and just Value of those that have been sold, embezzled, or otherwise dispos'd of, shall be restor'd within a fortnight after the Arrival of the Merchants and Mariners whom it concerns, or their Attorneys impower'd to receive them; and the Losses also which have accrued to the *English* aforesaid, by the Detainer thereof, shall be made good, according to an Appraisement to be made by *Edward Winstow, James Russell, John Becx,* and *William Vander Cryssen*, Arbitrators indifferently chosen, as well on the part of his Highness as of the said States General (the

Form or Instrument of whose Arbitration is already agreed on) to examine and determine the Demands of the Merchants, Masters and Owners, to whom the said Ships, Effects, and Losses appertain. Which said Arbitrators shall meet in that call'd *Goldsmiths-Hall* here in *London*, on the 27th of *June* next, O.S. or sooner if possible, and shall take a solemn Oath on the same Day before the Judges of the High Court of Admiralty of *England*, that they will renounce all manner of Respect and Relation to either State, and the Profit of every private Person: and moreover, that the Arbitrators shall, after the first day of *August* next ensuing, unless they agree beforehand, be shut up in a Room separate from all other Persons, without Fire, Candle, Meat, Drink, or other Support, till they have agreed of the Matters aforesaid to them refer'd. Which Sentence or Award by them given, shall bind and oblige both Parties. And the States General of the *United Provinces* firmly bind and oblige themselves by these Presents to perform the same, and to pay the Sum of Money which shall be awarded by the said Arbitrators here at *London*, for the use of the said Owners, to such Person or Persons as his Highness shall name within twenty-five Days after the Award so given. And the States General within two Days after the mutual Exchange of the Instruments for ratifying the Articles of the Peace, shall pay the Sum of five thousand Pounds *English* here at *London*, towards the Expences to be incurr'd by the Merchants, Masters or Owners in their Voyage to *Denmark*, and the sum of 20,000 Rix-Dollars to such Persons as his Highness shall nominate, within six Days after those Persons shall arrive there, for the use of the Merchants, Masters' and Owners, for repairing and fitting out their Ships for their return. Which said Sums shall be in part of Payment of the Sum which shall be contain'd in the Award of the said Arbitrators. And that a Bond and Security shall be given (the Form of which Bond is already agreed on) by sufficient Men able to answer it, and living here in *London*, obliging themselves in the sum of 140,000 Pounds *English* Money (the Original of which Bond shall be deliver'd at the same time with the Instrument of the Ratification) to make

Restitution as aforesaid, and to pay as well the twenty thousand Rix-Dollars, as the other Sums which shall be awarded as aforesaid. And if all or any of the Conditions abovemention'd are not effectually and really perform'd, in the time and manner prescrib'd, then the Penalty of the said Bond shall be demanded, and the said Sum of 140,000 Pounds *English* Money shall be paid to the Person or Persons to be nominated by his Highness, and the Losses of the Merchants, Mariners, and Owners, made good out of it.

“XXIX. Whereas certain disputes and controversies have happen'd betwixt the Republick of *England*, and the King of *Denmark*, on Account of detaining the Ships and Goods as mentioned in the foregoing Article ; and the States General of the *United Provinces* have engag'd for the Restitution of the aforesaid Ships and Goods, and consented to give Security for such Restitution, and Repair of Damages, as is specify'd in the former Article: 'Tis stipulated, agreed, and concluded, that when these things are well and truly done and perform'd, all Controversys, Disputes, Injurys, and Hostilitys, between the said Republick and the King of *Denmark*, on Account of the detaining of the same, shall cease and be bury'd for ever in Oblivion ; so as that the said King, with his Kingdom and Dominions, shall be included as a Friend in this Treaty and Confederacy, and restor'd to the same Friendship and Affinity with both Republicks, as he enjoy'd before the said Detainer, and in the same manner as if it had never happen'd ; and his Deputys and Ambassadors shall be admitted with the same Honour as the Deputys and Ambassadors of other States, who are united in Friendship.

“XXX. 'Tis agreed, as above, that four Commissioners shall be nam'd on both sides, at the time of exchanging the Ratifications, to meet here at *London*, on the 18th of *May* next, according to the *English* Style ; who, at the same time, shall be instructed and authorized, as they are instructed and authorised by these Presents, to examine and distinguish all those Losses, and Injurys, in the Year 1611, and after to the 18th of *May* 1652, according to the *English* Style, as well in the *East*

Indies, as in *Greenland*, *Muscovy*, *Brazil*, or wherever else, either Party complains of having suffer'd them from the other. And the Particulars of all those Injurys and Damages shall be exhibited to the said Commissioners so nominated, before the aforesaid 18th day of *May*, with this Restriction, that no new ones shall be admitted after that Day. And if the said Commissioners don't agree about adjusting the said Differences, so particularly exhibited and express'd in Writing, within the space of three Months, to be computed from the said 18th day of *May*; in such Case the said Differences shall be submitted, as they are by these Presents submitted, to the Judgment and Arbitration of the Protestant *Swiss* Cantons, who shall be requir'd, by the Instrument already agreed on, to assume that Arbitration in such Case, and to delegate Commissioners of like nature for the same purpose, so instructed that they shall give Judgment within the six Months next following the Expiration of those three months; and whatsoever such Commissioners, or the major part, shall determine within the said six Months, shall bind both Parties, and be well and truly perform'd.

“XXXI. 'Tis agreed and concluded, that both Parties shall truly and firmly observe and execute the present Treaty, and all and every Thing and Things therein contain'd and comprehended; and shall effectually take care that the same be observ'd and performed by the People, Subjects, and Inhabitants of either.”

XXXII. This Article provides, “For the more secure performance of this Treaty of Peace and Confederacy whosoever shall be chosen Captain-General, Governor, or first President, or Stadtholder General of the Armies, or Militia, by Land, or Admiral or Commander of the Fleets, Navy, or the Maritime Forces, shall be oblig'd and bound to confirm this Treaty and all the Articles of it by Oath”; &c.

XXXIII. This Article refers to the ratification and publishing of the Treaty.

A General Collection of Treatys of Peace and Commerce, Renunciations, Manifestos, and other Publick Papers from the Year 1642 to the End of the Reign of Queen Anne. London. Printed for J. J. & P. Knapton, &c. M.DCC.XXXII. Vol. III., pages 76-79.

Documents referring to above :—

Here follows the Substance of the Commission, on the part of his Serene Highness the Lord Protector.

Signed Oliver, P.

Ibid, pages 80, 81.

The Commission from the Lords the States General.

Signed by Henry Lawrence, Pres.
and eight others, Commissioners.

Ibid, pages 81-83.

The Ratification of the Lord Protector of the Republick of England, Scotland and Ireland, &c.

Husey.

Oliver, P.

Ibid, pages 83, 84.

The Ratification of the Lords the States General.

N. Ruysch and Former Signatures.

Ibid, pages 84-86.

A Sentence of Arbitration, pass'd between Oliver Cromwell, Protector of England on one part, and the Lords the States General of the United Provinces of the Netherlands on the other part, in pursuance of the Treaty of Peace concluded the 5th of April 1654 [Art. XXVIII.] concerning certain Ships and Effects of the English, that were seiz'd and detain'd in the Dominions of the King of Denmark, ever since the 18th of May 1652. Done at London the 31st of July 1654.

Ibid, pages 112-118.

A Regulation made and pass'd the 30th of August 1654 by the Commissioners nominated on both sides, concerning the Losses and Damages sustain'd, as well on the part of the English East and West-India Companys, and others, as on the part of the East and West-India Companys of the United Provinces &c. pursuant to the Treaty of Peace between England and the United Provinces in the Year 1654 [i.e. Article XXX. of the above Treaty].

Ibid, pages 119-121.

A Complaint, or certain Schedule of Losses, which the Merchants of the English Company trading to the East Indies have sustain'd in the said Indies, and the South Sea, from the Merchants of the Dutch Company trading in the Indies aforesaid, for which Reparation is requir'd on the part of the foresaid Merchants of the English Company, before the Lords Commissioners of both Nations.

Ibid, pages 122-127.

The Demand of the Dutch East India Company, who affirm it to be a just Claim of the Moneys which they expect as satisfaction from the English Company [together with the Sentence or Award Signed and Sealed the 30th of August, the English Style, in the Year 1654].

Ibid, pages 128-135.

II.—BETWEEN ENGLAND AND PORTUGAL.

Concluded July 10th. 1654.

Treaty of Peace and Alliance between Oliver Cromwell, Protector of England, and John IV. King of Portugal. Made at Westminster the 10th of July 1654.

[Consisted of 28 Articles.]

“XVII. If any Controversy shou’d arise between the said King’s Inspectors, Officers, or Ministers, and the said Merchants, concerning the Goodness of the Fish, or any other sort of Provisions whatsoever, which shall be brought to any of the said King’s Dominions, the same shall be decided by the Arbitration of Good Men, provided they are *Portugueze*, who shall be fairly chose by the Magistrate of the Place, and the Consul of the *English Nation*; and shall so determine the Matter, that no Detriment happen to the Owner in the mean time, while the Matter is in Dispute.”

“XXV. Also, whereas there was a Convention between the late Parliament, and an Ambassador Extraordinary from the King of *Portugal*, and the said Ambassador in the second of the six Preliminary Articles, which were agreed to on the 29th of *December, 1652*, oblig’d himself that all the Ships, Moneys, Goods, and Debts, appertaining to any *Englishmen* whomsoever, which were taken and detain’d in any of the Dominions whatsoever of the King of *Portugal*, shou’d immediately be freely restor’d in Specie, provided they were of the same Value and Goodness as when they were at first detain’d, and if not, that the Value shou’d be restor’d; or if they prov’d worse by being detain’d, that then Satisfaction shou’d be given for them, according to their true Value when they were first detain’d. And as to the Compensation of the Damages, the Council having declar’d them by their Charter of the 15th of *November, 1652*, and it appearing from the said Declaration that they had not resolved to insist upon and demand a strict Reparation, but only as far as was agreeable to Justice and

Reason; and whereas the said Ambassador, to witness his Inclination to Peace, bound himself on this Supposition, that the Losses shou'd be repair'd; and whereas in the fifth of the said Preliminaries, the said Ambassador engag'd farther, *That all the Ships and Goods of the English, which are brought into Portugal by the Princes Rupert and Maurice, or by any Ship whatsoever under their Command, and there dispos'd of, or still remaining, or brought back from thence by others, or by their Command, shou'd be presently restor'd to the Owners and Proprietors, or that Reparation and Satisfaction shou'd be given to them.* And because some Controversys are now remaining, concerning the Demands of Merchants, and others, respecting Satisfaction; to the end that all such Demands and Complaints may be fairly and justly decided and determin'd, 'tis agreed and concluded on both sides, That the said Demands on account of Losses shall be referr'd to Arbitration for Satisfaction, as they are by these Presents referr'd to the Judgment and Award of Dr. *Walter Walker, John Crowther, Dr. Jeronymus a Sylva*, Secretary of the Embassy, and *Francis Ferreira Rabello*, Agent in the Affairs of the said Embassy, Persons chose indifferently, as well on the part of the King of *Portugal* as of the Lord Protector, who by these Presents are made and constituted Procurators, Arbitrators, and Judges, to hear, examine, and determine all and singular the Demands and Complaints of all and singular the Merchants, Masters of Ships, and others, who claim a Right to all or any of the Ships, Moneys, Debts, Merchandizes or Goods whatsoever, mention'd in the said Preliminary Articles; which Arbitrators shall meet and sit at *London* on the 20th day of *July* next, O.S., and shall take a solemn Oath on that day, before the Judges of the High Court of Admiralty of *England*, that they will renounce all Favour and Respect to either Party, and all private Interest in judging of the Matters to them referr'd; and by these Presents they are instructed and authoriz'd to call for any Persons whatsoever, and to command such Depositions and Papers to be laid before them, as shall have any Relation to the Affair to them referr'd. And they shall particularly inquire into the Truth of all such Demands and Complaints, whether

given in upon Oath or not ; as also all and singular the Losses suffer'd by the said Arrests and Detainers. And the said Arbitrators are authoriz'd by these Presents to define each of the Premises, and to liquidate, and adjudge, and finally to determine the Losses, as they or the major part of them shall think fair and just in their Consciences and Reason, and to publish their final Sentence under their Hands ; which Sentence so publish'd, shall bind and oblige both Parties without any Appeal, Revisal, or Contradiction whatsoever. And the said King binds himself effectually to perform and observe the same, in all its Members and Articles ; as also to pay, or cause to be paid, such Sum or Sums of Money as shall be adjudg'd as aforesaid. And furthermore 'tis agreed, that if the said Arbitrators do not agree and finally determine of and concerning the Premises to them referr'd, before the first of *September* next, O.S., then the said Demands so undetermin'd, or undecided by the said Arbitrators, shall be submitted, as they are by these Presents submitted, to such Member of the Lord Protector's Privy Council, as the said Lord Protector shall nominate, within any Time whatsoever after the first of *September* next. To which end, the said Lord Protector shall grant his full Powers to such Person so nominated, in order to determine finally of and concerning all and singular the Demands aforesaid. And if before the Pronunciation of Sentence by the said Privy Councillor, any Papers should come from *Portugal*, or any Proctor to plead Causes thereupon, the said Councillor shall hear him ; and whatever Sentence shall be given by such Person so instructed, under his Hand and Seal, shall conclude and bind both Parties, and the same shall be duly perform'd and accomplish'd. And for the greater Security that such Sum of Money as is adjudg'd by the said Arbitrators or Arbitrator may be honestly paid, 'tis agreed and concluded, that one Moiety of the Subsidies and Customs of *Portugal*, arising from all the Goods and Merchandise whatsoever of the Inhabitants and People of this Republick, who traffick in *Portugal*, shall immediately after the Date of this Treaty be appropriated to the Payment : which Moiety shall be paid from time to time, to such

Person as the said Lord Protector shall appoint, for and towards the Reparation of the Losses of the Merchants, Masters of the Ships, and Owners.”

A General Collection of Treatys of Peace and Commerce &c. London M.DCC.XXXII. Vol. III., pages 106, 108-110.

III.—CONVENTION BETWEEN ENGLAND AND HOLLAND.

Concluded August 30th, 1645.

Convention between Oliver Cromwell, Protector of England, and the High and Mighty States General of the United Netherlands, for constituting a Congress at Amsterdam, of Commissioners to be nominated on both sides, for determining all the remaining Complaints without Limitation, in the Award and Arbitration pass'd the 30th of August, 1645, upon their Controversys.

“Whereas by the 30th Article of the late Treaty, between the most Serene Lord Protector of the Republick of *England, Scotland, and Ireland*, and the High and Mighty Lords the States General of the *United Netherlands*, it was agreed that Commissioners or Arbitrators should be nominated and appointed, with full and absolute Power and Authority, to examine and determine all those Losses and Injurys which the one Party laid to the Charge of the other, from the Year 1611, to the 18th of *May*, 1652 O. S. and which each Party ought to have exhibited before the 18th of *May* 1654. Which said Day nevertheless, by consent of both Partys, was put off till the 30th day of the said Month; and if the said Commissioners did not agree concerning the said Losses and Injurys within three months after that day, the said Complaints shou'd be refer'd to the Protestant Cantons of *Swisserland*, who should be desir'd to nominate and appoint Commissioners for examining and determining the foresaid Complaints, within six Months after the expiration of the former three.

“And whereas the Commissioners of both Republicks assembled at *London*, and receiv'd sundry Complaints to them deliver'd within the time aforesaid, and examin'd and determin'd

some, as express'd in the Award and Arbitration of the aforesaid Commissioners, publish'd under their Hands and Seals the 30th of *Aug.* 1654, O. S. And whereas several yet remain undetermin'd, which according to the 30th Article aforesaid ought to have been referr'd to the abovemention'd Protestant Cantons of *Swisserland*, in order for Decision by certain Commissioners to be by them nominated and appointed; which Nomination and Appointment was not made by them within the Term of six Months aforesaid, and yet it is necessary that the said Complaints shou'd be decided, and all private Grudges remov'd, and that every Shadow of Discord may be for the future taken away.

"Tis therefore agreed and concluded between the most Serene Lord Protector, and the High and Mighty Lords the States General, that all Complaints exhibited within the Time aforesaid, *viz.* the 30th of *May* 1654, and not included and determin'd in the abovemention'd Award and Arbitration, shall be referr'd and submitted to the Judgment and Determination of the aforesaid Commissioners, who publish'd the said Award and Arbitration, or of others who shall be nominated and constited on both sides; and that they shall meet again at *Amsterdam* in *Holland*, furnish'd and invested with the same full Power and Authority as before; and that they shall proceed in the same Order and Manner, and with the same Method, and consequently determine all the Complaints aforesaid within three Months after their first Congress, which shall be on the 26th of *July* 1655. And that publick Notice thereof shall be given to the People of both Republicks, and that all things which the aforesaid Commissioners shall determine within the three Months aforesaid shall bind both Partys. In Witness of all and singular the Premises, both we the Commissioners of his Highness, and I the Ambassador Extraordinary of the *United Provinces* of the *Netherlands*, have sign'd these Presents with our Hands, and seal'd them with our Seals. Done at *Westminster*, *May* 9, O. S. *Anno* 1655.

IV.—BETWEEN FRANCE AND ENGLAND.

Concluded November 3rd, 1655.

Treaty of Peace between the Kingdom of France, and the Republick of England, Scotland and Ireland. Done at Westminster the 3rd of November, 1655.

[Consisted of 28 Articles.]

“XXIV. And whereas since the Year 1640 many Prizes have been taken at Sea, and both Nations, their People and Subjects, have suffer'd many Losses, 'tis agreed that three Commissioners shall be appointed on both sides immediately after the Ratification of the present Treaty, who shall be sufficiently authoriz'd to consider, examine, estimate and explain such Prizes and Losses, and to determine and decree the Compensation, Payment and Satisfaction for them, according to the Demands which shall be produc'd and exhibited before them by either Party, their People and Subjects, within three Months to be reckon'd after the publication of this Treaty: for which purpose the Commissioners shall meet in the City of *London*, within six Weeks after the said Publication, and, if possible, shall determine the said Controversys within five Months next ensuing; but if the said Commissioners shall not agree within the space of six Months and a Fortnight, then the said Controversys, which remain undetermin'd, shall be referr'd, as they are by these Presents referr'd, to the Arbitration of the Republic of *Hamburgh*, to be decided within four months, to be computed from the Expiration of the aforesaid space of Time limited by the Commissioners. And that the said Republick of *Hamburgh* shall be desir'd, as it is by these Presents desir'd, to assume that Arbitration, and to delegate Commissioners to give Judgment concerning the Premises, in such convenient place as by the said Commissioners shall be appointed; and whatsoever shall be determin'd by the said Arbitrators or Commissioners shall bind both Partys, and be perform'd *bona fide* within six Months next ensuing. Provided

nevertheless, that if neither the said Commissioners appointed by both Partys, nor the said Arbitrators do not determine the said Controversys within the time prescrib'd, no body shall on that account be put to any Trouble; nor shall the old Letters of Marque be restor'd to their full Force, nor other new ones granted within the Space of four Months after the Expiration of those four Months, which are prescrib'd to the City of *Hamburgh* for the Determination of the said Controversys.

“XXV. And whereas three Forts, *viz.*, *Pentacoet*, *St. Jan*, and *Port Royal*, lately taken in *America*, together with the Goods therein found, wou'd be reclaim'd by the abovemention'd Lord Ambassador of his said Majesty, and the Lords Commissioners of his Highness wou'd argue from certain Reasons that they ought to be detain'd, 'tis agreed that such Controversy shall be refer'd, as it is by these Presents refer'd to the same Commissioners and Arbitrators, to be determin'd in the same manner and time, as the Losses sustain'd by both Partys since the Year 1640, and refer'd to in the last Article.”

A Posterior Article for including the Lords the States General of the United Provinces of the Netherlands. Done at Westminster the 23rd of November O.S. and the 3rd of December N.S. 1655.

“It is agreed and concluded on both sides, That the States General of the *United Provinces* of the *Netherlands* shall be comprehended and included in the Treaty of Peace made betwixt *France* and *England*, dated at *Westminster* the 3rd day of *November* N.S. 1655, as they are by these Presents therein comprehended and included, with all and every the Dominions and Territorys to them belonging. As are also all the Allies and Confederates of both States, who shall desire to be included in the said Treaty within the space of three Months next ensuing the date of these Presents. In Witness whereof we the Ambassador of his most Christian Majesty have confirm'd these Presents with our Hand and Seal. Done at *Westminster* the 23rd of *November* O.S. 1655. And the said Article was accordingly sign'd.

V.—BETWEEN ENGLAND AND SWEDEN.

Concluded July 17th, 1656.

Treaty between Charles Gustavus King of Sweden, and Oliver Cromwell Protector of England; whereby the Treaty of Alliance made between those two States the 11th of April 1654, is confirm'd and explain'd. Done at London, Anno, 1656.

[Consisted of 11 Articles.]

“VII. Whereas it is provided by the aforesaid Treaty at *Upsal*, that Satisfaction should be given for the Losses which either of the Confederates or his People or Subjects sustain'd from the other, or his People or Subjects, during the War between the Republick and the States of the *United Netherlands*, 'tis now agreed, that three Commissioners shall be delegated and deputed on each side, who shall take Cognizance of, and decide all those Disputes; which Commissioners shall meet at *London*, the first day of *January* next. And the three Commissioners abovemention'd, so chosen and deputed on both sides, shall have power to take all those things into their Consideration which shall be exhibited or propos'd on both sides, and which happened in the said Period, as well concerning the Restitution of the Ships or Goods hitherto detain'd, as the Satisfaction for Losses sustain'd by the detaining of the Ships of either of the Confederates, which are already or shall hereafter be released; or if it can be conveniently done in any other manner, they shall judge of them summarily, according to Right and Reason, without any Appeal or Forms of Law; and both Partys shall make it their chief Business and Endeavour that what is just and right be transacted in the Controversys aforesaid without any delay, and that what is taken away be restor'd, and Satisfaction perform'd and made fully and really for the Losses and Expences, according to the Tenor of the XIIIth Article of the aforesaid Treaty at *Upsal*.

But if the said Commissioners cannot agree in any Reasons or Foundations whatsoever of the Proofs relating to such Restitution or Satisfaction, then those Differences shall be left to another Convention of the Confederates. And that this may be done with the least loss of time, they shall use their endeavour to finish the Cognizance of all these matters in question within six Months after the first meeting; and the Restitution and Satisfaction for those Losses shall be made and perform'd fully and without delay, within the space of a Month after Sentence is pass'd, by that King or State whose Subjects shall be doom'd to perform the Satisfaction.

* * * * *

“In Witness of all and singular the Premises, we the Commissioners of the most Serene and the most High Protector of the Republick of *England, Scotland, Ireland, &c.*, by virtue of our aforesaid Commission, or full Powers, have sign'd the present Treaty, consisting of eleven Articles, with our Hands, and seal'd it with our Seals. Done at *Westminster July 17, Anno 1656.*”

A General Collection of Treatys of Peace and Commerce, &c. London, M.DCC.XXXII. (Supra.) Vol. III., pages 169, 170, 173, 174.

VI.—BETWEEN ENGLAND AND HOLLAND.

Concluded 19th February, 1674.

Articles of Peace between the most Serene and Mighty Prince, Charles the Second, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c., and the High and Mighty Lords the States General of the United Netherlands; Concluded at Westminster the 9/19 day of February, 1673/4.

This treaty, which consisted of eleven Articles and one secret Article, provided for the creation of Tribunals of Commissioners in the following terms:—

“ART. VIII.—That the Marine Treaty made at *The Hague*

between the two Parties in the Year 1668 be continued for Nine months after the Publication of this present Treaty, unless it shall be otherwise Agreed on by a subsequent Treaty ; and that in the meantime the Consideration of a new one be referred to the same Commissioners to whom the trade in the *East Indies* is referred in the subsequent Article.

“ But if such Commissioners, within Three months after their first meeting, shall not agree upon a new Marine Treaty, then that Matter shall also be referred to the Arbitration of the Most Serene Queen Regent of *Spain*, in the same manner as the Regulation of the *East-India* trade is referred to Her Majesty in the said Article next following.

“ ART. IX.—In respect that upon the mutual, free, and undisturbed enjoyment of Trade and Navigation, not only the Wealth, but the Peace likewise of both Nations is most highly concerned ; there ought nothing to be so much the care of both Parties as a just Regulation of Trade, and particularly in the *East-Indies* ; and yet, in respect that the weightiness of the Matter requireth much time to make firm and durable Articles to the Content and Security of the Subject on both Sides, and on the other side, the bleeding Condition of most part of *Europe*, as well as of the two parties concerned, earnestly demand a speedy Conclusion of this Treaty, the King of *Great Britain* is pleased to condescend to the Desires of the States-General, to have the Consideration of the same referred to an equal number of Commissioners to be nominated by each Party, the said States-General Engaging themselves to send those of their nomination to Treat at *London* with those to be nominated by His Majesty ; and this within the space of Three months after the Publication of this Treaty ; The number to be nominated by each to consist of six Persons ; And in case that after Three months from the time of their first Assembling they shall not have the good success to conclude a Treaty, the Points in difference betwixt them shall be referred to the Arbitrament of the Most Serene Queen Regent of *Spain*, who shall nominate eleven Commissioners, and whatsoever the major part of them shall determine as to the remaining Differences

shall oblige both Parties; Provided still, that they deliver their Judgment within the space of Six months from the day of their Assembling, which shall likewise be within the space of Three months after the said Most Serene Queen Regent of *Spain* hath accepted of the being Umpire."

"Chalmers' Treaties," Vol. I., pp. 175, 176, from official copy published in 1686.

Several Treaties of Peace and Commerce concluded between the Late King (Charles II.), &c. Reprinted and published by His Majesty's special command. London, 1685, pages 181, 182.

A General Collection of Treatys, &c. (Supra.) London, M.DCC.XXXII Vol. III. pages 279, 280.

TREATY OF FLORENCE.

BETWEEN ENGLAND AND SAVOY.

1669.

A Treaty of Friendship and Commerce between His Majesty of Great Britain, &c., and the Most Serene Prince the Duke of Savoy. Concluded at Florence the 19th day of September, 1669.

[Consisted of 15 "Articles Covenanted"].

"Tenthly, Since that nothing doth more torment any man than Controversies in Law before Tribunals of Judicature, in regard of the Great Expence both of Time and Money; But more especially one who is a Stranger to the Customs of the Place, and an Alien to the Laws: Therefore it is Covenanted and Agreed between his Majesty of *Great Britain*, &c. and his Royal Highness, That all Differences or Controversies whatsoever, which shall arise between Subject and Subject of his Majesty, or between the said Subjects and any Person that is no Subject of his Majesty, shall be only Pleaded before, and be Decided only by a Judge who shall be called the Delegate of the *English Nation*, which Delegate shall always be chosen by the Subjects of his Majesty who live at *Nizza, Villa Franca, or S. Hospitio*; Provided always, that the Election be made out of the number of those Ministers of his Royal Highness which Constitute the Consuls of the Sea: The Delegate so chosen shall be continued during the Pleasure of the National Electors; Provided that this Continuation be no longer time than what is limited by his Royal Highness for the Period of the Office of the rest of the Consuls of the Sea. When this Delegate is Elected, the Nation shall Present him to his Royal Highness, with a Petition, that by his Authority he may be appointed to Exercise this Charge; By

About the Deciding of Controversies.

A Judge to be chosen, and called the Delegate of the *English Nation*.

which Authority being Constituted he shall with brevity and expedition Decide and Determine all the aforesaid Controversies, without the Formality of Legal Processes, according to the validity and weight of Reason having regard only to the truth of the Fact: and all this shall be done without any Costs, Charges, or Expence, except only the bare payment of the Writing. From the Sentence given by this Delegate there shall no appeal be made or allowed, except to the Tribunal of the Consuls of the Sea residing at *Nizza*, where the Delegate himself is to be one, and sits as one of the Judges, from which Tribunal no Appeal is to be admitted. But if in the progress of time his Majesty's Subjects in the said Ports become numerous (which is to be hoped from the good and well composed Laws), if any Inconvenience be found in the Deciding of the Controversies according to the manner prescribed; then as to whatsoever Controversies which shall happen and arise only between Subject and Subject of his Majesty, the following rule for an unappealable Deciding of them shall be Established and Confirmed between his Majesty and his Royal Highness, which then is to be in full force and vigour from that time which his Majesty shall require it of his Royal Highness. The Form or Rule is this: The Subjects of his Majesty shall choose out of the *English* Nation Three, which for Life and Manners are esteemed Men of the greatest Integrity amongst them; these Three they shall humbly present to his Royal Highness, that he may benignly please to appoint One of them, who under the Title of Delegate of his Royal Highness, is to Exercise the Office which shall immediately be declared: By whose Authority when he shall be Constituted, and to that purpose has obtained Letters from His Royal Highness he shall notwithstanding be incapable of Exercising his Charge till he hath first taken Oath before the already mentioned National Delegate; or, in his absence, before some Other of the Consuls of the Sea residing at *Nizza* for his Royal Highness. These things premised, when a Controversy or Difference shall arise or happen, the Plaintiff and the Defendant shall each of them choose two Arbitrators, whom they shall declare and constitute to be such

To Decide
all Con-
troversies.

No Appeal
but to the
Tribunal of
the Consuls
of the Sea.

Controversies
amongst
the *English*
to be decided
by Arbitra-
tion.

before the Delegate of his Royal Highness, to every one of which the Delegate shall administer an Oath upon the holy Evangelists, to this purpose; *That they will according to the utmost of their power, laying aside all respect of Persons, and according to good Conscience and best Rule of Justice, give their Sentence of Arbitration Righteously and Faithfully.* After which Oath they may convene, as occasion offers, but always in the presence of the said Delegate; which Delegate shall have no Voice in case that the major part of the four Arbitrators agree in their Arbitration; which if they do, the Decision so made shall be valid and firm: But if the Arbitrators by reason of their equality of Votes agree not; then the Delegate of his Royal Highness, having first taken the same Oath the Arbitrators did, before one of the Consuls of the Sea at *Nizza*, shall have a Vote amongst the other four Arbitrators, and the Decision shall be on that side which has the majority of Votes, to all purposes valid and firm. In both Cases the Decision thus amicably made, shall be transmitted to his Royal Highness within the space of One month, that by his authority it may have its full force, and be put in Execution. This Delegate shall be further obliged to make Writings or Records, as Delegate of his Royal Highness, and it shall be his Charge carefully to keep and preserve the same. He shall be continued three years in his Office, and be obliged to give an account to the Delegate that succeeds him, of all matters that were Transacted under him."

Several Treaties of Peace and Commerce Concluded between the late King. &c. Reprinted and Published by His Majesty's Special Command. London, 1685. Pages 115-120.

JUDGES-CONSERVATORS.

1713.

The Assiento Treaty, between Great Britain and Spain, provided for the creation of tribunals in America, similar to those of the "Conservators of Commerce" in Europe, in connection with the African Slave Trade.

"Given at *Madrid*, the 26th of March, 1713."

"XIII. The said Assientists may nominate, in all the Ports and Chief Places of *America*, Judges-Conservators of this *Assiento*, whom they may remove and displace, and appoint others at pleasure, in the manner allow'd to the *Portuguese* in the eighth Article of their *Assiento*; provided always that they shew a justifiable Cause for their so doing, before the President, Governour, or Audience of such District, which shall be by them respectively approv'd, so as this Nomination may fall on some of his Catholic Majesty's Ministers; which said Judges are to have Cognizance, exclusive of all others, of all Causes, Affairs and Suits, relating to this *Assiento*, with full Authority and Jurisdiction: All Audiences, Ministers and Tribunals, Presidents, Captains-General, Governours, Corregidores, Great Alcaldes, and other Judges and Justices whatsoever, the Vice-Roys of those Kingdoms included, being forbidden to meddle therewith; forasmuch as the said Judges-Conservators are alone to have the Cognizance of these Causes and their Incidents, from whose Sentences an Appeal (in such Cases as the Law allows) shall lie to the Supreme Council of the *Indies*; with this Condition, that the said Judges-Conservators may not demand or pretend to greater Salaries than those the Assientists shall think good to allow them for that Service; and if any of them exact any more,

his Catholic Majesty will order it to be restor'd. He will also grant that the President or Governour of the said Council for the time being, or the Decano (eldest Member) thereof, shall be Protector of this *Assiento*; and also that they may propose a Minister of the same Council, (whom they shall think most proper) to be their Judge-Conservator, exclusive of all others, with his Catholic Majesty's Approbation, in like manner as has been done in former *Assientos*.

“XIV.—It shall not be lawful for any other Tribunal or Minister whatever of his Catholic Majesty to hinder, but on the contrary they shall be compelled to afford all the aid and succour, that the said Assientists, or their Factors shall desire, for fitting out, dispatching etc. their Ships.

“XV. Nor shall the said Ministers search the Houses or Warehouses of the Factors or others belonging to this *Assiento*; unless in case it shall have been prov'd that there has been some fraudulent and prohibited Importation, and then they may be search'd with assistance of the Judge-Conservator, herein absolutely required, who shall take care to prevent Pilferings and Embezlements, that use to happen by the great number of Soldiers and Officers that crowd to such Places on these Occasions.”

By Article XII. of the Treaty of Peace at Utrecht, between Great Britain and Spain the 13th day of July, 1713, the “Contract for introducing Negros into several Parts of the Dominions of his Catholic Majesty in *America*” commonly called “*el Pacto de el Assiento de Negros*,” was given to her *Britannic* Majesty; and this *Assiento* Treaty or “*Assiento a Negros*” is embodied therein and made part of the Treaty as if there “inserted word for word.”

A General Collection of Treatys of Peace and Commerce, Renunciations, Manifestos, and other Publick Papers, from the Year 1642 to the end of the Reign of Queen Anne. Vol. III. London. Printed for J. J. and P. Knapton, &c. M.DCC.XXXII. Pages 382, 383, 479.

TREATIES OF RYSWICK.

1697.

I.—BETWEEN GREAT BRITAIN AND FRANCE.

[Concluded 20th September, 1697.]

Articles of Peace between the most Serene and Mighty Prince, William III., King of Great Britain, and the most Serene and Mighty Prince, Lewis IV., the most Christian King; concluded in the Royal Palace at Reswick, the 10/20 day of September, 1697.

This Treaty of Peace, consisting of sixteen Articles, provided for the creation of two Commission Courts, as follows:—

“ART. VIII.—Commissioners shall be appointed on both sides, to examine and determine the Rights and Pretensions which either of the said Kings hath to the places situated in *Hudson's Bay*; But the Possession of those Places which were taken by the *French* during the Peace that preceded this present War, and were retaken by the *English* during this War, shall be left to the French by virtue of the foregoing Article [No. VII.]. The Capitulation made by the *English* on the 5th of *September*, 1696, shall be observed, according to its Form and Tenor; the Merchandises therein mentioned shall be restored; the Governor of the Fort taken there shall be set at liberty, if it be not already done; the Differences arisen concerning the Execution of the said Capitulation, and the value of the Goods there lost, shall be adjudged and determined by the said Commissioners; who, immediately after the Ratification of the present Treaty, shall be invested with sufficient Authority for settling the Limits and Confines of the Lands to be restored on either side, by virtue of the foregoing Article, and likewise for exchanging of Lands, as may conduce to the mutual Interest and Advantage of both Kings.

“And to this end the Commissioners, so appointed, shall within the space of Three Months from the time of the Ratification of the present Treaty, meet in the City of *London*, and within Six Months, to be reckoned from their First Meeting, shall determine all Differences and Disputes which may arise concerning this matter ; after which, the Articles the said Commissioners shall agree to, shall be ratified by both Kings, and shall have the same force and vigour as if they were inserted word for word in the present Treaty.”

“ART. XIII.—For what concerns the Principality of *Orange*, and other Lands and Dominions belonging to the said King of *Great Britain* ; the separate Article of the Treaty of *Nimeguen*, concluded between the most Christian King and the States General of the United Provinces the 10th day of *August* 1678, shall according to its Form and Tenor, have full effect ; and all things that have been innovated and alter'd, shall be restor'd as they were before. All Decrees, Edicts, and other Acts of what Kind soever they be, without exception, which are in any manner contrary to the said Treaty, or were made after the conclusion thereof, shall be held to be null and void, without any revival or consequence for the future : And all things shall be restor'd to the said King in the same state, and in the same manner, as he held and enjoy'd them before he was dispossess'd thereof in the time of the War, which was ended by the said Treaty of *Nimeguen*, or which he ought to have held and enjoy'd according to the said Treaty. And that an end may be put to all Trouble, Differences, Processes, and Questions, which may arise concerning the same, both the said Kings will name Commissioners, who, with full and summary Power, may compose and settle all these matters. And forasmuch as by the Authority of the most Christian King, the King of *Great Britain* was hindered from enjoying the Revenues, Rights, and Profits, as well of his Principality of *Orange* as of other his dominions, which, after the conclusion of the Treaty of *Nimeguen*, until the Declaration of the present war, were under the power of the said most Christian King, the said most Christian King will restore, and cause to be restored in

reality, with effect, and with the interest due, all those Revenues, Rights, and Profits, according to the Declarations and Verifications that shall be made before the said Commissioners."

"Chalmers' Treaties," Vol. I., pp. 335-339, from the Official copy, published in 1697.

A General Collection of Treaties, &c. (Supra.) Second edition. London, M.DCC.XXXII. Vol. I., pages 304-307.

II.—BETWEEN THE EMPEROR, &C., AND FRANCE.

[*Concluded October 30th, 1697.*]

A Treaty of Peace between the Emperor Leopold and the Empire on the one part, and Lewis XIV. of France, on the other; concluded at Reswick, Oct. 30, 1697.

[Consisted of 60 Articles.]

"ART. VIII.—The most Christian King shall restore to the Elector Palatine all the Dominions that either belong to him alone, or that are in common with others, let them be call'd by what name they will, and more particularly the City and Prefecture of *Germersheim*, wherein are comprehended the Presidentships and Subprefectures, with all the Castles, Citys, Towns, Villages, Lands, Feudships and Jurisdictions, as they were restor'd by the Peace of *Westphalia*, as also all the Documents in the Archive, Chancery, Feudal Court, Chamber of Accounts, Prefectures, and other Palatine Offices that have been taken away; no Place, Thing, Right or Document to be excepted. But as to what appertains to the Rights and Pretensions of the Dutchess of *Orleans*, it's agreed, that the foresaid Restitution being first made, things shall be compromis'd (*i.e.* referred to Arbitration) according to form between their Imperial and most Christian Majestys, as Arbitrators, according to the Laws and Customs of the Empire: But in case they cannot agree, the matter shall be

left to the final decision of the Pope. However, an amicable Agreement shall in the meantime be endeavour'd between the Partys; and till 'tis brought to a Conclusion, the Elector Palatine shall yearly pay to the Dutchess of *Orleans* two hundred thousand *Tournay* Livres, or a hundred thousand *Rhenish* Florins, upon that Account and Consideration, as 'tis express in a separate Article of equal force with this Treaty, and as well in respect to the Possessor as Suer, the Rights of the Empire being still kept inviolable."

Separate Article.

"That the eighth Article *Restituentur a Rege Christianissimo Domino Electori Palatino, &c.*, may be the more clearly understood, it's farther agreed on by the Instrument of Peace subscrib'd this Day, That this method be observ'd in proposing and deciding the Pretensions or Rights the Dutchess of *Orleans* has upon the Elector Palatine. When the place of meeting is pitch'd upon, between both the Arbitrators, within the time prefix'd for ratifying the Peace, that place shall be signify'd to each Party, whither the Delegates of the said Arbitrators shall be sent within two months time, to be computed from the full Restitution to be made to the Elector Palatine, according to the alledg'd Article; and there a full designation of the Pretensions or suit of the Lady Dutchess shall be exhibited within the following month, against the Elector, and the same shall be communicated to his Highness within eight days; a fourfold Extract shall be made of the allegations of each Party, and the same deliver'd to the Delegates of the Arbitrators, within four months space, on the same day as they shall name, of which each Arbitrator shall have a Copy by him, a third shall be laid up among the common Acts of the Arbitration, and the fourth shall be communicated backward and forward to the Partys within eight days: An Answer shall be return'd in the same manner, and a fourfold Copy of the Answer of both Partys shall be exhibited the same day to the Delegates of the Arbitrators, to be transmitted again to both the Principals, within eight days: They shall on both sides proceed to

the Determination of the Cause within the four following months, and also acquiesce with the Sentence of Arbitration; and this Determination and Acquiescence shall be notify'd to the Partys, and the Acts inroll'd by the then Procurators of the Partys. Wherefore the Rights of both Partys having been view'd and examin'd within the space of six Months, by the Arbitrators or their sworn Delegates, at the place of Congress, Sentence shall be publickly pronounc'd according to the Laws and Constitutions of the Empire: and if they do agree, shall be fully put in execution: but if the Arbitrators or their Delegates shall not agree upon the Sentence, the common Acts of Arbitration shall within the space of two Months, to commence from the day the Sentence should be on, be transfer'd to *Rome* at the mutual Charge of the Partys concern'd, and be left to the Pope as Umpire; where matters being examin'd over again, by Delegates unsuspected of Partiality to either Party, and upon Oath, within two Months, these shall give the final Sentence upon the former Acts, without allowing the Partys any farther diduction of matters within the six Months following, according to the Laws and Constitutions of the Empire: which Sentence shall no manner of way be impugn'd, but be put in Execution by the Arbitrators, without any contradiction or delay. But if either Party shall be dilatory in proposing, diducing or proving his Pretensions or Rights; the other may however deduce and exhibit his Pretensions, according to the Terms prescrib'd which cannot be lengthen'd; and the Arbitrators, as also the Umpire, may proceed thereupon as aforesaid, and give and execute Sentence according as the Acts are exhibited and prov'd. But notwithstanding this way of procedure, both the Partys themselves, as also the Arbitrators, are to endeavour amicably to determine the difference, and to omit nothing that can contribute in a friendly manner to end the Controversy. But seeing it is agreed in the Article of Peace above-named, that till this Controversy be terminated, the yearly Sum of two hundred thousand *Tournay* Livres, or a hundred thousand *Rhenish* Florins, shall be paid by the Elector Palatine to the Dutchess of *Orleans*; as to the

manner and time of Payment, when it ought to begin, it's particularly agreed, That that shall immediately commence from the time that the Places and Territorys specify'd in the said Article shall be fully restor'd to the Elector Palatine: but that the Payment of the said Sum may be the more effectually secured to the Dutchess of *Orleans*, the Elector Palatine shall nominate so many of the Administrators or Collectors of the Prefecture of *Germersheim* and other Places of the Palatinate, as shall be sufficient, before the Ratification of the Peace, who shall take upon them to pay the same to the Dutchess or her Agent at *Landau*, viz., one half every six months; and who if they do not perform it, shall be oblig'd to do it by the ordinary course of Justice, or if necessity requires it, be compell'd to it by Military Execution, according to the most Christian King's Order. But this Payment is to be made upon this condition, that what shall be paid upon the account of the said annual Sum to the Dutchess of *Orleans*, while the matter depends before the Arbitrators, or be done by way of compensation for her Pretensions, if anything shall be adjudg'd to her by the Arbitrators, shall be return'd, if nothing or less comes to be decided in her favour; and this Compensation or Restitution shall no less be determin'd than the Controversy itself by the Sentence of Arbitration: but if the Dutchess of *Orleans* shall be defective in the compromis'd form for the exhibited Extract of her Pretensions, Management of the Cause, and Answer to the Allegations of the Elector Palatine, and protract the same, the course of the said yearly payment shall only cease for that time, but the Examination and Decision of the Cause shall go on according to the same compromised form. *Done at Reswick, October 30, 1697.*"

A General Collection of Treatys, Declarations of War, Manifestos, and other Publick Papers, relating to Peace and War. The Second Edition. London: Printed for J. J. and P. Knapton, &c. M.DCC.XXXII. Vol. I. Pages 364, 382-384.

THE JAY TREATY.

Concluded 19th November, 1794.

As this treaty between the United States and Great Britain was the beginning of a long series of Arbitration agreements between these two Powers, and stands at the head of the list of modern Arbitration instances, the special clauses in it which provided for the appointment and regulation of Mixed Commission Tribunals, are here given. They ran as follows :—

ART. V.—Whereas doubts have arisen what river was truly intended under the name of the River St. Croix, mentioned in the said Treaty of Peace (1783), and forming a part of the boundary therein described ; that question shall be referred to the final decision of Commissioners, to be appointed in the following manner, viz. :—

1. One Commissioner shall be named by His Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof, and the said two Commissioners shall agree on the choice of a third ; or, if they cannot so agree, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original Commissioners.

2. And the three Commissioners so appointed shall be sworn, impartially to examine and decide the said question, according to such evidence as shall respectively be laid before them on the part of the British Government and of the United States.

3. The said Commissioners shall meet at Halifax, and shall have power to adjourn to such other place or places as they shall think fit.

4. They shall have power to appoint a secretary, and to employ such surveyors or other persons as they shall judge necessary.

5. The said Commissioners shall, by a declaration, under their hands and seals, decide what river is the River St. Croix, intended by the treaty.

6. The said declaration shall contain a description of the said river, and shall particularise the latitude and longitude of its mouth and of its source.

7. Duplicates of this declaration and of the statements of their accounts, and of the journal of their proceedings, shall be delivered by them to the Agent of His Majesty, and to the Agent of the United States, who may be respectively appointed and authorised to manage the business on behalf of the respective Governments.

8. And both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called in question, or made the subject of dispute or difference between them.

ART. VI.—Whereas it is alleged by divers British merchants and others His Majesty's subjects, that debts, to a considerable amount, which were *bonâ fide* contracted before the Peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the Peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that, by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained: It is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason, be actually obtained, had and received by the said creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: But it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors or other

causes as would equally have operated to produce such loss, if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

For the purpose of ascertaining the amount of any such losses and damages, five Commissioners shall be appointed and authorised to meet and act in the manner following, viz. :—

1. Two of them shall be appointed by His Majesty, two of them by the President of the United States by and with the advice and consent of the Senate thereof, and the fifth by the unanimous voice of the other four; and if they should not agree in such choice, then the Commissioners named by the two parties shall respectively propose one person, and of the two names so proposed, one shall be drawn by lot, in the presence of the four original Commissioners.

2. When the five Commissioners thus appointed shall first meet, they shall, before they proceed to act, respectively take the following oath, or affirmation, in the presence of each other; which oath or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz.—I, A. B., one of the Commissioners appointed in pursuance of the sixth Article of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, do solemnly swear (or affirm) that I will honestly, diligently, impartially, and carefully examine, and to the best of my judgment, according to justice and equity, decide all such complaints, as under the said Article shall be preferred to the said Commissioners: and that I will forbear to act as a Commissioner, in any case in which I may be personally interested.

3. Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the said Commission, provided that one of the Commissioners named on each side, and the fifth Commissioner shall be present, and all decisions shall be made by the majority of the voices of the Commissioners then present.

4. Eighteen months from the day on which the said Com-

missioners shall form a board, and be ready to proceed to business, are assigned for receiving complaints and applications; but they are nevertheless authorised, in any particular cases in which it shall appear to them to be reasonable and just, to extend the said term of eighteen months for any term not exceeding six months, after the expiration thereof.

5. The said Commissioners shall first meet at Philadelphia, but they shall have power to adjourn from place to place as they shall see cause.

6. The said Commissioners in examining the complaints and applications so preferred to them, are empowered and required, in pursuance of the true intent and meaning of this article, to take into their consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require.

7. And the said Commissioners shall have power to examine all such persons as shall come before them, on oath or affirmation, touching the premises; and also to receive in evidence, according as they may think most consistent with equity and justice, all written depositions, or books, or papers, or copies, or extracts thereof; every such deposition, book, or paper, or copy, or extract, being duly authenticated, either according to the legal form now respectively existing in the two countries, or in such other manner as the said Commissioners shall see cause to require or allow.

8. The award of the said Commissioners, or of any three of them as aforesaid, shall in all cases be final and conclusive, both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant; and the United States undertake to cause the sum so awarded to be paid in specie to such creditor or claimant without deduction; and at such time or times, and at such place or places, as shall be awarded by the said Commissioners; and on condition of such releases or assignments to be given by the creditor or claimant, as by the

said Commissioners may be directed : Provided always, that no such payment shall be fixed by the said Commissioners to take place sooner than twelve months from the day of the exchange of the ratifications of this treaty.

ART. VII.—(i.) Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which His Majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property it is agreed :—

That for the purposes of ascertaining the amount of any such losses and damages, five Commissioners shall be appointed and authorised to act in London, exactly in the manner directed with respect to those mentioned in the preceding article, and

1. After having taken the same oath or affirmation, (*mutatis mutandis*), the same term of eighteen months is also assigned for the reception of claims, and they are in like manner authorised to extend the same in particular cases.

2. They shall receive testimony, books, papers, and evidence in the same latitude, and exercise the like discretion and powers respecting that subject ; and shall decide the claims in question according to the merits of the several cases, and to justice, equity, and the laws of nations.

3. The award of the said Commissioners, or any such three of them as aforesaid, shall in all cases be final and conclusive, both as to the justice of the claim, and the amount of the sum to be paid to the claimant ; and His Britannic Majesty undertakes to cause the same to be paid to such claimant in specie, without any deduction, at such place or places, and at such time or times, as shall be awarded by the said Commissioners, and on condition of such releases or assignments to be given by the claimant, as by the said Commissioners may be directed.

(ii.) And whereas certain merchants, and others, His Majesty's subjects, complain that, in the course of the war, they have sustained loss and damage by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction

of the States and brought into the ports of the same, or taken by vessels originally armed in ports of the said States :—

1. It is agreed that in all such cases where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5th, 1793, a copy of which is annexed to this treaty ; the complaints of the parties shall be and hereby are referred to the Commissioners to be appointed by virtue of this article, who are hereby authorised and required to proceed in the like manner relative to these as to the other cases committed to them ; and

2. The United States undertake to pay to the complainants or claimants in specie, without deduction, the amount of such sums as shall be awarded to them respectively by the said Commissioners, and at the times and places which in such awards shall be specified ; and on condition of such releases or assignments to be given by the claimants as in the said awards may be directed :

3. And it is further agreed, that not only the non-existing cases of both descriptions, but also all such as shall exist at the time of exchanging the ratifications of this treaty, shall be considered as being within the provisions, intent, and meaning of this article.

ART. VIII.—It is further agreed that the Commissioners mentioned in this and in the two preceding Articles shall be respectively paid in such manner as shall be agreed between the two parties, such agreement being to be settled at the time of the exchange of the ratifications of this treaty. And all other expenses attending the said Commission shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by the majority of the Commissioners. And in the case of death, sickness, or necessary absence, the place of every such Commissioner respectively shall be supplied in the same manner as such Commissioner was first appointed, and the new Commissioners shall take the same oath or affirmation and do the same duties.

History and Digest of the International Arbitrations to which the United States has been a party. By John Bassett Moore. Washington, Government Printing Office, 1898. Vol. V., pp. 4720-4724.

TREATY OF GHENT.

TREATY OF PEACE AND AMITY BETWEEN GREAT BRITAIN AND
THE UNITED STATES OF AMERICA.

Signed at Ghent, December 24th, 1814.

His Britannic Majesty and the United States of America, desirous of terminating the War which has unhappily subsisted between the two Countries, and of restoring, upon principles of perfect reciprocity, Peace, Friendship, and good understanding between them, have for that purpose appointed their respective Plenipotentiaries, that is to say: His Britannic Majesty on his part has appointed the Right Honourable James Lord Gambier, late Admiral of the White, now Admiral of the Red Squadron of His Majesty's Fleet; Henry Goulburn, Esq., a Member of the Imperial Parliament, and Under-Secretary of State; and William Adams, Esq., Doctor of Civil Laws:

And the President of the United States, by and with the advice and consent of the Senate thereof, has appointed John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin, Citizens of the United States; who after a reciprocal communication of their respective Full Powers, have agreed upon the following Articles:—

ART. I.—There shall be a firm and universal Peace between His Britannic Majesty and the United States, and between their respective countries, territories, cities, towns, and people, of every degree, without exception of places or persons. All hostilities, both by sea and land, shall cease, as soon as this Treaty shall have been ratified by both Parties, as hereinafter mentioned. All territory, places, and possessions whatsoever, taken by either party from the other during the War, or which may be taken after the signing of this Treaty, excepting only the Islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery, or other Public Property, originally captured in the said Forts or Places, and which shall remain therein upon the exchange of the Ratifications

of this Treaty, or any Slaves or other Private Property. And all Archives, Records, Deeds, and Papers, either of a public nature, or belonging to private persons, which in the course of the War may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored, and delivered to the proper authorities and Persons to whom they respectively belong.

Such of the Islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the Ratifications of this Treaty, until the decision respecting the title to the said Islands shall have been made, in conformity with the Fourth Article of this Treaty.

No disposition made by this Treaty, as to such possession of the Islands and Territories claimed by both parties, shall in any manner whatever be construed to affect the right of either.

ART. II.—Immediately after the Ratifications of this Treaty by both parties, as hereinafter mentioned, orders shall be sent to the armies, squadrons, officers, subjects, and citizens of the two Powers, to cease from all hostilities. And to prevent all causes of complaint, which might arise on account of the Prizes which may be taken at Sea after the said Ratifications of this Treaty, it is reciprocally agreed, that all Vessels and effects which may be taken after the space of twelve days from the said Ratifications upon all parts of the Coast of North America, from the latitude of 23 degrees North to the latitude of 50 degrees North, and as far Eastward in the Atlantic Ocean as the 36th degree of West longitude from the meridian of Greenwich, shall be restored on each side; that the time shall be thirty days in all other parts of the Atlantic Ocean North of the equinoctial line or Equator, and the same time for the British and Irish Channels, for the Gulf of Mexico, and all parts of the West Indies; forty days for the North Seas, for the Baltic, and for all parts of the Mediterranean; sixty days for the Atlantic Ocean South of the Equator, as far as the latitude of the Cape of Good Hope; ninety days for every other part of the world south of the Equator, and one hundred

and twenty days for all other parts of the world without exception.

ART. III.—All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable after the Ratifications of this Treaty, as hereinafter mentioned, on their paying the Debts which they may have contracted during their captivity. The two Contracting Parties respectively engage to discharge in specie the advances which may have been made by the other for the sustenance and maintenance of such prisoners.

ART. IV.—Whereas it was stipulated by the Second Article in the Treaty of Peace of 1783, between His Britannic Majesty and the United States of America, that the boundary of the United States should comprehend “all Islands within twenty leagues [of any part of the shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid boundaries, between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such Islands as now are, or heretofore have been, within the limits of Nova Scotia”]; and whereas the several Islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the Island of Menan, in the said Bay of Fundy, are claimed by the United States as being comprehended within their aforesaid Boundaries, which said Islands are claimed as belonging to His Britannic Majesty, as having been, at the time of and previous to the aforesaid Treaty of 1783, within the limits of the Province of Nova Scotia; in order, therefore, finally, to decide upon these Claims, it is agreed that they shall be referred to two Commissioners, to be appointed in the following manner, viz.: One Commissioner shall be appointed by His Britannic Majesty, and one by the President of the United States, by and with the advice of the Senate thereof; and the said two Commissioners so appointed, shall be sworn impartially to examine and decide upon the said Claims, according to such evidence as shall be laid before them on the part of His Britannic Majesty and of the United States respectively. The said Commissioners shall meet at St. Andrews,

in the Province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall by a Declaration or Report, under their hands and seals, decide to which of the two Contracting Parties the several Islands aforesaid do respectively belong, in conformity with the true intent of the said Treaty of Peace of 1783; and if the said Commissioners shall agree in their Decision, both parties shall consider such Decision as final and conclusive.

It is further agreed that, in the event of the two Commissioners differing upon all or any of the matters so referred to them, or in the event of both or either of the said Commissioners refusing or declining, or wilfully omitting to act as such, they shall make, jointly or separately, Report or Reports, as well to the Government of His Britannic Majesty, as to that of the United States, stating in detail the points on which they differ, and the grounds upon which their respective opinions have been formed, or the grounds upon which they, or either of them, have so refused, declined, or omitted to act. And His Britannic Majesty and the Government of the United States, hereby agree, to refer the Report or Reports of the said Commissioners to some Friendly Sovereign or State, to be then named for that purpose, and who shall be requested to decide on the differences which may be stated in the said Report or Reports, or upon the Report of one Commissioner, together with the grounds upon which the other Commissioner shall have refused, declined, or omitted to act, as the case may be. And if the Commissioner so refusing, declining, or omitting to act, shall also wilfully omit to state the grounds upon which he has so done, in such manner that the said statement may be referred to such Friendly Sovereign or State, together with the Report of such other Commissioner, then such Sovereign or State shall decide, *ex parte*, upon the said Report alone, and His Britannic Majesty, and the Government of the United States engage to consider the Decision of such Friendly Sovereign or State, to be final and conclusive on all the matters so referred.

ART. V.—Whereas neither that point of the Highlands lying due North from the source of the River St. Croix, designated in

the former Treaty of Peace between the two Powers, as the north-west angle of Nova Scotia, nor the north-westernmost head of Connecticut River have yet been ascertained ; and whereas that part of the Boundary line between the dominions of the two Powers, which extends from the source of the River St. Croix, directly North to the above-mentioned north-west angle of Nova Scotia, thence along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River, thence down along the middle of that River to the 45th degree of north latitude, thence by a line due West on said latitude until it strikes the River Iroquois or Cataraguy, has not yet been surveyed, it is agreed that for these several purposes, two Commissioners shall be appointed, sworn, and authorized, to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in the present Article.

The said Commissioners shall meet at St. Andrews, in the province of New Brunswick, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall have power to ascertain and determine the points above mentioned, in conformity with the provisions of the said Treaty of Peace of 1783 ; and shall cause the Boundary aforesaid, from the source of the River St. Croix to the River Iroquois, or Cataraguy, to be surveyed and marked according to the said provisions ; the said Commissioners shall make a Map of the said boundary, and annex to it a Declaration under their hands and seals, certifying it to be the true Map of the said Boundary, and particularizing the latitude and longitude of the north-west angle of Nova Scotia, of the north-westernmost head of Connecticut River, and of such other points of the said boundary as they may deem proper.

And both parties agree to consider such Map and Declaration as finally and conclusively fixing the said Boundary.

And in the event of the said two Commissioners differing, or both, or either of them, refusing, declining, or wilfully omitting

to act, such reports, declarations, or statements shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made in all respects as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated.

ART. VI.—Whereas by the former Treaty of Peace that portion of the Boundary of the United States from the point where the 45th degree of north latitude strikes the River Iroquois, or Cataraguy, to the Lake Superior, was declared to be “along the middle of said River into Lake Ontario, through the middle of the said Lake, until it strikes the communication by water between that Lake and Lake Erie, thence along the middle of said communication into Lake Erie, through the middle of said Lake, until it arrives at the water communication into the Lake Huron, thence through the middle of said Lake to the water communication between that Lake and Lake Superior.” And whereas doubts have arisen what was the middle of the said River, Lakes and water communications, and whether certain Islands lying in the same were within the dominions of His Britannic Majesty or of the United States.

In order, therefore, finally to decide these doubts, they shall be referred to two Commissioners, to be appointed, sworn, and authorized, to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in this present Article. The said Commissioners shall meet, in the first instance, at Albany, in the State of New York, and shall have power to adjourn to such other place or places as they shall think fit.

The said Commissioners shall, by a Report or Declaration, under their hands and seals, designate the Boundary through the said River, Lakes and water communications, and decide to which of the two Contracting Parties the several Islands lying within the said River, Lakes, and water communications, do respectively belong, in conformity with the true intent of the said Treaty of 1783. And both parties agree to consider such designation and decision as final and conclusive.

And in the event of the said two Commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such Reports, Declarations, or Statements, shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made, in all respects, as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated.

ART. VII.—It is further agreed, that the said two last mentioned Commissioners, after they shall have executed the duties assigned to them in the preceding Article, shall be, and they are hereby authorized, upon their oaths, impartially to fix and determine, according to the true intent of the said Treaty of Peace of 1783, that part of the boundary between the dominions of the two Powers which extends from the water communication between Lake Huron and Lake Superior, to the most North-Western point of the Lake of the Woods; to decide to which of the two Parties the several Islands lying in the Lakes, water communications, and Rivers forming the said Boundary, do respectively belong, in conformity with the true intent of the said Treaty of Peace of 1783, and to cause such parts of the said Boundary as require it, to be surveyed and marked.

The said Commissioners shall, by a Report or Declaration, under their hands and seals, designate the Boundary aforesaid, state their decision on the points thus referred to them, and particularize the latitude and longitude of the most North-Western Point of the Lake of the Woods, and of such other parts of the said Boundary as they may deem proper. And both Parties agree to consider such designation and Decision as final and conclusive.

And in the event of the said two Commissioners differing, or both, or either of them, refusing, declining, or wilfully omitting to act, such Reports, Declarations, or Statements, shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made in all respects as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated.

ART. VIII.—The several Boards of two Commissioners mentioned in the four preceding Articles, shall respectively have power to appoint a Secretary, and to employ such Surveyors or other persons as they shall judge necessary. Duplicates of all their respective Reports, Declarations, Statements, and Decisions, and of their Accounts, and of the Journal of their Proceedings, shall be delivered by them to the Agents of His Britannic Majesty, and to the Agents of the United States, who may be respectively appointed and authorized to manage the business on behalf of their respective Governments. The said Commissioners shall be respectively paid in such manner as shall be agreed between the two Contracting Parties, such agreement being to be settled at the time of the exchange of the Ratifications of this Treaty. And all other expenses attending the said Commissions shall be defrayed equally by the Two Parties. And in case of death, sickness, resignation, or necessary absence, the place of every such Commissioner respectively shall be supplied in the same manner as such Commissioner was first appointed, and the new Commissioner shall take the same oath or affirmation, and do the same duties.

It is further agreed between the two Contracting Parties that in case any of the Islands mentioned in any of the preceding Articles, which were in the possession of one of the parties prior to the commencement of the present War between the two Countries, should, by the decision of any of the Boards of Commissioners aforesaid, or of the Sovereign or State so referred to, as in the four next preceding Articles contained, fall within the dominions of the other party, all Grants of Land made previous to the commencement of the War by the party having had such possession, shall be as valid as if such Island or Islands had by such decision or decisions, been adjudged to be within the dominions of the party having had such possession.

ART. IX.—The United States of America engage to put an end, immediately after the Ratification of the present Treaty, to hostilities with all the Tribes or Nations of Indians with whom they may be at war at the time of such Ratification, and forthwith to

restore to such Tribes or Nations respectively, all the possessions, rights, and privileges which they may have enjoyed, or been entitled to in 1811, previous to such hostilities. Provided always, that such Tribes or Nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

And His Britannic Majesty engages, on his part, to put an end, immediately after the ratification of the present Treaty, to hostilities with all the Tribes or Nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such Tribes or Nations respectively, all the possessions, rights, and privileges which they may have enjoyed or been entitled to in 1811, previous to such hostilities. Provided always, that such tribes or nations shall agree to desist from all hostilities against His Britannic Majesty and his subjects, upon the ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

ART. X.—Whereas the Traffic in Slaves is irreconcilable with the principles of humanity and justice, and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the Contracting Parties shall use their best endeavours to accomplish so desirable an object.

ART. XI.—This Treaty, when the same shall have been ratified on both sides, without alteration by either of the Contracting Parties, and the Ratifications, Mutually exchanged, shall be binding on both parties, and the Ratifications shall be exchanged at Washington, in the space of four months from this day, or sooner if practicable.

In faith whereof, we the respective Plenipotentiaries have signed this Treaty and have thereunto affixed our seals.

Done in triplicate at Ghent, the twenty-fourth day of December, one thousand eight hundred and fourteen.

A Treaty of Peace and Amity between His Britannic Majesty and the United States of America. Signed at Ghent, December 24, 1814. Published by Authority. London: Printed by R. G. Clarke, Cannon Row, Westminster. Hertslet: The Map of Europe by Treaty. Vol. I. pp. 48-59.

RULES OF THE MIXED TRIBUNALS FOR THE
SUPPRESSION OF ILLICIT TRAFFIC IN SLAVES.

1817.

The following Act or Instrument was annexed to the additional Convention to the Treaty of January 22nd, 1815, between Great Britain and Portugal, for the purpose of preventing illicit traffic in slaves.

Signed at London, July 28th, 1817.

REGULATIONS FOR THE MIXED COMMISSIONS, WHICH ARE TO
RESIDE ON THE COAST OF AFRICA, IN THE BRAZILS,
AND AT LONDON.

ART. I.—The Mixed Commissions to be established by the Additional Convention of this date, upon the Coast of Africa and in the Brazils, are appointed to decide upon the legality of the detention of such slave vessels as the cruisers of both nations shall detain, in pursuance of this same Convention, for carrying on an illicit commerce in slaves.

The above-mentioned Commissions shall judge, without appeal, according to the letter and spirit of the Treaty of the 22nd of January, 1815, and of the Additional Convention to the said Treaty, signed at London on this 28th day of July, 1817. The Commissions shall give sentence as summarily as possible and they are required to decide (as far as they shall find it practicable) within the space of twenty days, to be dated from that on which every detained vessel shall have been brought into the port where they shall reside; first, upon the legality of the capture; second, in the case in which the captured vessel shall have been liberated, as to the indemnification which she is to receive.

And it is hereby provided, that in all cases the final sentence

shall not be delayed on account of the absence of witnesses or for want of other proofs, beyond the period of two months; except upon the application of any of the parties interested, when, upon their giving satisfactory security to charge themselves with the expense and risks of the delay, the Commissioners may, at their discretion, grant an additional delay not exceeding four months.

ART. II.—Each of the above-mentioned Mixed Commissions, which are to reside on the Coast of Africa and in the Brazils, shall be composed in the following manner :

The two High Contracting Parties shall each of them name a Commissary Judge, and a Commissioner of Arbitration, who shall be authorised to hear and to decide, without appeal, all cases of capture of slave vessels which in pursuance of the stipulation of the Additional Convention of this date may be laid before them. All the essential parts of the proceedings carried on before these Mixed Commissions shall be written down in the language of the country in which the Commission may reside.

The Commissary Judges and the Commissioners of Arbitration, shall make oath, in presence of the principal Magistrate of the place in which the Commission may reside, to judge fairly and faithfully, to have no preference either for the claimants or the captors, and to act, in all their decisions, in pursuance of the stipulations of the Treaty of the 22nd January, 1815, and of the Additional Convention to the said Treaty.

There shall be attached to each Commission a Secretary or Registrar, appointed by the Sovereign of the country in which the Commission may reside, who shall register all its acts, and who, previous to his taking charge of his post, shall make oath, in presence of at least one of the Commissary Judges, to conduct himself with respect for their authority, and to act with fidelity in all the affairs which may belong to his charge.

ART. III.—The form of the process shall be as follows :—

The Commissary Judges of the two nations shall, in the first place, proceed to the examination of the papers of the vessel and receive the depositions on oath of the captain and of two or

three, at least, of the principal individuals on board of the detained vessel, as well as the declaration on oath of the captor, should it appear necessary, in order to be able to judge and to pronounce if the said vessel has been justly detained or not, according to the stipulations of the Additional Convention of this date, and in order that, according to this judgment, it may be condemned or liberated. And in the event of the two Commissary Judges not agreeing on the sentence they ought to pronounce, whether as to the legality of the detention or the indemnification to be allowed, or on any other question which might result from the stipulations of the Convention of this date, they shall draw by lot the name of one of the two Commissioners of Arbitration, who, after having considered the documents of the process shall consult with the above-mentioned Commissary Judges on the case in question, and the final sentence shall be pronounced conformably to the opinion of the majority of the above-mentioned Commissary Judges, and of the above-mentioned Commissioner of Arbitration.

ART. IV.—As often as the cargo of slaves found on board of a Portuguese slave ship shall have been embarked on any point whatever of the coast of Africa, where the slave trade continues lawful to the subjects of the Crown of Portugal, such slave ship shall not be detained on pretext that the above mentioned slaves have been brought originally by land from any other part whatever of the continent.

ART. V.—In the authenticated declaration which the captor shall make before the Commission, as well as in the certificate of the papers seized, which shall be delivered to the captain of the captured vessel, at the time of the detention, the above-mentioned captor shall be bound to declare his name, the name of his vessel, as well as the latitude and longitude of the place where the detention shall have taken place, and the number of slaves found living on board of the slave ship, at the time of the detention.

ART. VI.—As soon as sentence shall have been passed, the detained vessel, if liberated, and what remains of the cargo, shall be restored to the proprietors, who may, before the same Com-

mission, claim a valuation of the damages which they may have a right to demand : the captor himself, and in his default, his Government, shall remain responsible for the above-mentioned damages. The two High Contracting Parties bind themselves to defray, within the term of a year, from the date of the sentence, the indemnifications which may be granted by the above-named Commission, it being understood that these indemnifications shall be at the expense of the Power of which the captor shall be a subject.

ART. VII.—In case of condemnation of a vessel for an unlawful voyage, she shall be declared lawful prize, as well as her cargo, of whatever description it may be, with the exception of the slaves who may be on board as objects of commerce, and the said vessel, as well as her cargo, shall be sold by public sale, for the profit of the two Governments, and as to the slaves, they shall receive from the Mixed Commission a certificate of emancipation, and shall be delivered over to the Government on whose territory the Commission which shall have to judge them shall be established, to be employed as servants or free labourers. Each of the two Governments binds itself to guarantee the liberty of such portion of these individuals as shall be respectively consigned to it.

ART. VIII.—Every claim for compensation of losses occasioned to ships suspected of carrying on an illicit trade in slaves, not condemned as lawful prize by the mixed Commissions, shall be also heard and judged by the above-named Commissions, in the form provided by the third Article of the present regulation.

And in all cases wherein restitution shall be so decreed the Commission shall award to the claimant or claimants, or his, or their lawful attorney or attorneys, for his or their use, a just and complete indemnification :

First, for all costs of suit, and for all losses and damages which the claimant or claimants may have actually sustained by such capture and detention ; that is to say, in case of total loss, the claimant or claimants shall be indemnified :

First. For the ship, her tackle, apparel and stores ;

Secondly. For all freight due and payable ;

Thirdly. For the value of the cargo of merchandise, if any ;

Fourthly. For the slaves on board at the time of detention, according to the computed value of such slaves at the place of destination ; deducting therefrom the usual fair average mortality for the unexpired period of the regular voyage ; deducting also for all charges and expenses payable upon the sale of such cargoes, including commission of sale when payable at such port ; and,

Fifthly. For all other regular charges in such cases of total loss ;

And in all other cases not of total loss, the claimant or claimants shall be indemnified :

First, for all special damages and expenses occasioned to the ship by the detention, and for loss of freight when due or payable ;

Secondly, a demurrage when due, according to the schedule annexed to the present Article ;

Thirdly, a daily allowance for the subsistence of slaves, of one shilling, or one hundred and eighty reis for each person, without distinction of sex or age, for so many days as it shall appear to the Commission that the voyage has been, or may be, delayed by reason of such detention, as likewise ;

Fourthly, for any deterioration of cargo or slaves ;

Fifthly, for any diminution in the value of the cargo of slaves, proceeding from an increased mortality beyond the average amount of the voyage, or from sickness occasioned by detention ; this value to be ascertained by their computed price at the place of destination, as in the above case of total loss ;

Sixthly, an allowance of five per cent. on the amount of capital employed in the purchase and maintenance of cargo for the period of delay occasioned by the detention ; and

Seventhly, for all premium of insurance on additional risks. The claimant or claimants shall likewise be entitled to interest, at the rate of five per cent., per annum, on the sum awarded until paid by the Government to which the capturing ship belongs ; the whole amount of such indemnifications being calculated in the money of the country to which the captured ship belongs, and to be liquidated at exchange current at the time of award

excepting the sum for the subsistence of slaves, which shall be paid at par, as above stipulated.

The two High Contracting Parties, wishing to avoid, as much as possible, every species of fraud in the execution of the Additional Convention of this date, have agreed, that if it should be proved, in a manner evident to the conviction of the Judges of the two nations, and without having recourse to the decision of a Commissioner of Arbitration, that the captor has been led into error by a voluntary and reprehensible fault, on the part of the captain of the detained ship, in that case only, the detained ship shall not have the right of receiving, during the days of her detention, the demurrage stipulated by the present Article.

Schedule of demurrage or daily allowance for a vessel of

100 tons to	120 inclusive	£	5	} per diem.
121 do.	150 do.	£	6	
151 do.	170 do.	£	8	
171 do.	200 do.	£	10	
201 do.	220 do.	£	11	
221 do.	250 do.	£	12	
251 do.	270 do.	£	14	
271 do.	300 do.	£	15	

and so on in proportion.

ART. IX.—When the proprietor of a ship suspected of carrying on an illicit trade in slaves, released in consequence of a sentence of one of the Mixed Commissions (or in the case, as above-mentioned, of total loss) shall claim indemnification for the loss of slaves which he may have suffered, he shall in no case be entitled to claim for more than the number of slaves which his vessel was, by the Portuguese laws, authorised to carry, which number shall always be declared in his passport.

ART. X.—The Mixed Commission established in London by Article IX. of the Convention of this date, shall hear and determine all claims for Portuguese ships and cargoes, captured by British cruisers on account of the unlawful trading in slaves, since the 1st of June, 1814, till the period when the Convention of this date is to be in complete execution; awarding to them, conform-

ably to Article IV. of the Additional Convention of this date a just and complete compensation, upon the basis laid down in the preceding Articles, either for total loss, or for losses and damages sustained by the owners and proprietors of the said ships and cargoes. The said Commission established in London shall be composed, and shall proceed, exactly upon the basis determined in Articles 1, 2 and 3 of the present regulation for the Commissions established on the Coast of Africa and the Brazils.

ART. XI.—It shall not be permitted to any of the Commissary Judges, nor to the Arbitrators, nor to the Secretary of any of the Mixed Commissions, to demand or receive, from any one of the parties concerned in the sentences which they shall pronounce, any emolument, under any pretext whatsoever, for the performance of the duties which are imposed upon them by the present regulation.

ART. XII.—When the parties interested shall imagine they have cause to complain of any evident injustice on the part of the mixed Commissions, they may represent it to their respective Governments, who reserve to themselves the right of mutual correspondence for removing, when they think fit, the individuals who may compose these Commissions.

ART. XIII.—In the case of a vessel detained unjustly, under pretence of the stipulations of the Additional Convention of this date, and in which the captor should neither be authorised by the tenor of the above-mentioned Convention nor of the instructions annexed to it, the Government to which the detained vessel may belong shall be entitled to demand reparation; and in such case, the Government to which the captor may belong binds itself to cause the subject of complaint to be fully examined, and to inflict upon the captor, if he be found to have deserved it, a punishment proportioned to the transgression which may have been committed.

ART. XIV.—The two High Contracting Parties have agreed, that, in the event of the death of one or more of the Commissioners, Judges and Arbitrators composing the above-mentioned mixed Commissions, their post shall be supplied, *ad interim*, in

the following manner ; on the part of the British Government, the vacancies shall be filled successively in the Commission which shall sit within the possessions of His Britannic Majesty, by the Governor or Lieutenant-Governor resident in that colony, by the principal Magistrate of the place, and by the secretary ; and in the Brazils, by the British Consul and Vice-Consul resident in the city in which the Mixed Commission may be established. On the part of Portugal, the vacancies shall be supplied, in the Brazils, by such persons as the Captain-General of the Province shall name for that purpose ; and, considering the difficulty which the Portuguese Government would feel in naming fit persons to fill the posts which might become vacant in the Commission established in the British possessions, it is agreed that in case of the death of the Portuguese Commissioners, Judge or Arbitrator, in those possessions, the remaining individuals of the above-mentioned Commission shall be equally authorised to proceed to the judgment of such slave-ships as may be brought before them, and to the execution of their sentence. In this case alone, however, the parties interested shall have the right of appealing from the sentence if they think fit, to the Commission resident in the Brazils ; and the Government to which the captor shall belong shall be bound fully to defray the indemnification which shall be due to them, if the appeal be judged in favour of the claimants : it being well understood that the ship and cargo shall remain, during this appeal, in the place of residence of the first Commission before whom they may have been conducted. The High Contracting Parties have agreed to supply, as soon as possible, every vacancy that may arise in the above-mentioned Commissions, from death or any other contingency. And in case that the vacancy of each of the Portuguese Commissioners residing in the British possessions, be not supplied at the end of six months, the vessels which are taken there to be judged, after the expiration of that time, shall no longer have the right to appeal hereinbefore stipulated.

Done at London, the 28th of July, 1817.*

* Hertslet, A Complete Collection of the Treaties and Conventions
Vol. II., p. 105-121.

FEDERAL TRIBUNAL OF ARBITRATORS IN THE
GERMANIC CONFEDERATION.

1834.

Modifications of the Federal Constitution of the Germanic Confederation, established by the Federal Act of 1815, were introduced by the Act of the Diet of Frankfort, of the 30th October, 1834, in consequence of the diplomatic Conferences held at Vienna in the same year, by the representatives of the different States of Germany.

ART. 1.—By the first Article of this Act it is provided that, in case of differences arising between the Government of any State and the Legislative Chambers, either respecting the interpretation of the local constitution, or upon the limits of the co-operation allowed to the Chambers, in carrying into effect certain determinate rights of the Sovereign, and especially in case of the refusal of the necessary supplies for the support of government, conformably to the constitution and the federal obligations of the State, after every legal and constitutional means of conciliation have been exhausted, the differences shall be decided by a *Federal Tribunal of Arbitrators*, appointed in the following manner :—

ART. 2.—The representatives, each holding one of the seventeen votes in the ordinary Assembly of the Diet, shall nominate, once in every three years, within the States represented by them, two persons distinguished by their reputation and length of service in the judicial and administrative service. The vacancies which may occur, during the said term of three years, in the Tribunal of Arbitrators thus constituted, shall be in like manner supplied as often as they may occur.

ART. 3.—Whenever the case mentioned in the first Article arises, and it becomes necessary to resort to a decision by this

Tribunal, there shall be chosen from among the thirty-four, six Judges Arbitrators, of whom three are to be selected by the Government, and three by the Chambers. This number may be reduced to two, or increased to eight, by the consent of the parties; and in case of the neglect of either to name judges, they may be appointed by the Diet.

ART. 4.—The Arbitrators thus designated shall elect an additional Arbiter as an Umpire, and in case of an equal division of votes the Umpire shall be appointed by the Diet.

ART. 5.—The documents respecting the matter in dispute shall be transmitted to the Umpire, by whom they shall be referred to two of the Judges Arbitrators to report upon the same, the one to be selected from among those chosen by the Government, the other from among those chosen by the Chambers.

ART. 6.—The Judges Arbitrators, including the Umpire, shall then meet at a place designated by the parties, or in case of disagreement, by the Diet, and decide by a majority of voices the matter in controversy according to their conscientious conviction.

ART. 7.—In case they require further elucidations, before proceeding to a decision, they shall apply to the Diet, by whom the same shall be furnished.

ART. 8.—Unless in case of unavoidable delay under the circumstances stated in the preceding Article, the decision shall be pronounced within the space of four months at farthest from the nomination of the Umpire, and be transmitted to the Diet in order to be communicated to the Government of the State interested.

ART. 9.—The sentence of the Judges Arbitrators shall have the effect of an austregal judgment, and shall be carried into execution in the manner prescribed by the ordinances of the Confederation.

In the case of disputes more particularly relating to the financial budget, the effect of the Arbitration extends to the period of time for which the same may have been voted.

ART. 10.—The costs and expenses of the Arbitration are to be exclusively borne by the State interested, and, in case of disputes

respecting their payment, they shall be levied by a decree of the Diet.

ART. 11.—The same tribunal shall decide upon the differences and disputes which may arise in the free towns of the Confederation, between the Senate and the authorities established by the burghers in virtue of their local constitutions.

ART. 12.—The different members of the Confederation may resort to the same Tribunal of Arbitration to determine the controversies arising between them; and whenever the consent of the States respectively interested is given for that purpose, the Diet shall take the necessary measures to organise the Tribunal according to the preceding Articles

For details respecting the Germanic Constitution, see “Wheaton’s History of the Law of Nations,” pp. 455 *et seq.*, and “Wheaton’s International Law,” pp. 76-91.

FISHERY TREATY,
BETWEEN GREAT BRITAIN AND THE UNITED
STATES OF AMERICA.

*Treaty extending the right of fishing, signed at Washington,
5th June, 1854.*

In Article 1 of this Treaty, rules are given for the guidance of a Commission Court as follows:—

After an Agreement concerning the liberty of fishing:—

1. And it is further agreed, that in order to prevent or settle any disputes as to the places to which the reservation of exclusive right to British fishermen contained in this Article, and that of fishermen of the United States contained in the next succeeding Article apply, each of the High Contracting Parties, on the application of either to the other, shall, within six months thereafter, appoint a Commissioner.

2. The said Commissioners, before proceeding to any business, shall make and subscribe a solemn declaration, that they will impartially and carefully decide, to the best of their judgement, and according to justice and equity, without fear, favour, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing, under this and the next succeeding Article.

3. The Commissioners shall name some third person, to act as Arbitrator or Umpire in any case or cases on which they may themselves differ in opinion.

4. If they should not be able to agree upon the name of such person, they shall each name a person and it shall be determined by lot which of the two persons so named shall be Arbitrator or Umpire, in cases of difference or disagreement between the Commissioners.

5. The person so to be chosen to be Arbitrator or Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the Commissioners, which, as well as their declarations, shall be entered on the record of their proceedings.

6. In the event of the death, absence, or incapacity of either of the Commissioners, or the Arbitrator or Umpire, or of their or his omitting, declining, or ceasing to act as such Commissioner, Arbitrator, or Umpire, another and different person shall be appointed, or named, as aforesaid, to act as such Commissioner, Arbitrator or Umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

7. Such Commissioners shall proceed to examine the coasts of the North American Provinces and of the United States embraced within the provisions of the first and second Articles of this treaty, and shall designate the places reserved by the said Articles from the common right of fishing therein.

8. The decision of the Commissioners, and of the Arbitrator or Umpire, shall be given in writing in each case and shall be signed by them respectively.

9. The High Contracting Parties hereby solemnly engage to consider the decision of the Commissioners, conjointly, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him respectively. (United States Statutes at Large, Vol. X., p. 1089.)

THE PARIS PROTOCOL.

1856.

Since, admittedly, the action of the Congress of Plenipotentiaries, which met in Paris, in 1856, for the settlement of the Treaty of Peace, at the close of the Crimean War, had an appreciable influence on the course of history, during the latter half of the nineteenth century, in reference to the question of Arbitration, it will be of interest to the reader to have placed before him the exact proceedings of that body in this matter. The references to Arbitration are contained in *Article VIII.* and in *Protocol 23* of the Treaty which was adopted April 14th, 1856. The *Article* was adopted previous to, and independently of, the visit of the Deputation to Paris from the Peace Society; but the Protocol, and the discussion upon it, were intimately connected with that visit.

ARTICLE VIII.

“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.”

THE SAME IN THE OFFICIAL FRENCH.

“S’il survenait entre la Sublime Porte et l’une, ou plusieurs, des autres Puissances signataires, un dissentiment qui menaçât de leurs relations, la Sublime Porte et chacune de ces Puissances, avant de recourir à l’emploi de la force, mettront les autres

Parties Contractantes en mesure de prévenir cette extrémité par leur action médiatrice.”

THE TWENTY-THIRD PROTOCOL.

“The Plenipotentiaries do not hesitate to express, in the name of their Governments, the wish that States between which any serious misunderstanding may arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly Power.

“The Plenipotentiaries hope that the Governments not represented at the Congress will unite in the sentiment which has inspired the wish recorded in the present Protocol.”

THE SAME IN THE OFFICIAL FRENCH.

“MM. les Plénipotentiaires n’hésitent pas à exprimer, au nom de leurs Gouvernements, le vœu que les Etats entre lesquels s’élèverait un dissentiment sérieux, avant d’en appeler aux armes, eussent recours, en tant que les circonstances l’admettraient, aux bons offices d’une Puissance amie.

“MM. les Plénipotentiaires espèrent que les Gouvernements non représentés au Congrès s’associeront à la pensée qui a inspiré le vœu consigné au présent Protocole.”

The place of this famous Protocol in history, and the reason for its influence were admirably set forth in a letter addressed to the *Times* on the 18th May, 1864, which is remarkable for a suggested Permanent Congress, by the Right Hon. Sir H. Drummond Wolf, as follows :—

A PERMANENT CONGRESS.

BY SIR H. DRUMMOND WOLFF.

1864.

Embarrassments arise from the imperfect basis on which international law is built up. According to Montesquieu, “*Le droit des gens est naturellement fondé sur ce principe, que les diverses nations doivent se faire dans la paix le plus de bien, et dans la guerre le moins de mal qu’il est possible sans nuire à leurs véritables intérêts.*” Two elements only are recognised—peace and war. It was not till Lord Clarendon proposed the mediatory clause of the Protocols of 1856 that a third basis was established—viz., that the object of international law is to prevent war.

Thus we see three points :—

1. That the general scheme of nations requires revision, so as to remove the probabilities of war.
2. That to supply this want we must look to diplomacy.
3. That the present machinery of diplomacy is insufficient for the purpose, and requires revision.

If any plan be formed to revise public law, that plan must include some permanent scheme for further revision. The constant changes in human affairs, still more rapid with the recent appliances of change, make it necessary to provide not only for a solid base, but for the constant exigencies of superstructure. Congresses have been, in their very nature, of short duration. Their arrangements have been rather suggestive than permanent. Their provisions have been violated without a check, and where they have broken down, even by necessity, those necessities have been, and are, declared illegal, not because they have sinned against the spirit of law and justice, but in the absence of any authority to declare their legality. Hence the principal weak-

ness in the proposal of the Emperor Napoleon for a Congress. It is in no partisan or polemical spirit that I must shortly discuss this proposal. It was a wise one in substance, though unwise in form, and unseasonable. The converse of my proposition applies to the refusal to enter into the Congress. It was unwise in substance, though perhaps wise at the time. It is necessary for the purpose of argument to reproduce as a whole

THE EMPEROR'S LETTER :—

In the presence of events that are daily arising and pressing on each other, I consider it indispensable to tell all my thoughts to the Sovereigns to whom is confided the destiny of nations.

Each time that deep shocks have shaken the bases and displaced the limits of States, solemn transactions have followed to co-ordain the new elements, and to consecrate by revision the transformations that have been accomplished. Such was the object of the Treaty of Westphalia, in the seventeenth century, and of the negotiations of Vienna in 1815. It is on this last foundation that at this day rests the political edifice of Europe, and, nevertheless, your Majesty is not ignorant it is crumbling in every part.

In considering attentively the situation of the different countries, it is impossible not to acknowledge that almost on all points the Treaties of Vienna have been destroyed, modified, ignored, or menaced. Hence duties without rule, rights without title, and unbridled pretensions : a danger the more formidable, since the improvements brought on by civilisation, which have bound the nations together by the community of material interests, would render war even more destructive.

Here is a subject for grave meditation. Let us not wait to take measures that sudden and irresistible events should trouble our judgment and hurry us on, despite ourselves, in contrary directions. I therefore propose to your Majesty to regulate the present and to assure the future in a Congress. Called to the Throne by Providence and by the will of the French people, but brought up in the school of adversity, it is, perhaps, less allowable for me than for another to ignore either the rights of Sovereigns or the legitimate aspirations of nations. Thus, I am ready to bring into an international council the spirit of moderation and justice, the ordinary portion of those who have undergone so many trials.

If I take the initiative in such an overture, I do not yield to a movement of vanity ; but as I am the Sovereign to whom is imputed the greater number of ambitious projects, I have it at heart to prove, by this frank and loyal step, that my only object is to arrive without a shock at the pacification of Europe. If this proposition be accepted I beg your Majesty to accept Paris as place of meeting.

In case the Princes allies or friends of France should find it convenient to heighten by their presence the authority of the deliberations, I should be

proud to offer them a cordial hospitality. Europe would perhaps see some advantage if the capital from which has been raised so often the signal of convulsions should become the seat of conferences destined to lay the bases of a general pacification.

Had the author stopped at the end of the fourth paragraph his proposal would doubtless have met with a different fate.

* * * * *

The proposal contained still weaker points. The Emperor proposes to replace the Treaties of 1815; but he does not provide against the violation or the crumbling away of the substitutes. He brings forward a new mechanism in politics. He thinks, and with justice, that a process which in former times has followed war and established Peace may now follow a Peace and prevent war; but he forgets that on the former occasions the nations were tired with war when they came to the Congress, and that they put up for a long time with the inconveniences of an imperfect settlement rather than have recourse to the alternative which has almost exhausted their strength. The Congress of Peace was offered to young generations not averse to try the fortunes of war. It was the putting of new wines into old bottles without allowance for the fermentation. A less pretending scheme would have been worked into a more practical result:—

THE WRITER'S SCHEME.

1. Despatch-writing does not succeed in keeping the Peace; why should diplomacy not be carried on to a certain extent by word of mouth?

2. Might not a town be chosen by lot at which the Ministers of Foreign Affairs of first and second rate Powers, accompanied by second plenipotentiaries and legal assessors, should yearly meet in synod?

3. Their first act would be to settle the bases of an international code. Like all legislative assemblies the synod would then proceed to discuss such matters as formed the subject of difference or correspondence between States, and amicably suggest measures for their adjustment. Where arbitration was required, sub-committees would be formed for the purpose, and difficulties would

thus be at once disposed of. The work over, another lot would decide the place of meeting for the next year.

4. More work might thus be accomplished in a month, and more good fellowship be insured, than by diplomatic correspondence in a year; and, as every capital of Europe would, in turn, become the seat of the Congress, one element of jealousy is done away with.

5. A transitory Congress, such as those of Westphalia, Utrecht, Vienna, and Paris, presents this defect that it cannot detect or repair its own errors and readjust its ordinances. Not six months after the Treaty of Paris of 1856 was published the American note, declining adhesion to the clause abolishing letters of marque. The prompt action of a Congress might have at once dealt with a question which will, unless settled, produce formidable results in a war between the two sides of the Atlantic. Again, the arbitration proposal of Lord Clarendon, wise as it was in the abstract, from want of elaborate detail has proved almost a dead letter.

6. Such would not be the case if the Synod or Congress assumed a permanent character. Each session would repair the errors or supply the wants of the preceding, and the machinery of construction would be continuous with experience.

7. While the ordinary business of diplomacy would be carried on by the resident legations, knotty or irritating points would be deferred for discussion at the Congress, or for direct conference at the meeting between the Ministers whose Courts were interested.

8. For emergencies sub-committees might be appointed, or mediatory tribunals chosen from the second Plenipotentiaries and legal assessors, or an understanding might be come to that in each State one of the ordinary tribunals should be named for deciding such international causes as any other State might wish to submit, from which tribunal the Congress should be the great Court of Appeal.

9. It is a law of nature that in friendly discussions suggestions are thrown out and expedients devised that otherwise would never see the light. Such would be the case in an assemblage

representing the birth, the wealth, the talent, the experience, and hence the conciliatory spirit of all civilised nations. The work of diplomacy simplified and lessened ; the mediatory clause of Paris, now optional, established as a fixed institution ; questions of debate nipped in the bud, armaments reduced, hostilities anticipated, and a neutral field provided, at which, even during war, the representatives of belligerents might meet together and devise terms of Peace—such would be the results of the proposed scheme.

10. The question may be asked here, as it was by Lord Russell of the Emperor, By what means it is proposed to carry out the decrees of the Congress? At the time of the Emperor's proposal the question was difficult of solution. The suggestion that war was the executive instrument of the Congress, suddenly proposed while Peace was not broken, presented an anomaly and a danger which, perhaps more than anything else, justified our refusal.

11. But a permanent Congress would not be sudden in its action or unseasonable if regular in its meetings. While intended to prevent war, it must keep war as a reserve, to be decided by circumstances. A body like this, when it has felt its influence, will of itself find methods to carry into effect its decrees. It will regulate the causes and conduct of war as well as those of Peace ; but war will be still less probable when a machinery has been instituted to concentrate in a tangible form the public opinion of all civilised countries, and to bring its full force to bear upon every great question.

12. An aggressor will scarce venture to maintain his pretensions in such an assembly. A *casus belli* when it does arise will be clearly stated, and the terms of arrangement equally laid down. If war is forced on by the petulance or injustice of any member of the European family, it will be simplified, and its effects modified, by the declared opinions of his brethren at the Congress.

THE ALABAMA CLAIMS CONVENTION.

1869.

The following is a copy of the Convention between Great Britain and the United States of America for the settlement of all outstanding claims.

“Signed at London, January 14th, 1869.

“Whereas claims have at various times since the exchange of the ratifications of the Convention between Great Britain and the United States of America, signed at London on February 8th, 1853, been made upon the Government of her Britannic Majesty on the part of citizens of the United States, and upon the Government of the United States on the part of subjects of her Britannic Majesty; and whereas some of such claims are still pending and remain unsettled; her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a Convention and have named as their plenipotentiaries to confer and agree thereupon, that is to say:—

“Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Hon. George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a peer of the United Kingdom, a member of her Britannic Majesty’s Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, her Britannic Majesty’s Principal Secretary of State for Foreign Affairs;

“ And the President of the United States of America, Reverdy Johnson, Esq., Envoy Extraordinary and Minister Plenipotentiary from the United States to her Britannic Majesty ;

“ Who, after having communicated to each other their respective full powers, found in good and due form, have agreed as follow :—

ART. I.—The High Contracting Parties agree that all claims on the part of subjects of her Britannic Majesty upon the Government of the United States, and all claims on the part of citizens of the United States upon the Government of her Britannic Majesty, including the so-called Alabama claims, which may have been presented to either Government for its interposition with the other since July 26th, 1853, the day of the exchange of the ratifications of the Convention concluded between Great Britain and the United States of America at London, on February 8th, 1853, and which yet remain unsettled ; as well as any other such claims which may be presented within the time specified in Article 3, of this Convention whether or not arising out of the late Civil War in the United States, shall be referred to four Commissioners to be appointed in the following manner—that is to say, two Commissioners shall be named by her Britannic Majesty, and two by the President of the United States, by and with the advice and consent of the Senate. In case of the death, absence or incapacity of any Commissioner, or in the event of any Commissioner omitting, or declining, or ceasing to act as such, her Britannic Majesty, or the President of the United States, as the case may be, shall forthwith name another person to act as Commissioner in the place or stead of the Commissioner originally named.

“ The Commissioners so named shall meet at Washington at the earliest convenient period after they shall have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour, or affection to their own country, upon all such claims as shall be laid before

them on the part of the Governments of her Britannic Majesty and of the United States respectively ; and such declaration shall be entered on the record of their proceedings.

“The Commissioners shall then, and before proceeding to any other business, name some person to act as Arbitrator or Umpire, to whose final decision shall be referred any claim upon which they may not be able to come to a decision. If they should not be able to agree upon an Arbitrator or Umpire, the Commissioners on either side shall name a person as Arbitrator or Umpire ; and in each and every case in which the Commissioners may not be able to come to a decision, the Commissioners shall determine by lot which of the two persons so named shall be the Arbitrator or Umpire in that particular case. The person or persons to be so chosen as Arbitrator or Umpire shall, before proceeding to act as such, in any case, make and subscribe a solemn declaration, in a form similar to that made and subscribed by the Commissioners which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their omitting, or declining, or ceasing to act as such Arbitrator or Umpire, another person shall be named, in the same manner as the person originally named, to act as Arbitrator or Umpire in his place and stead, and shall make and subscribe such declaration as aforesaid.

“ART. 2.—The Commissioners shall then forthwith proceed to the investigation of the Claims which shall be presented to their notice. They shall investigate and decide upon such Claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. The official correspondence which has taken place between the two Governments respecting any claims shall be laid before the Commissioners, and they shall, moreover, be bound to receive and peruse all other written documents or statements which may be presented to them by or on behalf of the respective Governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each Government, as

Counsel or Agent for such Government on each and every separate claim. Should they fail to decide by a majority upon any individual claim, they shall call to their assistance the Arbitrator or Umpire whom they may have agreed upon, or who may be determined by lot, as the case may be ; and such Arbitrator or Umpire, after having examined the official correspondence which has taken place between the two Governments and the evidence adduced for and against the claim, and after having heard, if required, one person on each side, as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal,

“ Nevertheless, if the Commissioners, or any two of them, shall think it desirable that a Sovereign or head of a friendly State should be Arbitrator or Umpire in case of any claim, the Commissioners shall report to that effect to their respective Governments, who shall thereupon, within six months, agree upon some Sovereign or head of a friendly State, who shall be invited to decide upon such claim, and before whom shall be laid the official correspondence which has taken place between the two Governments, and the other written documents or statements which may have been presented to the Commissioners in respect of such claims.

“ The Decision of the Commissioners and of the Arbitrator or Umpire shall be given upon each claim in writing, and shall be signed by them respectively and dated.

“ In the event of a decision involving a question of compensation to be paid being arrived at by a special Arbitrator or Umpire, the amount of such compensation shall be referred back to the Commissioners for adjudication ; and in the event of their not being able to come to a decision, it shall then be decided by the Arbitrator or Umpire appointed by them, or who shall have been determined by lot.

“ It shall be competent for each Government to name one person to attend the Commissioners as Agent on its behalf, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

“Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America hereby solemnly and sincerely engage to consider the decision of the Commissioners, or of the Arbitrator or Umpire, as the case may be, as absolutely final and conclusive upon each of such claims decided upon by him or them, respectively, and to give full effect to such decision without any objection or delay whatsoever.

“It is agreed that no claim arising out of any transaction of a date prior to July 26th, 1853, the day of the exchange of the ratifications of the Convention of February 8th, 1853, shall be admissible under this Convention.

“ART. 3.—Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, or of the Arbitrator or Umpire in the event of the Commissioners differing in opinion thereupon; and then, and in any such case, the period for presenting the claim may be extended to any time not exceeding three months longer.

“The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners, or for the Arbitrator or Umpire, if they differ, to decide in each case whether any claim has or has not been duly made, preferred, or laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this Convention.

“ART. 4.—All sums of money which may be awarded by the Commissioners, or by the Arbitrator or Umpire, on account of any claim, shall be paid in coin or its equivalent by the one Government to the other, as the case may be, within eighteen months after the date of the decision, without interest.

“ART. 5.—The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full and final settlement of every claim upon either Government, arising out of any transaction of a date prior to the exchange of the rati-

fications of the present Convention ; and further engage that every such claim whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled and barred, and thenceforth inadmissible.

“ART. 6.—The Commissioners and the Arbitrator or Umpire appointed by them shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ clerks or other persons to assist them in the transaction of the business which may come before them.

“The Secretary shall be appointed by her Britannic Majesty’s representative at Washington and by the Secretary of State of the United States jointly.

“Each Government shall pay the salaries of its own Commissioners. All other expenses and the contingent expenses of the Commission, including the salary of the Secretary, shall be defrayed in moieties by the two Parties.

“ART. 7.—The present Convention shall be ratified by her Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof ; and the Ratifications shall be exchanged at London as soon as may be within twelve months from the date hereof.

“In witness whereof the respective Plenipotentiaries have signed the same, and have affixed their respective seals.

“Done at London the 14th day of January, in the year of our Lord 1869.

“(L.S.) CLARENDON.

“(L.S.) REVERDY JOHNSON.”

N.B.—*The ratification of this, which is sometimes known as the Johnson-Clarendon Convention, was rejected by the American Senate on the 13th April, 1869.*

TREATY OF WASHINGTON,
BETWEEN GREAT BRITAIN AND THE UNITED
STATES OF AMERICA.

Signed at Washington, May 8th, 1871.

Ratifications exchanged at London, June 17th, 1871.

Her Britannic Majesty and the United States of America, being desirous to provide for an amicable settlement of all causes of difference between the two countries, have for that purpose appointed their respective Plenipotentiaries, that is to say:—

For Great Britain: Earl de Grey and Ripon, Lord President of the Privy Council; Sir Stafford Henry Northcote, Bart., M.P.; Sir Edward Thornton, Ambassador to the U.S.A.; Sir John Alexander Macdonald, Attorney-General for Canada, and Professor Mountague Bernard; and for the United States: Hamilton Fish, Secretary of State; Robert Cumming Schenck, American Minister to Great Britain; Samuel Nelson, Judge of the Supreme Court; Ebenezer Rockwood Hoar, Esq., of Massachusetts, and George Henry Williams, Esq., of Oregon.

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:—

SECTION I.—VIOLATION OF NEUTRALITY.

ART. 1.—Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the “Alabama” claims:

And whereas Her Britannic Majesty has authorised Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty’s Government for the escape, under whatever circumstances, of the “Alabama” and other

vessels from British ports, and for the depredations committed by those vessels :

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the "Alabama" claims, shall be referred to a Tribunal of Arbitration to be composed of five Arbitrators to be appointed in the following manner, that is to say : one shall be named by Her Britannic Majesty ; one shall be named by the President of the United States ; His Majesty the King of Italy shall be requested to name one ; the President of the Swiss Confederation shall be requested to name one ; and His Majesty the Emperor of Brazil shall be requested to name one.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, Her Britannic Majesty, or the President of the United States, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such head of a State.

And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

ART. 2.—The Arbitrators shall meet at Geneva, in Switzerland,

at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its Agent to represent it generally in all matters connected with the Arbitration.

ART. 3.—The written or printed case of each of the two Parties accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the Agent of the other Party as soon as may be after the organisation of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

ART. 4.—Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the Agent of the other Party, a counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence, so presented by the other Party.

The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ART. 5.—It shall be the duty of the Agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies ; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument or oral argument by counsel upon it ; but in such case the other Party shall be entitled to reply either orally or in writing, as the case may be.

ART. 6. — In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case :—

RULES.

A neutral Government is bound—

First :—To use due diligence to prevent the fitting out, arming or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace ; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly :—Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly :—To exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in Article I. arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers and to invite them to accede to them.

ART. 7.—The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognised by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States at Washington within twelve months after the date of the award.

The award shall be in duplicate, one copy whereof shall be

delivered to the Agent of Great Britain for his Government, and the other copy shall be delivered to the Agent of the United States for his Government.

ART. 8.—Each Government shall pay its own Agent and provide for the proper remuneration of the Counsel employed by it, and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties.

ART. 9.—The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ART. 10. — (1.) In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

(2.) The Board of Assessors shall be constituted as follows : One member thereof shall be named by Her Britannic Majesty, one member thereof shall be named by the President of the United States, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy ; and in case of a vacancy happening from any cause, it shall be filled in the same manner in which the original appointment was made.

(3.) As soon as possible after such nominations the Board of Assessors shall be organised in Washington, with power to hold their sittings there, or in New York, or in Boston.

(4.) The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice

and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and of the United States respectively.

(5.) They shall be bound to hear on each separate claim, if required, one person on behalf of each Government as Counsel or Agent.

(6.) A majority of the Assessors in each case shall be sufficient for a decision.

(7.) The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively, and dated.

(8.) Every claim shall be presented to the Assessors within six months from the day of their first meeting; but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

(9.) The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remain undetermined at that time, they shall make a final report within a further period of six months.

(10.) The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the Representative of Her Britannic Majesty at Washington, and one copy thereof to the Secretary of State of the United States.

(11.) All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

(12.) The Board of Assessors may employ such clerks as they shall think necessary.

(13.) The expenses of the Board of Assessors shall be borne equally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

ART. 11.—The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

SECTION II.—MARITIME CAPTURES.

ART. 12.—The High Contracting Parties agree that all claims on the part of Corporations, Companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between the 13th of April, 1861, and the 9th of April, 1865, inclusive, not being claims growing out of the acts of the vessels referred to in Article 1 of this Treaty; and all claims, with the like exception, on the part of Corporations, Companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for its interposition with the other, and which yet

remain unsettled, as well as any other such claims which may be presented within the time specified in Article 14 of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner, that is to say:—One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of Her Britannic Majesty and of the United States, respectively; and such declaration shall be entered on the record of their proceedings.

ART. 13.—The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of their respective Governments in support of, or in answer to, any claim; and to hear, if

required, one person on each side, on behalf of each Government, as Counsel or Agent for such Government, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its Agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the decision of the Commissioners as absolutely final and conclusive, upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

ART. 14.—Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners; and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Treaty.

ART. 15.—All sums of money which may be awarded by the Commissioners on account of any claim shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the final award, without interest, and without any deduction save as specified in Art. 16 of this Treaty.

ART. 16.—The Commissioners shall keep an accurate record,

and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary, and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner and Agent or Counsel. All other expenses shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a rateable deduction on the amount of the sums awarded by the Commissioners; provided always that such deduction shall not exceed the rate of five per cent. on the sums so awarded.

ART. 17.—The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of all such claims as are mentioned in Article 12 of this Treaty upon either Government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

SECTION III.—FISHERY RIGHTS.

ART. 18.—It is agreed between the High Contracting Parties that liberty, which “applies solely to the sea fishery,” be given to the United States fishermen to fish, etc., in places defined therein for the term of years mentioned in Art. 33 of this Treaty.

ART. 19.—It is agreed that similar rights be conceded in places defined therein to British subjects for the same term of years.

ART. 20.—Relates to places reserved from the common right of fishing under the Treaty of Washington, of the 5th June, 1854, and provides that should any question arise in regard to these, a Commission shall be appointed to designate such places, constituted in the same manner, and having the same powers,

duties, and authority as the Commission appointed under the first Article of the Treaty of the 5th of June, 1854.

ART. 21.—It is agreed that, for the term of years mentioned in Article 33, the produce of the fisheries shall be admitted into each country, respectively, free of duty.

ART. 22.—It is further agreed that Commissioners shall be appointed to determine the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States in return for the privileges accorded under Article 18 of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

ART. 23.—The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States, conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the city of Halifax, in the province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them, to the best of their judg-

ment, and according to justice and equity ; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its Agent, to represent it generally in all matters connected with the Commission.

ART. 24.—The proceedings shall be conducted in such order as the Commissioners appointed under Articles 22 and 23 of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof ; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organisation of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article 23 of this Treaty.

ART. 25.—The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Com-

missioner and Agent or Council; all other expenses shall be defrayed by the two Governments in equal moieties.

SECTION IV.—DELIMITATIONS.

ART. 26.—Refers to the free and open navigation of the rivers St. Lawrence, Yukon, Porcupine, and Stikine.

ART. 27.—Refers to the use on terms of equality of certain canals, both in the Dominion and in the States.

ART. 28.—Stipulates the free and open navigation of Lake Michigan for the term of years mentioned in Art. 33.

ART. 29.—Relates to Custom duties and transit of goods for the same term of years.

ART. 30.—Regulates the transportation of goods, export duties, etc., for the same term of years.

ART. 31.—Relates to the removal, by the Parliament of the Dominion of Canada, and the Legislature of New Brunswick, of duties on lumber and timber for the same term of years.

ART. 32.—Agrees that the provisions and stipulations of Articles 18 to 25 of this Treaty inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable.

ART. 33. — The foregoing Articles 18 to 25 inclusive, and Article 30 of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation, and further, until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the

other at the end of the said period of ten years or at any time afterward.

ART. 34.—It is agreed that the respective claims of the two Governments in regard to the boundary line between the United States and Canada, running south through the middle of the Channel which separates the Continent and Vancouvers Island and thence through the middle of Fuca Straits to the Pacific Ocean, which by Article 1 of the Treaty concluded at Washington June 15th, 1846, was referred to Commissioners who were unable to agree upon the same, “shall be submitted to the Arbitration and award of His Majesty the Emperor of Germany, who, having regard to the above-mentioned Article of the said Treaty, shall decide thereupon, finally and without appeal, which of those claims is most in accordance with the true interpretation of the Treaty of June 15th, 1846.”

ART. 35.—The award of His Majesty the Emperor of Germany shall be considered as absolutely final and conclusive; and full effect shall be given to such award without any objection, evasion, or delay whatsoever. Such decision shall be given in writing and dated; it shall be in whatsoever form His Majesty may choose to adopt; it shall be delivered to the Representatives or other public Agents of Great Britain and of the United States respectively, who may be actually at Berlin, and shall be considered as operative from the day of the date of the delivery thereof.

ART. 36.—The written or printed case of each of the two Parties, accompanied by the evidence offered in support of the same, shall be laid before His Majesty the Emperor of Germany within six months from the date of the exchange of the ratifications of this Treaty, and a copy of such case and evidence shall be communicated by each Party to the other, through their respective Representatives at Berlin.

The High Contracting Parties may include, in the evidence to be considered by the Arbitrator, such documents, official correspondence, and other official or public statements bearing on the

subject of the reference as they may consider necessary to the support of their respective cases.

After the written or printed case shall have been communicated by each Party to the other, each Party shall have the power of drawing up and laying before the Arbitrator a second and definitive statement, if it think fit to do so, in reply to the case of the other Party so communicated, which definitive statement shall be so laid before the Arbitrator, and also be mutually communicated in the same manner as aforesaid, by each Party to the other, within six months from the date of laying the first statement of the case before the Arbitrator.

ART. 37.—If in the case submitted to the Arbitrator either Party shall specify or allude to any report or document in his own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof, and either Party may call upon the other, through the Arbitrator, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrator may require. And if the Arbitrator should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either Party, and he shall be at liberty to hear one Counsel or Agent for each Party, in relation to any matter, and at such time, and in such manner as he may think fit.

ART. 38.—The Representatives or other public Agents of Great Britain, and of the United States, at Berlin respectively, shall be considered as the Agents of their respective Governments to conduct their cases before the Arbitrator, who shall be requested to address all his communications, and give all his notices, to such Representatives or other public Agents who shall represent their Governments generally in all matters connected with the Arbitration.

ART. 39.—It shall be competent to the Arbitrator to proceed

in the said Arbitration, and all matters relating thereto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose, either in the presence or absence of either or both Agents, and either orally or by written discussion, or otherwise.

ART. 40.—The Arbitrator may, if he think fit, appoint a Secretary or Clerk, for the purposes of the proposed Arbitration, at such rate of remuneration as he shall think proper. This and all other expenses of and connected with the said Arbitration shall be provided for as hereinafter stipulated.

ART. 41.—The Arbitrator shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to, in relation to this matter, which shall forthwith be repaid by the two Governments in equal moieties.

ART. 42.—The Arbitrator shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said Agents.

ART. 43.—The present Treaty shall be duly ratified by Her Britannic Majesty, and by the President of the United States of America, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged either at London or at Washington within six months from the date hereof, or earlier if possible.

TRAITÉ DE WASHINGTON

du 8 Mai 1871.

LES QUATRE CAS D'ARBITRATION.

Le Traité de Washington de 1871 contient quatre cas d'Arbitrage :

Le premier relatif à des faits de violation de neutralité (Art. I à XI) déféré à un Tribunal d'Arbitrage siégeant à Genève ;

Le deuxième relatif à des questions de validité de prises maritimes (Art. XII à XVII) déféré à un Tribunal d'Arbitrage siégeant à Washington ;

Le troisième relatif à des droits de pêche (Art. XVIII à XXV) déféré à un Tribunal d'Arbitrage siégeant à Halifax ;

Le quatrième relatif à une contestation de limites (Art. XXXIV à XLII) déféré à la décision arbitrale de Sa Majesté l'Empereur d'Allemagne.

LES TROIS RÈGLES.

PREMIÈRE RÈGLE.—Un gouvernement neutre est obligé de faire toutes les diligences nécessaires (due diligence) pour s'opposer, dans les limites de sa juridiction territoriale, à ce qu'un vaisseau soit mis en mesure de prendre la mer, soit armé ou équipé, quand ce gouvernement a des motifs suffisants pour penser que ce vaisseau est destiné à croiser ou à faire des actes de guerre contre une puissance avec laquelle il est lui-même en paix. Ce gouvernement doit faire également toutes diligences nécessaires pour s'opposer à ce qu'un vaisseau destiné à croiser ou à faire des actes de guerre,

comme il est dit ci-dessus, quitte les limites de sa juridiction territoriale, dans le cas où il aurait été spécialement adapté, soit en totalité soit en partie, à des usages belligérants.

DEUXIÈME RÈGLE.—Un gouvernement neutre ne doit ni permettre ni tolérer que l'un des belligérants se serve de ses ports ou de ses eaux comme d'une base d'opérations navales contre l'autre belligérant ; renouvelle ou augmente ses approvisionnements militaires, qu'il se procure des armes, ou bien encore qu'il recrute des hommes.

TROISIÈME RÈGLE.—Un gouvernement neutre est obligé de faire toutes les diligences nécessaires dans ses ports et dans ses eaux, pour prévenir toute violation des obligations et des devoirs ci-dessus énoncés ; il agira de même à l'égard de toutes les personnes qui se trouveront dans sa juridiction.—Martens, "Nouveau Recueil," XX, 698. Aussi, voyez ci-dessus, p. 315.

RÉSOLUTIONS PAR M. BLUNTSCHLI.

I.—Les trois règles du traité de Washington du 8 mai 1871, n'introduisent point un principe nouveau dans le droit international. Elles ne sont que l'application claire du principe juridique reconnu, que l'État neutre, désireux de demeurer en paix et amitié avec les belligérants, et de jouir des droits de la neutralité, a aussi le devoir de s'abstenir de prendre à la guerre une part quelconque, par la prestation de secours militaires à l'un des belligérants ou à tous les deux, et de veiller à ce que son territoire ne soit pas utilisé et usurpé par d'autres personnes (troupes étrangères ou particuliers) pour coopérer à la guerre.

II.—La violation de ce devoir de l'État neutre ne saurait être présumée, elle doit être prouvée lorsqu'elle n'est ni avouée ni notoire, soit que l'on reproche à l'État neutre une intention hostile (*Dolus*) ou seulement de la négligence (*Culpa*).

III.—La puissance lésée par une violation des devoirs de neutralité, n'a que dans des cas graves et seulement pendant la durée de la guerre, le droit de considérer la neutralité comme aban-

donnée, et de recourir aux armes pour se défendre contre l'État jusque-là neutre.

Dans les cas peu graves et lorsque la guerre est terminée, de telles contestations appartiennent exclusivement à la procédure arbitrale.

IV.—Le tribunal arbitral prononce *ex bono et æquo* sur les dommages-intérêts que l'État neutre doit, par suite de sa responsabilité, payer à l'État lésé.

NOTE SUR LES TROIS RÈGLES PAR M. MOUNTAGUE BERNARD.

Ces règles inscrites dans le Traité sont conventionnellement obligatoires pour les deux Puissances Contractantes. Les principes qu'elles consacrent auraient-ils lié les puissances contractantes indépendamment du Traité? Lient-ils les autres États maritimes? La question reste entière: la Grande-Bretagne et les États-Unis ne sont convenus de rien à cet égard, et il n'était pas nécessaire qu'ils convinssent de quelque chose.

Les États-Unis ne regardaient pas seulement les Règles comme conventionnellement obligatoires, mais comme une consécration de certains principes de droit international en vigueur avant la conclusion du Traité et avant la guerre civile de 1861. Cela est dit en termes exprès dans le mémoire (*Case*) présenté par le gouvernement des États-Unis aux arbitres de Genève en 1872 (pp. 148—162). Cela avait été déclaré de même dans le message annuel du Président au Congrès, 4 décembre 1871 :

“ Les Parties Contractantes dans le Traité ont résolu de considérer comme “ règle de leurs rapports mutuels certains principes de droit public, pour “ lesquels les États-Unis ont lutté depuis le commencement de leur histoire. “ Elles sont convenues de plus de porter ces principes à la connaissance des “ autres Puissances maritimes, et de les inviter à y adhérer.”

En ce qui concerne la seconde règle, le gouvernement anglais a déclaré qu'il admettait, cette manière de voir.

“ Le gouvernement des États-Unis a déclaré nettement qu'il ne regarde ces “ règles que comme la reconnaissance de principes de droit international pré- “ établis. Pour ce qui concerne la seconde règle, le gouvernement britannique “ partage cette manière de voir.” (Counter Case of Great Britain presented at Geneva, p. 15.)

PROCEDURE IN THE GENEVA TRIBUNAL.

December 15th, 1871.

The Procedure of the Court created by the Treaty of Washington, May 8th, 1871, was mainly fixed by that Treaty; but when its members met at their first conference in the Hotel de Ville, Geneva, on the 15th December, 1871:—

1. The credentials of the Arbitrators were examined and found to be in good and due form.

2. On the motion of Mr. Adams, the American Arbitrator, seconded by Sir Alexander Cockburn, the Lord Chief Justice of England and British Arbitrator, Count Sclopis, "as being the Arbitrator named by the Power first mentioned in the treaty after Great Britain and the United States," was unanimously chosen to preside over the labours of the Tribunal. Count Sclopis, having expressed his acknowledgments, assumed the presidency.

3. On the proposal of Count Sclopis, the Tribunal of Arbitration requested the Arbitrator named by the President of the Swiss Confederation to recommend some suitable person to act as secretary of the tribunal.

The Swiss Arbitrator named M. Alexandre Favrot, who was thereupon appointed by the Tribunal to act as its Secretary during the conferences, and entered upon the duties of that office.

4. Mr. J. C. Bancroft Davis, the Agent of the United States, then presented in duplicate to each of the Arbitrators and to the Agent of Great Britain the printed case of the United States, accompanied by the documents, official correspondence, and other evidence on which his side relied. Lord Tenterden, the British Agent, did the same with the printed case of the British Government.

5. The Tribunal thereupon directed that the respective counter cases, additional documents, correspondence, and evidence called

for or permitted by the Fourth Article of the Treaty should be delivered to the Secretary of the Tribunal at the hall of the conference, the Hotel de Ville, at Geneva, for the Arbitrators and for the respective Agents, on or before the 15th day of the following April.

6. The Arbitrators further directed that either party desiring, under the provisions of the Fourth Article of the Treaty, to extend the time for delivering the counter cases, documents, correspondence, and evidence, shall make application to them through the Secretary, and that the Secretary shall thereupon convene a conference at Geneva at an early day, to suit the convenience of the respective Arbitrators, and that the notice thereof shall be given to the Agent of the other party.

7. The Tribunal proceeded to direct that applications by either party, under the provisions of the Fourth Article of the Treaty, for copies of reports or documents specified or alluded to, and in the exclusive possession of the other party, shall be made to the Agent of the other party with the same force and effect as if made to the Tribunal itself.

8. The Tribunal further directed that, should either party, in accordance with the provisions of the Fourth Article, call upon the other party, through the Arbitration, to produce the original or certified copies of any papers adduced as evidence, such application shall be made by written notice thereof to the Secretary within thirty days after the delivery of the cases, and that thereupon the Secretary shall transmit to the Agent of the other party a copy of the request, and that it shall be the duty of the Agent of the other party to deliver said originals or certified copies to the Secretary as soon as may be practicably convenient.

9. The Arbitrators also agreed that for the purpose of deciding any question arising upon the foregoing rules, the presence of three of their number shall be sufficient.

RULES OF
THE EGYPTIAN INTERNATIONAL COURTS.

1876.

Rules of Judicial Organisation for Mixed Lawsuits in Egypt.

No. I.

CIVIL AND COMMERCIAL JURISDICTION.

Chapter I.—Tribunals of First Instance and Court of Appeal.

I.—APPOINTMENT AND CONSTITUTION.

ART. 1.—There shall be instituted three Tribunals of First Instance, at Alexandria, Cairo, and Zagazig.

ART. 2.—Each of these Tribunals shall be composed of seven judges, four foreigners and three natives.

Awards shall be rendered by five judges, three foreigners and two natives.

One of the foreign judges shall preside, with the title of Vice-President, and shall be appointed by the absolute majority of the foreign and native members of the tribunal.

In commercial cases, the Tribunal shall associate with itself two merchants, a native and a foreigner, who shall have a deliberative voice and be chosen by election.

ART. 3.—There shall be at Alexandria a Court of Appeal, consisting of eleven magistrates, four natives and seven foreigners.

One of the foreign magistrates shall preside, with the title of Vice-President, and he shall be appointed in the same manner as the vice-presidents of the tribunals.

The Decrees of the Court of Appeal shall be issued by eight magistrates, five foreigners and three natives.

ART. 4.—The number of the Magistrates of the Court of

RÈGLEMENT
D'ORGANISATION JUDICIAIRE EN EGYPTE.

1876.

TITRE PREMIER.

JURIDICTION EN MATIÈRE CIVILE ET COMMERCIALE.

Chapitre Premier.—Tribunaux de première instance et cour d'appel.

§ I. — INSTITUTION ET COMPOSITION.

ARTICLE 1^{er}. — Il sera institué trois tribunaux de première instance à Alexandrie, au Caire et à Zagazig.

ART. 2. — Chacun de ces tribunaux sera composé de sept juges : quatre étrangers et trois indigènes.

Les sentences seront rendues par cinq juges, dont trois étrangers et deux indigènes.

L'un des juges étrangers présidera avec le titre de vice-président, et sera désigné par la majorité absolue des membres étrangers et indigènes du tribunal.

Dans les affaires commerciales, le tribunal s'adjoindra deux négociants, un indigène et un étranger, ayant voix délibérative et choisis par voie d'élection.

ART. 3. — Il y aura à Alexandrie une cour d'appel composée de onze magistrats, quatre indigènes et sept étrangers.

L'un des magistrats étrangers présidera sous le titre de vice-président et sera désigné de la même manière que les vice-présidents des tribunaux.

Les arrêts de la cour d'appel seront rendus par huit magistrats, dont cinq étrangers et trois indigènes.

ART. 4. — Le nombre des magistrats de la cour d'appel et

Appeal and of the Tribunals may be increased if the Court declares it necessary for the needs of the service, without altering the proportion fixed between the native and foreign judges.

Meanwhile, in case of the simultaneous absence or inability to serve, of several judges of the Court of Appeal, or of the same Tribunal, the President of the Court may have their places supplied, if they are foreign judges, by their colleagues of the other tribunals, or by the foreign magistrates of the Court of Appeal ; but when one of the magistrates of that court shall be thus delegated to take part in one of the tribunals, he shall have the presidency thereof.

ART. 5.—The nomination and choice of the judges shall belong to the Egyptian Government ; but in order that it may itself be quite satisfied as to the guarantees offered by the persons chosen by it, it shall apply officially to the Ministers of Justice abroad, and only engage persons who have the acquiescence and authorisation of their Government.

ART. 6.—There shall be in the Court of Appeal, and in each tribunal, a Registrar and several sworn Clerks, by whom his place may be taken.

ART. 7.—There shall also be in the precincts of the Court of Appeal and of each Tribunal a sufficient number of sworn Interpreters, and a staff of necessary Ushers, who shall have the duty of attending to those present, of giving legal notice of the documents, and of the carrying out of the sentences.

ART. 8.—The Registrars, Ushers, and Interpreters shall be first appointed by the Government, and, as to the Registrars, they shall be chosen, in the first instance, from abroad, among the Ministerial Officers who are exercising or have already exercised, or among the persons qualified to fulfil, the same functions abroad, and they may be dismissed by the tribunal to which they shall be attached.

II.—COMPETENCE.

ART. 9.—These tribunals alone shall take cognisance of all disputes in civil and commercial matters, between natives and

des tribunaux pourra être augmenté si le cour en signale la nécessité pour le besoin du service, sans altérer la proportion fixée entre les juges indigènes et étrangers.

En attendant, dans le cas d'absence ou d'empêchement de plusieurs juges à la fois de la cour d'appel, ou du même tribunal, le président de la cour pourra les faire suppléer, s'il s'agit de juges étrangers, par leurs collègues des autres tribunaux ou par les magistrats étrangers de la cour d'appel ; lorsque l'un des magistrats de la cour sera ainsi délégué à intervenir aux audiences d'un des tribunaux, il en aura la présidence.

ART. 5. — La nomination et le choix des juges appartiendront au gouvernement égyptien ; mais, pour être rassuré lui-même sur les garanties que présenteront les personnes dont il fera choix, il s'adressera officieusement aux ministres de la justice à l'étranger, et n'engagera que les personnes munies de l'acquiescement et de l'autorisation de leur gouvernement.

ART. 6. — Il y aura dans la cour d'appel et dans chaque tribunal un greffier et plusieurs commis-greffiers assermentés, par lesquels il pourra se faire remplacer.

ART. 7. — Il y aura aussi près la cour d'appel et de chaque tribunal des interprètes assermentés en nombre suffisant, et le personnel d'huissiers nécessaires qui seront chargés du service de l'audience, de la signification des actes et de l'exécution des sentences.

ART. 8. — Les greffiers, huissiers et interprètes seront d'abord nommés par le gouvernement, et, quant aux greffiers, ils seront choisis pour la première fois à l'étranger parmi les officiers ministériels qui exercent ou qui ont déjà exercé, ou parmi les personnes aptes à remplir les mêmes fonctions à l'étranger, et pourront être révoqués par le tribunal auquel il seront attachés.

§ II. — COMPÉTENCE.

ART. 9. — Ces tribunaux connaîtront seuls de toutes les contestations en matière civile et commerciale, entre indigènes et

foreigners, and between foreigners of different nationalities outside the personal statute.

They shall also take cognisance of all suits relating to real estate between all persons, even belonging to the same nationality.

ART. 10.—The Government, the Administrations, and the Dairas of His Highness, the Khedive, and of the members of his family, shall be amenable to these tribunals, in lawsuits with foreigners.

ART. 11.—These tribunals, while unable to give a judgment relating to the property of the Public Domain, or to interpret or stay the execution of an administrative measure, shall have the power of judging, in cases provided for by the Civil Code, the violations of any right acquired by a foreigner, through any administrative act.

ART. 12.—Suits of Foreigners against a Religious Establishment, in claim of the ownership of real estate possessed by such establishment, cannot be submitted to these tribunals; but these shall be competent to give judgment on suits entered into on the question of legal possession, whoever may be the plaintiff or defendant.

ART. 13.—The sole fact of a mortgage being obtained on real estate, in favour of a foreigner, whoever may be the occupier and landlord, shall render these tribunals competent to give judgment on the validity of the mortgage and on all its consequences, even to and including the forced sale of the estate, together with the distribution of the proceeds of the sale.

ART. 14.—The tribunals shall delegate one of the magistrates, who, acting as Judge of the Peace, shall have the duty of conciliating the parties, and of trying cases of which the importance shall be fixed by the code of procedure.

III.—HEARINGS.

ART. 15.—The hearings shall be public, except in cases where the tribunal, by a decision supported by reasons (*motivée*), shall order the proceedings to be *in camera* in the interest of morals and public order; the defence shall be free.

étrangers et entre étrangers de nationalités différentes en dehors du statut personnel.

Ils connaîtront aussi de toutes les actions réelles immobilières entre toutes personnes, même appartenant à la même nationalité.

ART. 10. — Le gouvernement, les administrations, les daïras de S. A. le Khédive et des membres de sa famille seront justiciables de ces tribunaux dans les procès avec les étrangers.

ART. 11. — Ces tribunaux, sans pouvoir statuer sur la propriété du domaine public ni interpréter ou arrêter l'exécution d'une mesure administrative, pourront juger, dans les cas prévus par le Code civil, les atteintes portées à un droit acquis d'un étranger, par un acte d'administration.

ART. 12. — Ne sont pas soumises à ces tribunaux les demandes des étrangers contre un établissement pieux en revendication de la propriété d'immeubles possédés par cet établissement, mais ils seront compétents pour statuer sur la demande intentée sur la question de possession légale, quel que soit le demandeur ou le défendeur.

ART. 13. — Le seul fait de la constitution d'une hypothèque en faveur d'un étranger sur les biens immeubles, quels que soient le possesseur et le propriétaire, rendra ces tribunaux compétents pour statuer sur la validité de l'hypothèque et sur toutes ses conséquences jusques et y compris la vente forcée de l'immeuble, ainsi que la distribution du prix.

ART. 14. — Les tribunaux délègueront un des magistrats, qui, agissant en qualité de juge de paix, sera chargé de concilier les parties et de juger les affaires dont l'importance sera fixée par le Code de procédure.

§ III. — AUDIENCES.

ART. 15. — Les audiences seront publiques, sauf les cas où le tribunal par une décision motivée, ordonnera l'huis-clos dans l'intérêt des bonnes mœurs ou de l'ordre public ; la défense sera libre.

ART. 16.—The legal Languages used before the Tribunal for the pleadings and the publication of the documents and awards, shall be the languages of the country, Italian and French.

ART. 17.—Only persons having the diploma of advocate shall be admitted to represent and defend parties before the Court of Appeal.

IV.—EXECUTION OF AWARDS.

ART. 18.—The Execution of Judgments shall take place outside all administrative action, consular or otherwise, on the order of the Tribunal. It shall be carried out by the ushers of the Tribunal with the assistance of the local authorities, if this assistance becomes necessary, but always outside all administrative interference. Only, the officer of justice entrusted with such execution by the tribunal must notify the Consulates of the day and hour of the execution, and this on penalty of the judgment becoming void, and of damages against him. The consul, thus notified, has the opportunity of being present at the execution; but in case of absence, the execution shall be proceeded with.

V.—IRREMOVABILITY OF THE MAGISTRATES.—ADVANCEMENT.— INCOMPATIBILITY.—DISCIPLINE.

ART. 19.—The Magistrates who compose the Court of Appeal and the Tribunals shall be irremovable.

Irremovability shall last only during the period of five years. It shall not be definitively allowed till after this period of probation.

ART. 20.—The promotion of magistrates, and their removal from one tribunal to another, shall only take place with their consent and on the vote of the Court of Appeal, which shall take the opinion of the interested tribunals.

ART. 21.—The functions of Magistrates, Registrars, Clerks, Interpreters, and Ushers shall be incompatible with all other salaried functions, and with the vocation of a merchant.

ART. 16. — Les langues judiciaires employées devant le tribunal, pour les plaidoiries et la rédaction des actes et sentences seront les langues du pays, l'italien et le français.

ART. 17. — Les personnes ayant le diplôme d'avocat seront seules admises à représenter et défendre les parties devant la cour d'appel.

§ IV. — EXÉCUTION DES SENTENCES.

ART. 18. — L'exécution des jugements aura lieu en dehors de toute action administrative consulaire ou autre, sur l'ordre du tribunal. Elle sera effectuée par les huissiers du tribunal avec l'assistance des autorités locales, si cette assistance devient nécessaire, mais toujours en dehors de toute ingérence administrative.

Seulement, l'officier de justice chargé de l'exécution par le tribunal est obligé d'avertir les consulats du jour et de l'heure de l'exécution, et ce, à peine de nullité et de dommages-intérêts contre lui. Le consul, ainsi averti, a la faculté de se trouver présent à l'exécution ; mais, en cas d'absence, il sera passé outre à l'exécution.

§ V. — INAMOVIBILITÉ DES MAGISTRATS. — AVANCEMENT. — INCOMPATIBILITÉ. — DISCIPLINE.

ART. 19. — Les magistrats qui composent la cour d'appel et les tribunaux seront inamovibles.

L'inamovibilité ne subsistera que pendant la période quinquennale. Elle ne sera définitivement admise qu'après ce délai d'épreuve.

ART. 20. — L'avancement des magistrats et leur passage d'un tribunal à un autre n'auront lieu que de leur consentement et sur le vote de la cour d'appel, qui prendra l'avis des tribunaux intéressés.

ART. 21. — Les fonctions de magistrats, de greffiers, commis-greffiers, interprètes et huissiers seront incompatibles avec toutes autres fonctions salariées et avec la profession de négociant.

ART. 22.—The magistrates shall not be the object, on the part of the Egyptian administration, of titular or material distinctions.

ART. 23.—All judges of the same class shall receive the same salary. The acceptance of any remuneration beyond this salary, or of an increase of salary, or of valuable gifts or other material advantages, shall entail for the judge the forfeiture of his position and salary, without any right to an indemnity.

ART. 24.—The Discipline of the magistrates, of the officers of justice, and the advocates, is reserved to the Court of Appeal. The disciplinary Penalty applicable to magistrates, for actions which compromise their honour as magistrates, or the independence of their vote, shall be the relinquishment and loss of emolument, without any right to an indemnity. The penalty applicable to advocates, for actions which compromise their honour, shall be their removal from the list of advocates admitted to plead before the Court, and the verdict shall be given by the Court in a full assembly, and by a three-quarters majority of the Councillors present.

ART. 25.—Every complaint presented to the Government by a member of the Consular Court against the judges for disciplinary reasons, must be brought before the Court, which shall be bound to examine the matter.

Chapter II.—The Bar.

ART. 26.—There shall be established a Judicial Bar, at the head of which shall be an Attorney-General.

ART. 27.—The Attorney-General shall have under his direction in the Court of Appeal and the Tribunals, substitutes numerous enough for the service of the Court and the judicial police.

ART. 28.—The Attorney-General may sit in all the courts of the Appeal Court and the Tribunals, in all the Criminal Courts and all the General Assemblies, both of the Court and the Tribunals.

ART. 29.—The Attorney-General and his substitutes shall be irremovable, and shall be appointed by His Highness the Khedive.

ART. 22. — Les magistrats ne seront point l'objet, de la part de l'administration égyptienne, de distinctions honorifiques ou matérielles.

ART. 23. — Tous les juges de la même catégorie recevront les mêmes appointements. L'acceptation d'une rémunération en dehors de ces appointements, d'une augmentation des appointements, de cadeaux de valeur ou d'autres avantages matériels, entraîne, pour le juge, la déchéance de l'emploi et du traitement, sans aucun droit à une indemnité.

ART. 24. — La discipline des magistrats, des officiers de justice et des avocats est réservée à la cour d'appel. La peine disciplinaire applicable aux magistrats, pour les faits qui compromettent leur honorabilité comme magistrat ou l'indépendance de leur vote, sera la révocation et la perte du traitement, sans aucun droit à une indemnité. La peine applicable aux avocats pour les faits qui compromettent leur honorabilité sera la radiation de la liste des avocats admis à plaider devant la cour, et le jugement devra être rendu par la cour en réunion générale à la majorité des trois quarts des conseillers présents.

ART. 25. — Toute plainte présentée au gouvernement par un membre du corps consulaire contre les juges pour cause disciplinaire devra être déférée à la cour, qui sera tenue d'instruire l'affaire.

Chapitre II. — Parquet.

ART. 26. — Il sera institué un parquet à la tête duquel sera un procureur-général.

ART. 27. — Le procureur-général aura sous sa direction auprès de la cour d'appel et des tribunaux des substitués en nombre suffisant pour le service des audiences et la police judiciaire.

ART. 28. — Le procureur-général pourra siéger à toutes les chambres de la cour et des tribunaux, à toutes les cours criminelles et à toutes les assemblées générales de la cour et des tribunaux.

ART. 29. — Le procureur-général et ses substitués seront amovibles et ils seront nommés par S. A. le Khédive.

VI.—SPECIAL AND TEMPORARY ARRANGEMENTS.

ART. 30.—The right of Peremptory Challenge of magistrates, interpreters, and written translations, shall be reserved for all the parties.

ART. 31.—There shall be, in each record office of the tribunals of First Instance, an employé of the Mehkémé, who shall assist the Registrar in the conveyance of real property, and in documents relating to the constitution of the law of landed property, and he shall draw up a deed of it, which he shall transmit to the Mehkémé.

ART. 32.—There shall also be at the Mehkémé clerks delegated by the Registrar of the Tribunal of First Instance, whose duty it shall be to transmit to him, to be officially transcribed in the register of mortgages, the conveyances of real property and all mortgage deeds. These transmissions shall be made under penalty of damages and disciplinary proceedings, but the omission to do so shall not involve nullity of the sentence.

ART. 33.—The agreements, deeds of gift, and mortgage deeds, or conveyances of real estate, received by the Registrar of the Tribunal of First Instance, shall have the force of authentic documents, and their original shall be deposited in the archives of the record office.

ART. 34.—The New Tribunals, in the exercise of their jurisdiction in Civil and Commercial matters, and within the limits of what is allowed them in penal matters, shall apply the codes presented by Egypt to the Powers; and, in case of silence, insufficiency, or obscurity of the law, the judge shall act in conformity with the principles of natural law and the rules of Equity.

ART. 35.—The Government shall cause to be published, one month before the New Tribunals enter on their functions, the Codes, a copy of which, in each of the judicial languages, shall be deposited up to the time of opening, in each Mudierah, at each Consulate, and in the Record Offices of the Court of Appeal and the Tribunals, which shall always preserve a copy thereof.

§ VI. — DISPOSITIONS SPÉCIALES ET TRANSITOIRES.

ART. 30. — Le droit de récusation péremptoire des magistrats, des interprètes et des traductions écrites, sera réservé pour toutes les parties.

ART. 31. — Il y aura, dans chaque greffe des tribunaux de première instance, un employé du Mehkémé qui assistera le greffier dans les actes translatifs de propriété immobilière et de constitution de droit de privilège immobilier, et en dressera acte qu'il transmettra au Mehkémé.

ART. 32. — Il y aura également auprès du Mehkémé des commis délégués par le greffier du tribunal de première instance qui devront lui transmettre, pour être transcrits d'office au registre des hypothèques, les actes translatifs de propriété immobilière et de constitution de gage immobilier.

Ces transmissions seront faites sous peine de dommages-intérêts et de poursuite disciplinaire, et sans que l'omission entraîne nullité.

ART. 33. — Les conventions, donations et les actes de constitution d'hypothèque ou translatifs de propriété immobilière, reçus par le greffier du tribunal de première instance, auront la valeur d'actes authentiques et leur original sera déposé dans les archives du greffe.

ART. 34. — Les nouveaux tribunaux, dans l'exercice de leur juridiction en matière civile et commerciale, et dans la limite de celle qui leur est consentie en matière pénale, appliqueront les codes présentés par l'Égypte aux puissances, et, en cas de silence, d'insuffisance et d'obscurité de la loi, le juge se conformera aux principes du droit naturel et aux règles de l'équité.

ART. 35. — Le gouvernement fera publier, un mois avant le fonctionnement des nouveaux tribunaux, les codes, dont un exemplaire en chacune des langues judiciaires sera déposé jusqu'à ce fonctionnement dans chaque Mudierah, auprès de chaque consulat et aux greffes de la cour d'appel et des tribunaux, qui en conserveront toujours un exemplaire.

ART. 36.—It shall also publish the statutes relative to the personal law of foreigners, a scale of judicial charges, and the ordinances in relation to lands, embankments and canals.

ART. 37.—The Court shall prepare the general Judicial Rules concerning the maintenance of order in the court, the oversight of the tribunals, of the officers of justice, and of the advocates, and the duties of the solicitors representing the parties to the proceedings, the admission of indigent persons to the bureau of judicial assistance, the exercise of the right of peremptory challenge, and the manner of procedure in case of the equal division of votes, for the judgments of the Court of Appeal.

The Code of Rules thus prepared shall be transmitted to the Tribunals of First Instance for their observations, and, after a fresh deliberation of the Court, which shall be definitive, it shall be rendered executory by decree of the Minister of Justice.

ART. 38.—The Tribunals, in civil and commercial matters, shall not begin to take cognisance of Mixed Cases until one month after their installation.

ART. 39.—Causes already commenced before the Foreign Consulates at the time of the installation of the tribunals shall be carried on before the older courts till their definitive settlement. They may, however, on the demand of the parties and with the consent of all interested, be referred to the New Tribunals.

ART. 40.—The New Laws and New Judicial Organisation shall not have retrospective application.

NO. II.

JURISDICTION IN PENAL MATTERS AND IN WHAT CONCERNS FOREIGN CRIMINALS.

(This is beyond the scope of this Work ; the French version is given for the sake of completeness.)

ART. 36. — Il publiera également les lois relatives au statut personnel des indigènes, un tarif des frais de justice, les ordonnances sur le régime des terres, des digues et canaux.

ART. 37. — La cour préparera le règlement général judiciaire en ce qui concerne la police de l'audience, la discipline des tribunaux, des officiers de justice, des avocats, et les devoirs des mandataires représentant les parties à l'audience, l'admission des personnes indigentes au bureau d'assistance judiciaire, l'exercice du droit de récusation péremptoire, et la manière de procéder en cas de partage des votes, pour les jugements de la cour d'appel.

Le projet de règlement ainsi préparé sera transmis aux tribunaux de première instance pour leurs observations, et, après une nouvelle délibération de la cour qui sera définitive, rendu exécutoire par décret du ministre de la justice.

ART. 38. — Les tribunaux en matière civile et commerciale ne commenceront à connaître des causes mixtes qu'un mois après leur installation.

ART. 39. — Les causes déjà commencées devant les consulats étrangers au moment de l'installation des tribunaux, seront jugées devant leur ancien forum jusqu'à leur solution définitive. Elles pourront, cependant, à la demande des parties et avec le consentement de tous les intéressés, être référées aux nouveaux tribunaux.

ART. 40. — Les nouvelles lois et la nouvelle organisation judiciaire n'auront pas d'effet rétroactif.

TITRE II.

JURIDICTION EN MATIÈRE PÉNALE ET EN CE QUI CONCERNE LES INculpÉS ÉTRANGERS.

Chapitre Premier. — Tribunaux des contraventions, de police correctionnelle et cour d'assises.

§ I^{er}. — COMPOSITION.

ARTICLE PREMIER. — Le juge des contraventions à la charge des étrangers sera un des membres étrangers du tribunal.

ART. 2. — La chambre du conseil, aussi bien en matière de délits qu'en matière de crimes, sera composée de trois juges dont un indigène et deux étrangers, et de quatre assesseurs étrangers.

ART. 3. — Le tribunal correctionnel aura la même composition.

ART. 4. — La cour d'assises sera composée de trois conseillers, dont un indigène et deux étrangers.

Les douze jurés seront étrangers.

Dans ces divers cas, la moitié des assesseurs et des jurés sera de la nationalité de l'inculpé, s'il le demande. Dans le cas où la liste des jurés ou des assesseurs de la nationalité de l'accusé serait insuffisante, il désignera la nationalité à laquelle ils devront appartenir pour compléter le nombre voulu.

ART. 5. — Lorsqu'il y aura plusieurs inculpés, chacun d'eux aura droit de demander un nombre égal d'assesseurs ou de jurés, sans que le nombre des assesseurs ou jurés puisse être augmenté, et sauf à déterminer par la voie du sort ceux des inculpés qui, à raison de ce nombre, ne pourront exercer leur droit.

§ II. — COMPÉTENCE.

ART. 6. — Seront soumises à la juridiction des tribunaux égyptiens, les poursuites pour contraventions de simple police, et, en outre, les accusations portées contre les auteurs et complices des crimes et délits suivants :

ART. 7. — Crimes et délits commis directement contre les magistrats, les jurés et les officiers de justice dans l'exercice de leurs fonctions, savoir :

- a) Outrages par gestes, paroles ou menaces ;
- b) Calomnies, injures, pourvu qu'elles aient été proférées, soit en présence du magistrat, du juré ou de l'officier de justice, soit dans l'enceinte du tribunal, ou publiées par voie d'affiches, d'écrits, d'imprimés, de gravures ou d'emblèmes ;
- c) Voies de fait contre leur personne, comprenant les coups, blessures et homicide volontaire avec ou sans préméditation ;

d) Voies de fait exercées contre eux ou menaces à eux faites pour obtenir un acte injuste ou illégal ou l'abstention d'un acte juste ou légal ;

e) Abus par un fonctionnaire public de son autorité contre eux dans le même but ;

f) Tentative de corruption exercée directement contre eux ;

g) Recommandation donnée à un juge par un fonctionnaire public en faveur d'une des parties.

ART. 8. — Crimes et délits commis directement contre l'exécution des sentences et des mandats de justice, savoir :

a) Attaque ou résistance avec violence ou voies de fait contre les magistrats en fonctions, ou des officiers de justice instrumentant ou agissant légalement pour l'exécution des sentences ou mandats de justice, ou contre les dépositaires ou agents de la force publique, chargés de prêter main-forte à cette exécution ;

b) Abus d'autorité de la part d'un fonctionnaire public pour empêcher l'exécution ;

c) Vol de pièces judiciaires dans le même but ;

d) Bris de scellés apposés par l'autorité judiciaire, détournement d'objets saisis en vertu d'une ordonnance ou d'un jugement ;

e) Evasion de prisonniers détenus en vertu d'un mandat ou d'une sentence et actes qui ont directement procuré cette évasion ;

f) Recel des prisonniers évadés dans le même cas.

ART. 9. — Les crimes et délits imputés aux juges, jurés et officiers de justice, quand ils seront accusés de les avoir commis dans l'exercice de leurs fonctions ou par suite d'un abus de ces fonctions, savoir :

Outre les crimes et délits communs qui pourront leur être imputés dans ces circonstances, les crimes et délits spéciaux sont :

a) Sentence injuste rendue par faveur ou inimitié ;

b) Corruption ;

c) Non-révélation de la tentative de corruption ;

- d) Dénî de justice ;
- e) Violences exercées contre les particuliers ;
- f) Violation du domicile sans les formalités légales ;
- g) Exactions ;
- h) Détournement de deniers publics ;
- i) Arrestation illégale ;
- j) Faux dans les sentences et actes.

ART. 10. — Dans les dispositions qui précèdent, sont compris sous la désignation d'officiers de justice, les greffiers, les commis-greffiers assermentés, les interprètes attachés au tribunal et les huissiers titulaires, mais non les personnes chargées accidentellement par délégation du tribunal d'une signification ou d'un acte d'huissier.

La dénomination de magistrats comprend les assesseurs.

Chapitre II. — Dérogation au code d'instruction criminelle dans le jugement des contraventions des crimes et délits à la charge des étrangers.

§ 1^{er} — POURSUITE.

ART. 11. — Lorsqu'un membre du corps consulaire dénoncera un fait délictueux à la charge d'un magistrat ou d'un officier de justice, le gouvernement devra donner les ordres nécessaires au ministère public, qui sera tenu de suivre sur la dénonciation.

ART. 12. — Toutes les poursuites pour crimes et délits feront l'objet d'une instruction qui sera soumise à une chambre du conseil.

ART. 13. — Le consul de l'inculpé sera sans délai avisé de toute poursuite pour crime ou délit intentée contre son administré.

§ II. — INSTRUCTION.

ART. 14. — L'instruction ainsi que les débats auront lieu dans celle des langues judiciaires que connaîtrait l'inculpé.

ART. 15. — Toute instruction contre un étranger, ainsi que

la direction des débats lors du jugement, appartiendront à un magistrat étranger, tant en matière de simple police qu'en matière criminelle ou correctionnelle.

ART. 16. — Si l'inculpé d'un crime ou d'un délit n'a pas de défenseur, il lui en sera désigné un d'office au moment de l'interrogatoire, à peine de nullité.

ART. 17. — Jusqu'à ce qu'il soit constaté qu'il existe en Egypte une installation suffisante de lieux de détention, les inculpés arrêtés préventivement seront livrés au consul immédiatement après l'interrogatoire, et dans les vingt-quatre heures de l'arrestation au plus tard, à moins que le consul n'ait autorisé la détention dans la prison du gouvernement.

ART. 18. — Le témoin qui refusera de répondre, soit au juge d'instruction, soit devant un tribunal du jugement, pourra être condamné à la peine de l'emprisonnement, qui variera d'une semaine à un mois, en matière de délit, et qui pourra être portée à trois mois en matière de crime, ou, en tout cas, à une amende de 100 à 4,000 piastres égyptiennes.

Ces peines seront prononcées, suivant les cas, par le tribunal ou la cour.

ART. 19. — Les seuls témoins qui pourront être récusés sont les ascendants, les descendants et les frères et sœurs de l'inculpé ou ses alliés au même degré et son conjoint même divorcé, sans que l'audition des personnes ci-dessus entraîne nullité, lorsque ni le ministère public, ni la partie civile, ni l'inculpé ne les aura récusés.

ART. 20. — Lorsque, dans le cours d'une instruction, il y aura lieu de procéder à une visite domiciliaire, le consul de l'inculpé sera avisé.

Il sera dressé procès-verbal de l'avis donné au consul.

Copie de ce procès-verbal sera laissée au consulat au moment de l'interpellation.

ART. 21. — Hors le cas de flagrant délit ou d'appel de secours de l'intérieur, l'entrée du domicile pendant la nuit ne pourra avoir lieu qu'en présence du consul ou de son délégué, s'il ne l'a pas autorisée hors sa présence.

§ III. — RÈGLEMENT DE LA COMPÉTENCE DANS LES CONFLITS
DE JURIDICTION.

ART. 22. — Trois jours avant la réunion de la chambre du conseil, la communication des pièces de l'instruction sera faite au greffe, au consul ou à son délégué.

Il devra, sous peine de nullité, être délivré au consul expédition des pièces dont il demandera copie.

ART. 23. — Si, sur la communication des pièces, le consul de l'inculpé prétend que l'affaire appartient à sa juridiction et qu'elle doit être déférée à son tribunal, la question de compétence, si elle est contestée par le tribunal égyptien, sera soumise à l'arbitrage d'un conseil composé de deux conseillers ou juges, désignés par le président de la cour, et de deux consuls choisis par le consul de l'inculpé.

ART. 24. — Lorsque le juge d'instruction et le consul instruiront en même temps sur le même fait, si l'un ou l'autre ne croit pas devoir se reconnaître incompétent, le conseil des conflits devra être réuni pour régler le différend à la demande de l'un des deux.

Il est bien entendu que le conflit ne pourra jamais être soulevé par le juge d'instruction à l'occasion d'un crime ou d'un délit ordinaire ; de plus, le crime ou le délit qu'il prétendra avoir été commis devra être qualifié par le réquisitoire dont il aura été saisi, conformément aux catégories ci-dessus des faits attribués aux nouveaux tribunaux. Enfin, si le magistrat ou l'officier de justice offensé a porté sa plainte devant le tribunal consulaire, ce tribunal statuera sur la plainte sans qu'il y ait possibilité de conflit.

ART. 25. — Le tribunal qui, après que les formalités ci-dessus auront été remplies, restera saisi de l'affaire, statuera sur cette affaire sans qu'il puisse y avoir lieu ultérieurement à déclaration d'incompétence.

§ IV. — DÉBATS DEVANT LA COUR D'ASSISES.

ART. 26. — Devant la cour d'assises, quand les débats seront clos et les questions à poser aux juges arrêtées, le président résumera l'affaire et les principales preuves pour ou contre l'accusé.

§ V. — DE L'APPEL ET DU POURVOI CONTRE LES JUGEMENTS DE CONDAMNATION.

ART. 27. — Les appels, quand ils sont permis en matière de contravention contre les jugements du tribunal de simple police, seront portés devant le tribunal correctionnel.

ART. 28. — Les pourvois, dans le cas où ils sont autorisés par le Code d'instruction criminelle contre les jugements de condamnation en matière pénale, seront portés devant la cour, composée comme en matière civile.

Les conseillers ayant siège dans la cour d'assises ne pourront connaître du pourvoi élevé contre l'arrêt de la cour.

§ VI. — ÉTABLISSEMENT DE LA LISTE DES JURÉS ET CHOIX DES ASSESSEURS.

ART. 29. — La liste des jurés de nationalité étrangère sera dressée annuellement par le corps consulaire.

A cet effet, chaque consul adressera au doyen du corps consulaire la liste de ses nationaux qui remplissent, d'après lui, les conditions voulues pour être jurés. Les jurés devront avoir l'âge de trente ans et une résidence, en Égypte, d'un an au moins.

ART. 30. — La liste définitive sera dressée par le corps consulaire sur les listes partielles en procédant par voie d'élimination, jusqu'à ce que le total des jurés atteigne et n'excède pas le nombre de deux cent cinquante.

ART. 31. — Chaque nationalité pourra avoir un maximum de trente jurés, pourvu que, dans ce dernier cas, la composition de la nationalité le permette.

ART. 32. — Les assesseurs correctionnels seront choisis par le corps consulaire sur la liste des jurés.

ART. 33. — Le minimum des assesseurs sera de six, et le maximum de douze par nationalité.

ART. 34. — Lorsqu'un délit correctionnel devra être jugé dans une ville où il ne se trouvera pas un nombre suffisant d'assesseurs étrangers, la cour désignera les assesseurs du tribunal voisin qui devront venir siéger.

ART. 35. — Les assesseurs et jurés qui ne comparaitront pas pour remplir leurs fonctions seront condamnés par le tribunal ou la cour, suivant les cas, à une amende de 200 à 4,000 piastres égyptiennes, à moins d'excuse légitime.

§ VII. — EXÉCUTION.

ART. 36. — Jusqu'à ce qu'il soit constaté qu'une installation suffisante des lieux de détention existe réellement en Égypte, les condamnés à l'emprisonnement seront, si le consul le demande détenus dans les prisons consulaires.

ART. 37. — Le consul dont l'administré subira sa peine dans les établissements du gouvernement égyptien aura le droit de visiter les lieux de détention et d'en vérifier l'état.

ART. 38. — En cas de condamnation à la peine capitale, messieurs les représentants des puissances auront la faculté de réclamer leur administré.

A cet effet, un délai suffisant interviendra entre le prononcé et l'exécution de la sentence pour donner aux représentants des puissances le temps de se prononcer.

TITRE III.

§ I^{er}. — DISPOSITION SPÉCIALE.

ART. 39. — Il sera établi près des nouveaux tribunaux un nombre suffisant d'agents choisis par les tribunaux eux-mêmes,

pour pouvoir, quand il n'y aura pas péril en la demeure, assister au besoin les magistrats et les officiers de justice dans leurs fonctions.

§ II. — DISPOSITION FINALE.

ART. 40. — Pendant la période quinquennale, aucun changement ne devra avoir lieu dans le système adopté.

Après cette période, si l'expérience n'a pas confirmé l'utilité pratique de la réforme judiciaire, il sera loisible aux puissances, soit de revenir à l'ancien ordre de choses, soit d'aviser, d'accord avec le gouvernement égyptien, à d'autres combinaisons.

CONVENTION BETWEEN THE UNITED STATES OF
AMERICA AND FRANCE, RELATIVE TO CERTAIN
CLAIMS FOR DAMAGES CAUSED BY WAR.

*Concluded January 15th, 1880, and Ratified by the President of
the United States, April 3rd, 1880, and by the President of
the French Republic, June 9th, 1880.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, a Convention between the United States of America and the French Republic, for the settlement of certain claims of the citizens of either country against the other, was concluded and signed by their respective Plenipotentiaries, at the City of Washington, on the fifteenth day of January, in the year One thousand eight hundred and eighty, which Convention is, word for word, as follows :—

Convention between the United States of America and the French Republic, for the settlement of certain claims of the citizens of either country against the other.

The United States of America and the French Republic, animated by the desire to settle and adjust amicably the claims made by the citizens of either country against the Government of the other, growing out of acts committed by the civil or military authorities of either country as hereinafter defined, during a state of war or insurrection, under the circumstances hereinafter specified, have agreed to make arrangements for that purpose, by means of a Convention, and have named as their Plenipotentiaries to confer and agree thereupon, as follows :—

The President of the United States, William Maxwell Evarts, Secretary of State of the United States, and the President of the French Republic, Georges Maxime Outrey, Envoy Extraordinary and Minister Plenipotentiary of France at Washington, Commander of the National Order of the Legion of Honour, &c., &c., &c.

Who after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles :—

CONVENTION

CONCLUE LE 15 JANVIER 1880 ENTRE LA FRANCE
ET LES ÉTATS-UNIS D'AMÉRIQUE, RELATIVE A
CERTAINES RÉCLAMATIONS POUR DOMMAGES
DE GUERRE.

La République française et les États-Unis d'Amérique, animés du désir de régler, par un arrangement amical, les réclamations élevées par les citoyens de chacun des deux pays contre le gouvernement de l'autre et résultant d'actes commis pendant l'état de guerre ou d'insurrection par les autorités civiles et militaires de l'un ou de l'autre pays, dans les circonstances spécifiées ci-après, ont résolu de prendre des mesures à cet effet, au moyen d'une convention, et ont désigné comme leurs plénipotentiaires pour conférer et établir un accord, savoir : M. le Président de la République française, M. George-Maxime Outrey, envoyé extraordinaire et Ministre plénipotentiaire de France à Washington, et le Président des États-Unis ; M. William Maxwell Evarts, secrétaire d'État aux États-Unis, lesquels, après s'être communiqué leurs pleins pouvoirs respectifs et les avoir trouvés en bonne et due forme, sont convenus des articles suivants :

ART. 1.—Toutes les réclamations élevées par des corporations, des compagnies ou de simples particuliers, citoyens des États-Unis, contre le Gouvernement français et résultant d'actes commis en haute mer ou sur le territoire de la France, de ses colonies et dépendances, pendant la dernière guerre entre la France et le Mexique ou pendant celle de 1870-1871 entre la France et l'Allemagne et pendant les troubles civils subséquents connus sous le nom " d'insurrection de la commune," par les autorités civiles ou militaires françaises, au préjudice des personnes ou de la propriété de citoyens des États-Unis non au service des ennemis de la France et qui ne leur ont prêté volontairement ni aide ni assistance, et d'autre part, toutes les réclamations élevées par des corporations, des compagnies ou de simples particuliers citoyens français, contre le Gouvernement des États-Unis et fondées sur

ART. 1.—All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of France, arising out of acts committed against the persons or property of citizens of the United States not in the service of the enemies of France, or voluntarily giving aid and comfort to the same, by the French civil or military authorities, upon the high seas, or within the territory of France, its colonies and dependencies, during the late war between France and Mexico, or during the war of 1870-71 between France and Germany, and the subsequent civil disturbances known as the “Insurrection of the Commune”; and on the other hand, all claims on the part of corporations, companies or private individuals, citizens of France, upon the Government of the United States, arising out of acts committed against the persons or property of citizens of France not in the service of the enemies of the United States, or voluntarily giving aid and comfort to the same, by the civil or military authorities of the Government of the United States, upon the high seas or within the territorial jurisdiction of the United States, during the period comprised between the thirteenth day of April, eighteen hundred and sixty-one, and the twentieth day of August, eighteen hundred and sixty-six, shall be referred to three Commissioners, one of whom shall be named by the President of the United States, and one by the French Government, and the third by His Majesty the Emperor of Brazil.

ART. 2.—The said Commission, thus constituted, shall be competent and obliged to examine and decide upon all claims of the aforesaid character, presented to them by the citizens of either country, except such as have been already diplomatically, judicially or otherwise by competent authorities, heretofore disposed of by either Government; but no claim or item of damage or injury based upon the emancipation or loss of slaves shall be entertained by the said Commission.

ART. 3.—In case of the death, prolonged absence, or incapacity to serve, of one of the said Commissioners, or in the event of one Commissioner omitting, or declining, or ceasing to act as such.

des actes commis en haute mer et sur le territoire des Etats-Unis pendant la période comprise entre le 13 avril 1861 et le 20 août 1866, par les autorités civiles ou militaires du Gouvernement des Etats-Unis, au préjudice des personnes ou de la propriété de citoyens français non au service des ennemis du Gouvernement des Etats-Unis et qui ne leur ont prêté volontairement ni aide ni assistance, seront soumises à trois commissaires, dont un sera nommé par le Gouvernement français, un autre par le Président des Etats-Unis et le troisième par S.M. l'Empereur du Brésil.

ART. 2.—La dite commission ainsi constituée aura compétence et devra statuer sur toutes les réclamations ayant le caractère ci-dessus indiqué, présentées par les citoyens de chacun des deux pays, sauf sur celles que l'un ou l'autre gouvernement aurait déjà fait régler diplomatiquement, judiciairement ou autrement par des autorités compétentes. Mais aucune réclamation ni article de torts ou de dommages fondés sur la perte ou l'émancipation d'esclaves ne seront examinés par la dite commission.

ART. 3.—Dans le cas de mort, d'absence prolongée, d'incapacité de servir de l'un des dits commissaires, ou dans le cas où l'un des dits commissaires négligerait, refuserait ou cesserait de remplir ses fonctions, le Gouvernement français, ou le Président des Etats-Unis, ou S. M. l'Empereur du Brésil, suivant le cas, devra remplir la vacance ainsi occasionnée, en nommant un nouveau commissaire dans les trois mois à dater du jour où la vacance se serait produite.

ART. 4.—Les commissaires, nommés conformément aux dispositions précédentes, se réuniront dans la ville de Washington, aussitôt qu'il leur sera possible, dans les six mois qui suivront l'échange des ratifications de cette convention, et leur premier acte, aussitôt après leur réunion, sera de faire et de signer une déclaration solennelle qu'ils examineront et décideront avec soin et impartialité, au mieux de leur jugement, conformément au droit public, à la justice et à l'équité, sans crainte, faveur ni affection, toutes les réclamations comprises dans les termes et la véritable signification des articles 1 et 2, qui leur seront soumises de la

then the President of the United States, or the Government of France, or His Majesty the Emperor of Brazil, as the case may be, shall forthwith proceed to fill the vacancy so occasioned by naming another Commissioner within three months from the date of the occurrence of the vacancy.

ART. 4.—The Commissioners named as hereinbefore provided shall meet in the City of Washington at the earliest convenient time within six months after the exchange of the ratifications of this Convention, and shall, as their first act in so meeting, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to public law, justice, and equity, without fear, favour or affection, all claims within the description and true meaning of Articles 1 and 2, which shall be laid before them on the part of the Governments of the United States and of France respectively; and such declaration shall be entered on the record of their proceedings: Provided, however, that the concurring judgment of any two Commissioners shall be adequate for every intermediate decision arising in the execution of their duty and for every final award.

ART. 5.—The Commissioners shall, without delay, after the organisation of the Commission, proceed to examine and determine the claims specified in the preceding articles, and notice shall be given to the respective Governments of the day of their organisation and readiness to proceed to the transaction of the business of the Commission. They shall investigate and decide said claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by, or on behalf of, the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by, or on behalf of, the respective Governments in support of, or in answer to, any claim, and to hear, if required, one person on each side whom it shall be competent for each Government to name as its Counsel or Agent to present and support claims on its behalf, on each and every separate claim. Each Government shall furnish at the request of

part des deux gouvernements de France et des Etats-Unis respectivement ; cette déclaration sera consignée au procès-verbal de leurs travaux. Il est entendu d'ailleurs que le jugement rendu par deux des commissaires sera suffisant pour toutes les décisions intermédiaires qu'ils auront à prendre dans l'accomplissement de leurs fonctions, comme pour chaque décision finale.

ART. 5.—Les commissaires devront procéder sans délai, après l'organisation de la commission, à l'examen et au jugement des réclamations spécifiées par les articles précédents. Ils donneront avis aux gouvernements respectifs du jour de leur organisation, en leur faisant savoir qu'ils sont en mesure de procéder aux travaux de la commission. Ils devront examiner et juger les dites réclamations en tel ordre et de telle façon qu'ils jugeront convenable, mais seulement sur les preuves et informations fournies par les gouvernements respectifs ou en leur nom. Ils seront tenus de recevoir et de prendre en considération tous les documents ou exposés écrits qui leur seront présentés par les gouvernements respectifs ou en leur nom à l'appui de ou en réponse à toute réclamation et d'entendre, s'ils en sont requis, une personne de chaque côté que les deux gouvernements auront le droit de désigner comme leur conseil ou agent pour présenter et soutenir les réclamations en leur nom dans chaque affaire prise séparément. Chacun des deux gouvernements devra fournir à la requête des commissaires ou de deux d'entre eux, les pièces en sa possession qui peuvent être importantes pour la juste détermination de toute réclamation portée devant la commission.

ART. 6.—Les décisions unanimes des commissaires ou de deux d'entre eux seront concluantes et définitives. Les dites décisions devront, dans chaque affaire, être rendues par écrit, séparément sur chaque réclamation, et fixer, dans le cas où une indemnité pécuniaire serait accordée, le montant ou la valeur équivalente de cette indemnité en monnaie d'or de France ou des Etats-Unis, suivant le cas, et, si le jugement allouait des intérêts, le taux et la période pour laquelle ils devront être comptés seront également déterminés, cette période ne pouvant s'étendre au-delà de la durée de la commission ; les dites

the Commissioners, or of any two of them, the papers in its possession which may be important to the just determination of any of the claims laid before the Commission.

ART. 6.—The concurring decisions of the Commissioners, or of any two of them, shall be conclusive and final. Said decisions shall, in every case, be given upon each individual claim, in writing, stating, in the event of a pecuniary award being made, the amount or equivalent value of the same in gold coin of the United States, or of France, as the case may be; and in the event of interest being allowed on such award, the rate thereof and the period for which it is to be computed shall be fixed, which period shall not extend beyond the close of the Commission; and said decision shall be signed by the Commissioners concurring therein.

ART. 7.—The High Contracting Parties hereby engage to consider the decision of the Commissioners, or of any two of them, as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objections, evasions, or delay whatever.

ART. 8.—Every claim shall be presented to the Commissioners within a period of six months, reckoned from the day of their first meeting for business, after notice to the respective Governments, as prescribed in Article 5 of this Convention. Nevertheless, in any case where reasons for delay shall be established to the satisfaction of the Commissioners, or of any two of them, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting for business as aforesaid; which period shall not be extended except only in case the proceedings of the Commission shall be interrupted by the death, incapacity, retirement, or cessation of the functions of any one of the Commissioners, in which event the period of two years herein prescribed shall not be held to include the time during which such interruption may actually exist.

décisions devront être signées par les commissaires qui y auront concouru.

ART. 7.—Les hautes parties contractantes s'engagent, par le présent acte, à considérer la décision des commissaires ou de deux d'entre eux, comme absolument définitive et concluante dans chaque affaire réglée par eux, et à donner plein effet à ces décisions, sans objection ni délais évasifs d'aucune nature.

ART. 8.—Toutes les réclamations devront être présentées aux commissaires dans une période de six mois à dater du jour où ils se seront réunis pour commencer leurs travaux, après avis donné aux gouvernements respectifs, conformément aux dispositions de l'article 5 de cette convention. Toutefois, dans tous les cas où l'on ferait valoir de justes motifs de délai à la satisfaction des commissaires ou de deux d'entre eux, le temps où la réclamation sera valablement présentée, pourra être étendu par eux à une période qui ne devra point excéder un terme additionnel de trois mois.

Les commissaires seront tenus d'examiner et de rendre une décision sur toutes les réclamations, dans les deux ans à dater du jour de leur première réunion comme ci-dessus, ce délai ne pourra être étendu que dans le cas où les travaux de la commission seraient interrompus par la mort, l'incapacité de servir, la démission ou la cassation des fonctions de l'un des commissaires. Dans cette éventualité, le temps où une pareille interruption aura existé de fait ne sera point compté dans le terme de deux ans ci-dessus fixé.

Il appartiendra aux commissaires de décider, dans chaque affaire, si la réclamation a ou n'a pas été dûment faite, présentée et soumise, soit dans son entier, soit en partie, conformément à l'esprit et à la véritable signification de la Convention.

ART. 9.—Toutes les sommes d'argent qui pourraient être allouées par les commissaires, en vertu des dispositions précédentes, devront être versées par l'un des gouvernements à l'autre, suivant le cas, dans la capitale du Gouvernement qui devra recevoir le paiement, dans les douze mois qui suivront la date du jugement final, sans intérêts ni autres déductions que celles spécifiées dans l'article 10.

It shall be competent, in each case, for the said Commissioners to decide whether any claim has, or has not, been duly made, preferred, and laid before them, either wholly, or to any and what extent, according to the true intent and meaning of this Convention.

ART. 9.—All sums of money which may be awarded by the Commissioners as aforesaid, shall be paid by the one Government to the other, as the case may be, at the capital of the Government to receive such payment, within twelve months after the date of the final award, without interest, and without any deduction, save as specified in Article 10.

ART. 10.—The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof; and the Governments of the United States and of France may each appoint and employ a Secretary versed in the language of both countries, and the Commissioners may appoint any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner, Secretary, and Agent or Counsel, and at the same or equivalent rates of compensation, as near as may be, for like officers on the one side as on the other. All other expenses, including the compensation of the third Commissioner, which latter shall be equal or equivalent to that of the other Commissioners, shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a rateable deduction on the amount of the sums awarded by the Commissioners, provided always that such deduction shall not exceed the rate of five per centum on the sums so awarded. If the whole expenses shall exceed this rate, then the excess of expense shall be defrayed jointly by the two Governments in equal moieties.

ART. 11.—The High Contracting Parties agree to consider the result of the proceedings of the Commission provided by this Convention as a full, perfect and final settlement of any and every claim upon either Government, within the description and

ART. 10.—Les commissaires devront tenir un procès verbal exact et conserver des minutes ou notes correctes et datées de tous leurs travaux ; les gouvernements de France et des Etats-Unis pourront chacun nommer et employer un secrétaire versé dans le langage des deux pays, et les commissaires pourront nommer tels autres employés qu'ils jugeront nécessaires pour les aider dans l'expédition des affaires qui viendront devant eux.

Chaque Gouvernement paiera ses propres commissaires, secrétaire et agent de conseil et la compensation qui leur sera allouée devra être égale ou équivalente, autant que possible, des deux côtés, pour les fonctionnaires de même rang.

Toutes les autres dépenses, y compris l'allocation du troisième commissaire, seront supportées par les deux gouvernements en parties égales.

Les dépenses générales de la Commission, y compris les dépenses éventuelles, seront couvertes par une déduction proportionnelle sur le montant des sommes allouées par les commissaires. Il est bien entendu, toutefois, que cette retenue ne devra pas excéder cinq pour cent des sommes accordées. Si les dépenses générales excédaient ce taux, le surplus serait supporté conjointement et en parties égales par les deux gouvernements.

ART. 11.—Les hautes parties contractantes sont convenues de considérer le résultat de la commission instituée par cette convention comme un règlement complet, parfait et définitif de toutes et de chacune des réclamations contre l'une d'elles, conformément aux termes et à la vraie signification des articles 1 et 2, de telle sorte que toute réclamation de cette nature, qu'elle ait été ou non portée à la connaissance des commissaires, qu'elle leur ait ou non été présentée et soumise, devra, à dater de la fin des travaux de la dite commission, être tenue et considérée comme définitivement réglée, décidée et éteinte.

ART. 12.—La présente convention sera ratifiée par le Président de la République française et par le Président des Etats-Unis, par et avec l'avis et consentement du Sénat, et les ratifications seront échangées à Washington, au jour le plus rapproché qu'il sera possible dans les neuf mois à partir de la date du présent acte.

true meaning of Articles 1 and 2; and that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, concluded and barred.

ART. 12.—The present Convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by the President of the French Republic, and the ratifications shall be exchanged at Washington, at as early a day as may be possible within nine months from the date hereof.

In testimony whereof the respective Plenipotentiaries have signed the present Convention, in the English and French languages, in duplicate, and hereunto affixed their respective seals.

Done at the City of Washington, the fifteenth day of January, in the year of our Lord One thousand eight hundred and eighty.

WILLIAM MAXWELL EVARTS. [SEAL.]

MAX OUTREY. [SEAL.]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Washington on the twenty-third day of June, One thousand eight hundred and eighty:

Now, therefore, be it known that I, RUTHERFORD B. HAYES, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-fifth day of June, in the year of our Lord One thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

By the President:

R. B. HAYES.

WM. M. EVARTS, *Secretary of State.*

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention, faite en double en langues anglaise et française, et y ont apposé leurs sceaux respectifs.

Fait en la Cité de Washington le quinze janvier de l'an de grâce mil huit cent quatre-vingt.

MAX OUTREY. [SCEAU.]

WILLIAM MAXWELL EVARTS. [SCEAU.]

La présente a été ratifiée par le Président des Etats-Unis le 3 avril 1880 et par le Président de la République Française, le 9 juin 1880.

Et attendu que la dite Convention a été dûment ratifiée des deux parts et que les ratifications des deux Gouvernements ont été échangées en la Cité de Washington le vingt-trois juin mil huit cent quatre-vingt, elle a été publiée en la Cité de Washington par le Président, M. RUTHERFORD B. HAYES, le ving-cinq juin de l'an mil huit cent quatre-vingt.

CONVENTION
CONCLUDED NOVEMBER 2, 1882, BETWEEN FRANCE
AND CHILI, RELATING TO CERTAIN CLAIMS
FOR DAMAGE CAUSED BY WAR.

The President of the French Republic and His Excellency the President of the Republic of Chili, desiring to settle in a friendly way the claims advanced by French citizens, supported by the Legation of the French Republic in Chili, and founded on the acts and operations accomplished by the forces of the Republic of Chili, on the territories and coasts of Peru and Bolivia, during the present war, have resolved to conclude an Arbitration Convention. For this purpose they have appointed as their respective plenipotentiaries :—

The President of the French Republic appointed Adolph, Baron d'Avril, Minister Plenipotentiary of the First Class, Officer of the national order of the Legion of Honour, and His Excellency the President of the Republic of Chili, Señor Luis Aldunate, Minister for Foreign Affairs of the Republic.

Which plenipotentiaries, after having examined and exchanged their authorisations, and having found them in good and due form, agreed to the following Articles :—

ART. I.—An Arbitral Tribunal, or International mixed Commission, shall, in the form and according to the rules which shall be laid down in the present Convention, examine all the claims which, founded on the acts and operations accomplished by the Chilian sea and land forces, on the territories and coasts of Peru and Bolivia, during the present war, have been presented up to the present, or shall be presented later, by French citizens under the patronage of the Legation of the French Republic in Chili, within the time named hereafter.

CONVENTION

CONCLUE LE 2 NOVEMBRE 1882, ENTRE LA FRANCE ET LE CHILI, RELATIVE À CERTAINES RÉCLAMATIONS POUR DOMMAGES DE GUERRE.

Le Président de la République française et S. E. le Président de la République du Chili, désirant mettre amicalement un terme aux réclamations introduites par des citoyens français, appuyées par la légation de la République française au Chili, et motivées par les actes et opérations accomplis par les forces de la République du Chili, sur les territoires et côtes du Pérou et de la Bolivie, durant la présente guerre, ont résolu de conclure une convention d'arbitrage. A cet effet, ils ont nommé pour leurs plénipotentiaires respectifs :

Le Président de la République française, le sieur Adolphe baron d'Avril, ministre plénipotentiaire de 1^{re} classe, officier de l'ordre national de la Légion d'honneur, et S. E. le Président de la République du Chili, le sieur Luis Aldunate, ministre des relations extérieures de la République.

Lesquels plénipotentiaires, après avoir examiné et échangé leurs pouvoirs et les avoir trouvés en bonne et due forme, sont convenus des articles suivants :

ART. 1.—Un tribunal arbitral ou commission mixte internationale jugera en la forme et suivants les termes qui seront établis dans la présente convention toutes les réclamations, qui motivées par les actes et les opérations accomplis par les forces chiliennes de mer et de terre, sur les territoires et côtes du Pérou et de la Bolivie, durant la présente guerre, ont été introduits jusqu'à présent ou seront introduits ultérieurement par des citoyens français sous le patronage de la légation de la République française au Chili, dans le délai qui sera indiqué ci-après.

ART. 2.—The Commission shall be composed of three members, one appointed by the President of the French Republic, another by the President of the Republic of Chili, and the third by the Emperor of Brazil, either directly or by the intermediary of the diplomatic agent accredited by His Majesty to Chili.

In case of death, absence or incapacity, through whatever cause, of one or more of the members of the Commission, provision shall be made for replacing him, in the forms and conditions respectively expressed in the preceding paragraph.

ART. 3.—The mixed Commission shall examine and decide on the claims which the French citizens have presented up to the present time or shall present later by their diplomatic representative, and which are founded on the acts and operations accomplished by the armies and fleets of the Republic, since February 14th, 1879, the date of the opening of hostilities, up to the day when a Treaty of Peace or an Armistice shall be concluded between the belligerent nations, *i.e.*, up to the time when the hostilities between the three nations at war shall have actually ceased.

ART. 4.—The mixed Commission shall receive such proofs and evidence as shall, in the opinion and proper judgment of its members, best conduce to throw light on the facts in dispute, and especially to settle the status and neutral character of the claimants.

The Commission shall receive alike verbal statements and written documents from the two Governments or their respective Agents or Counsel.

ART. 5.—Each Government may appoint an agent to watch over the interests of its constituents and take up their case; to present petitions, documents, interrogatories; propose motions or reply to them, support its counter-affirmations, furnish proofs of them, and, before the Commission, by himself or by means of a lawyer, verbally or by writing, conformably to the rules of procedure and the ways which the Commission itself

ART. 2.—La commission se composera de trois membres, un nommé par le Président de la République française, un autre par le Président de la République du Chili, et le troisième, par l'Empereur du Brésil, soit directement, soit par l'intermédiaire de l'agent diplomatique accrédité par Sa Majesté au Chili.

Dans le cas de mort, absence ou incapacité, pour quelques motifs que ce soit, d'un ou de plusieurs des membres de la commission, il sera pourvu à son remplacement dans les formes et conditions respectivement exprimées au paragraphe précédent.

ART. 3.—La commission mixte examinera et jugera les réclamations que les citoyens français ont introduites jusqu'à aujourd'hui ou introduiront ultérieurement par leur organe diplomatique, et motivées par les actes ou les opérations accomplis par les armées et escadres de la République, depuis le 14 février 1879, date de l'ouverture des hostilités, jusqu'au jour où il sera conclu de traité de paix ou des armistices entre les nations belligérantes jusqu'au jour où auront cessé de fait les hostilités entre les trois nations en guerre.

ART. 4.—La commission mixte accueillera les moyens probatoires ou d'investigation qui, d'après l'appréciation et le juste discernement de ses membres, pourront le mieux conduire à l'éclaircissement des faits controversés et spécialement à la détermination de l'état et du caractère neutre des réclamants.

La commission recevra également les allégations verbales et écrites des deux gouvernements ou de leurs agents ou défenseurs respectifs.

ART. 5.—Chaque gouvernement pourra constituer un agent qui veille aux intérêts de ses commettants et en prenne la défense ; qui présente des pétitions, documents, interrogatoires ; qui pose des conclusions ou y réponde, qui appuie ses affirmations contraires, qui en fournisse les preuves et qui, devant la commission, par lui-même ou par l'organe d'un homme de loi, verbalement ou par écrit, conformément aux règles de procédure et aux voies que la commission elle-même arrêtera en commen-

shall determine when commencing its proceedings, set forth the doctrines, legal principles or precedents which suit his case.

ART. 6.—The mixed Commission shall decide on the claims according to the value of the proof furnished, and in conformity with the principles of International Law, as also with the practice and jurisprudence established by recent similar tribunals having the most authority and prestige; and its decisions, whether interlocutory or definitive, shall be arrived at by a majority of votes.

In each definitive award the Commission shall briefly put forth the facts and causalities of the claim, the motives alleged in support or in contradiction, and the grounds on which its resolutions rest.

The resolutions and awards of the Commission shall be in writing, signed by all its members and authenticated by its Secretary. The original documents shall remain, with their respective dossiers, at the Chilian Ministry of Foreign Affairs, where certified copies shall be delivered to those parties demanding them.

The Commission shall keep a register in which shall be entered the procedure followed, the demands of the claimants, and the awards and decisions rendered. The Commission shall hold its sittings at Santiago.

ART. 7.—The Commission shall have the power to provide itself with secretaries, reporters and such other employés, as it shall deem necessary for the satisfactory accomplishment of its duties.

It belongs to the Commission to propose the persons who will have to fulfil these functions and to fix the terms and salaries.

The appointment of these different employés will be made by His Excellency the President of the Republic of Chili.

The decisions of the mixed Commission, which have to be carried out in Chili, will have the support of the public force in the same manner as those which are rendered by the ordinary

çant ses fonctions, expose les doctrines, principes légaux ou précédents qui conviennent à sa cause.

ART. 6.—La commission mixte jugera les réclamations d'après la valeur de la preuve fournie et conformément aux principes de droit international, ainsi qu'à la pratique et à la jurisprudence établies par les tribunaux récents analogues ayant le plus d'autorité et de prestige, en prenant ses résolutions, tant interlocutoires que définitives, à la majorité des votes.

Dans chaque jugement définitif, la commission exposera brièvement les faits et causalités de la réclamation, les motifs allégués à l'appui ou en contradiction, et les bases sur lesquelles s'appuient ses résolutions.

Les résolutions et jugements de la commission seront écrits, signés par tous ses membres et revêtus de la forme authentique par son secrétaire. Les actes originaux resteront, avec leurs dossiers respectifs, au ministère des relations extérieures du Chili, où il sera délivré des copies certifiées aux parties qui les demanderont.

La commission tiendra un livre d'enregistrement dans lequel on inscrira la procédure suivie, les demandes des réclamants et les jugements et décisions rendus. La commission fonctionnera à Santiago.

ART. 7.—La commission aura la faculté de se pourvoir de secrétaires, rapporteurs et autres employés qu'elle estimera nécessaire pour le bon accomplissement de ses fonctions.

Il appartient à la commission de proposer les personnes qui auront à remplir respectivement ces emplois et de fixer les traitements et rémunérations à leur assigner.

La nomination de ces divers employés sera faite par S. E. le Président de la République du Chili.

Les décisions de la commission mixte qui devront être exécutées au Chili, auront l'appui de la force publique de la même manière que celles qui sont rendues par les tribunaux ordinaires

tribunals of the country ; the decisions which have to be carried out abroad will have their effect in conformity with the rules and usages of private International Law.

ART. 8.—The claims shall be presented to the mixed Commission in the six months following the date of its first sitting, and those presented at the expiration of that time shall not be admitted. For the carrying out of the provision contained in the preceding paragraph, the mixed Commission shall publish in the official journal of the Republic of Chili a notice by which it shall indicate the date of its installation.

ART. 9.—The Commission, to terminate its mission, with regard to all the claims submitted for its examination and decision, shall be allowed a period of two years counted from the day when it shall be declared installed.

When this time has passed, the Commission shall have the power to prolong its proceedings for a new period which must not exceed six months, if, through illness or temporary incapacity of one of its members, or for any other reason of acknowledged weight, it would be unable to complete its mission in the time fixed in the first paragraph.

ART. 10.—Each of the contracting Governments shall provide for the expenses of its own Agents or Counsel.

The expenses of the organisation of the mixed Commission, the honorariums of its members, the salaries of the secretaries, reporters, and other employés, and all costs and expenses of common service shall be paid, half by each of the two Governments ; but if any sum is awarded to the claimants, there shall be deducted from it the said common costs and expenses provided they do not exceed 6 per cent. of the amount which the Treasury of Chili may have to pay for the sum total of the admitted claims.

The sums which the mixed Commission shall assign in favour of the claimants shall be paid by the Government of Chili to the

du pays, les décisions qui auront à être exécutées à l'étranger sortiront leurs effets conformément aux règles et usages de droit international privé.

ART. 8.—Les réclamations seront présentées à la commission mixte dans les six mois qui suivront la date de sa première séance, et celles qu'on présenterait à l'expiration de ce délai ne seront pas admises. Pour les effets de la disposition contenue au paragraphe précédent, la commission mixte publiera dans le *Journal officiel* de la République du Chili, un avis par lequel elle indiquera la date de son installation.

ART. 9.—La commission aura, pour terminer sa mission, à l'égard de toutes les réclamations soumises à son examen et décision, un délai de deux années comptées depuis le jour où elle sera déclarée installée.

Passé ce délai, la commission aura la faculté de proroger ses fonctions pour une nouvelle période qui ne pourra excéder six mois, dans le cas où, pour cause de maladie ou d'incapacité temporaire de quelqu'un de ses membres ou pour tout autre motif de gravité reconnue, elle ne serait parvenue à terminer sa mission dans le délai fixé au premier paragraphe.

ART. 10.—Chacun des gouvernements contractants pourvoiera aux frais de ses propres agents ou défenseurs.

Les dépenses d'organisation de la commission mixte, les honoraires de ses membres, les appointements des secrétaires, rapporteurs et autres employés et tous frais et dépens de service commun seront payés de moitié par les deux gouvernements, mais s'il y a des sommes allouées en faveur des réclamants, il en sera déduit les dits frais et dépenses communs en tant qu'ils n'excèdent pas le 6 % des valeurs que le Trésor du Chili ait à payer pour la totalité des réclamations admises.

Les sommes que la commission mixte assignera en faveur des réclamants seront versées par le gouvernement du Chili au

French Government through the intermediary of its Legation at Santiago or through the person designated by this Legation, within one year reckoning from the date of the resolution relating thereto, and so that during this time the said sums shall be liable to no interest in favour of the claimants.

ART. 11.—The High Contracting Parties engage themselves to consider the award of the mixed Commission organised by this present Convention, as a satisfactory, complete and irrevocable solution of the difficulties which it has had under settlement ; and it is understood that all the claims of the French citizens, whether presented or not in the conditions set forth in the preceding articles, shall be held to be decided and settled definitively and in such a manner that they can, for no motive and under no pretext, be the subject of a new examination or discussion.

ART. 12.—The present Convention shall be ratified by the High Contracting Parties, and the exchange of ratifications shall be made at Santiago.

gouvernement français par l'entremise de sa légation à Santiago ou de la personne désignée par cette légation, dans le délai d'une année à compter de la date de la résolution y afférente, sans que durant ce délai les dites sommes soient passibles d'aucun intérêt en faveur des réclamants.

ART. 11.—Les hautes parties contractantes s'obligent à considérer les jugements de la commission mixte organisée par la présente convention, comme une solution satisfaisante, parfaite et irrévocable des difficultés qu'elle a eu en vue de régler, et il est bien entendu que toutes les réclamations des citoyens français, présentées ou non présentées dans les conditions signalées aux articles précédents, seront tenues pour décidées et jugées définitivement et de manière que, pour aucun motif ou prétexte, elles ne puissent être l'objet d'un nouvel examen ou d'une nouvelle discussion.

ART. 12.—La présente convention sera ratifiée par les hautes parties contractantes et l'échange des ratifications s'effectuera à Santiago.

PROJECT OF A PERMANENT TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND SWITZERLAND, ADOPTED BY THE SWISS FEDERAL COUNCIL, JULY 24TH, 1883.

1. The Contracting Parties agree to submit to an arbitral tribunal all difficulties which may arise between them during the existence of the present treaty, whatever may be the cause, the nature or the object of such difficulties.

2. The Arbitral Tribunal shall be composed of three persons. Each party shall designate one of the arbitrators. It shall choose him from among those who are neither citizens of the State nor inhabitants of its territory. The two arbitrators thus chosen shall themselves choose a third arbitrator ; but if they should be unable to agree, the third arbitrator shall be named by a neutral Government. This Government shall be designated by the two arbitrators, or, if they cannot agree, by lot.

3. The Arbitral Tribunal, when called together by the third arbitrator, shall draw up a form of agreement which shall determine the object of the litigation, the composition of the tribunal and the duration of its powers. The agreement shall be signed by the representatives of the parties and by the arbitrators.

4. The Arbitrators shall determine their own procedure. In order to secure a just result, they shall make use of all the means of information which they may deem necessary, the contracting parties engaging to place them at their disposal. Their judgment shall be communicated to the parties, and shall become executory one month after its communication.

5. The Contracting Parties bind themselves to observe and loyally to carry out the arbitral sentence.

6. The present treaty shall remain in force for a period of thirty years after the exchange of ratifications. If notice of its abrogation is not given before the beginning of the thirtieth year, it shall remain in force for another period of thirty years, and so on.

PROJET DE TRAITÉ GÉNÉRAL D'ARBITRAGE ENTRE LA SUISSE ET LES ETATS-UNIS.

Entre les Etats-Unis de l'Amérique du Nord et la Confédération Suisse, il a été conclu un traité permanent d'arbitrage comme suit :

ART. 1.—Les deux Etats contractants s'engagent à soumettre à un tribunal arbitral toutes les difficultés qui pourraient naître entre eux pendant la durée du présent traité, quels que puissent être la cause, la nature ou l'objet de ces difficultés.

ART. 2.—Le tribunal arbitral sera composé de trois personnes. Chacun des Etats désignera l'un des arbitres. Il le choisira parmi les personnes qui ne sont ni les ressortissants de l'Etat, ni les habitants de son territoire. Les deux arbitres choisiront eux-mêmes leur sur-arbitre. S'il ne peuvent s'entendre sur ce choix, le sur-arbitre sera nommé par un gouvernement neutre. Ce gouvernement sera lui-même désigné par les deux arbitres, ou à défaut d'entente, par le sort.

ART. 3.—Le tribunal arbitral, réuni par les soins du sur-arbitre fera rédiger un compromis qui fixera l'objet du litige, la composition du tribunal et la durée du pouvoir de ce dernier. Ce compromis sera signé par les représentants des parties et par les arbitres.

ART. 4.—Les arbitres détermineront leur procédure. Ils useront pour éclairer leur justice de tous les moyens d'informations qu'ils jugeront nécessaires, les parties s'engageant à les mettre à leur disposition. Leur sentence sera communiquée aux parties. Elle sera exécutoire de plein droit un mois après cette communication.

ART. 5.—Chacun des Etats contractants s'engage à observer et à exécuter loyalement la sentence arbitrale.

ART. 6.—Le présent traité est fait pour la durée de trente années, à partir de l'échange des ratifications ; s'il n'est pas dénoncé avant le commencement de la trentième année, il sera renouvelé pour une nouvelle durée de trente ans et ainsi de suite.

PLAN OF A PERMANENT TRIBUNAL OF ARBITRATION, ADOPTED BY THE INTERNATIONAL AMERICAN CONFERENCE, APRIL 18, 1890.

I.—PLAN OF ARBITRATION.

The Delegates from North, Central, and South America in Conference assembled ;

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of International differences ;

Recognising that the growth of the moral principles which govern political societies has created an earnest desire in favour of the amicable adjustment of such differences ;

Animated by the realisation of the great moral and material benefits that Peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of Arbitration as a substitute for armed struggles ;

Convinced by reason of their friendly and cordial meeting in the present Conference, that the American Republics, controlled alike by the principles, the duties and the responsibilities of popular Government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the Peace of the Continent, and the goodwill of all its inhabitants ;

And considering it their duty to lend their assent to the lofty principles of Peace which the most enlightened public sentiment of the world approves ;

Do solemnly recommend all the Governments by which they are accredited, to celebrate a uniform Treaty of Arbitration in the Articles following :—

ART. I.—The republics of North, Central, and South America hereby adopt arbitration as a principle of American International

PROJET DE TRAITÉ D'ARBITRAGE ENTRE LES ÉTATS D'AMÉRIQUE

SIGNÉ À WASHINGTON LE 18 AVRIL 1890.

I.—PLAN D'ARBITRAGE.

Les délégués de l'Amérique du Nord, de celle du Centre et de celle du Sud, assemblés en conférence :

Croyant que la guerre est le plus cruel, le plus infructueux et le plus dangereux expédient pour l'arrangement des différends internationaux ;

Reconnaissant que le développement des principes moraux qui gouvernent les sociétés politiques a donné naissance à un ardent sentiment en faveur de l'arrangement amical de ces différends ;

Animés par la conviction des grands bénéfices moraux et matériels que la paix offre à l'humanité, et comptant que les conditions actuelles des nations sont spécialement propices à l'adoption de l'arbitrage à la place des luttes armées ;

Convaincus, en raison de leur amicale et cordiale rencontre à la présente conférence, que les Républiques américaines, pareillement soumises à des principes, des devoirs et des responsabilités de gouvernement populaire, et liées ensemble par de vastes et toujours croissants intérêts mutuels, peuvent, dans la sphère de leur propre action, maintenir la paix sur le continent et la bonne volonté parmi tous ses habitants ;

Et considérant qu'il est de leur devoir de prêter leur assentiment aux grands principes de la paix que le sentiment public le plus éclairé approuve ;

Recommandent solennellement à tous les Gouvernements près lesquels ils sont accrédités, de conclure un traité uniforme d'arbitrage dont les articles suivent :

ART. 1. — Les Républiques de l'Amérique du Nord, de l'Amérique du Centre et de l'Amérique du Sud adoptent, par

Law for the settlement of the differences, disputes or controversies that may arise between two or more of them.

ART. 2.—Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction and enforcement of treaties.

ART. 3.—Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

ART. 4.—The sole questions excepted from the provisions of the preceding articles, are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case for such nation arbitration shall be optional ; but it shall be obligatory upon the adversary power.

ART. 5.—All controversies or differences, whether pending or hereafter arising, shall be submitted to arbitration, even though they may have originated in occurrences antedating the present treaty.

ART. 6.—No question shall be revived by virtue of this treaty, concerning which a definite agreement shall already have been reached. In such cases, arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation or enforcement of such agreements.

ART. 7.—The choice of arbitrators shall not be limited or confined to American States. Any Government may serve in the capacity of arbitrator, which maintains friendly relations with the nation opposed to the one selecting it. The office of Arbitrator may also be entrusted to tribunals of justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the states selecting them.

ART. 8.—The Court of Arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the

ces présents, l'arbitrage comme un principe de la loi internationale américaine pour l'arrangement des différends, des disputes ou des controverses qui peuvent s'élever entre deux ou plusieurs d'entre elles.

ART. 2.—L'arbitrage sera obligatoire dans toutes les controverses relatives aux privilèges diplomatiques ou consulaires, aux frontières, territoires, indemnités, au droit de navigation et à la validité, à l'interprétation et à la violation des traités.

ART. 3.—L'arbitrage sera également obligatoire dans tous les autres cas que ceux mentionnés dans le précédent article, quelle que puisse être leur origine, leur nature ou leur objet avec la seule exception mentionnée dans l'article suivant.

ART. 4.—Le seul cas excepté des clauses des articles précédents est celui qui, dans le jugement d'une des nations enveloppées dans la controverse, peut mettre en péril son indépendance. Dans ce cas, pour cette nation, l'arbitrage sera facultatif, mais il sera obligatoire pour la puissance adverse.

ART. 5.—Toutes les controverses, tous les différends pendant actuellement ou qui s'élèveront dans la suite, seront soumis à l'arbitrage, même s'ils provenaient d'occurrences antérieures au présent traité.

ART. 6.—En vertu de ce traité, aucune question qui aura été déjà réglée définitivement ne pourra être renouvelée. Dans un tel cas, on n'aurait recours à l'arbitrage que pour l'arrangement des questions relatives à la validité, à l'interprétation ou à la violation des engagements.

ART. 7.—Le choix des arbitres ne sera pas limité ou confiné aux Etats américains. Tout gouvernement peut servir en qualité d'arbitre s'il entretient d'amicales relations avec la nation adverse de celle qui l'a choisi. L'office d'arbitre peut aussi être confié à des tribunaux de justice, à des corps scientifiques, à des officiers publics ou à de simples particuliers, citoyens ou non des Etats les choisissant.

ART. 8.—La Cour d'arbitrage peut consister en une seule ou plusieurs personnes. Si elle se compose d'une personne, elle

nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a distinct interest in the question at issue shall have the right to appoint one arbitrator on its own behalf.

ART. 9.—Whenever the Court shall consist of an even number of arbitrators, the nations concerned shall appoint an umpire, who shall decide all questions upon which the arbitrators may disagree. If the nations interested fail to agree in the selection of an umpire, such umpire shall be selected by the arbitrators already appointed.

ART. 10.—The appointment of an umpire, and his acceptance, shall take place before the arbitrators enter upon the hearing of the questions in dispute.

ART. 11.—The umpire shall not act as a member of the Court, but his duties and powers shall be limited to the decision of questions, whether principal or incidental, upon which the arbitrators shall be unable to agree.

ART. 12.—Should an arbitrator or an umpire be prevented from serving by reason of death, resignation, or other cause, such arbitrator or umpire shall be replaced by a substitute to be selected in the same manner in which the original arbitrator or umpire shall have been chosen.

ART. 13.—The Court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the Court itself may determine the location.

ART. 14.—When the Court shall consist of several arbitrators, a majority of the whole number may act, notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties, until they shall have reached a final determination of the questions submitted for their consideration.

sera choisie conjointement par les nations intéressées. Si elle se compose de plusieurs personnes, leur choix doit être fait conjointement par les nations intéressées. Si on ne pouvait tomber d'accord pour aucun choix, chaque nation ayant un intérêt distinct dans le résultat de la question, aura le droit de désigner un arbitre pour sa propre défense.

ART. 9.—Lorsque la Cour consistera en un nombre égal d'arbitres, les nations intéressées désigneront un tiers arbitre qui décidera toutes les questions sur lesquelles les arbitres ne seraient pas d'accord. Si les nations intéressées ne tombent pas d'accord pour le choix d'un tiers-arbitre, ce tiers-arbitre sera choisi par les arbitres déjà désignés.

ART. 10.—Le choix du tiers-arbitre et son acceptation devront avoir lieu avant que les arbitres n'entrent en audience sur les questions de la dispute.

ART. 11.—Le tiers-arbitre n'agira pas comme membre de la Cour ; mais ses devoirs et ses pouvoirs seront limités à la décision des questions, soit principales, soit secondaires, sur lesquelles les arbitres ne pourront tomber d'accord.

ART. 12.—Si un arbitre ou un tiers-arbitre était empêché de remplir ses fonctions par suite de décès, de renonciation ou pour toute autre cause, cet arbitre ou tiers-arbitre sera remplacé par un substitut qui devra être choisi de la même manière que l'aurait été le premier arbitre ou tiers-arbitre.

ART. 13.—La Cour tiendra des sessions en tel lieu que les nations intéressées s'accorderont à désigner, et, dans le cas de désaccord, ou si elles manquaient de désigner le lieu, la Cour elle-même pourra déterminer la localité.

ART. 14.—Lorsque la Cour consistera en plusieurs arbitres, une majorité de tous les membres pourra agir malgré l'absence ou le départ de la minorité. Dans un tel cas, la majorité continuera à remplir ses devoirs jusqu'à ce qu'elle soit parvenue à une détermination finale dans toutes les questions soumises à l'examen des arbitres.

ART. 15.—The decision of a majority of the whole number of arbitrators shall be final, both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

ART. 16.—The general expenses of arbitration proceedings shall be paid in equal proportions by the Governments that are parties thereto ; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

ART. 17.—Whenever disputes arise, the nations involved shall appoint courts of arbitration in accordance with the provisions of the preceding articles. Only by the mutual and free consent of all such nations may those provisions be disregarded, and courts of arbitration appointed under different arrangements.

ART. 18.—This treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the contracting parties shall have notified all the others of its desire to terminate it. In the event of such notice, the treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the treaty with respect to the other nations concerned.

ART. 19.—This treaty shall be ratified by all the nations approving it according to their respective constitutional methods ; and the ratifications shall be exchanged in the city of Washington on or before the 1st day of May, A.D. 1891. Any other nation may accept this treaty and become a party thereto by signing a copy thereof and depositing the same with the Government of the United States ; whereupon the said Government shall communicate this fact to the other contracting parties.

ART. 15.—La décision de la majorité des arbitres sera définitive aussi bien sur les questions principales que sur les questions incidentes, à moins que, dans les conditions de l'arbitrage, on n'ait expressément déterminé que l'unanimité serait indispensable.

ART. 16.—Les dépenses générales du procédé d'arbitrage seront payées en proportions égales par les gouvernements qui sont parties intéressées ; mais les dépenses faites par chacune des parties pour la préparation et la poursuite de sa défense seront payées par chacune d'entre elles individuellement.

ART. 17.—Lorsque des disputes s'élèveront, les nations intéressées désigneront les Cours d'Arbitrage d'après les clauses des précédents articles. Seulement, dans le cas où ces nations y consentiraient mutuellement et librement, ces clauses pourraient être mises de côté, et les Cours d'Arbitrage seraient désignées d'après d'autres arrangements.

ART. 18.—Ce traité restera en vigueur pendant vingt ans à partir du jour où il sera ratifié. Après l'expiration de cette période, il continuera à être valable jusqu'à ce qu'une des parties contractantes notifie à toutes les autres un désir d'y mettre fin. Dans le cas de cette notification, le traité continuera à être obligatoire pendant un an pour la partie l'abandonnant ; mais l'action d'une ou de plusieurs nations renonçant à ce traité ne l'invalidera pas pour les autres nations en faisant partie.

ART. 19.—Ce traité sera ratifié par toutes les nations l'approuvant, chacune selon sa méthode constitutionnelle et les ratifications seront échangées dans la ville de Washington le premier jour de mai A.D. 1891, ou avant si c'est possible. Toute autre nation peut accepter ce traité et devenir une partie contractante, en signant une copie de traité et en la déposant entre les mains du Gouvernement des Etats-Unis, sur quoi le dit Gouvernement communiquera le fait aux autres parties contractantes. En foi de quoi, les plénipotentiaires soussignés ont apposé leur signature et leur sceau.

II.—RECOMMENDATION TO EUROPEAN POWERS.

The International American Conference resolves:—

That this Conference, having recommended Arbitration for the settlement of disputes among the Republics of America, begs leave to express the wish that controversies between them and the nations of Europe may be settled in the same friendly manner.

It is further recommended that the Government of each nation herein represented communicate this wish to all friendly Powers.

NON-RATIFICATION OF THE TREATY.

The Treaty was signed by the Representatives of eleven States, as follows: Bolivia, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Salvador, the United States of America, the United States of Brazil, the United States of Venezuela, and Uruguay.

It was provided by Article XIX that "this Treaty shall be ratified by all the nations approving it, according to their respective constitutional methods; and the ratifications shall be exchanged, in the City of Washington, on or before the first day of May, A.D. 1891."

The Treaty, however, *lapsed, through the failure of all its signatories to exchange ratifications within the prescribed time; the United States being one of the signatories who did not sign the Treaty.*

An attempt has since been made to revive the Treaty. A form of extension was agreed upon and submitted to all the Signatory Powers, October 29th, 1891. The following Governments signified their acceptance of the proposal to revive the lapsed Treaty, viz., Ecuador, Guatemala, Honduras, Venezuela, Nicaragua, Salvador, and Bolivia.

The matter never progressed beyond this latter stage, and so the Treaty never became operative between the States concerned.

II. RECOMMANDATION AUX PUISSANCES EUROPÉENNES.

La Conférence internationale américaine résout : Que cette Conférence ayant recommandé l'arbitrage, pour l'arrangement des différends entre les Républiques Américaines, demande la permission d'exprimer le désir que les controverses entre elles et les nations de l'Europe puissent être terminées de la même manière amicale. Il est de plus recommandé que le Gouvernement de chaque nation, représentée dans ce traité, communique ce désir à toutes les puissances amies.

NON-RATIFICATION DU TRAITÉ.

Le traité était signé par les représentants de onze États, c'est à dire : Bolivie, l'Equateur, Guatemala, Haïti, Honduras, Nicaragua, Salvador, les États-Unis d'Amérique, les États-Unis de Brésil, les Etats-Unis de Venezuela, et Uruguay.

Il était pourvu dans l'Article XIX, que : "Ce traité sera ratifié par toutes les nations l'approuvant, chacune selon sa méthode constitutionnelle ; et les ratifications seront échangées dans la ville de Washington le premier jour de mai A.D. 1891, ou avant si c'est possible."

Cependant ce Traité *faillit*, car tous les signataires, les Etats-Unis mêmes, manquèrent d'échanger les ratifications dans le temps prescrit.

On a tenté depuis de renouveler le Traité. On a convenu sur une forme d'extension, qui fut soumise à toutes les Puissances signataires, 29 Octobre 1891. Les gouvernements ci-dessous acceptaient la proposition, savoir : l'Equateur, Guatemala, Honduras, Venezuela, Nicaragua, Salvador et Bolivie.

La chose ne s'avança plus, et ainsi le Traité n'est jamais devenu efficace entre les Etats.

THE ANGLO-AMERICAN ARBITRATION TREATY.

SIGNED AT WASHINGTON, 11TH JANUARY, 1897, BUT NOT RATIFIED.

PREAMBLE.

The Governments of Great Britain and the United States, desirous of consolidating the relations of amity so happily existing, and of consecrating by treaty the principle of International Arbitration, have therefore concluded the following Treaty :—

ART. 1.—The High Contracting Parties agree to submit to Arbitration, in accordance with the provisions and subject to the limitations of the Treaty, all questions in difference between them which may fail to adjust themselves by diplomatic negotiations.

ART. 2.—All pecuniary claims or groups of pecuniary claims which do not in the aggregate exceed £100,000 in amount, and which do not involve the determination of territorial claims, shall be dealt with and decided by an Arbitral Tribunal constituted as provided in the next following article.

In this article, and in Article 4, the words “groups of pecuniary claims” mean pecuniary claims by one or more persons arising out of the same transactions or involving the same issues of law and of fact.

ART. 3.—Each of the High Contracting Parties shall nominate one Arbitrator, who shall be a jurist of repute, and the two Arbitrators so nominated shall within two months of the date of nomination select an Umpire. In case they shall fail to do so within a limit of time, the Umpire shall be appointed by agreement between the members for the time being of the Supreme Court of the United States, and the members for the time being of the Judicial Committee of the Privy Council of Great Britain, each nominating body acting by a majority. In case they fail to agree upon an Umpire within three months of the date of the application being made to them in that behalf by the High Con-

TRAITÉ D'ARBITRAGE ANGLO-AMÉRICAIN.

SIGNÉ À WASHINGTON, LE 11^{me} JANVIER 1897, MAIS NON RATIFIÉ.

Voici le texte du traité d'arbitrage signé récemment à Washington par MM. Olney, secrétaire d'État et Pauncefote, ambassadeur de la Grande-Bretagne :

Les gouvernements de la Grande-Bretagne et des États-Unis, désirant consolider les relations d'amitié qui existent entre les deux États et consacrer par un traité le principe de l'arbitrage international, ont conclu la convention suivante :

ARTICLE PREMIER.—Les hautes parties contractantes conviennent de soumettre à l'arbitrage, sous les réserves ci-après, toutes les questions litigieuses qui surgiront entre elles et qui ne pourront être réglées par la voie diplomatique.

ART. 2.—Les réclamations pécuniaires ou les groupes de réclamations pécuniaires, dont le total n'excède pas la somme de 100,000 livres sterling et qui n'ont pas en même temps le caractère de réclamations territoriales, seront soumises au jugement d'un tribunal arbitral constitué comme il est dit à l'article suivant.

L'expression "groupe de réclamations pécuniaires" mentionnée dans le présent article et dans l'art. 4, signifie les réclamations d'argent faites par une ou plusieurs personnes à raison des mêmes transactions ou résultant des mêmes positions de droit ou de fait.

ART. 3.—Chacune des hautes parties contractantes désignera un arbitre dans la personne d'un juriste de renom ; ces deux arbitres choisiront, dans le délai de deux mois à partir de leur nomination, un sur-arbitre. Dans le cas où ils négligeraient de le faire dans le délai prescrit, le sur-arbitre sera désigné d'un commun accord par les membres de la Cour suprême des États-Unis et par les membres de la Commission judiciaire du Conseil privé de la Grande-Bretagne, la nomination incombant à chacun de ces corps ayant lieu à la majorité. Si ceux-ci ne peuvent s'entendre sur le choix du sur-arbitre dans le délai de trois mois à partir du jour où ils auront été invités par les hautes parties contractantes ou par l'une

tracting Parties, or either of them, the Umpire shall be selected in the manner provided for in Article 10.

The person so selected shall be President of the Tribunal, and the award of the majority of the members shall be final.

ART. 4.—All pecuniary claims or groups of pecuniary claims which shall exceed £100,000 in amount, and all other matters in difference in respect of which either of the High Contracting Parties shall have rights against the other under treaty or otherwise, provided such matters in difference do not involve the determination of territorial claims, shall be dealt with and decided by an Arbitral Tribunal constituted as provided in the next following Article.

ART. 5.—Any subject of Arbitration described in Article 4 shall be submitted to the Tribunal provided for by Article 3, the award of which Tribunal, if unanimous, shall be final; if not unanimous, either of the contracting parties may within six months from the date of the award demand a review thereof. In such case the matter in controversy shall be submitted to an Arbitral Tribunal consisting of five jurists of repute, no one of whom shall have been a member of the Tribunal whose award is to be reviewed, and who shall be selected as follows, viz., two by each of the High Contracting Parties, and one, to act as Umpire, by the four thus nominated, and to be chosen within three months after the date of their nomination.

In case they fail to choose an Umpire within the limit of time mentioned, the Umpire shall be appointed by agreement between the nominating bodies designated in Article 3, acting in the manner therein provided.

In case they fail to agree upon an Umpire within three months of the date of an application made to them by the High Contracting Parties or either of them, an Umpire shall be selected, as provided for in Article 10.

The person so selected shall be President of the Tribunal, and the award of the majority of members shall be final.

d'elles à procéder à cette nomination, le sur-arbitre sera désigné de la manière prévue à l'article 10.

La personne désignée remplira les fonctions de président du tribunal et la sentence rendue par la majorité des membres sera définitive.

ART. 4.—Les réclamations pécuniaires ou groupes de réclamations pécuniaires dont le total excède 100,000 livres sterling, de même que tous autres différends au sujet desquels l'une des hautes parties contractantes peut invoquer contre l'autre des droits résultant d'un traité ou de toute autre cause, pourvu que ces différends n'aient pas le caractère de réclamations territoriales, seront soumises au jugement d'un tribunal arbitral constitué comme il est dit à l'article suivant.

ART. 5.—Les litiges mentionnés à l'article 4 seront soumis au jugement d'un tribunal constitué comme il est dit à l'article 3. Si le jugement de ce tribunal est rendu à l'unanimité des voix, il sera définitif ; dans le cas contraire, chacune des parties contractantes pourra en demander la révision dans les six mois de sa date. Dans ce cas, le différend sera soumis à un tribunal arbitral, composé de cinq juristes de renom, à l'exclusion de ceux dont la sentence doit être révisée ; chacune des hautes parties contractantes nommera deux arbitres et les quatre réunis désigneront un sur-arbitre dans le délai de trois mois à partir du jour de leur nomination.

Dans le cas où ils négligeraient de le désigner dans le délai prescrit, le sur-arbitre sera choisi d'un commun accord par les corps mentionnés à l'article 3, comme il est expliqué à cet article.

Si ceux-ci ne peuvent s'entendre sur le choix du sur-arbitre dans le délai de trois mois à partir du jour où ils auront été invités par les hautes parties contractantes, ou par l'une d'elles, à procéder à cette nomination, le sur-arbitre sera désigné de la manière prévue à l'article 10.

La personne désignée remplira les fonctions de président du tribunal et la sentence rendue par la majorité des membres sera définitive.

ART. 6.—Any Controversy which shall involve the determination of territorial claims shall be submitted to a Tribunal composed of six members, three of whom, subject to the provisions of Article 8, shall be judges of the Supreme Court of the United States or Justices of Circuit Courts, to be nominated by the President of the United States ; and the other three, subject to the provisions of Article 8, shall be judges of the British Supreme Court of Judicature, or members of the Judicial Committee of the Privy Council, to be nominated by her Britannic Majesty, whose award by a majority of not less than five to one shall be final.

In case of the Award being made by less than the prescribed majority, the award shall also be final unless either Power shall, within three months after the award has been reported, protest that the same is erroneous, in which case the award shall be of no validity.

In the event of the Award being made by less than the prescribed majority, and protested against as above provided, or if members of the Arbitral Tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the mediation of one or more friendly Powers has been invited by one or both of the High Contracting Parties.

ART. 7.—Objections to the jurisdiction of an Arbitral Tribunal constituted under the Treaty shall not be taken except as provided in this Article.

If, before the close of the hearing upon the claim submitted to an Arbitral Tribunal constituted under Article 3 or Article 5, either of the High Contracting Parties shall move such Tribunal to decide, and thereupon it shall decide, that the determination of such a claim necessarily involves the decision of a disputed question of principle, of grave general importance affecting the national rights of such party as distinguished from private rights, whereof it is merely an international representative, the jurisdiction of

ART. 6.—Tout différend ayant le caractère d'une réclamation territoriale sera soumis à un tribunal de six membres, dont trois seront désignés par le président des États-Unis sous réserve de ce qui est dit à l'art. 8, parmi les juges de la Cour suprême des États-Unis ou des Cours d'arrondissement, et les trois autres, sous la même réserve, par S. M. la reine de la Grande-Bretagne, parmi les juges de la Cour suprême britannique ou les membres de la Commission judiciaire du Conseil privé. La sentence du tribunal sera définitive, pourvu qu'elle ait été rendu à l'unanimité ou par cinq voix contre une.

Dans le cas de majorité insuffisante, le jugement sera également définitif, à moins qu'une des puissances ne déclare, dans les trois mois de sa date, le considérer comme faux, laquelle déclaration annule le jugement.

Lorsqu'un jugement, rendu à une majorité insuffisante, a été déclaré nul comme il vient d'être dit, ou lorsque les voix des membres du tribunal arbitral se sont partagées par moitié, les parties contractantes ne recourront à aucune mesure d'hostilité de quelle nature que ce soit avant d'avoir, ensemble ou séparément, requis la médiation d'une ou de plusieurs puissances amies.

ART. 7.—La compétence du tribunal arbitral, constitué conformément aux dispositions du présent traité ne pourra être attaquée que dans le cas suivant :

Lorsque avant la clôture de l'instruction d'une réclamation soumise à un tribunal arbitral constitué conformément aux articles 3 ou 5, ce tribunal reconnaît, à la demande de l'une des hautes parties contractantes, que la qualification de cette réclamation entraînera nécessairement une décision sur une question de principe contestée d'une importance grave et générale concernant des droits nationaux, la partie qui les revendique n'agissant pas en réalité pour la poursuite de droits privés, mais plutôt comme agent international, le tribunal arbitral sera incompétent pour

such Arbitral Tribunal over such claim shall cease, and the same shall be dealt with by Arbitration under Article 6.

ART. 8.—Where the question involved concerns a particular State or Territory of the United States, the President may appoint a judicial officer of such State or territory to be one of the Arbitrators. Where the question involved concerns a British colony or possession, her Majesty may appoint a judicial officer of such colony or possession to be one of the Arbitrators.

ART. 9.—Territorial claims in the Treaty shall include all claims to territory and all other claims involving questions of servitude, rights of navigation, and of access to fisheries, and all rights and interests necessary to the control and enjoyment of territory claimed by either of the high contracting parties.

ART. 10.—If, in any case, the nominating bodies designated in Articles 3 and 5 shall fail to agree upon an Umpire, the Umpire shall be appointed by his Majesty the King of Sweden and Norway.

Either of the High Contracting Parties may at any time give notice to the other that by reason of material changes in the conditions as existing at the date of the Treaty, it is of opinion that a substitute for his Majesty should be chosen. The substitute may be agreed upon.

ART. 11.—In case of the death, &c., of any Arbitrator, the vacancy shall be filled in the manner provided for in the original appointment.

ART. 12.—This Article provides for each Government paying its own counsel and Arbitrators, but in the case of an essential matter of difference submitted to Arbitration it is the right of one of the parties to receive disavowals of or apologies for acts or defaults of the other, not resulting in substantial pecuniary injury. The Arbitral Tribunal, finally disposing of the matter, shall direct

statuer sur cette réclamation et celle-ci sera soumise à l'arbitrage prévu par l'art. 6.

ART. 8.—Lorsque le différend concerne un des Etats ou territoires des États-Unis, le président pourra désigner comme arbitre un officier judiciaire de cet État ou territoire. Lorsque le différend concerne une colonie ou possession britannique, Sa Majesté pourra désigner comme arbitre un officier judiciaire de cette colonie ou possession.

ART. 9.—Les réclamations territoriales comprennent, aux termes du présent traité, outre celles concernant un territoire, toute question de servitude, de droit de navigation, de pêche, et tous les droits et intérêts dont l'exercice est nécessaire pour la surveillance ou la jouissance du territoire réclamé par l'une des hautes parties contractantes.

ART. 10.—Lorsque les corps désignés aux art. 3 et 5 ne pourront s'entendre au sujet de la nomination du sur-arbitre, celui-ci sera désigné par S. M. le roi de Suède et de Norvège.

Chacune des hautes parties contractantes pourra aviser en tout temps l'autre État, qu'à raison de la modification matérielle des circonstances sous l'empire desquelles le présent traité est conclu, elle estime qu'il est opportun de désigner un remplaçant à Sa Majesté. Le remplaçant pourra être consulté à ce sujet.

ART. 11.—En cas de décès, etc., d'un arbitre, il sera pourvu à son remplacement de la même manière que pour sa nomination.

ART. 12.—Chaque gouvernement paiera son conseil et ses arbitres. Cependant, dans les cas importants soumis à l'arbitrage, de une partie pourra accepter des actes de désaveu, de défense ou défaut, sans que ses charges au sujet des dépens s'en trouvent aggravées. Le tribunal arbitral décidera, dans sa sentence finale,

whether any of the expenses of the successful party shall be borne by the unsuccessful party, and to what extent.

ART. 13.—The time and place of the meeting of the Arbitral Tribunal, and all arrangements for the hearing, and all questions of procedure shall be decided by the Tribunal itself.

This Article also provides for the keeping of a record and employment of agents, &c., and stipulates that the decision of the Tribunal shall, if possible, be made within three months from the close of the arguments on both sides, and shall be in writing and dated and signed by the Arbitrators who assent to it.

ART. 14.—This Treaty shall remain in force for five years from the date it shall come into operation, and, further, until the expiration of twelve months after either of the High Contracting Parties shall have given notice to the other of its wish to terminate it.

ART. 15.—This Treaty shall be ratified by the President of the United States and her Majesty the Queen of Great Britain and Ireland, and the exchange of ratifications shall take place in Washington or London within six months of the date hereof, or earlier if possible.

si et dans quelles proportions les frais de la partie qui obtient gain de cause seront mis à la charge de la partie adverse.

ART. 13.—Le tribunal fixera lui-même l'époque et le lieu de ses séances ; il arrêtera également le mode d'instruction, ainsi que toutes les questions de procédure. La sentence du tribunal sera rendue si possible dans le délai de trois mois après la clôture de l'instruction ; elle sera écrite, datée et signée par les arbitres qui y ont adhéré.

ART. 14.—Le présent traité restera en vigueur pendant cinq années à partir du jour où il en sera fait application et continuera aussi longtemps que l'une des hautes parties contractantes n'aura pas signifié à l'autre État, douze mois à l'avance, qu'elle désire le résilier.

ART. 15.—Le présent traité sera ratifié par le président des États-Unis et par S. M. la reine de la Grande-Bretagne et d'Irlande. L'échange des ratifications aura lieu à Washington ou à Londres dans les six mois de sa date, ou plus tôt si possible.

THE ARBITRATION TREATY BETWEEN ITALY AND THE ARGENTINE REPUBLIC.

The following is the text of the Arbitration Treaty between the kingdom of Italy and the Argentine Republic, which was signed at Rome on July 23rd, 1898.

ART. 1.—The High Contracting Parties hereby bind themselves to submit to an Arbitration decision all the disputes, whatever may be their nature or cause, which may arise between the said parties, when such cannot be adjusted in a friendly way by the ordinary course of diplomacy. This provision for Arbitration shall extend even over disputes which may have arisen prior to the negotiation of this Treaty.

ART. 2.—Should Arbitration be necessary, the parties shall make a special Convention to determine the object of the litigation, the scope of the powers of the Arbitrators, and any other matters having reference to procedure.

In default of such a Convention, the tribunal under the instruction of the parties shall determine the points of law and of fact which must be decided in order to adjust the dispute. In default of a convention, or in case the point in question has not been foreseen, the following rules shall be observed :—

ART. 3.—The tribunal shall be composed of three judges. Each of the States shall appoint one. The two Arbitrators shall choose the third. If they fail to agree in a choice, the third Arbitrator shall be chosen by the head of a third State, to be named. If the parties shall not agree upon the head of the State to be named, the President of the Swiss Confederation and the King of Sweden and Norway shall be asked in turn to name the third Arbitrator.

The third Arbitrator thus chosen shall be president of the

TRAITE D'ARBITRAGE PERMANENT ENTRE LE
ROYAUME D'ITALIE ET LA REPUBLIQUE
ARGENTINE

Le texte du traité d'arbitrage permanent, signé le 23 juillet 1898 à Rome, entre le représentant de la République Argentine et le ministre des affaires étrangères du royaume d'Italie, au nom de leurs gouvernements :

ARTICLE PREMIER.—Les hautes parties contractantes se sont obligées à soumettre à un jugement arbitral tous les litiges, quelles qu'en soient la nature et la cause, qui viendraient à surgir entre les dites parties, si l'on n'a pu les vider amiablement par voie diplomatique directe. La clause d'arbitrage s'étend même aux litiges qui peuvent avoir une origine antérieure à la stipulation du dit traité.

ART. 2.—Le cas échéant, les parties stipuleront une convention spéciale pour déterminer l'objet du litige, la portée des pouvoirs des arbitres et toute autre modalité relative à la procédure.

A défaut d'une telle convention, le tribunal, sur les déductions des parties, déterminera les points de droit et de fait qui doivent être résolus pour vider le litige.

A défaut de convention, ou si elle n'a pas prévu le point en question, on observera les règles suivantes :

ART. 3.—Le tribunal sera composé de trois juges. Chacun des Etats en désignera un. Les deux arbitres choisiront le troisième arbitre. S'ils ne se mettent pas d'accord sur ce choix, le tiers-arbitre sera choisi par le chef d'un Etat-tiers qui en sera requis. Si ces parties ne sont pas d'accord sur le chef d'Etat à choisir, la demande de nomination sera faite alternativement au président de la confédération suisse et au roi de Suède et de Norvège.

Le tiers-arbitre élu dans ces circonstances sera président de droit du tribunal.

tribunal. The same person cannot be named as third Arbitrator more than once in succession.

The Arbitrators cannot be citizens of the contracting States nor reside, nor have homes, in their territories. They must have no interest in the question which constitutes the ground for the Arbitration.

ART. 4.—If an Arbitrator, for any reason whatever, cannot perform, or continue in, the office of Arbitrator to which he has been named, his place shall be filled according to the same procedure used in his nomination.

ART. 5.—In default of a special agreement between the parties the tribunal shall designate the time and the place of the meeting, outside of the territories of the contracting States, and shall choose the language which shall be employed. It shall determine the methods of procedure, the forms and the delays to be observed by the parties, the procedures to be followed, and, in general, it shall adopt all the measures which it shall judge necessary for its action, and suitable for the solving of all the difficulties of procedure which may arise in the course of the discussion.

The parties, on their part, pledge themselves to put at the disposal of the Arbitrators all the means of information within their power.

ART. 6.—An Agent of each of the parties shall be present at the sittings, and he shall represent his Government in all matters pertaining to the Arbitration.

ART. 7.—The Tribunal shall be competent to decide upon the regularity of its constitution, the validity of the Arbitration Agreement and its interpretation.

ART. 8.—The Tribunal shall render its decisions according to the principles of International Law, unless the Agreement provides for the application of special rules, and authorises the Arbitrators to render their decision as friendly counsellors.

ART. 9.—Unless provision is made to the contrary, the

Il est défendu de nommer tiers-arbitre plusieurs fois de suite la même personne.

Les arbitres ne peuvent être ni citoyens des Etats contractants, ni domiciliés ou résidents dans leurs territoires. Ils doivent n'avoir aucun intérêt dans les questions qui font l'objet de l'arbitrage.

ART. 4.— Si un arbitre, pour une raison quelconque, ne peut remplir ou continuer l'office d'arbitre auquel il avait été nommé, on le remplacera suivant la même procédure adoptée pour sa nomination.

ART. 5.— A défaut d'un accord spécial entre les parties, le tribunal désignera l'époque et le lieu des séances loin des territoires des Etats contractants, et choisira la langue dont on devra faire usage ; il déterminera les moyens de procédure, les formes et les délais à fixer aux parties, les procédures à suivre, et en général, il prendra toutes les mesures qu'il jugera nécessaires à son action et propres à résoudre toutes les difficultés de procédure qui pourraient surgir dans le cours du débat.

Les parties, de leur côté, s'engagent à mettre à la disposition des arbitres tous les moyens d'information qui dépendent d'elles.

ART. 6.— Un mandataire de chacune des parties assistera aux séances, et il représentera son gouvernement dans toutes les affaires qui se rapporteront à l'arbitrage.

ART. 7.— Le tribunal est compétent pour statuer sur la régularité de sa constitution, sur la validité du compromis et sur son interprétation.

ART. 8.— Le tribunal devra prononcer d'après les principes du Droit international, à moins que le compromis n'impose l'application de règles spéciales et n'autorise les arbitres à statuer comme amiables compositeurs.

ART. 9.— Sauf le cas de dispositions contraires, toutes les

decisions of the tribunal shall be made by a majority vote of the Arbitrators.

ART. 10.—The Award rendered shall decide definitely every point of the dispute. Two copies of it shall be drawn up and signed by all the Arbitrators. If one of the Arbitrators refuses to sign, a note of the refusal shall be made in the Award, which shall be carried into effect, if it bears the signature of a majority of the Arbitrators. The Award shall not contain any counter-arguments. Each of the parties shall be notified of the Award by its representative before the tribunal.

ART. 11.—Each of the parties shall bear its own expenses and one-half of the expenses of the Arbitral Tribunal.

ART. 12.—The Award, legally pronounced, shall settle, within the limits of its applicability, the matters in dispute between the parties. It shall indicate the limit of time within which it is to be executed. The Tribunal shall have the power to settle any questions which shall arise as to the execution of the decree.

ART. 13.—There shall be no appeal from the Award, and its execution shall be confided to the honour of the nations signing this Treaty.

The revision of the Award before the same Tribunal which has pronounced it may be asked for before the execution of the sentence: First, if the judgment has been based upon a false or erroneous document; and, second, if the decision in whole or in part has resulted from an error of fact, positive or negative, resulting from the acts or documents of the trial.

ART. 14.—This Treaty shall continue in force for a period of ten years from the exchange of ratifications. If the Treaty is not denounced six months before the date of its expiration, it shall be understood that it is renewed for a new period of ten years, and so thereafter.

délibérations du tribunal seront valables quand elles auront la majorité des voix des arbitres.

ART. 10.—La sentence devra décider définitivement tout point du litige. Elle sera rédigée en deux exemplaires et signée par tous les arbitres. Si l'un des arbitres s'y refuse, on donnera acte du refus dans la sentence qui aura effet, si elle porte la signature de la majorité absolue des arbitres. Il est défendu de joindre à la sentence des motifs contraires. La sentence devra être notifiée à chacune des parties par son représentant auprès du tribunal.

ART. 11.—Chacune des parties supportera ses propres frais et la moitié des frais du tribunal arbitral.

ART. 12.—La sentence, légalement prononcée, tranche dans les limites de sa portée, la contestation entre les parties. Elle devra contenir l'indication du terme dans lequel elle doit être exécutée.

Le tribunal a le pouvoir de vider les questions qui pourraient surgir sur l'exécution de l'arrêt.

ART. 13.—Le jugement n'est pas susceptible d'appel et il est confié à l'honneur des nations signataires du pacte.

Est reconnu le droit d'en demander, avant que la sentence ne soit exécutée, la revision devant le même tribunal qui a prononcé le jugement : 1^o si on a jugé sur un document faux ou erroné ; 2^o si la sentence, en tout ou en partie, a été l'effet d'une erreur de fait, positif ou négatif, résultant des actes ou des documents du procès.

ART. 14.—Le traité est conclu pour la durée de dix ans à partir de l'échange des ratifications. Si le traité n'est pas dénoncé six mois avant la date de l'échéance, il est entendu qu'il est renouvelé pour une nouvelle période de dix ans, et ainsi de suite

ARGENTINA E ITALIA: IL TESTO UFFICIALE DEL
TRATTATO ARBITRALE TRA L'ITALIA E
L'ARGENTINA.

S. M. il Re d'Italia e S. E. il Presidente della Repubblica Argentina, animati dal desiderio di sempre più favorire i cordiali rapporti esistenti fra i loro Stati, hanno risoluto di concludere un trattato generale di arbitrato, ed hanno a tal fine nominato come loro plenipotenziari :

SUA MAESTÀ IL RE D'ITALIA

Sua Eccellenza il conte Napoleone Canevaro, senatore del Regno, vice ammiraglio nella Real Marina, Suo Ministro Segretario di Stato per gli affari esteri, e

SUA ECCELLENZA IL PRESIDENTE DELLA REPUBBLICA
ARGENTINA.

Sua Eccellenza Don Enrico B. Moreno, Suo Inviato straordinario e Ministro plenipotenziario presso Sua Maestà il Re d'Italia, i quali, avendo riconosciuto perfettamente regolari i rispettivi loro pieni poteri, hanno convenuto quanto segue :

ART. 1.—Le Alte Parti contraenti si obbligano di sottoporre a giudizio arbitrale tutte le controversie, di qualunque natura, che per qualsiasi causa sorgessero fra di esse nel periodo di durata del presente trattato, e per le quali non si sia potuto ottenere un' amichevole soluzione mercè trattative dirette. Nulla importa che tali controversie abbiano la loro origine in fatti anteriori alla stipulazione del presente trattato.

ART. 2.—Caso per caso le Alte Parti contraenti concluderanno una speciale Convenzione con lo scopo di determinare il preciso oggetto della controversia, l'estensione dei poteri degli arbitri, e ogni altra opportuna modalità relativa al procedimento.

Mancando tale convenzione, spetterà al tribunale di specificare, in base alle reciproche pretese delle parti, i punti di diritto e di fatto che dovranno essere risolti per decidere la controversia.

Per ogni altro provvedimento varranno, nell'assenza di speciale Convenzione, o nel suo silenzio, le regole qui sotto enunciate.

ART. 3.—Il tribunale sarà composto di tre giudici. Ognuno

degli Stati contraenti ne designerà uno. Gli arbitri così nominati sceglieranno il terzo arbitro. Se non potranno accordarsi nella scelta, il terzo arbitro sarà nominato dal capo di un terzo Stato a cui ne sarà fatta richiesta. Tale Stato sarà designato dagli arbitri già nominati. In mancanza di accordo, per la nomina del terzo arbitro, la richiesta sarà fatta al presidente della Confederazione Svizzera ed al Re di Svezia e Norvegia alternativamente.

Il terzo arbitro così eletto sarà di diritto presidente del tribunale.

A terzo arbitro non potrà mai venir nominata successivamente la medesima persona.

Nessuno degli arbitri potrà essere cittadino degli Stati contraenti, nè domiciliato o residente nei loro territorii. Non dovranno avere interesse nelle questioni che sono oggetto dell'arbitrato.

ART. 4.—Qualora un arbitro, per qualunque ragione, non possa assumere o non possa continuare l'ufficio a cui fu nominato, si provvederà alla sua sostituzione con il medesimo procedimento adoperato per la sua nomina.

ART. 5.—Nella mancanza di speciali accordi fra le parti spetta al tribunale: di designare l'epoca ed il luogo delle proprie sedute, fuori dei territorii degli Stati contraenti; di scegliere la lingua, di cui dovrà essere fatto uso; di determinare i modi di istruzione, le forme e i termini da prescrivere alle parti, le procedure da seguirsi, e in generale di prendere tutti i provvedimenti che siano necessari per il proprio funzionamento, e di risolvere tutte le difficoltà procedurali che potessero sorgere nel corso del dibattimento.

Le parti si obbligano, dal canto loro, di porre a disposizione degli arbitri tutti i mezzi di informazione che da loro dipendono.

ART. 6.—Un mandatario di ognuna delle parti assisterà alle sedute e rappresenterà il proprio governo in tutti gli affari che hanno rapporto con l'arbitrato.

ART. 7.—Il Tribunale è competente a decidere sulla regolarità della propria costituzione, sulla validità del compromesso e sulla sua interpretazione.

ART. 8.—Il Tribunale dovrà decidere secondo i principii del diritto internazionale a meno che il compromesso non imponga l'

applicazione di regole speciali, o non autorizzi gli arbitri a decidere come amichevoli compositori.

ART. 9.—A meno di espresse disposizioni contrarie, tutte le deliberazioni del tribunale saranno valide quando ottengano la maggioranza dei voti di tutti gli arbitri.

ART. 10.—La sentenza dovrà decidere definitivamente ogni punto del litigio. Dovrà essere redatta in doppio originale e sottoscritta da tutti gli arbitri. Ricusando alcuno di essi di sottoscriverla, ne dovrà esser fatta menzione dagli altri, e la sentenza avrà effetto perchè sottoscritta dalla maggioranza assoluta degli arbitri. Non potranno essere allegati alla sentenza voti motivati contrarii. La sentenza dovrà essere notificata a ciascuna dalle parti, per mezzo del suo rappresentante presso il tribunale.

ART. 11.—Ognuna delle parti sapporterà le spese proprie e metà delle spese generali del tribunale arbitrale.

ART. 12.—La sentenza legalmente pronunciata decide, nei limiti della sua portata, la contestazione fra le parti. Essa dovrà contenere l'indicazione del termine entro cui dovrà essere eseguita.

Sulle questioni che potessero insorgere nella esecuzione della sentenza, dovrà decidere il tribunale medesimo che la pronunciò.

ART. 13.—La sentenza è inappellabile, e la sua esecuzione è affidata all'onore delle nazioni firmatarie di questo patto.

E' ammessa peraltro la domanda di revisione dinanzi al medesimo tribunale che la pronunciò, e prima che la sentenza medesima sia stata eseguita: 1° se sia stato giudicato sopra un documento falso od errato; 2° se la sentenza sia stata, in tutto o in parte, l'effetto di un errore di fatto, positivo o negativo, che risulti dagli atti o documenti della causa.

ART. 14.—Il presente trattato avrà la durata di dieci anni a partire dallo scambio delle ratifiche. Se non sarà denunciato sei mesi prima della sua scadenza, lo si intenderà rinnovato per un nuovo periodo di dieci anni e così di seguito.

ART. 15.—Il presente trattato sarà ratificato e le ratifiche saranno scambiate a Buenos Ayres entro sei mesi dalla presente data.

Fatto a Roma in doppio esemplare, addì ventitrè luglio dell'anno mille ottocento novantotto.

(L. S.) CANEVARO.

(L. S.) ENRIQUE MORENO.

A CONGRESS AND COURT OF NATIONS.

BY THE AMERICAN PEACE SOCIETY, 1840.

A Congress of Nations was a favourite plan with the American Peace Society, from its first organisation at New York in 1828. At its first annual meeting it offered a prize for the best essay on the subject. Thirty-five essays were written in response, of which five were selected for publication. The President of the Society, Mr. William Ladd, examined the other essays, and a sixth was written and published by him, which contained all the matter relevant to the subject from the rejected essays.

The practical scheme in this essay is the following :—

1. Our plan is composed of two parts, viz., a Congress of Nations, and a Court of Nations, either of which might exist without the other, but they would tend much more to the happiness of mankind if united in one plan though not in one body.

Such a Congress would provide for the organisation of such a Court ; but they would not constitute that Court, which would be permanent, like the Supreme Court of the United States, while the Congress would be transient or periodical like the Congress or Senate of the United States.

THE CONGRESS OF NATIONS.

2. The Congress of Nations would be organised by a Convention, composed of Ambassadors from all those Christian or civilised nations who should concur in the measure, each nation having one vote, however numerous may be the Ambassadors sent to the Convention.

This Convention would organise themselves into a Congress of Nations by adopting such regulations and bye-laws as might appear expedient to the majority.

The Congress thus constituted would choose its president, vice-presidents, secretaries, clerks and such other officers as may be seen fit.

New members might be received, at any time subsequent to the first organisation of the Congress, by their embracing the rules already adopted, and also the laws of nations enacted by the Congress, and duly ratifying these before becoming members of the Congress.

3. After organisation, the Congress would proceed to the consideration of the first principles of the law of nations—no principle to be established unless it had the unanimous consent of all the nations represented at the Congress and were ratified by all the Governments of those nations—each principle thus ratified having the force of a treaty between them.

4. The [formation of the] Court of Nations need not be delayed until all the points of International Law were settled; but its organisation might be one of the first things for the Congress of Nations to do, and in the meantime the Court of Nations might decide cases brought before it, on principles generally known and accepted.

5. The Congress of Nations is to have nothing to do with the internal affairs of nations, or with insurrections, revolutions or contending factions of people or princes or with forms of government, but shall solely concern itself with the intercourse of nations [in relation] to Peace and war.

The four great divisions of its labours shall be: —

1. To define the rights of belligerents towards each other, and [to] endeavour, as much as possible, to abate the horrors of war, lessen its frequency and promote its termination.
2. To settle the rights of neutrals, and thus abate the evils which war inflicts on those nations that are desirous of remaining in Peace;
3. To agree on measures of utility to mankind in a state of Peace;
4. And to organise—

A COURT OF NATIONS.

I.—ORGANISATION AND POWERS.

1. The Court shall be composed of as many members as the Congress of Nations shall previously agree upon, say two from each of the Powers represented at the Congress.

2. The power of this Court shall be merely advisory. It shall act as a High Court of Admiralty, but without its enforcing powers. There shall be no sheriff or posse to enforce its commands. It shall take cognisance only of such cases as shall be referred to it by the free and mutual consent of both parties concerned, like a Chamber of Commerce; and shall have no more power to enforce its decisions than an Ecclesiastical Court in this country (U.S.A.).

II.—MEMBERS AND MEETINGS.

3. The members of this Court shall be appointed by the Governments represented in the Congress of Nations, and shall hold their places according to the tenure previously agreed upon in the Congress notably during good behaviour.

4. Whether they should be paid by the Governments sending them, or by the nations represented in the Congress conjointly, according to the ratio of their population or wealth, may be agreed on in the Congress.

5. The Court should organise itself by choosing a president and vice-presidents from among its members, and they should appoint the necessary clerks, secretaries, reporters, etc.

6. The Court should hear counsel on both sides of the questions to be judged.

7. Its members might meet once a year for the transaction of business, and adjourn till such time, and to such place, as they think proper.

8. Their meeting should never be in a country which had a case on trial.

9. These persons should enjoy the same privileges and immunities as ambassadors.

III.—AWARDS.

10. Their verdicts, like those of other great Courts, should be decided by a majority, and need not be, like the decrees of the Congress, unanimous.

11. The majority should appoint one of their number to make out their verdict, giving a statement of facts from the testimony presented to the Court, and the reasoning on those facts by which they come to a conclusion.

IV.—METHODS AND FUNCTIONS.

12. All cases submitted to the Court should be judged by the true interpretation of existing Treaties, and by the Laws enacted by the Congress and ratified by the nations represented ; and where these Treaties and Laws fail of establishing the point at issue, they should judge the cause by the principles of equity and justice.

13. In cases of disputed boundary, the Court should have the power to send surveyors, appointed by themselves, but at the expense of the parties, to survey the boundaries, collect facts on the spot, and report to the Court.

14. This Court should not only decide on all cases brought before it by any two or more independent, contending nations, but it should be authorised to offer its MEDIATION where war actually exists, or in any difficulty arising between any two or more nations which would endanger the Peace of the world.

Its members should act as conservators of the Peace of Christendom, and watch over the welfare of mankind, both of the nations of the Confederacy and the world at large.

Often nations go to war on a point of honour, and having begun to threaten [each other], think they cannot recede without disgrace ; at the same time, they would be glad to catch at such an excuse for moderation. And often, when nations are nearly exhausted by a protracted war, they would be glad to

make Peace, but they fear to make the first advances, lest it should be imputed to weakness. In such cases they would welcome a mediator.

In cases where ambassadors would neither be sent nor accepted, the members of this Court might go as heralds of Peace.

15. Should the Court be applied to to settle any internal disputes between contending factions, such as the right of succession to the throne, it would be its duty to hear the parties, and give its opinion according to the laws and usages of the country asking its advice, but it should never officiously [officially] offer an *ex parte* verdict though it might propose [suggest] terms of reconciliation.

16. It should be the duty of a Court of Nations, from time to time, to suggest topics for the consideration of the Congress, as new or unsettled principles, favourable to the Peace and welfare of nations, would present themselves to the Court, in the adjudication of cases.

17. There are many other cases, besides those above mentioned, in which such a Court would either prevent war or end it.

A nation would not be justified, in the opinion of the world, in going to war, when there was an able and impartial umpire to judge its case; and many a dispute would be quashed at the outset if it were known that the world would require an impartial investigation of it by able judges.

NOTE.—In the same essay occurs the statement: “The London Peace Society” [which was always in accord with its sister society in America,] “has always been friendly to the plan of a Court or Congress of Nations, as appears by the following extract from the *Herald of Peace*, which is their organ:—“The Court of Nations [*i.e.* a permanent Court of Arbitration] is the end of the operations of the Peace Societies. . . . The *Herald of Peace* for July, 1839, contains a Petition to Parliament on the subject of a Congress of Nations, which was presented on the 12th of April preceding, by Edward Baines, Esq., Member for Leeds, and in the House of Lords by I know not whom. I mention this event in this place for the purpose of preserving the connection.”

THE POLITICAL TRIBUNAL.

BY I. M. DE LA CODRE.

1867.

I take for granted, then, that in every kingdom, and every country in Europe, the majority of the citizens ardently desire the maintenance of Peace; public opinion declares this—it calls for the institution of a High Court of Arbitration, having the mission and the power to decide all questions which may arise between different States, whether as regards territory, dignity, commerce, or any other subject; and as it declares its decision in the name of equity, in the name of the Creator and Father of all men, and in the general interest of all, it would in principle become an institution.

In looking forward to this event, we sketch a plan which might be consulted in establishing such a beneficent plan of arbitration.

ART. I.—A high court of supreme jurisdiction is founded for the settlement of international disputes, present and future, between all the states of Europe.

It shall bear the title—The Political Tribunal.

The Political Tribunal will pronounce judgment definitively and absolutely.

ART. II.—It shall be composed of from fifty to sixty members, who shall be designated *Judges of the Peace*.

Each European State, or each federative association, shall nominate one judge of the Peace for every ten million souls of which it shall be composed, without fraction; any state containing thirty-six million souls shall nominate three judges.

These nominations shall be made in each country according to its custom in making its most important elections.

LE TRIBUNAL POLITIQUE.

PAR I. M. DE LA CODRE.

Paris, 1867.

Je suppose donc que, dans chaque royaume, dans chaque pays de l'Europe, la majorité des citoyens veut avec fermeté le maintien de la paix ; l'opinion publique se prononce, elle demande l'institution d'un haut arbitrage ayant la mission et le pouvoir de statuer sur toutes les prétentions que susciteraient entre les divers Etats des questions de territoire, de dignité, de commerce ou autres, et comme elle formule sa demande au nom de l'équité, au nom du Créateur, père de tous les hommes, au nom de l'intérêt général, elle obtient en principe l'institution.

Dans la prévision de cet événement, esquissons le plan qui pourrait être conseillé pour établir ce bienfaisant arbitrage.

ART. I^{er}.—Un tribunal de haute et suprême juridiction est institué pour la règlementation des affaires litigieuses internationales, présentes ou futures, entre tous les Etats de l'Europe.

Il prendra le nom de *Tribunal Politique*. Le Tribunal politique jugera souverainement et définitivement.

ART. II.—Il sera composé de 50 à 60 membres, désignés par le seul titre de *Juges de la paix*.

Chaque Etat européen, ou chaque association fédérative, nommera un juge de la paix, par chaque quantité de dix millions d'âmes qu'il comprendra, sans fraction ; un Etat comprenant 36 millions d'âmes nommera trois juges. Ces nominations seront faites dans chaque pays, suivant les formes usitées pour les élections les plus importantes.

ART. III.—The judges of the Peace in their respective countries shall neither be members or employés of their own governments.

They shall promise, on accepting this appointment, never to receive, even after they shall cease to hold office, from any government, European or otherwise, any office, title, decoration, indemnity or recompense, under any pretext, or in any form whatever; an oath which they shall repeat with solemnity on taking possession of their seat.

ART. IV.—They shall repair to the places where the Courts may be held, and sojourn there at their own personal expense, without being indemnified or reimbursed. During the Sessions they shall not bear titles or distinctive national marks, but they shall be dressed alike, not only during the sittings, but habitually.

Each of them shall cease *for the time* to belong to his own nationality.

ART. V.—The Political Tribunal shall assemble in its own right, and without convocation, in each year in the town of . . . or in such other place as it shall select. Extraordinary convocations may be called in the interval of the annual sessions, by the President of the last session, or by one of the Vice-presidents, ten of whom shall have been appointed.

The nomination of the President, and of the Vice-presidents, shall be made at the opening of each session by the tribunal, in such manner as it shall decide.

The Senior in age shall be the provisional President of the first sitting.

ART. VI.—The President and Vice-Presidents may be re-elected.

The number of votes which each Vice-President obtains shall determine the order in which they may be called momentarily to take the place of President, or in case of decease or other hindrance.

ART. VII.—Judgments shall be decided by the majority of *members present*, whatever be the number. Where the numbers are equal the President shall have a casting vote.

ART. VIII.—Each member may express in the Council Chamber

ART. III.—Les juges de la paix ne pourront être, dans leurs pays respectifs ni ailleurs, membres du gouvernement ou fonctionnaires. Ils promettent, en acceptant cette magistrature, de ne jamais recevoir, même après l'expiration de leur mandat, d'aucun gouvernement, européen ou autre, ni fonction, ni titre, ni décoration, ni indemnité, ni récompense sous quelque prétexte et dans quelque forme que ce soit, serment qu'ils réitéreront avec solennité en prenant possession de leur siège.

ART. IV.—Ils se rendront au lieu des séances et y séjourneront à leurs frais personnels, sans pouvoir être indemnisés ou remboursés. Pendant la durée des sessions, ils ne conserveront, ni titre, ni marque distinctive, ils porteront non seulement pendant les séances, mais habituellement, des vêtements pareils. Chacun d'eux cessera *transitoirement* d'appartenir à sa nationalité.

ART. V.—Le Tribunal politique s'assemblera de plein droit et sans convocation, chaque année, en la ville de ou en telle autre qu'il voudrait désigner par la suite. Des convocations extraordinaires pourront être faites, dans l'intervalle des sessions annuelles, par le président de la dernière session ou par l'un des vice-présidents, qui auront été nommés au nombre de dix. La nomination du président et du vice-président sera faite à l'ouverture de chaque session par le Tribunal, dans la forme qu'il déterminera. Le doyen d'âge sera le président provisoire de cette première séance.

ART. VI.—Le président et les vice-présidents pourront être réélus. Le nombre de voix qu'aura obtenu chaque vice-président, déterminera dans quel ordre, ils pourront être appelés à remplacer momentanément le président, en cas de décès ou d'empêchement.

ART. VII.—Les jugements seront rendus à la majorité des membres présents, quel qu'en soit le nombre. Le président aura voix prépondérante en cas de partage.

ART. VIII. — Chaque membre pourra exprimer, dans la

the grounds of his opinion ; but he must do it briefly, either verbally or by writing.

ART. IX.—The votes shall on all occasions be given by ballot.

ART. X.—The causes shall be argued in public by the advocates who shall have been deputed by the European States, who are interested directly or indirectly in their solution.

ART. XI.—The pleadings, the opinions of the judges, and the judgments shall be in French ; that being now the language adopted in diplomatic relations.

ART. XII.—Each nation shall have the right to translate into other languages the pleadings, the opinions of the judges, and the judgments, and to publish them.

ART. XIII.—Each nation shall contribute to the general expense of ordinary and extraordinary sittings with all that is necessary to their efficiency, by a sum in proportion to the number of judges which she may have the right to name, without power to exceed it.

The President of the tribunal shall decide all that is necessary concerning the security, the representation, the administration, and the amount of expenses.

ART. XIV.—Each Judge of the Peace shall be appointed for five years, except so far as relates to the first term of five years, and is eligible for re-election.

The tribunal shall be renewed annually for the first five years. During the first four years the judges retire by lot.

All this appears to me practicable, though subject to consideration and amendment ; but for the complete accomplishment of the project, there is one great and perhaps insurmountable difficulty to be solved. *In what way can the judgments with certainty be enforced ?*

This I hope may be accomplished most certainly and completely by the power of public opinion, which I will proceed to explain.

The Political Tribunal having declared its judgment as to

chambre du Conseil, les motifs de son opinion ; il devra le faire brièvement, de vive-voix ou par écrit.

ART. IX.—Les votes seront toujours donnés au scrutin secret.

ART. X.—Les causes seront débattues publiquement par des avocats qu'auront envoyés les Etats de l'Europe qui auront intérêt à la solution directement ou indirectement.

ART. XI.—Les plaidoiries auront lieu, les avis des juges seront donnés, les jugements seront rendus en français, langue maintenant adoptée pour les relations diplomatiques.

ART. XII.—Chaque nation aura le droit de faire traduire dans toutes les langues, les plaidoiries, les opinions des juges et le jugement, et de les publier.

ART. XIII.—Chaque Etat contribuera aux frais généraux des séances ordinaires ou extraordinaires, avec tous les accessoires qu'elles comportent, pour une somme proportionnelle au nombre des juges qu'elle aura le droit de nommer, sans pouvoir l'excéder. Le président du Tribunal règlera la forme de ces accessoires, concernant la sécurité, la représentation, l'administration et le montant des frais.

ART. XIV.—Chaque juge de la paix sera nommé pour cinq ans, sauf ce qui va être dit relativement à la première période, et pourra être réélu. Chaque année le Tribunal sera renouvelé jusqu'à concurrence d'un cinquième. Pendant les quatre premières années, les juges sortant seront désignés par le sort.

Tout ceci, me dira-t-on, semble praticable, sauf discussions et amendements ; mais pour l'entier accomplissement du projet, vous avez une grande et peut-être une insurmontable difficulté à résoudre. Comment l'exécution des jugements serait-elle assurée ? Elle le sera, je l'espère, d'une manière très certaine et très complète, par les manifestations de l'opinion publique, ainsi que je vais l'expliquer.

Les décisions du Tribunal politique ayant montré à cette

which of the contending parties has right and justice on its side, it will be sufficient, in order that its decisions be respected and adopted even by the most powerful princes and peoples, that the tribunal shall publish them gratuitously and extensively throughout the world. What prince, what people would by resisting Awards so given and declared, incur the obloquy (a very deep disgrace in the present state of the world) of being regarded by its contemporaries and by posterity as disturbers of the public tranquillity and enemies of the human race.

Besides which, the other States might isolate the rebellious prince or people, and deprive them, by mere passive force, of all political and commercial relations so long as they refused to submit to the sentence.

Finally, there might, perhaps, be a more imminent danger, for that prince and people in exposing human society to the ravages of war by resisting a decision which had been reached in a regular way; for a war commenced under such auspices might be fatal to them and subject them to very severe reprisals. If, again, the people whose claims had been rejected, consented to execute the Award, but the prince by whom they were governed refused to do so, the consequences of that dissension might also be very serious.

There is another question. Admitting that the establishment of a Political Tribunal would bring about the vast and precious results which you announce, the project of that establishment is at present only an intellectual conception. How shall we attain to the realisation of it? What prince or what people will take the initiative and propose it? I reply, with the well-weighed conviction that that answer will probably be more practical than many persons may at first suppose: **IT WILL BE THE MOST GENEROUS OF THEM ALL.**

opinion de quel côté est, entre les contendants, le bon droit et la justice, il suffira pour que ses décisions soient respectées et suivies même par les princes et les peuples les plus puissants, qu'on les fasse connaître dans toute l'Europe, sur toute la terre par des feuilles distribuées gratuitement en très grand nombre.

Quel prince, quel peuple voudrait, en résistant à des sentences arbitrales ainsi rendues et notifiées, encourir la peine (peine très grave dans l'état présent de nos mœurs) d'être regardé par les contemporains et par la postérité comme des perturbateurs du repos public, comme des ennemis du genre humain ?

De plus, les autres Etats pourraient isoler le prince et le peuple rebelle, et le priver, par la force d'inertie, de toute relation politique et commerciale, tant qu'il ne se serait pas soumis à la sentence.

Enfin, il y aurait peut-être un danger plus immédiat, pour ce prince et pour ce peuple, à exposer le monde aux ravages de la guerre, en repoussant une décision régulièrement portée, car cette guerre commencée sous tels auspices, pourrait leur être fatale et leur faire subir des représailles très sévères. Si le peuple, dont les prétensions auraient été rejetées, consentait à exécuter l'arrêt, et que le prince, qui le gouverne, s'y refusât, les conséquences de ce dissentiment pourraient aussi être fort graves.

Encore une question :

Admettons que l'établissement d'un Tribunal politique puisse amener les vastes et précieux résultats que vous annoncez, le projet de cet établissement n'est encore qu'une conception intellectuelle ; comment arriver à la réalisation ? Quel prince ou quel peuple prendra l'initiative et le proposera ? Je réponds, avec la pensée très méditée, que cette réponse serait probablement plus efficace que plusieurs personnes ne le supposent d'abord : **CE SERA LE PLUS GÉNÉREUX DE TOUS.**

RULES FOR INTERNATIONAL ARBITRATION TRIBUNALS.

Presented to the Institute of International Law, at Geneva, in 1874.

By DR. GOLDSCHMIDT.

PRELIMINARY OBSERVATIONS.

Hitherto there have not existed legal Rules generally admitted either for the formation of *International Arbitration Tribunals*, or for the *Procedure* in those Tribunals.

The present Project is designed to prepare for the adoption of Rules of this description, and to serve as subsidiary law in case of uncertainty.

These Rules apply only to *International Arbitration Tribunals* :—

1. They have, therefore, nothing to do with (*a*) Mediators ; (*b*) Diplomatic Congresses ; (*c*) Permanent International Commissions ; (*d*) Permanent International Tribunals.

2. They relate only to Arbitration Tribunals, which are intended to decide disputes *between States*.

The Rules which follow refer only to the case where *States covenant together by a Treaty to submit to an Arbitration decision*.

The principles to be laid down have reference to—

1. The conclusion of the Arbitration Agreements (compromis) ;
2. The formation of the Arbitration Tribunal ;
3. The Procedure before the tribunal ;
4. The Arbitration Sentence or Award ;
5. The Appeal against the sentence.

PROJET DE RÈGLEMENT POUR TRIBUNAUX
ARBITRAUX INTERNATIONAUX.

Présenté à l'Institut de Droit International à Genève, 1874

PAR LE DR. GOLDSCHMIDT.

OBSERVATIONS PRÉLIMINAIRES.

Il n'existe pas, jusqu'à présent, de règles juridiques admises généralement pour la *formation de tribunaux arbitraux internationaux*, ni pour la *procédure* en ces tribunaux.

Le présent projet est destiné à préparer la réception de règles de cette espèce et à servir de loi subsidiaire en cas de doute.

Ce règlement n'a trait qu'aux *tribunaux arbitraux internationaux*.

1. Il ne concerne donc pas : *a.*) les médiateurs ; *b.*) les congrès d'États ; *c.*) les commissions internationales permanentes ; *d.*) les tribunaux internationaux permanents.

2. Il ne concerne que les tribunaux arbitraux qui doivent décider des contestations *entre États*.

Les règles qui suivent ne concernent que le cas où *des États sont convenus par un traité de se soumettre à une décision arbitrale*.

Les principes à poser concernent :

1. La conclusion des compromis ;
2. La formation du tribunal arbitral ;
3. La procédure devant ce tribunal ;
4. La sentence arbitrale ;
5. Le recours contre la sentence.

THE SCHEME.

ART. 1.—An international arbitration tribunal is one that decides judicial disputes between two or more States.

ART. 2.—An international arbitration tribunal presupposes:—

1. A valid International *Arbitration Agreement* or *Compromis** (*compromissum*).

2. A valid Agreement, or Convention, between the Parties referring to arbitration, on the one side and the Arbitrator on the other, by which convention the latter engages to decide the litigation (*receptum arbitri*). If the arbitration tribunal is to consist of two or more persons, it is necessary that a valid convention should be entered into between the parties arbitrating on the one side, and each of the arbitrators on the other (Art. 9).

ART. 3. The *Compromis* is concluded:—

1. *Antecedently*, either for all disputes, or to determine disputes of a certain kind, which might arise between the contracting States. The conclusion takes place in this case by a valid international treaty.

2. For a dispute, or several disputes *already arisen* between the contracting States, by an instrument signed by representatives of the States which are making the reference to arbitration.

ART. 4.—In the case where the *Compromis* is concluded antecedently for disputes yet to arise, the Competency of the Arbitration Tribunal extends to all the disputes indicated in the *Compromis*, unless the parties arbitrating have limited its scope by any subsequent convention.

In the case where the *Compromis* is concluded for a dispute already arisen between the parties arbitrating, this dispute ought to be distinctly set forth either in the *Compromis* itself, or by a subsequent complementary convention; in default of a sufficient indication the *Compromis* is void.

* As the English word "Compromise" is in this sense obsolete, the term *Compromis*, which usually has this meaning, will be employed throughout.

PROJET.

§ 1.—Le tribunal arbitral international décide des contestations juridiques entre deux ou plusieurs États.

§ 2.—Un Tribunal arbitral international suppose :

1. Un compromis international valable (compromissum).
2. Une convention valable entre les compromettants d'une part et l'arbitre d'autre part, convention par laquelle celui-ci s'engage à décider le litige (receptum arbitri). Si le tribunal arbitral doit se composer de deux ou plusieurs personnes, il faut une convention valable entre les compromettants d'une part et chacun des arbitres d'autre part (§ 9).

§ 3.—Le compromis est conclu :

1. *D'avance*, soit pour toutes contestations, soit pour les contestations d'une certaine espèce à déterminer, qui pourraient s'élever entre les États contractants. La conclusion a lieu dans ce cas par traité international valable.

2. Pour une contestation ou plusieurs contestations *déjà nées* entre les États contractants par un acte signé de représentants des États qui compromettent.

§ 4.—Dans le cas où le compromis est conclu d'avance pour contestations à naître, la compétence du tribunal arbitral s'étend à toutes les contestations désignées dans le compromis, en tant que les compromettants ne la restreignent pas par convention subséquente.

Dans le cas où le compromis est conclu pour une contestation née entre les compromettants, cette contestation doit être clairement désignée dans le compromis ou par une convention subséquente complémentaire ; à défaut de désignation suffisante, le compromis est nul.

Disputes which have arisen after the conclusion of the *Compromis* cannot come before the arbitration tribunal.

ART. 5.—The valid *Compromis* gives to each of the Contracting Parties the right to apply to the arbitration tribunal appointed by the *Compromis* for the Decision of the dispute. Failing any personal designation, in the *Compromis*, of the arbitrator or arbitrators, the course to be followed in forming the arbitration tribunal is determined by the provisions prescribed by the *Compromis* or by another Agreement (See Art. 6).

In the absence of any provisions, each of the Contracting Parties has the right to choose on its side one arbitrator. If the arbitrators chosen cannot agree on their Award, they may, as far as they have been empowered to do so by the contracting parties, choose an Umpire. The ratification, either expressed or understood, of the choice made by the arbitrators amounts to an authorisation.

Failing such authorisation the Contracting Parties must agree together on the choice of an Umpire, or of a third person who shall make the choice.

If the parties cannot come to an agreement, or if the person appointed declines to choose, or if one of the parties refuses the co-operation which according to the *Compromis* it ought to give for the formation of the arbitration tribunal, the *Compromis* is annulled.

ART. 6.—If from the beginning, or because they have not been able to agree on the choice of arbitrators, the Contracting Parties are agreed that the arbitration tribunal should be formed by a third person, appointed by them, and if the person appointed undertakes the formation of the arbitration tribunal, the course to be pursued with this object will be the first thing to be settled in accordance with the regulations laid down in the *Compromis*.

In default of regulations, the third person appointed will suggest at least nine persons; each party may reject three of these; if more than three remain on the list, the third person draws three of them by lot.

If one of the parties refuses his co-operation, the three persons

Les contestations nées après la conclusion du compromis ne seront pas portées devant le tribunal arbitral.

§ 5.—Le compromis valable donne à chacune des parties contractantes le droit de s'adresser au tribunal arbitral désigné par le compromis pour décision de la contestation. A défaut de désignation personnelle, dans le compromis, de l'arbitre ou des arbitres, la marche à suivre pour former le tribunal arbitral se règle selon les dispositions prescrites par le compromis ou par une autre convention (Voyez § 6).

A défaut de dispositions, chacune des parties contractantes a le droit de choisir, de son côté, un arbitre. Si les arbitres choisis ne peuvent tomber d'accord sur la sentence, ils pourront, en tant qu'ils en auront reçu le pouvoir des parties contractantes, choisir un sur-arbitre. La ratification expresse ou tacite du choix fait par les arbitres équivaut à une autorisation.

A défaut d'autorisation, les parties contractantes doivent se mettre d'accord sur le choix d'un sur-arbitre ou d'une personne tierce qui le choisira.

Si les parties ne peuvent s'accorder ou si la personne désignée refuse de choisir, ou si l'une des parties refuse la coopération qu'elle doit prêter selon le compromis à la formation du tribunal arbitral, le compromis est éteint.

§ 6.—Si, dès le principe ou parce qu'elles n'ont pu tomber d'accord sur le choix des arbitres, les parties contractantes sont convenues que le tribunal arbitral serait formé par une personne tierce par elles désignée, et si la personne désignée se charge de la formation du tribunal arbitral, la marche à suivre à cet effet se réglera en première ligne d'après les prescriptions du compromis. A défaut de prescriptions, le tiers désigné propose neuf personnes au moins ; chaque partie en peut rejeter trois : s'il en reste plus de trois sur la liste, le tiers en tire trois au sort.

whom it has the right of eliminating will be eliminated by the umpire, by lot.

ART. 7.—The following are incapable of discharging the Duties of Arbitrator:—

Persons under 14 years of age.

Persons of unsound mind.

Objection may be raised to—

1. Persons under 21 years of age.
2. Persons of the female sex.
3. Mutes, deaf persons, deaf-mutes.
4. Persons who, according to the law of the country to which they belong, are deprived of the exercise of civil rights.
5. Persons who have a personal and immediate interest in the issue of the dispute.
6. Subjects of one of the contesting States.

None of these reasons for objection can be invoked by the party which, in spite of the existence, known to itself, of the reason, has yet chosen the person in question, or which has not notified its objection in writing to the opposing party within thirty days from the time it has been acquainted with the reason.

It is immaterial whether the choice has been made by one party only, or by the two in common, or by a third person. The nomination of an umpire by the arbitrators chosen is like the choice made by a third person.

ART. 8.—If the parties have in a valid manner agreed upon arbitrators individually chosen by them, incapacity or valid objection, were it in regard to one only of the arbitrators, completely invalidates the *Compromis*, forasmuch as the parties are unable to put themselves in agreement about another qualified arbitrator.

If the *Compromis* does not carry with it individual choice of the arbitrator in question, it is necessary, in case of incapacity or valid objection, to follow the course prescribed for the original choice.

ART. 9.—No one is bound to accept the office of arbitrator. Intimation of acceptance is made by writing, and should, if the

Si l'une des parties refuse sa coopération, les trois personnes qu'elle a le droit d'éliminer le sont par le tiers par voie du sort.

§ 7.—Sont incapables de remplir l'office d'arbitre :

Les personnes âgées de moins de quatorze ans révolus.

Les personnes en état de démence.

Peuvent être récusés :

1. Les personnes âgées de moins de vingt-et-un ans révolus.

2. Les personnes du sexe féminin.

3. Les muets, sourds, sourds-muets.

4. Les personnes qui, selon le droit du pays auquel elles appartiennent, sont privées de l'exercice des droits civiques.

5. Les personnes qui ont à l'issue de la contestation un intérêt propre et immédiat.

6. Les sujets d'un des États contestants.

Aucun de ces motifs de récusation ne peut être invoqué par la partie qui, malgré l'existence à elle connue du motif, a choisi la personne en question, ou qui n'a pas notifié sa récusation par écrit à la partie adverse dans le délai de trente jours à partir de la connaissance qu'elle a eue du motif.

Il est indifférent que le choix ait été fait par une partie seulement, ou par les deux en commun, ou par un tiers. La nomination d'un sur-arbitre par les arbitres choisis est comme le choix fait par un tiers.

§ 8.—Si les parties ont valablement compromis sur des arbitres individuellement déterminés, l'incapacité ou la récusation valable, fût-ce d'un seul de ces arbitres, infirme le compromis entier, pour autant que les parties ne peuvent se mettre d'accord sur un autre, arbitre capable.

Si la compromis ne porte pas détermination individuelle de l'arbitre en question, il faut, en cas d'incapacité ou de récusation valable, suivre la marche prescrite pour le choix originaire (§§ 5, 6).

§ 9.—Nul n'est tenu d'accepter l'office d'arbitre.

La déclaration d'acceptation a lieu par écrit, et doit, si le com-

Compromis prescribes it, contain the assurance of a just and impartial decision. It is sufficient to intimate the acceptance to one of the parties.

The fact of assuming the office of arbitrator may take the place of the notification by writing.

ART. 10.—The arbitrator who, after having accepted the office, either by written notification or by fact and deed, lays it down without the consent of all the parties arbitrating and without a just reason, or withdraws in any other manner from the obligation which he has assumed, may be prosecuted in the (usual) legal way before an ordinary judge by each of the parties for the payment of an indemnity corresponding to the charges to which they have been put.

ART. 11.—If an arbitrator refuse the arbitral office, or if he withdraws from it after acceptance, or if he should die, or if he should become of unsound mind, or if valid objection is raised against him for any one of the reasons mentioned in Art. 7, there is occasion for the application of the provisions of Art. 8.

ART. 12.—If the place of meeting of the arbitration tribunal is not settled, either by the *Compromis* or by a subsequent convention between the parties, the appointment shall be made by the arbitrator or by the majority of the arbitrators.

The arbitration tribunal is not authorised to change its place of sitting except when the performance of its functions in the place agreed on is impossible or manifestly dangerous.

ART. 13.—The arbitration tribunal may appoint a President, chosen from its members, and may avail itself of the assistance of one or more Secretaries. The arbitration tribunal shall decide in what Language or Languages its deliberations and the discussions of the parties shall be carried on and the documents and other means of proof presented. It shall keep minutes of its deliberations.

ART. 14.—The Deliberations of an arbitration tribunal take place when all its members are present. It is, however, permissible for it to delegate one or more of its members, or even to appoint third persons, to draw up a record.

promis le prescrit, contenir l'assurance d'une décision juste et impartiale. Il suffit de déclarer l'acceptation à l'une des parties.

Le fait d'assumer l'office d'arbitre peut tenir lieu de la déclaration par écrit.

§ 10.—L'arbitre qui, après avoir accepté soit par déclaration écrite soit par acte *de fait*, se déporte sans le consentement de tous les compromettants et sans juste motif ou se soustrait d'autre façon à l'obligation qu'il a assumée, peut être poursuivi en la voie légale devant son juge ordinaire par chacune des parties en payement d'une indemnité correspondante aux frais qui ont été faits.

§ 11.—Si un arbitre refuse l'office arbitral, ou s'il se déporte après l'avoir accepté, ou s'il meurt, ou s'il tombe en état de démence, ou s'il est valablement récusé pour l'un des motifs mentionnés au § 7, il y a lieu à l'application des dispositions du § 8.

§ 12.—Si le siège du tribunal arbitral n'est désigné ni par le compromis ni par une convention subséquente des parties, la désignation a lieu par l'arbitre ou la majorité des arbitres.

Le tribunal arbitral n'est autorisé à changer de siège qu'au cas où l'accomplissement de ses fonctions au lieu convenu est impossible ou manifestement périlleux.

§ 13.—Le tribunal arbitral peut se nommer un président, pris dans son sein, et s'adjoindre un ou plusieurs secrétaires.

Le tribunal arbitral décide en quelle langue ou quelles langues devront avoir lieu ses délibérations et les débats des parties, et devront être présentés les actes et les autres moyens de preuve. Il tient procès-verbal de ses délibérations.

§ 14.—Le tribunal arbitral délibère tous membres présents. Il lui est loisible toutefois de déléguer un ou plusieurs membres ou même de commettre des tierces personnes pour dresser protocole.

If the arbitrator be a State, or its Head, a Commune or other corporation, an Authority, a Faculty of Law, a learned Society, or the actual President of a commune, corporation, authority, faculty, company, *all* the discussions may take place before a commissioner appointed *ad hoc* by the arbitrator. A record of it shall be drawn up.

ART. 15.—No arbitrator is authorised to appoint a substitute. If substitution takes place by consent of the parties submitting to arbitration, the substitute takes the place entirely of the original arbitrator.

ART. 16.—If the *Compromis* or a subsequent Convention of the Arbitrating Parties prescribes the mode of procedure to be followed by the arbitration tribunal, or the observance of a definite and positive rule of procedure, the arbitration tribunal must comply with this direction. In default of such a direction, the procedure to be followed will be freely chosen by the arbitration tribunal, which is only bound to comply with the principles which it has informed the parties it is willing to follow.

In all cases it must hear each party, and provide itself with the proofs necessary to elucidate the disputable points which are to be taken into consideration. The conduct of the discussions belongs to the arbitration tribunal or to its president.

ART. 17.—Each of the parties shall appoint a representative at the place of meeting of the arbitration tribunal.

ART. 18.—The arbitration tribunal is judge of its own Competence. If a plea of incompetence has not been urged at the first suitable moment, or if, a plea urged within the statutory time having been rejected by the arbitration tribunal, the parties pass on without making any reservations, any later discussion of its incompetence is excluded.

ART. 19.—In the absence of provisions to the contrary in the *Compromis*, the arbitration tribunal has the right:—

1. To determine the forms and the periods of time in which each party must, by its representatives and assistants duly authorised, present its conclusions, establish them in fact and in law, propose its means of proving its case to the tribunal, com-

Si l'arbitre est un État ou son chef, une commune ou autre corporation, une autorité, une faculté de droit, une société savante, ou le président actuel de la commune, corporation, autorité, faculté, compagnie, *tous* les débats peuvent avoir lieu devant le commissaire nommé *ad hoc* par l'arbitre. Il en est dressé protocole.

§ 15.—Aucun arbitre n'est autorisé à se nommer un substitut. S'il y a substitution par consentement des parties compromettantes, le substitut entre complètement en lieu et place de l'arbitre primitif.

§ 16.—Si le compromis ou une convention subséquente des compromettants prescrit au tribunal arbitral le mode de procédure à suivre ou l'observation d'une loi de procédure déterminée et positive, le tribunal arbitral doit se conformer à cette prescription. A défaut d'une prescription pareille, la procédure à suivre sera choisie librement par le tribunal arbitral, lequel est seulement tenu de se conformer aux principes qu'il a déclaré aux parties vouloir suivre. Dans tous les cas il doit entendre chaque partie et se faire fournir les preuves nécessaires pour élucider les points litigieux qui doivent être pris en considération. La direction des débats appartient au tribunal arbitral, ou à son président.

§ 17.—Chacune des parties constituera un représentant au siège du tribunal arbitral.

§ 18.—Le tribunal arbitral est juge de sa compétence. Si l'exception d'incompétence n'est pas opposée au premier moment opportun ou si, l'exception opposée en temps utile ayant été repoussée par le tribunal arbitral, les parties passent outre sans faire de réserves, toute contestation ultérieure de la compétence est exclue.

§ 19.—Sauf dépositions contraires du compromis, le tribunal arbitral a le droit :

1. De déterminer les formes et délais dans lesquels chaque partie devra, par ses représentants et assistants dûment légitimés, présenter ses conclusions, les fonder en fait et en droit, proposer ses moyens de preuve au tribunal, les communiquer à la partie

municate them to the opposite party, and produce such documents as the opposite party may require.

2. To take as admitted those Claims of each party which are not directly contested by the opposite party, as also the declared contents of such documents as the opposite party, without sufficient reasons, fails to produce.

3. To order fresh Hearings of the parties, to require from each party the clearing up of doubtful points.

4. To lay down rules of procedure (on the carrying on of the trial), to have Proofs produced, and to require, if necessary, from a competent tribunal the Judicial Acts for which the arbitration tribunal is not qualified, especially the swearing of experts and witnesses.

5. To decide according to its free will in the interpretation of the documents produced, and, generally, in its estimation of the evidence presented by the parties.

ART. 20.—Each of the parties is at liberty to make other States, communes, corporations, or individuals, parties to the action, either in order to take advantage of their support, or because it wishes, if the occasion arise, to have its remedy against them. If the party joined in the action obeys the summons issued by the arbitration tribunal, it should be heard as well as the other parties in regard to what is advanced by it. Voluntary intervention is not admissible.

ART. 21.—Cross Suits can be brought before the arbitration tribunal only when they are referred to it by the *Compromis*, or when the two parties and the tribunal are in agreement as to their admission.

ART. 22.—Unless the arbitration tribunal, by the *Compromis* or by a subsequent Convention of the arbitrating parties, is either prohibited from pronouncing sentence simply according to its own impartial judgment, or is on the contrary directed to find its verdict according to rules fixed by agreement, its Judicial Determination of the facts of the case shall take place conformably to the principles of law which are applicable in pursuance of the rules of international law.

adverse, produire les documents dont la partie adverse requiert la production.

2. De tenir pour accordées les prétensions de chaque partie qui ne sont pas nettement contestées par la partie adverse, ainsi que le contenu prétendu des documents dont la partie adverse omet la production sans motifs suffisants.

3. D'ordonner de nouvelles auditions des parties, d'exiger de chaque partie l'éclaircissement de points douteux.

4. De rendre des ordonnances de procédure (sur la direction du procès), faire administrer des preuves, et requérir, s'il le faut, du tribunal compétent les actes judiciaires pour lesquels le tribunal arbitral n'est pas qualifié, notamment l'assermentation d'experts et de témoins.

5. De décider selon son libre arbitre dans l'interprétation des documents produits et généralement dans l'appréciation des moyens de preuve présentés par les parties.

§ 20.—Chacune des parties est libre de mettre en cause d'autres États, des communes, des corporations, des particuliers, soit pour s'en faire appuyer, soit parce qu'elle veut, le cas échéant, avoir son recours contre eux. Si le mis en cause obtempère à la citation émanée du tribunal arbitral, il doit être entendu ainsi que les parties sur ce qu'il avance. L'intervention volontaire n'est pas admissible.

§ 21.—Les demandes reconventionnelles ne peuvent être portées devant le tribunal arbitral qu'en tant qu'elles lui sont déférées par le compromis ou que les deux parties et le tribunal sont d'accord pour les admettre.

§ 22.—A moins que, par le compromis ou par une convention subséquente des compromettants il ne soit permis au tribunal arbitral de prononcer simplement selon son équitable appréciation, ou qu'il ne lui soit au contraire prescrit de prononcer d'après des règles convenues déterminées, l'appréciation juridique des faits de la cause aura lieu conformément aux principes de droit qui sont applicables en vertu des règles du droit international.

ART. 23.—The arbitration tribunal cannot decline to pass judgment on the plea that it is not sufficiently instructed either on the facts or on the judicial principles which it has to apply. It must decide conclusively each of the points in litigation. Nevertheless, if the *Compromis* does not prescribe a simultaneous definitive decision on *all* the points, the tribunal may, in deciding finally certain points, reserve the others for further decision.

ART. 24.—The delivery of the Definitive Decision must take place within the period of time fixed by the *compromis*, or by a subsequent convention. Failing any other determination, a period of two years may be taken as agreed upon, to start from the date of the conclusion of the *Compromis*. The day of the conclusion is not included therein. Neither must the time be included during which the arbitration tribunal shall have been hindered by force from fulfilling its functions, by one of the parties, or by a third state.

ART. 25.—Every Decision, definitive or provisional, shall be taken by a majority of the whole of the arbitrators.

The Deliberation and Decision must take place in common, even in the case of a subsequent valid appointment of a third arbitrator (Art. 5). If one or more of the arbitrators refuse to take part therein, the decision for which the third arbitrator has procured the absolute majority by his participation is the arbitration Award.

If, even with the participation of the third arbitrator, there is not an absolute majority, the tribunal must inform the parties, and the *Compromis* is annulled.

ART. 26.—If the arbitration tribunal does not find the Claims of any of the parties established, it must make known the fact, and, if it is not restricted in regard to this by the terms of the *compromis*, must lay down the real state of the law.

ART. 27.—The arbitration Award must be drawn up in writing, and signed by each of the members of the arbitration tribunal with his own hand. If a minority refuses to sign, the signature of the majority shall suffice, with a written declaration that the minority has refused to sign.

§ 23.—Le tribunal arbitral ne peut refuser de prononcer sous le prétexte qu'il n'est pas suffisamment éclairé soit sur les faits soit sur les principes juridiques qu'il doit appliquer.

Il doit décider définitivement chacun des points en litige. Toutefois, si le compromis ne prescrit pas décision définitive simultanée de *tous* les points, le tribunal peut, en décidant définitivement certains points, réserver les autres pour une procédure ultérieure.

§ 24.—Le prononcé de la décision définitive doit avoir lieu dans le délai fixé par le compromis ou par convention subséquente. A défaut d'autre détermination, on tient pour convenu un délai de deux ans à partir du jour de la conclusion du compromis. Le jour de la conclusion n'y est pas compris. On n'y comprend pas non plus le temps durant lequel le tribunal arbitral aura été violemment empêché par une des parties ou par un état tiers de remplir ses fonctions.

§ 25.—Toute décision, définitive ou provisoire, sera prise à la majorité de tous les arbitres.

La délibération et décision doit avoir lieu en commun, même en cas de nomination valable subséquente d'un tiers arbitre (§ 5). Si l'un ou plusieurs des arbitres refusent d'y prendre part, la décision, à laquelle le tiers arbitre a procuré par sa participation la majorité absolue, est sentence arbitrale.

Si, même avec la participation du tiers arbitre, il n'y a pas de majorité absolue, le tribunal doit aviser les parties, et le compromis est éteint.

§ 26.—Si le tribunal arbitral ne trouve fondées les prétensions d'aucune des parties, il doit le déclarer et, s'il n'est limité sous ce rapport par le compromis, établir l'état réel de droit.

§ 27.—La sentence arbitrale doit être rédigée par écrit et signée de la propre main de chacun des membres du tribunal arbitral. Si une minorité refuse de signer, la signature de la majorité suffit, avec déclaration écrite que la minorité a refusé de signer.

ART. 28.—It is allowable for the arbitration tribunal to add to the award a Statement of the Reasons for it. This statement is not necessary unless the *Compromis* directs it. The reasons must be signed in the same way as the Award (Art. 27).

ART. 29.—The Award, with the reasons, if they are set forth, is notified to each party. The notification is effected by the serving of a copy upon the representative of each party (Art. 17) or to an agent of each party appointed *ad hoc*. Even if it has been served upon the representative or the agent of one party only, the Award can no longer be changed by the arbitration tribunal. The tribunal has, nevertheless, the right to correct simple mistakes in writing or calculation, even if neither of the parties proposes it, and to complete the Award on the disputed points not decided, on the proposal of one party, and after hearing the opposite party. An interpretation of the Award notified is not admissible unless *both* parties require it.

ART. 30.—The Award duly delivered (Arts. 24 to 29) settles, within the limit of its compass, the dispute between the parties.

ART. 31.—The Expenses of the arbitration procedure shall be borne by the two parties in equal proportions, without prejudice to the decision of the arbitration tribunal in regard to the indemnity which either of the parties may be condemned to pay.

ART. 32.—The Arbitration Award duly delivered may be impugned and annulled:—

1. If the *Compromis* has not been validly concluded (Arts. 2, 3, 4, 7, 8). This reason cannot be urged if the party has taken part in the procedure before the arbitration tribunal without pleading the nullity of the *Compromis*.

2. If the *Compromis* validly concluded has afterwards been annulled:—

a. By a convention between the parties agreed to before the delivery of the award.

b. Because it has not been possible to form the arbitration tribunal, or because the arbitration tribunal validly formed was afterwards dissolved (Arts. 5 to 8, 11, 25).

§ 28.—Il est loisible au tribunal arbitral d'ajouter à la sentence un exposé de motifs. Cet exposé n'est nécessaire que si le compromis le prescrit. Les motifs doivent être signés de la même manière que la sentence (§ 27).

§ 29.—La sentence, avec les motifs s'ils sont exposés, est notifiée à chaque partie. La notification a lieu par signification d'une expédition au représentant de chaque partie (§ 17) ou à un fondé de pouvoir de chaque partie constitué *ad hoc*.

Même si elle n'a été signifiée qu'au représentant ou au fondé de pouvoirs d'une seule partie, la sentence ne peut plus être changée par le tribunal arbitral. Il a néanmoins le droit de corriger de simples fautes d'écriture ou de calcul, lors même qu'aucune des parties n'en ferait la proposition, et de compléter la sentence sur les points litigieux non décidés, sur la proposition d'une partie et après audition de la partie adverse. Une interprétation de la sentence notifiée n'est admissible que si les *deux* parties la requièrent.

§ 30.—La sentence duement prononcée (§§ 24 à 29) décide, dans les limites de sa portée, la contestation entre les parties.

§ 31.—Les frais de la procédure arbitrale sont supportés par moitié par chaque partie : sans préjudice de la décision du tribunal arbitral touchant l'indemnité que l'une ou l'autre des parties pourra être condamnée à payer.

§ 32.—La sentence arbitrale duement prononcée peut être attaquée et mise à néant :

1. Si le compromis n'a pas été conclu valablement (§§ 2, 3, 4, 7, 8). Ce motif ne peut être invoqué si le recourant a pris part à la procédure devant le tribunal arbitral, sans opposer la nullité du compromis.

2. Si le compromis valablement conclu s'est ensuite éteint :

a. par convention des parties intervenue avant le prononcé de la sentence ;

b. parce qu'on n'a pas pu former le tribunal arbitral, ou parce que le tribunal arbitral valablement formé s'est ensuite dissous (§§ 5 à 8, 11, 25) ;

- c. Because the period prescribed for the delivery of the award has expired before this delivery (Art. 24).
3. If the arbitration tribunal has not deliberated and decided with all its members present and voting (Arts. 14, 25).
4. If, while the *Compromis* provides for a statement of the reasons for the award, the award has been given without such reasons (Art. 28).
5. If the arbitration tribunal has decided without hearing appellant at all (Art. 16). A like case to that of refusal to hear appellant is that in which the person, who has acted as representative of the applicant, has neither received from him a mandate either expressed or implied, nor has his action been ratified, either expressly or tacitly, by the appellant.
6. If the arbitration tribunal has exceeded the limits of the competency which the *Compromis* conferred upon it (Arts. 3, 4, 18).
7. If the arbitration tribunal has, by its decision, awarded to the opposite party more than it asked.
8. If the rules of procedure, or the principles of law, *expressly laid down* for the observance of the arbitration tribunal in the *Compromis* or in a subsequent Convention of the Contracting Parties, or the principles of procedure laid down by the tribunal itself and notified to the parties, have been manifestly neglected or violated (Arts. 16, 22).
9. If the arbitration Award requires any action *generally* recognised as immoral and prohibited.
10. If, without the knowledge of the appellant, and before the delivery of the award, one of the arbitrators has received from the opposite party any advantage or the promise of an advantage.
11. If it is proved that the arbitration tribunal has been deceived by the opposite party, for example, by means of false or altered documents, or corrupted witnesses.

ART. 33.—The Appeal must be made before the tribunal, or arbitration tribunal specified or appointed for that purpose, in the *Compromis*, or in a subsequent Convention of the parties. In default of such specification or appointment, or if success has not

c. parce que le délai prescrit pour le prononcé de la sentence est expiré avant ce prononcé (§ 24).

3. Si le tribunal arbitral n'a pas délibéré et décidé tous ses membres présents et votants (§§ 14, 25).

4. Si le compromis prescrivant l'exposé des motifs, la sentence a été rendu sans motifs (§ 28).

5. Si le tribunal arbitral a décidé sans aucunement entendre le recourant (§ 16). Est assimilé au cas de refus d'audition celui où la personne qui s'est gérée en représentant du recourant n'en a reçu mandat ni exprès ni tacite, sa gestion n'ayant pas non plus été ratifiée, ni expressément ni tacitement, par le recourant.

6. Si le tribunal arbitral a excédé les limites de la compétence que lui donnait le compromis (§§ 3, 4, 18).

7. Si le tribunal arbitral a, par sa décision, accordé à la partie adverse plus qu'elle ne demandait.

8. Si les règles de procédure ou les principes de droit *expressément prescrits* à l'observation du tribunal arbitral dans le compromis ou dans une convention subséquente des compromettants, ou les principes de procédure posés par le tribunal lui-même et notifiés aux parties, ont été manifestement négligés ou violés (§§ 16, 22).

9. Si la sentence arbitrale *ordonne* un acte reconnu *généralement* pour immoral et prohibé.

10. Si, à l'insu du recourant et avant le prononcé de la sentence, un des arbitres a reçu de la partie adverse un avantage ou la promesse d'un avantage.

11. S'il est établi que le tribunal arbitral a été trompé par la partie adverse, par exemple, au moyen d'actes faux ou altérés ou de témoins corrompus.

§ 33. La recours doit être porté devant le tribunal ou tribunal arbitral désigné ou nommé à cet effet dans le compromis ou dans une convention subséquente des parties. A défaut de désignation ou nomination pareille, ou si l'on ne parvient pas à former

been achieved in validly forming the specified arbitration tribunal, or if the validly formed arbitration tribunal has been dissolved, or if the specified tribunal declines to decide, the Appeal must be made before the Supreme Court of the State or Territory where the arbitration tribunal has its location (Art. 12).

ART. 34.—The Appeal must take place within a period of ninety days reckoned from the day of the notification of the arbitration sentence to the agent of the appellant (Art. 29).

For the purpose of entering an appeal it is sufficient to produce a written declaration to the effect that the arbitration award inflicts injury on the appellant, with the deposit at the same time of a sum of (1,000) francs as security.

After the expiration of the aforesaid period of time, the appeal can be entertained only if the appellant proves that without fault of his own he had only later come to the knowledge of the ground of appeal.

The Appeal is held to be abandoned, and the penalty is incurred, if during a new period of ninety days which runs on from the date of the termination of the first, there is not presented to the tribunal a justificatory document specifying and detailing the reasons for which the arbitration judgment is called in question. The reasons adduced cannot be completed after expiration of the period fixed for justification.

The Appeal can be entered and proved only by agents duly authenticated. The Appeal and the Justificatory Document must be communicated to the opposite party, which must reply in writing within a period of ninety days from the communication of the justificatory document. The facts affirmed in this document, and which the opposite party do not directly contest, are held to be admitted. The tribunal has the power to hear the Agents of the parties and to call for proof. The tribunal pronounces judgment only on the reasons for the Appeal adduced in the justificatory document.

If one of them is found to be established, that invalidates the arbitration judgment. If the Arbitration Award contains decisions independent of each other, concerning several points in dispute,

valablement le tribunal arbitral désigné, ou si le tribunal arbitral formé valablement est dissous, ou si le tribunal désigné refuse de décider, le recours doit être porté devant la cour suprême de l'État ou territoire où a siégé le tribunal arbitral (§ 12).

§ 34.—Le recours a lieu dans un délai de 90 jours comptés à partir du jour de la signification de la sentence arbitrale au fondé de pouvoirs du recourant (§ 29).

Il suffit, pour intenter le recours, de la déclaration écrite que la sentence arbitrale inflige grief au recourant, avec dépôt simultané d'une somme de (1,000) francs à titre d'amende.

Après expiration du délai susmentionné, le recours n'est recevable que si le recourant établit que, sans faute de sa part, il n'a eu connaissance que plus tard du motif du recours.

Le recours est tenu pour abandonné et l'amende encourue, si dans un nouveau délai de 90 jours, qui court à partir de l'expiration du premier, il n'est pas présenté au tribunal un mémoire justificatif spécifiant et détaillant les motifs pour lesquels le jugement arbitral est attaqué. Les motifs indiqués ne peuvent être complétés après expiration du délai de justification.

Le recours ne peut être intenté et justifié que par représentants dûment légitimés.

Le recours et le mémoire justificatif doivent être communiqués à la partie adverse, laquelle doit répondre par écrit dans un délai de 90 jours dès la communication du mémoire justificatif. Les faits affirmés dans ce mémoire est que la partie adverse ne conteste pas nettement sont tenus pour accordés.

Le tribunal peut entendre les représentants des parties et ordonner des preuves.

Le tribunal prononce uniquement sur les motifs de recours indiqués dans le mémoire justificatif. S'il en trouve un fondé, il infirme le jugement arbitral. Si la sentence arbitrale contient les décisions, indépendantes les unes des autres, de plusieurs points

those which are successfully called in question alone are invalidated.

If the tribunal rejects the Appeal, the Security deposited is forfeited.

The Costs of these proceedings shall be given against the party which loses the case.

The Decision of the tribunal is final.

A reference of the case for rehearing to the arbitration tribunal, by which it was tried, or to another, can be made only by consent of the parties.

en litige, les décisions efficacement attaquées sont seules infirmées.

Si le tribunal rejette le recours, l'amende déposée est encourue.

Les frais de cette procédure sont à la charge de la partie qui a succombé.

La décision du tribunal est définitive.

Un renvoi du litige pour procédure nouvelle au tribunal arbitral qui a jugé, ou à un autre, ne peut avoir lieu que du consentement des parties.

(Traduction de M. ALPH. RIVIER).

THE HIGH TRIBUNAL OF PUBLIC INTERNATIONAL
JUDICATURE,

BY A. P. SPRAGUE.

From First Prize Essay, "*Pro pace nationum*," on the
Codification of Public International Law, in
"Internationalism," 1876.

PRELIMINARY.

1. The department of judicative public international law is the most positive and constructive of the departments.

2. It is, in some respects, the most important; for it is considered the international *desideratum* of the age that there should be a Tribunal for the settlement of international controversies.

3. The judicative branch of the Code being of a constructive character, should be prepared with a care and judgment quite equal to that required in the substantive branch.

4. Judicative law includes the constitution and jurisdiction of a Tribunal for the settlement of claims and controversies and the mode of procedure in the cases which shall come before the tribunal.

5. The constitution of a Tribunal of an international and public character is, obviously, of more importance than the rules of procedure.

The latter must, necessarily, be special and technical, and can be easily determined; and, whatever mode of procedure may be adopted, would be likely to give general satisfaction.

THE CONSTITUTION OF THE PUBLIC INTERNATIONAL TRIBUNAL
OF JUDICATURE OR ARBITRATION.

6. It is essential to the dignity and influence of the Tribunal that it be composed of persons of an international and judicial character.

7. It is desirable that the Tribunal should possess variability or elasticity combined with permanence and cohesion.

This cannot be the case where the Tribunal consists of judges appointed as occasion may require, to sit only in the cause for which they are required (*tribunal ad hoc*); the tribunal would lack permanence and cohesion.

Whereas, if the Tribunal should be composed of a number of judges, appointed by each of the associated Powers, to hold office during life, and all the judges to sit upon each case, the tribunal would be rather unwieldy, so to speak, and there would not be sufficient variability of judicial talent and international representation; although the permanence of the tribunal would, of course, be assured under such a system, and the results of the decisions would be a great body of international interpretive law.

8. A medium must, therefore, be sought, such as—

A Tribunal consisting of a number of judges appointed for a long period (for life), one or more from each Power, only a part of whom shall sit in any single cause.

By this means the number of judges may be large enough to represent effectually the different interests of the various associated Powers; and by a selection from this number the acting court or tribunal may be sufficiently small to be efficient.

9. If the selection is given to the contending Powers, as it should be, each cause will be heard and decided by judges especially representing the parties to the controversy.

10. The location of the Tribunal should be left to the choice of the judges, with the limitation that the Tribunal shall not have its sittings at any place within the territory of either of the contending parties, nor outside of the territory of the Association of Powers.

THE JURISDICTION OF THE TRIBUNAL.

In respect to the jurisdiction of the Tribunal various schemes may be devised:—

11. It has been proposed by some writers to erect a tribunal which shall have power to settle all disputes between nations.

This was the scheme of Emery de la Croix, in his "Nouveau Cynée"; of Castel de St. Pierre, in his "Projet de la Paix"; and also the Plan of Bentham.

12. But the Tribunal here proposed is not a common-law tribunal, but a statutory one, a tribunal whose jurisdiction should be defined.

I have already considered the impracticability of submitting all questions to an international tribunal for settlement in the present state of international sentiment; and, under a partial, political codification (of international law), such as that here proposed, there is no necessity or propriety for a tribunal having a jurisdiction any more extensive than the extent of the substantive rules.

13. For the purpose, however, of indirectly including the unwritten public international law in the code of judicative law, it may be expedient to establish or recommend an additional tribunal.

14. This additional tribunal might be termed a Tribunal of Arbitration, and have jurisdiction over all questions which the parties in controversy shall agree to submit to it.

15. From this tribunal appeals might lie, in cases involving an interpretation of the code, to the principal tribunal, which might be denominated the High Tribunal of International Judicature, and have not only appellate, but original jurisdiction in matters arising under the code.

16. Thus, let it be provided that there shall be a High Tribunal of public international judicature, having power to hear and determine questions arising under the Code, and having both an appellate and an original jurisdiction in respect to such questions; also that there shall be Tribunal of public International Arbitration, having its constitution or existence in the option of the contending Powers, and its jurisdiction co-extensive with the option of the contending Powers; that from this tribunal appeals shall lie to the High Tribunal in causes involving the construction or interpre-

tation of the Code—that in all other cases, or in cases where the parties so agree, the decision of the tribunal of arbitration shall be final.

17. By such a scheme the Code would encourage, though not require, adjudication or arbitration upon the unwritten as well as written law.

ARRANGEMENT OF THE WHOLE SCHEME.

The whole scheme of judicative law will then be susceptible of the following arrangement:—

1. The High Tribunal of Public International Judicature shall consist of at least as many judges as there are Powers, and, under some conditions of the Association of Powers, of more judges than Powers.

2. If there are fifteen or more Powers, there shall be one judge appointed from each Power; if less than fifteen and more than six Powers, there shall be two judges appointed from each Power; if less than seven Powers, there shall be four judges appointed from each Power.

3. The hearing of a cause or question and its decision shall be by nine judges—four to be chosen from all the judges by each party, and the ninth, by the eight so chosen, from the remaining judges.

4. If at any time, by the accession of new Powers to the Association of Powers, the number of judges shall become too great, one (or more) shall be retired by each of the Powers; or if, at any time, the number of judges shall become too small, by the withdrawal of Powers from the Association, each Power shall appoint an additional number.

5. In the event of the death of a judge, the Power by which he was appointed would, of course, be required to fill the vacancy.

6. The original jurisdiction of the High Tribunal of Public

International Judicature shall be limited to the interpretation of the Code, and the administration of the substantive law embodied therein.

7. Where the settlement of a controverted point, or claim under the Code is desired by either of the contending Powers, such Power may give notice to the adverse Power that it intends to bring the point or claim before the High Tribunal of Public International Judicature for adjudication; and such notice shall require the adverse Power to join the complaining Power in selecting the judges and preparing the cause for adjudication, according to the rules of the Code.

8. *It is recommended* that wherever the Powers contending can agree upon the submission of a disputed point or claim, of whatever nature, to arbitration, that they submit their cause to a Tribunal of public International Arbitration, such tribunal to be constituted in any manner in which the contending powers may agree.

9. The Tribunal of Arbitration shall give its decision upon all questions which may be submitted to it, and shall decide upon principles and rules not inconsistent with the Code.

10. In cases where the interpretation of the Code is involved, the decision of the Tribunal of Arbitration shall not be final, unless the parties so agree beforehand; but an appeal in such cases may be taken to the High Tribunal of Judicature, which shall have power to hear and decide such appeal.

REMARKS ON PRECEDING.

On examining this scheme, it will be seen that it allows the utmost latitude to the Powers, consistent with any kind of permanence and stability. It will be seen also that while all questions *may* be submitted for settlement to an appropriate public international tribunal under this scheme, yet the Code only *requires* that questions involving an interpretation and application

of the principles of the codified law shall be submitted for settlement.

This scheme contemplates both adjudication and arbitration; but it must be observed that the adjudication proposed is, essentially, arbitration, the voluntary element in the submission of causes to adjudication being concentrated in the act of adopting the Code.

And while the High Tribunal of Public International Judicature may not be, nominally, a Tribunal of Arbitration, but a Court of Adjudication, it nevertheless differs from the ordinary, or municipal, court of adjudication, in which the involuntary element is predominant, and the voluntary element, in the submission of causes, is remote and obscure.

The similarity of the proposed High Tribunal of Judicature to a Tribunal of Arbitration will be more apparent when we come to consider the method of executing its decrees, and the consequences of a violation of the provisions of the Code. It will only be expedient to state now that any tribunal which has not an accessory physical power sufficient to procure the execution of its decrees, must be, essentially, a Tribunal of Arbitration, no matter what it may be denominated.

CODE OF INTERNATIONAL ARBITRATION.

*Approved by the Peace Congress, held at Antwerp, at its sitting of
30th August, 1894.*

CHAPTER I.

DEFINITION OF INTERNATIONAL ARBITRATION, AND THE MODE OF INSTITUTING IT.

1. International Arbitration is a voluntary and contentious jurisdiction which consists in the investment, by two or more nations, of private individuals, or rulers, with the power of pronouncing on the differences which have arisen, or which may arise between them.

2. All disputes, of whatever kind, are capable of being settled by arbitration, provided that they do not affect the autonomy or the independence of the disputant nations.

3. International Arbitration is occasional or permanent. Occasional Arbitration is that which has for its object to settle a specific dispute in accordance with rules agreed on for this particular dispute. Permanent Arbitration is that which has for its object the settlement, according to certain rules previously agreed on, of all the disputes which shall arise between two or more nations.

4. Occasional Arbitration is governed by the terms of the special convention which establishes it, unless the disputant nations declare that they refer to the rules determined in the following articles.

5. Occasional Arbitration shall nevertheless be considered as invalid, if the convention which establishes it does not specify the points of the dispute, if it does not provide for the appointment of the arbitrators, and if it does not bear the signatures of the plenipotentiaries validly appointed for this purpose by the disputant nations.

CODE DE L'ARBITRAGE INTERNATIONAL.

Approuvé par le sixième Congrès de la Paix, tenu à Anvers, en sa séance du 30 août 1894.

CHAPITRE PREMIER

DE LA DÉFINITION DE L'ARBITRAGE INTERNATIONAL ET DE LA MANIÈRE DE L'INSTITUER.

1. L'arbitrage international est une juridiction contentieuse et volontaire qui consiste dans le fait, par deux ou plusieurs nations, d'investir des particuliers ou des gouvernants du pouvoir de prononcer sur les différends qui ont surgi ou qui peuvent surgir entre elles.

2. Tous les différends, quels qu'ils soient, sont susceptibles de recevoir une solution arbitrale, à moins qu'ils ne touchent à l'autonomie ou à l'indépendance des nations litigantes.

3. L'arbitrage international est occasionnel ou permanent. L'arbitrage occasionnel est celui qui a pour objet de résoudre un différend déterminé suivant des règles fixées pour ce seul différend. L'arbitrage permanent est celui qui a pour objet de résoudre, suivant certaines règles fixées préalablement, tous les différends qui surgiront entre deux ou plusieurs nations.

4. L'arbitrage occasionnel est régi par les termes de la convention spéciale qui l'institue, à moins que les nations litigantes ne déclarent s'en référer aux règles déterminées dans les articles suivants.

5. L'arbitrage occasionnel sera néanmoins considéré comme nul, si la convention qui l'institue ne désigne pas les objets du litige, si elle ne règle pas la nomination des arbitres et si elle ne porte pas les signatures des plénipotentiaires valablement délégués à cet effet par les nations litigantes.

6. Permanent Arbitration is constituted by a Convention between two or more nations: this convention determines the rules to be followed for appointing the arbitrators who shall be called on to determine the differences which shall arise between them, as also the procedure which shall be observed by the arbitral courts.

7. The Convention which constitutes the Permanent Arbitration shall be general or limited. Such a convention is *limited* if no foreign nation may become a party to it without the consent of the previously contracting parties; it is *general* if any nation may become a party to it by a simple expression of its willingness.

8. In default of special provisions, the Convention which constitutes a Permanent Arbitration is considered to refer to the rules determined in the following articles.

9. The question in dispute shall be precisely specified: the arbitrators shall be forbidden, under pain of their award being considered invalid, to enlarge their powers beyond the fixed limits. In any case, when there is a doubt as to the scope of the reference, the least strict interpretation should be allowed.

10. The arbitrators shall be at least three in number: one to be chosen by each of the disputant nations: these two arbitrators shall choose the umpire.

11. In case of the disputant nations desiring to have a dispute referred to more than three arbitrators, the number of these arbitrators shall always be unequal, and the umpire shall always be chosen by the arbitrators appointed in equal numbers by the disputant nations.

12. When a dispute arises between more than two nations the number of the arbitrators shall be fixed in such a way that their total shall always be an odd number, and that the umpire be chosen by the arbitrators appointed in equal numbers by each of the disputant nations.

13. If the arbitrators do not arrive at an understanding on the

6. L'arbitrage permanent est institué par une convention entre deux ou plusieurs nations : cette convention détermine les règles à suivre pour désigner les arbitres appelés à trancher les différends qui surgiront entre elles ainsi que la procédure qui sera observée au cours de l'arbitrage.

7. La convention qui institue l'arbitrage permanent sera ouverte ou fermée. Une telle convention est fermée si aucune nation étrangère ne peut y accéder que du consentement des contractants antérieurs ; elle est ouverte si toute nation peut y accéder par une simple manifestation de sa volonté. Dans le doute, une convention d'arbitrage permanent sera considérée comme ouverte.

8. A défaut de stipulations spéciales, la convention qui institue un arbitrage permanent est censée s'en référer aux règles déterminées dans les articles suivants.

9. L'objet de chaque différend sera nettement circonscrit : il est interdit aux arbitres, sous peine de nullité de leur sentence, d'étendre leur compétence en dehors des limites qui leur seront fixées. Toutefois, dans le doute sur la portée du litige, l'interprétation la moins stricte doit prévaloir.

10. Les arbitres seront au moins au nombre de trois. Il en sera choisi un par chacune des nations litigantes : ces deux arbitres choisiront le sur-arbitre.

11. Dans le cas où les nations litigantes désirent qu'un différend soit soumis à plus de trois arbitres, le chiffre de ces arbitres sera toujours impair et le sur-arbitre sera toujours choisi par les arbitres nommés en nombre égal par chacune des nations litigantes.

12. Dans le cas où un différend surgit entre plus de deux nations, le nombre des arbitres sera fixé de manière à ce que leur total soit toujours impair et à ce que le sur-arbitre soit choisi par les arbitres nommés en nombre égal par chacune des nations litigantes.

13. Si les arbitres ne parviennent pas à s'entendre sur le choix

choice of an umpire, he shall be chosen by the ruler of some neutral state, which shall be determined by lot.

14. The following are not eligible for the office of arbitrators : those who are under the jurisdiction of the disputant nations ; those of bad character ; incapables and minors.

15. The arbitrators appointed may refuse to accept the mission with which they have been charged, but their consent is definitively obtained. This consent may be made known expressly or tacitly.

16. Any arbitrator who withdraws without legitimate excuse from the mission which he has undertaken shall be condemned to payment of an indemnity equal to the expenses incurred by the disputant nations.

17. The nation which desires to resort to arbitration shall signify its wish by diplomatic channels to the nation with which it finds itself in dispute, and shall notify to it the name of the arbitrator chosen by it.

18. The nation affected by this notice shall be obliged to appoint its arbitrator within one month. The two arbitrators appointed shall be obliged, within one month, to appoint the umpire or to declare that they have not been able to agree on the choice of one.

19. Within a month from the appointment of the umpire a convention shall be signed by plenipotentiaries specially appointed for this purpose, and by the arbitrators. This convention shall have as its object the exact definition of the dispute, the appointment of the place of meeting of the arbitrators, the fixing of the duration of their powers, and, eventually, the drawing up of the juridical principles admitted by the disputant nations as the basis of the decision to be arrived at.

20. The place of meeting of the arbitrators may not form part of any territory on which one of the disputant nations has any special power.

du sur-arbitre, ce dernier sera choisi par le chef d'une nation neutre désigné par la voie du sort.

14. Ne peuvent remplir l'office d'arbitres, les ressortissants des nations litigantes, les indignes, les incapables et les mineurs.

15. Les arbitres désignés peuvent refuser d'accepter la mission dont ils ont été chargés, mais leur acquiescement est définitivement acquis. Cet acquiescement peut se manifester expressément ou tacitement.

16. L'arbitre qui se soustrait sans motif légitime à la mission qu'il a assumée sera poursuivi en payement d'une indemnité égale aux frais qui auront été faits par les nations litigantes.

17. La nation qui désire recourir à un arbitrage, signifiera sa volonté par la voie diplomatique à la nation avec laquelle elle se trouve en litige et lui notifiera le nom de l'arbitre choisi par elle.

18. La nation touchée par cette signification sera tenue dans le délai d'un mois de désigner son arbitre. Les deux arbitres nommés seront tenus, dans le délai d'un mois, de désigner le surarbitre ou de déclarer qu'ils n'ont pu s'entendre sur le choix de ce dernier.

19. Dans le délai d'un mois, après la désignation du sur-arbitre, un compromis sera signé par des plénipotentiaires spécialement désignés à cet effet, et par les arbitres. Ce compromis aura pour objet de déterminer le différend, de désigner la localité où les arbitres se réuniront, de fixer la durée de leurs pouvoirs et éventuellement de libeller les principes juridiques admis par les nations litigantes comme base de la décision à intervenir.

20. La localité où les arbitres se réuniront ne pourra faire partie d'un territoire sur lequel l'une des nations litigantes a un pouvoir éminent quelconque.

21. If no place of meeting is named the arbitrators shall meet at the residence of the umpire, if this locality meets the conditions of the preceding article, or if not at the residence of one of the two other arbitrators. A place shall be chosen by the arbitrators by common agreement, or by lot, if none of the localities aforementioned fulfils the conditions mentioned above.

22. The arbitrators may not change their location, except when the accomplishment of their mission in it would be impossible or dangerous.

23. The arbitrators shall meet within a month of the signing of the convention.

24. If the duration of the powers of the arbitrators has not been fixed by the convention, it shall be for one year at most, from the date of their first meeting. The extension of the powers of the arbitrators is allowed in all cases, but with the consent of the disputant nations. The duration of the powers of the arbitrators shall be extended by as much time as they may have been forcibly prevented from sitting.

25. The revocation of the arbitrators is not possible during the time of the arbitration, except with the consent of the disputant nations.

CHAPTER II.

THE ARBITRAL PROCEDURE.

26. In principle, the disputant nations and the arbitrators shall follow in the procedure the forms established before the ordinary jurisdictions of civilised countries. In case of differences between the legislations of these countries, those rules shall be applied which are most advantageous to that one of the disputant nations which invokes them.

27. The records of their examination, the drawing up of the minutes of the duties performed by them, the deliberation on and the delivery of the award shall be shared in by all the arbitrators.

21. A défaut de désignation d'une localité, les arbitres se réuniront au domicile du sur-arbitre, si cette localité se trouve dans les conditions de l'article précédent, ou sinon au domicile de l'un des deux autres arbitres. Une localité sera choisie par les arbitres d'un commun accord ou par la voie du sort, si aucune des localités prémentionnées ne remplit les conditions indiquées plus haut.

22. Les arbitres ne pourront changer le siège de leurs délibérations que dans le cas où l'accomplissement de leur mission y deviendrait impossible ou périlleux.

23. Les arbitres se réuniront un mois au plus tard après la signature du compromis.

24. Si la durée des pouvoirs des arbitres n'a pas été fixée par le compromis, elle sera d'un an au plus, à partir de la date de leur première réunion. La prorogation des pouvoirs des arbitres est permise dans tous les cas, mais du consentement des nations litigantes. La durée des pouvoirs des arbitres sera prolongée de tout le temps qu'ils auraient été violemment empêchés de siéger.

25. La révocation des arbitres n'est possible, pendant la durée de l'arbitrage, que du consentement des nations litigantes.

CHAPITRE II.

DE LA PROCÉDURE ARBITRALE.

26. En principe, les nations litigantes et les arbitres suivront, dans la procédure, les formes établies devant les juridictions ordinaires des pays civilisés. En cas de divergences entre les législations de ces pays, les règles les plus avantageuses à celle des nations litigantes qui les invoquera, seront appliquées.

27. Les actes de l'instruction, la rédaction des procès-verbaux des devoirs par eux accomplis, la délibération et le prononcé de la sentence seront réalisés par tous les arbitres.

28. In every case the arbitrators should hear each of the disputant nations on each of the contested points. All documents, of whatever description, produced by one of them, shall be communicated entire. The limits of time allowed to the disputant nations for the completion of the various documents in the case shall be determined by the arbitrators.

29. All oral proceedings before the arbitrators shall be subject to cross-examination.

30. The choice of the languages to be used before them shall be left to the arbitrators. In any case, each of the disputant nations has the right to have any documents which are produced before the Arbitration Court translated into its own language at its own expense by a sworn translator.

31. Each of the disputant nations has the right to be represented before the arbitrators by a special delegate, who shall be obliged to choose a residence at the place where the arbitral tribunal is located. In the absence of any declaration to the contrary, after the opening of the debates, all notifications, in the course of the arbitration, shall be made to the representative chosen by each of the disputant nations.

32. This delegate may be assisted by such persons as each of the disputant nations shall consider qualified to defend its cause.

33. The arbitrators may take the oaths of witnesses and experts.

34. The unopposed claims and declarations of a disputant nation shall be held to be verified.

35. No appeal in warranty shall be allowed by the arbitrators. However, those who are liable to such an appeal may, by a special convention with the appellant in warranty and with the consent of the arbitrators, agree that the latter shall decide by one single award the accessory dispute and the principal dispute.

36. Counter claims may be entertained if they are provided for by the Arbitration Agreement, or in cases where the agreement makes no mention of them, by the consent of the disputant parties and the arbitrators.

28. Dans tous les cas, les arbitres doivent entendre chacune des nations litigantes sur chacun des points litigieux. Tous les documents, quels qu'ils soient, produits par l'une d'elles, seront communiqués intégralement. Les délais à observer par les nations litigantes pour l'accomplissement des divers actes de la procédure seront déterminés par les arbitres.

29. Toute procédure orale devant les arbitres sera contradictoire.

30. Le choix des langues qui seront employées devant eux est abandonné aux arbitres. Toutefois, chacune des nations litigantes a le droit de faire traduire dans sa langue et à ses frais, par un traducteur assermenté, les documents produits au cours de l'arbitrage.

31. Chacune des nations litigantes a le droit de se faire représenter devant les arbitres par un délégué spécial, qui sera tenu d'élire domicile au siège du tribunal arbitral. A moins de déclaration contraire, lors de l'ouverture des débats, toutes les notifications pourront se faire, au cours de l'arbitrage, au représentant choisi par chacune des nations litigantes.

32. Ce délégué pourra se faire assister par telles personnes que chacune des nations litigantes jugera qualifiées pour défendre sa cause.

33. Les arbitres pourront recevoir le serment des témoins et des experts.

34. Les prétentions et déclarations de l'une des nations litigantes, qui ne seront pas contestées seront tenues pour vérifiées.

35. Aucun appel en garantie ne sera admis par les arbitres. Toutefois, ceux qui sont passibles d'un tel appel peuvent, par un compromis spécial avec l'appelant en garantie et du consentement des arbitres, accepter que ces derniers jugent par une seule sentence le différend accessoire et le différend principal.

36. Les demandes reconventionnelles sont recevables si elles sont prévues par le compromis ou, dans le cas où ce dernier serait muet à leur égard, du consentement des parties litigantes et des arbitres.

37. In default of special stipulations in the Agreement, or of a supplementary convention between the disputant nations, the arbitrators shall take as the basis or ground of their award: Firstly, the special international law formulated in the treaties made between the disputant nations; secondly, the general international law formulated or used by civilised nations; thirdly, the public or private law of the disputant nations or of other civilised nations.

38. The arbitrators shall make a constant appeal to equity, both for the interpretation and application of the principles and the texts.

39. The arbitrators may not refuse to give their award, under pretext of the insufficiency of the information supplied by the disputant nations, or the obscurity of the juridical principles to be applied.

40. The arbitrators may, in the absence of any stipulation to the contrary in the Agreement, pronounce successively on the points in dispute, but they should, before separating, pronounce on all the disputed points.

41. Every decision shall be taken by an absolute majority of the arbitrators. If no decision has been able to secure an absolute majority, the arbitrators shall be obliged to draw up the different judgments expressed by them, without indicating the names of those who have shared in them.

42. The award shall contain a statement of the reasons on each of the points in dispute. In case of divided votes, with each of these votes there shall be a statement of reasons.

43. The award shall be drawn up in writing, and signed by each of the arbitrators. In case of the minority of arbitrators refusing to sign it, the other arbitrators should mention the fact, and the award shall have effect as if it had been signed by all the arbitrators.

43a. The award is to be drawn up and signed in as many copies as there are disputant nations.

37. A défaut de stipulations spéciales, dans le compromis ou de convention ultérieure entre les nations litigantes, les arbitres, pour asseoir leur sentence, se baseront : en premier lieu, sur le droit international spécial formulé dans les traités intervenus entre les nations litigantes ; en second lieu, sur le droit international général formulé ou usité par les nations civilisées ; en troisième lieu, sur le droit public ou privé tant des nations litigantes que des autres nations civilisées.

38. Les arbitres feront un appel constant à l'équité tant pour l'interprétation que pour l'application des principes et des textes.

39. Les arbitres ne peuvent se refuser à prononcer leur sentence, sous prétexte de l'insuffisance des renseignements fournis par les nations litigantes ou de l'obscurité des principes juridiques à appliquer.

40. Les arbitres peuvent, à moins d'une stipulation contraire dans le compromis, prononcer successivement sur les points en litige, mais ils doivent, avant de se séparer, prononcer sur tous les points litigieux.

41. Toute décision sera prise à la majorité absolue des arbitres. Si aucune décision n'a pu rallier la majorité absolue, les arbitres seront tenus de libeller les différents avis émis par eux, sans indiquer les noms de ceux qui les ont partagés.

42. La sentence sera motivée sur chacun des points en litige. En cas d'avis partagés, chacun de ces avis sera motivé.

43. La sentence sera rédigée par écrit et signée par chacun des arbitres. Au cas où la minorité des arbitres refuserait de la signer, les autres arbitres en feraient mention et la sentence aura effet comme si elle avait été signée par chacun des arbitres.

43a. La sentence est rédigée et signée en autant d'expéditions qu'il y a de nations litigantes.

44. The award is notified to the representatives of each of the disputant nations, accredited to the arbitrators, unless there are precise stipulations to the contrary in the agreement.

45. The notification is effected by delivery of copies of the award to the representatives or delegates of the disputant nations. This is done simultaneously in the arbitrators' presence, and a minute of it is drawn up and signed both by the arbitrators and the aforementioned representatives or delegates.

46. The costs of procedure are borne equally by each of the disputant nations. However, the expenses of counsel and proxies shall be borne entirely by the nation that incurs them.

CHAPTER III.

EXECUTION AND NULLITY OF THE AWARD.

47. The execution of the award is in principle left to the good faith of the disputant nations. They may by mutual agreement make such arrangements on this point as may suit them.

48. The disputant nations may, by a special and mutual provision of the Agreement, give the arbitrators the power to enforce their award, and suggest the means.

49. In any case it is forbidden to enforce the award by taking any steps which should in any way have the character of acts of war, or which might lead to war, or to the destruction of human lives or public or private property.

50. Each of the disputant nations has the right to ask for the interpretation of the award arrived at, and the correction of material errors which it may contain.

51. Such a request shall be notified to the arbitrators and to the other nation within 30 days at the most after the delivery of the copy of the award.

52. The arbitrators shall pronounce judgment on this application within a period of two months. The award shall from that time be definitive.

44. La sentence est notifiée au représentant de chacune des nations litigantes, accrédité auprès des arbitres, à moins de stipulation contraire et précise dans le compromis.

45. La notification a lieu par la remise, aux représentants ou aux délégués des nations litigantes, des expéditions de la sentence. La remise a lieu simultanément en présence des arbitres et il en est dressé procès-verbal signé tant par les arbitres que par les représentants ou délégués prémentionnés.

46. Les frais de procédure sont supportés par chacune des nations litigantes, par parts égales. Toutefois, les frais de représentation ou de délégation restent à charge de celle des nations qui les aura exposés.

CHAPITRE III.

DE L'EXÉCUTION ET DE LA NULLITÉ DE LA SENTENCE.

47. L'exécution de la sentence est en principe abandonnée à la bonne foi des nations litigantes. Elles peuvent de commun accord prendre à ce sujet tels arrangements qu'il leur conviendra.

48. Les nations litigantes peuvent, par une disposition spéciale et mutuelle du compromis, donner aux arbitres le pouvoir de sanctionner leur sentence et leur en indiquer les moyens.

49. Toutefois il est interdit de sanctionner la sentence par des mesures d'exécution qui, de quelque manière que ce soit, auraient le caractère d'actes de guerre, ou pourraient conduire à la guerre ou à la destruction de vies humaines ou de propriétés publiques ou privées.

50. Chacune des nations litigantes a le droit de requérir l'interprétation de la sentence intervenue et la réparation des erreurs matérielles qu'elle peut contenir.

51. Une telle réquisition sera notifiée aux arbitres et à la nation défenderesse trente jours au plus tard après la remise de l'expédition de la sentence.

52. Les arbitres prononceront sur cette réquisition dans un délai de deux mois. La sentence sera dès lors définitive.

53. Each of the disputant nations has the right to demand the re-opening of the discussions, if use has been made of forged or altered documents, or if false witnesses have been heard.

54. This demand shall be notified not later than 30 days after the forgeries, the alterations, or the false witnesses have been brought to the notice of the other nation.

55. The arbitrators shall declare the discussions re-opened, and shall make the same regulations as above—in articles 26 to 46.

56. The expenses incurred since the re-opening of the discussions shall be placed to the account of the nation which fails in its case.

57. The award shall be annulled on the demand of one of the disputant nations, if it has contravened articles 5, 9, 22, 27, 28, 42, 45, of the present code.

58. However, nullity, based on the fact that the Arbitration Agreement was not validly concluded, shall be excused if the nation which claims the declaration of nullity has taken part in the procedure before the arbitrators without pleading the invalidity of the Agreement.

59. The award shall still be annulled if the arbitrators have granted to one of the disputant nations more than it asked, if their decision requires an immoral or illegal act, if one of the arbitrators has accepted from one of the disputant nations any advantage whatever, or the promise of any advantage.

60. The same shall be the case if the rules of procedure and the principles of law, whether they have been enumerated in the Arbitration Agreement or in a later convention, or whether they have been laid down by the arbitrators, have been broken by them.

61. Every petition of nullity shall form the subject of a convention concluded according to the rules enumerated in the present code or, in default of the conclusion of a convention, shall be brought before the Supreme Court of the nation on whose territory the Arbitrators have sat.

62. The petition of nullity shall be notified by diplomatic

53. Chacune des nations litigantes a le droit de demander la réouverture des débats, s'il a été fait usage d'actes faux ou altérés ou s'il a été entendu de faux témoins.

54. Cette demande sera notifiée trente jours au plus tard après que les faux, les altérations ou les faux témoignages auront été portés à la connaissance de la nation demanderesse.

55. Les arbitres déclareront les débats réouverts et statueront comme il a été dit plus haut aux articles 26 à 46.

56. Les frais faits depuis la réouverture des débats seront mis à la charge de la nation qui succombe.

57. La sentence sera annulée à la demande d'une des nations litigantes, s'il a été contrevenu aux articles 5, 9, 22, 27, 28, 42, 45 du présent code.

58. Toutefois la nullité, basée sur ce que le compromis n'a pas été valablement conclu, sera couverte si la nation demanderesse a pris part à la procédure devant les arbitres sans avoir opposé l'invalidité du compromis.

59. La sentence sera encore annulée si les arbitres ont accordé à l'une des nations litigantes plus qu'elle ne demandait, si leur décision ordonne un acte immoral ou illégal, si l'un des arbitres a accepté d'une des nations litigantes un avantage quelconque ou la promesse d'un avantage.

60. Il en sera encore ainsi si les règles de procédure et les principes de droit, soit qu'ils aient été énumérés dans le compromis ou dans une convention ultérieure, soit qu'ils aient été posés par les arbitres, ont été violés par ces derniers.

61. Tout recours en nullité fera l'objet d'un compromis conclu d'après les règles énumérées dans le présent code ou, à défaut de la conclusion d'un compromis, sera porté devant la cour suprême de la nation sur le territoire de laquelle les arbitres ont siégé.

62. Le recours en nullité sera notifié par la voie diplomatique

means within three months of the delivery of the copies of the award.

63. Nevertheless the petition of nullity, if it is based on facts contrary to the rules of Articles 27 and 28, or on facts of bribery provided for by Article 59, shall still be receivable after the expiration of the time allowed by the preceding article, if the nation which claims it proves that the facts appealed to by it were not brought to its knowledge till after the expiration of this interval. When this is the case, the appeal shall be notified not later than three months after the facts appealed to have been brought to the knowledge of the appealing nation.

64. Five months after the said notification, the petition of nullity shall be considered as abandoned, if the appealing nation has not presented to the court before which the matter has come a justificatory memorandum explaining all the reasons urged by it, and if it has not at the same time deposited the sum of 10,000 francs by way of possible indemnity.

65. A like interval of five months is allowed to the defendant nation to draw up its arguments in reply.

66. After an interval of one year at most, the Court shall be bound to give its judgment on the grounds of the petition.

67. If one of the arguments is sustained, the arbitral award shall be annulled. If the arbitral award comprises several independent decisions, those decisions which have been successfully attacked shall alone be annulled.

68. If the Court rejects the petition, the indemnity which has been deposited shall be forfeited to the advantage of the defendant nation.

69. The costs of these proceedings shall be charged to the nation which loses its case.

70. The decision on the petition of nullity is definitive.

71. The rules of procedure fixed by Articles 26 to 46 shall be observed during the hearing of the petition of nullity.

trois mois au plus tard après la remise de l'expédition de la sentence.

63. Toutefois le recours en nullité, s'il est basé sur des faits contraires aux prescriptions des articles 27 et 28 ou sur des faits de corruption prévus par l'article 59, sera encore recevable, après l'expiration du délai établi par l'article précédent, si la nation demanderesse établit que les faits invoqués par elle n'ont été portés à sa connaissance que postérieurement à l'expiration de ce délai. Dans cette hypothèse, le recours sera notifié trois mois au plus tard après que les faits invoqués ont été portés à la connaissance de la nation demanderesse.

64. Cinq mois après la dite notification, le recours en nullité sera considéré comme abandonné si la nation demanderesse n'a pas présenté à la juridiction saisie un mémoire justificatif exposant tous les motifs invoqués par elle et si elle n'a pas déposé simultanément une somme de dix mille francs à titre d'amende éventuelle.

65. Un pareil délai de cinq mois est accordé à la nation défenderesse pour faire valoir ses motifs en réponse.

66. Dans le délai d'une année au plus, la juridiction saisie sera tenue de se prononcer sur les motifs du recours.

67. Si l'un des motifs est fondé, la sentence arbitrale sera annulée. Si la sentence arbitrale contient plusieurs décisions indépendantes, les décisions efficacement attaquées seront seules annulées.

68. Si la juridiction saisie rejette le recours, l'amende déposée sera confisquée au profit de la nation défenderesse.

69. Les frais de cette procédure seront mis à charge de la nation qui succombe.

70. La décision sur le recours en nullité est définitive.

71. Les règles de procédure déterminées par les articles 26 à 46 seront observées au cours de l'instance en nullité.

A FORM OF INTERNATIONAL TREATY OF ARBITRATION FOR PERMANENT ADOPTION BETWEEN STATES.

Prepared by the late M. CHARLES LEMONNIER, Doctor of Law,
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Paix et de la Liberté."

ART. I.—The two contracting parties undertake to submit to a tribunal, endowed with the constitution, jurisdiction, and powers to be described in the following articles, all differences and all difficulties which may arise between the two nations during the term of the present treaty, whatever may be the cause, nature, or subject-matter of such disputes. Moreover, the two States undertake, in the most absolute manner, without restriction or reserve, directly or indirectly, to have no recourse to warlike proceedings of any kind or description.

ART. II.—Every difference which may have arisen, or which may arise, between the two nations shall be submitted to a tribunal composed of three persons; and its decisions shall be final and without appeal. The Power which takes the initiative in such a case, when inviting the other Power to constitute an arbitral tribunal, shall report the name of the arbitrator whom it has selected, and the latter shall reply within fifteen days of this notification by naming a second arbitrator.

Within a month from the time of such nomination, the two arbitrators shall jointly name a third arbitrator.

ART. III.—Within a month from the date when the third arbitrator is selected, the following matters shall be specified in the Agreement:—The constitution of the tribunal; the duties of the arbitrators; the subject of the dispute; the respective claims of the parties; and the place where the tribunal shall be constituted.

This Agreement shall be signed by the representatives of the parties, and by the arbitrators.

FORMULE D'UN TRAITÉ D'ARBITRAGE PERMANENT
ENTRE NATIONS

PAR CH. LEMONNIER.

ARTICLE 1^{er}. — Les deux parties contractantes s'engagent à soumettre au tribunal arbitral, dont la constitution, la juridiction et la compétence seront fixées plus bas, tous les différends et toutes les difficultés qui pourront naître entre les deux peuples pendant la durée du présent traité, quels que puissent être la cause, la nature et l'objet de ces difficultés. Les deux nations renonçant de la façon la plus absolue, sans aucune exception, restriction ni réserve, à user, l'une vis-à-vis de l'autre, directement ni indirectement, d'aucun moyen ni procédé de guerre.

ART. 2. — Tout différend né ou à naître entre les deux peuples sera soumis à un tribunal composé de trois personnes, lequel jugera sans appel et en dernier ressort.

La partie la plus diligente, en requérant de l'autre la constitution du tribunal arbitral, lui fera connaître l'arbitre choisi par elle, et celle-ci devra répondre dans la quinzaine de la notification à elle faite, par la désignation d'un autre arbitre. Dans le mois qui suivra cette désignation, les deux arbitres en nommeront un troisième.

ART. 3.—Le compromis qui, dans le mois de l'acceptation du troisième arbitre, constatera par écrit la constitution du tribunal, déterminera la mission des arbitres, en fixant l'objet du litige, les prétentions respectives des parties, et le lieu de la réunion du tribunal. Ce compromis sera signé par les représentants des parties et par les arbitres.

ART. IV.—In the absence of positive international law for their guidance, the contracting parties shall expressly agree that, in all the cases which may be submitted to them, the arbitrators shall be guided by, and apply the following rules and principles, which the parties undertake to recognise as having the force of law :—

(a) All nations are in relations of complete equality, whatever may be the number of their population, or the extent of their territory

(b) Every nation possesses sovereign rights, and is responsible to other nations both for its own acts, and for those of its subjects and citizens, as well as for the acts of its Government.

(c) The right of a nation to belong to itself and to govern itself is inalienable and imprescriptible.

(d) No individual, Government, or people can, under any pretext, legitimately dispose of the fortunes of another people by annexation, by conquest, or by any other means whatever.

(e) Four conditions are requisite to the validity of any convention or treaty between nations, as follows :—

(1.) Capacity to enter into contracts with another party.

(2.) Free consent on the part of both.

(3.) A definite object as the subject-matter of the agreement.

(4.) A lawful purpose—that is to say, one which does not affect public order or morals.

(f) Any clause, treaty, or agreement shall be null and void, because contrary to public order and morality, which includes any of the following purposes :—

Any infringement of the sovereign rights and independence of one or more nations or persons ; a war which is not strictly defensive ; any conquest, invasion, hostile occupation,

ART. 4. — En l'absence d'une loi internationale positive qui les régit, les parties contractantes conviennent expressément que dans tous les cas qui pourront leur être déférés par elles, les arbitres consulteront et appliqueront les règles et les principes qui suivent, auxquels les parties entendent donner entre elles force de loi :

I. Les peuples sont égaux entre eux, sans égard à la superficie des territoires, non plus qu'à la densité des populations.

II. Les peuples s'appartiennent à eux-mêmes ; ils sont responsables les uns envers les autres, tant de leurs propres actes que des actes des sujets ou citoyens qui les composent ainsi que des actes de leurs gouvernements.

III. Le droit des peuples à s'appartenir et à se gouverner eux-mêmes est inaliénable et imprescriptible.

IV. Nul individu, nul gouvernement, nul peuple ne peut légitimement ni sous aucun prétexte disposer d'un autre peuple par annexion, par conquête ou de quelque autre façon que ce soit.

V. Quatre conditions sont requises pour la validité de toute convention et de tout traité entre peuples :

La capacité de contracter chez l'une et l'autre parties ;

Le libre consentement de l'une et de l'autre ;

Un objet certain qui forme la matière de l'engagement ;

Une cause licite, c'est-à-dire qui ne blesse ni l'ordre public ni les bonnes mœurs.

VI. Est nul comme contraire à l'ordre public et aux bonnes mœurs, toute clause, convention ou traité ayant pour objet :

Toute atteinte à l'autonomie d'un ou de plusieurs peuples, ou individus ;

Toute guerre qui n'est point strictement défensive ;

Toute conquête, invasion, occupation, partage, démembre-

dismemberment, cession, annexation or acquisition, on any grounds or under any circumstances whatever, of the whole or part of a territory occupied by one people, or by any population whatever, if such occupation has not been previously accepted by the inhabitants, both male and female.

(g) Every nation which is invaded has the right, for purposes of defence, to make use of all the resources of its territory, and of all the collective or individual forces of its inhabitants; and the exercise of this right is not subject to any conditions whatever.

(h) War becomes culpable from the moment that it passes from the defensive to the offensive, and in order to enter upon the illicit course of invasion and conquest.

Moreover, in accordance with the special character of each case referred to arbitrators, the Agreement should, as per Article III., define the constitution of the tribunal and the subject of the dispute. Again, it should if necessary prescribe the special rules, which, like the general rules above stated, will constitute the law to be put in force by the arbitrators.

If it happens that in applying the provisions of this article some difficulty or obscurity occurs, the arbitrators shall supply what is wanted, as their conscience and reason may direct; and they shall not fail to pronounce a decision in any case submitted to them. Nor shall they fail to carry out the principles laid down in the above article.

ART. V.—The Agreement shall prescribe the duration of the functions of the arbitrators; but the term may be extended at the consent of the parties. Should it happen that the treaty ceases to be in force before the expiration of the powers conferred upon the arbitrators by the last agreement between the parties, those powers shall not be thereby terminated or invalidated in any respect whatever.

ART. VI.—The arbitrators shall themselves determine their procedure, fix the periods for the execution of processes, and

ment, cession, annexion ou acquisition à quelque titre ou de quelque façon que ce soit, de tout ou partie d'un territoire occupé par un peuple, ou par une population quelconque, qui n'a pas été au préalable consentie par les habitants, sans distinction de sexe.

VII. Tout peuple envahi a le droit, pour repousser l'invasion, d'user de toutes les ressources de son territoire et de toutes les forces collectives ou individuelles de ses habitants ; ce droit n'est subordonné dans son exercice à aucune condition, soit de signe extérieur, soit d'organisation militaire.

VIII. La guerre devient coupable du moment qu'elle passe de la défensive à l'offensive pour entrer dans la voie illicite de l'invasion et de la conquête.

En outre et selon la spécialité des cas litigieux soumis aux arbitres, le compromis qui devra, aux termes de l'article 3, constater la constitution du tribunal et fixer l'objet du litige, devra, s'il y échet, déterminer les règles particulières qui devront, comme les règles générales énoncées ci-dessus, servir de loi aux arbitres.

S'il arrive que dans l'application, les dispositions du présent article offrent quelque obscurité, quelque omission, quelque lacune, les arbitres devront y suppléer par les lumières de leur conscience et de leur raison, sans pouvoir en aucun cas s'abstenir de juger, ni déroger aux principes édictés par le dit article.

ART. 5. — Le compromis fixera la durée des pouvoirs des arbitres. Ces pouvoirs pourront toujours être prorogés du consentement des parties. S'il arrivait que le traité prit fin avant l'expiration des pouvoirs conférés aux arbitres par le dernier compromis passé entre les parties, ces pouvoirs n'en seraient ni détruits, ni diminués en quoi que ce soit.

ART. 6. — Les arbitres régleront eux-mêmes leur procédure, fixeront les délais et régleront la forme en laquelle les parties

prescribe the formalities according to which the parties shall present their claims, counterclaims, pleas, and rejoinders.

ART. VII.—The arbitrators shall have recourse to all means of information which they may think necessary for the purpose of ascertaining the facts, and of arriving at a just decision, such as investigations, the services of experts, the production of documents (with or without transfer from their place of custody), examination of documents, the removal of judges from one place to another, commissions of inquiry, &c. Each party shall undertake to place at the service of the judges all facilities and means of information that may be necessary.

ART. VIII.—There shall be no appeal from the decision of the judges, which shall be final. Their award shall be executory, and shall have the force of law a month after it has been notified by them to the two parties. They will be required to make their award known through the medium of official journals or delegates specially authorised to receive legal notices, within eight days of its issue.

The arbitrators shall themselves fix the salaries and emoluments of the persons employed by them. They shall regulate all expenses, including their own honoraria; and they shall specify in the award the proportion of expenses to be paid by the two parties respectively.

ART. IX.—The arbitral decision shall not be annulled, except in the following cases, and for the following reasons:—

(a) If the arbitrators have pronounced judgment in reference to matters not referred to them.

(b) If the decision has been based upon an Agreement which is null and void, or which has expired.

(c) If the forms and periods of time prescribed by the Treaty have not been observed.

devront produire devant eux leurs demandes, requêtes, conclusions et défenses.

ART. 7.—Les arbitres useront, pour éclairer leur justice, de tous les moyens d'informations qu'ils jugeront nécessaires : enquêtes, expertises, production de pièces, avec ou sans déplacement, compulsoires, transports de juges, commissions rogatoires, etc., chaque partie s'obligeant à mettre à leur disposition tous les moyens, ressources et facilités nécessaires.

ART. 8.—Les arbitres jugeront sans appel et en dernier ressort. Leur sentence sera exécutoire, de plein droit, un mois après la notification qui en sera faite par leurs soins aux deux parties. Ils seront tenus de rendre cette sentence publique par la voie des journaux officiels ou délégués pour recevoir les annonces légales dans la huitaine de la dite notification.

Les arbitres fixeront eux-mêmes les salaires et émoluments des personnes qu'ils auront employées ; ils régleront les frais faits par eux, en y comprenant leurs propres honoraires, et détermineront par la sentence la proportion dans laquelle ces frais et honoraires devront être supportés par les parties.

ART. 9.—La sentence arbitrale ne pourra être annulée que dans les cas et pour les causes suivantes :

Si les arbitres ont prononcé sur choses non demandées ;

Si la sentence a été rendue sur compromis nul ou expiré ;

Si les formes et délais prescrits par le présent traité n'ont pas été observés.

In either of these cases, the party desiring to have the award declared null and void, should make a claim to that effect, on pain of forfeiture of the same, within a month of the declaration of the award. Such party should, in his statement of claim, name an arbitrator, and the inquiry into the demand for nullity shall be conducted as in the case of arbitration, and in conformity with the rules above laid down

ART. X.—Arbitrators conducting an inquiry into the nullity of an award shall confine themselves to a declaration on that point alone; and their decision shall not be called in question, either by way of appeal or in any other manner, it being definite and absolute. In the case of the award in question being annulled, a new arbitral tribunal shall be constituted for the purpose of arriving at a decision, according to the rules laid down in Articles II., III., IV., V., VII., VIII., as above.

If the award whose nullity has been demanded is affirmed, it shall come into full effect within fifteen days of the declaration being notified to the parties.

ART. XI.—The present treaty shall remain in full effect for thirty successive years from the date on which it is signed. Unless one of the parties shall have given notice, in writing, to the contrary at least six months before its expiry, the said treaty shall continue to have effect by tacit renewal ("reconduction"). Each party shall, however, retain full power, by a simple notification, to terminate the treaty at the expiration of the thirty years aforesaid. Such notification, however, shall not take effect until six months afterwards, and shall not invalidate the conditions stated in Article V.

ART. XII.—The two parties pledge their honour faithfully to observe the execution of the preceding treaty, in respect to all its provisions.

L'un de ces cas échéant, celle des parties qui voudra se pourvoir en nullité de la sentence devra le faire, à peine de forclusion, dans le mois de la notification de la sentence. Elle devra, par le même acte, désigner un arbitre, et la procédure de la demande en nullité devra être poursuivie par voie d'arbitrage, et conformément aux règles établies ci-dessus.

ART. 10.—Les arbitres saisis d'une demande en nullité d'une sentence rendue ne devront statuer que sur la question de nullité, leur sentence ne pourra être attaquée ni par voie d'appel, ni par aucune autre voie, elle sera souveraine et définitive. S'ils annulent la sentence à eux déférée, un nouveau tribunal arbitral sera formé pour instruire et statuer selon les règles tracées par les articles 2, 3, 4, 5, 6, 7 et 8 qui précèdent.

Si la sentence arguée de nullité est déclarée valable, elle sortira son plein et entier effet dans la quinzaine de la notification faite aux parties de la sentence qui en aura déclaré la validité.

ART. 11.—Le présent traité aura son plein et entier effet pendant trente années consécutives, à partir de la signature. A moins que l'une des parties n'ait, six mois au moins avant son expiration, notifié par écrit son intention contraire, le dit traité continuera d'avoir effet entre les parties par voie de tacite reconduction. Chaque partie gardant d'ailleurs la faculté d'y mettre fin après l'expiration des trente années ci-dessus indiquées, par une simple déclaration qui n'aura d'effet que six mois après sa notification, et ce, sans dérogation aux dispositions portées en l'article 5.

ART. 12.—Les deux parties engagent leur honneur à exécuter fidèlement et en toutes ses dispositions le traité qui précède.

A MODEL OF A TREATY OF ARBITRATION FOR
PERMANENT ADOPTION BETWEEN STATES.

PREPARED BY M. EMILE ARNAUD,

President of the "Ligue Internationale de la Paix et de la Liberté."

Between :

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There is concluded, in the following terms, a permanent treaty of Arbitration :—

I. The contracting States reciprocally recognise their full Autonomy and independence.

II. These States engage to submit to an arbitral tribunal judging without appeal and finally* all the disputes and differences which may arise between them during the time that the present treaty is in force, whatever may be the cause, nature and object of these difficulties: consequently they renounce, without any exception or reserve, the use against each other, whether directly or indirectly, of any means or process of war during this period.

III. The arbitral tribunal shall be composed of three persons, Each of the States shall appoint one of the arbitrators. It shall choose him from amongst persons who are neither under the jurisdiction of one of the contracting States nor inhabitants of their continental or colonial territory. The two arbitrators shall themselves choose the third.

If, three months after being called upon to appoint its arbitrator, one of the States has not proceeded to such appointment, or if the

* It would be easy, if the contracting parties desired it, to constitute a second degree of jurisdiction. It would be sufficient to settle in the treaty the composition of the Arbitration Court (5 or 7 members appointed as the arbitrators of the 1st degree) the time allowed for appeal, and the procedure.

PROJET-MODÈLE D'UN TRAITÉ D'ARBITRAGE PERMANENT ENTRE NATIONS.

PAR M. EMILE ARNAUD,

Président de la Ligue Internationale de la Paix et de la Liberté.

Entre :

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Il est conclu, dans les termes suivants, un traité d'arbitrage permanent :

I. Les Etats contractants reconnaissent réciproquement leur pleine Autonomie et Indépendance.

II. Ces Etats s'engagent à soumettre à un tribunal arbitral jugeant sans appel et en dernier ressort (*) tous les conflits et différends qui pourraient naître entre eux pendant la durée du présent traité, quels que puissent être la cause, la nature et l'objet de ces difficultés ; ils renoncent en conséquence, sans aucune exception ni réserve, à user l'un vis-à-vis de l'autre, soit directement, soit indirectement, d'aucun moyen ni procédé de guerre pendant cette durée.

III. Le tribunal arbitral sera composé de trois personnes. Chacun des Etats désignera l'un des arbitres. Il le choisira parmi les personnes qui ne sont ni ressortissants de l'un des Etats contractants ni habitants de leur territoire continental ou colonial. Les deux arbitres choisiront eux-mêmes le troisième.

Si trois mois après une mise en demeure de désigner son arbitre l'un des Etats n'a pas procédé à cette désignation, ou si

(*) Il serait aisé, si les contractants le désiraient, de constituer un second degré de juridiction. Il suffirait de régler dans le traité, la composition de la Cour d'arbitrage (5 ou 7 membres nommés comme les arbitres du 1^{er} degré), les délais d'appel et la procédure.

two arbitrators cannot agree on the choice of the third arbitrator, this first arbitrator or the third arbitrator shall be appointed by the Swiss Federal Council (*or by any other neutral Government, or by any independent authority of a neutral Power*).

IV. The tribunal called together by the third arbitrator, shall immediately have an Agreement drawn up which shall fix the object of the suit, the composition of the tribunal, the character and duration of this tribunal. This Convention shall be signed by the representatives of the parties and by the arbitrators.

V. The arbitrators shall determine their procedure and the place of meeting of the tribunal, whose sittings shall be public.

To throw light on the question, they shall use all the means of information which they shall judge necessary, the parties engaging to place them at their disposition. Their award shall be notified to the parties within three days; it shall be invested with the force of law one month after this notification.

VI. Each of the parties engages to observe and loyally execute this award.

The parties may, by a special clause of the Agreement, give the arbitrators the power and the means of enforcing their award.

VII. The present treaty is concluded for thirty consecutive years, dating from the exchange of the ratifications. If notice to the contrary is not given before the commencement of the thirtieth year, it will continue to have effect between the parties, by tacit renewal ("reconduction"), during another period of thirty years, and so continuously.

les deux arbitres ne peuvent s'entendre sur le choix du tiers arbitre, ce premier arbitre ou le tiers arbitre sera désigné par le Conseil fédéral helvétique (*ou par tout autre gouvernement neutre, ou par toute autorité indépendante d'une puissance neutre*).

IV. Le tribunal réuni par les soins du tiers arbitre, fera rédiger immédiatement un compromis qui fixera l'objet du litige, la composition du tribunal, le caractère et la durée des pouvoirs de ce dernier. Le compromis sera signé par les représentants des parties et par les arbitres.

V. Les arbitres détermineront leur procédure et le lieu de réunion du tribunal dont les audiences seront publiques.

Ils useront, pour éclairer leur justice, de tous les moyens d'information qu'ils jugeront nécessaires, les parties s'engageant à les mettre à leur disposition. Leur sentence sera notifiée aux parties dans les trois jours ; elle sera exécutoire de plein droit un mois après cette notification.

VI. Chacune des parties s'engage à observer et à exécuter loyalement cette sentence.

Les parties pourront, par une clause spéciale du compromis, donner aux arbitres le pouvoir et les moyens de sanctionner leur sentence.

VII. Le présent traité est fait pour trente années consécutives qui courent à partir de l'échange des ratifications. S'il n'est pas dénoncé avant le commencement de la trentième année, il continuera d'avoir effet entre les parties, par voie de tacite reconduction, pendant une autre période de trente ans et toujours ainsi par la suite.

A CHINESE SCHEME FOR UNIVERSAL PEACE.

The *Shih Pao* develops, in a long article, a scheme for securing universal Peace, which, it says, has been suggested by a distinguished Japanese.

Premising that the modern political world may be compared to the ancient contending States of China, the *Shih Pao* says that in the United States an idea is found which may be expanded into a scheme for maintaining Peace and giving effect upon earth to the life-loving virtue of Heaven. The scheme it propounds is thus summarised :—

I. Several great strategical places should be fixed upon in the five continents, which should constitute together the seat of International Dominion.

II. A General Arbiter and a Vice-Arbiter should be chosen, and also four Great Generals, with subordinate officers, by popular vote of all nations ; offices to be held for four years, with a possibility of re-election for a second time only.

III. All nations should contribute, according to their size, to the revenue of the Peace Department ; and the Department should have a standing army of several hundreds of thousands.

IV. The General Arbiter is to be the absolute exponent of International Law.

V. But it seems his function would be also similar to those of a superintendent of police, for the Great Generals are in every case to proceed at once under his direction to punish any State which commences to use force against another, whether it be in the right or wrong ; and then the Arbiter, like a police magistrate, is to settle the terms of peace between the two nations.

VI. The Peace Department is not to interfere with the internal government of States, or even in civil wars, unless called upon to put them down.—*Herald of Peace*, October, 1890.

SKETCH OF A PROPOSED ARBITRATION TREATY.

Prepared for the Alumni Association of Haverford College, and submitted to a convention held at St. George's Hall, Philadelphia, November 27th, 1883.

1. The Powers joining the Arbitration League, shall sign a treaty, binding themselves to submit all disputes to an international tribunal, to abide by the decisions thereof, and to assist in enforcing such decisions upon any recalcitrant member of the Arbitration League.

2. Each signatory shall disarm, reserving only such force as under the treaty such signatory is required to maintain as its contingent in the international police.

3. The contingent to be maintained by each signatory shall be calculated, (1) in the case of land forces, on the basis of population, and (2) in the case of sea forces, on the basis of the tonnage of the shipping entered in the ports of each signatory.

4. Such contingents shall remain under the control of their respective authorities, until summoned by order of the international tribunal on international service, when they shall unite to execute its commands.

5. Upon receipt of such summons, the commanders of both land and sea forces shall elect, by ballot, a Commander-in-chief and Lord High Admiral, who shall thereupon assume the direction of their respective forces.

6. An international tribunal shall be constituted to perform the herein recited functions.

AND OF THE CONSTITUTION OF A PROPOSED

INTERNATIONAL TRIBUNAL.

1. Each signatory to the arbitration treaty shall nominate judges according to population of such signatory. For fifteen millions and under, one judge: between fifteen and twenty-five millions, two judges; over twenty-five millions, three judges and no more.

2. At the first session of the international tribunal, the members thereof shall elect their president by ballot.

3. When any question is submitted, concerning which not more than three nations are at issue, the judges representing such nations shall retire from the bench and shall be at liberty to act as counsel for their respective nations, but all questions affecting more than three nations shall be heard and decided by the entire bench.

4. The salaries of the judges shall be paid by the nations which they represent.

5. Contending nations shall appear by such counsel as they may think fit to employ, but judges may not act as counsel, except as provided in Art. 3.

6. Each nation shall, by its judge or judges, select and name a place of session within its territory. An alphabetical list of such places shall be drawn up, and the tribunal shall sit at each place in rotation, except as provided in Art. 7.

7. The tribunal shall not sit at the place of session of any nation which is a party to the question to be decided, notwithstanding that such nation is next in order on the rota-list, but in such case, the session shall be held at the place of session of the nation immediately following on the rota-list which shall not be a party to the questions to be decided; and places of session

so postponed, shall *pro hâc vice* exchange positions on the rota-list, with places of session so substituted.

8. The judges shall collect existing precedents of international law, to form the basis of a future code.

9. The language of the tribunal shall be the French tongue.*

10. It shall be lawful for the tribunal to interfere in cases of internal disturbances in nations being parties to the arbitration treaty whenever, in their opinion, such disturbances are calculated to lead to internecine conflicts.

11. The international police shall be at the disposal of the tribunal to execute any orders it may think fit to issue.

* The French language has been inserted here as being the recognised medium of diplomatic communications.

RULES PROPOSED BY THE INSTITUTE OF INTERNATIONAL LAW.

ADOPTED AT THE HAGUE, AUGUST 28TH, 1875.

The Institute, desiring that recourse to Arbitration for the settlement of international disputes should be more and more resorted to by civilised peoples, hopes to contribute usefully to the realisation of this progress by proposing the following possible regulations for the Arbitral Tribunals. It recommends it for entire or partial adoption by those State which may form Arbitration Agreements.

ART. 1.—An Agreement to arbitrate is concluded by a valid international treaty.

It may be so concluded :

(*a.*) By anticipation, whether for any and every difference, or for those of a certain class specially to be designated, that may arise between the Contracting States ;

(*b.*) For one or more differences already existing.

ART. 2.—The Agreement to arbitrate gives to each of the Contracting Parties the right to appeal to the Arbitration Tribunal which it designates for the decision of the question in dispute. If the Agreement to arbitrate does not designate the number and names of the arbitrators, the Arbitration Tribunal shall proceed according to the provisions laid down in the Agreement to arbitrate, or in some other agreement.

If there be no such provision, each of the Contracting Parties shall choose an arbitrator, and the two arbitrators thus appointed shall choose a third arbitrator, or name a third person who shall appoint him.

If the two arbitrators appointed by the parties cannot agree on the choice of a third arbitrator, or if one of the parties refuses the co-operation which, according to the Agreement to arbitrate, he should give to the formation of the Court of Arbitration, or if the person named refuses to choose, the Agreement to arbitrate is annulled.

ART. 3.—If in the first instance, or because they have not been

PROJET DE RÈGLEMENT POUR LA PROCÉDURE
ARBITRALE INTERNATIONALE

ADOPTÉ PAR L'INSTITUT DE DROIT INTERNATIONAL LE 28 AOÛT
1875 À LA HAYE.

L'Institut, désirant que le recours à l'arbitrage pour la solution des conflits internationaux soit de plus en plus pratiqué par les peuples civilisés, espère concourir utilement à la réalisation de ce progrès en proposant pour les tribunaux arbitraux le règlement éventuel suivant. Il le recommande à l'adoption entière ou partielle des Etats qui concluraient des compromis.

ART. 1.—Le compromis est conclu par traité international valable.

Il peut l'être :

(a.) *D'avance*, soit pour toutes contestations, soit pour les contestations d'une certaine espèce à déterminer, qui pourraient s'élever entre les Etats contractants :

(b.) Pour une contestation ou plusieurs contestations *déjà nées* entre les Etats contractants.

ART. 2.—Le compromis donne à chacune des parties contractantes le droit de s'adresser au tribunal arbitral qu'il désigne pour la décision de la contestation. A défaut de désignation du nombre et des noms des arbitres dans le compromis, le tribunal arbitral se règlera selon les dispositions prescrites par le compromis ou par une autre convention.

A défaut de disposition, chacune des parties contractantes choisit de son côté un arbitre, et les deux arbitres ainsi nommés choisissent un tiers-arbitre ou désignent une personne tierce qui l'indiquera.

Si les deux arbitres nommés par les parties ne peuvent s'accorder sur le choix d'un tiers-arbitre, ou si l'une des parties refuse la coopération qu'elle doit prêter selon le compromis à la formation du tribunal arbitral, ou si la personne désignée refuse de choisir, le compromis est éteint.

ART. 3.—Si dès le principe, ou parce qu'elles n'ont pu tomber

able to agree on the choice of arbitrators, the Contracting Parties have agreed that the Arbitration Tribunal should be formed by a third person named by them, and if the person named undertakes the formation of the tribunal, the course to be followed shall depend, first, on the provisions of the Agreement to arbitrate. If there be no such provisions, then the third person so named may either himself appoint the arbitrators, or propose a certain number of persons, among whom each of the parties shall choose.

ART. 4.—The following shall be eligible for appointment as International Arbitrators: Sovereigns and Heads of Governments, without any restriction; and all persons who are competent, according to the law of their country, to exercise the functions of arbitrator.

ART. 5.—If the parties have agreed upon individual arbitrators, the incompetency of, or the allegation of a valid objection to, one of such arbitrators, invalidates the whole agreement to arbitrate, unless the parties can agree upon another competent arbitrator.

If the Agreement to arbitrate does not prescribe the manner of selecting another arbitrator in case of incompetency, or of the allegation of a valid objection, the method prescribed for the original choice must again be followed.

ART. 6.—The acceptance of the office of arbitrator must be in writing.

ART. 7.—If an arbitrator refuses the office, or if he resigns after having accepted it, or if he dies, or becomes mentally incompetent, or if he is validly challenged on account of inability to serve according to the terms of Art. 4, then the provisions of Art. 5 shall be in force.

ART. 8.—If the seat of the Arbitration Tribunal is not named either by the Agreement to arbitrate or by a subsequent agreement of the parties, it shall be named by the arbitrator or by a majority of the arbitrators.

The Arbitration Tribunal is authorised to change the place of its sessions, only in case the performance of its duties at the place agreed upon is impossible or manifestly dangerous.

d'accord sur le choix des arbitres, les parties contractantes sont convenues que le tribunal arbitral serait formé par une personne tierce par elles désignée, et si la personne désignée se charge de la formation du tribunal arbitral, la marche à suivre à cet effet se réglera en première ligne d'après les prescriptions du compromis. A défaut de prescriptions, le tiers désigné peut ou nommer lui-même les arbitres ou proposer un certain nombre de personnes parmi lesquelles chacune des parties choisira.

ART. 4.—Seront capables d'être nommés arbitres internationaux les souverains et chefs de gouvernements sans aucune restriction, et toutes les personnes qui ont la capacité d'exercer les fonctions d'arbitre d'après la loi commune de leur pays.

ART. 5.—Si les parties ont valablement compromis sur des arbitres individuellement déterminés, l'incapacité ou la récusation valable, fût-ce d'un seul de ces arbitres, infirme le compromis entier, pour autant que les parties ne peuvent se mettre d'accord sur un autre arbitre capable.

Si le compromis ne porte pas détermination individuelle de l'arbitre en question, il faut, en cas d'incapacité ou de récusation valable, suivre la marche prescrite pour le choix originaire (art. 2, 3).

ART. 6.—La déclaration d'acceptation de l'office d'arbitre a lieu par écrit.

ART. 7.—Si un arbitre refuse l'office arbitral, ou s'il se déporte après l'avoir accepté, ou s'il meurt, ou s'il tombe en état de démence, ou s'il est valablement récusé pour cause d'incapacité aux termes de l'article 4, il y a lieu à l'application des dispositions de l'article 5.

ART. 8.—Si le siège du tribunal arbitral n'est désigné ni par le compromis ni par une convention subséquente des parties, la désignation a lieu par l'arbitre ou la majorité des arbitres.

Le tribunal arbitral n'est autorisé à changer de siège qu'au cas où l'accomplissement de ses fonctions au lieu convenu est impossible ou manifestement périlleux.

ART. 9. — The Arbitration Tribunal, if composed of several members, chooses a president from among its own number, and appoints one or more secretaries.

The Arbitration Tribunal decides in what language or languages its deliberations and the pleadings of the litigants shall be conducted, and the documents and other evidence be presented. It keeps minutes of its sessions.

ART. 10.—The Arbitration Tribunal sits with all its members present. It may, however, delegate one or more of its members, or even commission outside persons, to draw up certain preliminary proceedings.

If the arbitrator is a State, or its head, a commune or other corporation, an authority, a faculty of law, a learned society, or the actual president of the commune, corporation, authority, faculty, or society, all the pleadings may be conducted, with the consent of the parties, before a commission appointed *ad hoc* by the arbitrator. A protocol of such pleadings shall be kept.

ART. 11.—No arbitrator can, without the consent of the litigants, name a substitute for himself.

ART. 12.—If the Agreement to arbitrate, or a subsequent agreement of the parties, prescribes the method of procedure to be followed by the Court of Arbitration, or prescribes to it the observance of a definite and positive law of procedure, the Arbitration Tribunal must conform thereto. If there be no such provision, the procedure to be followed shall be freely prescribed by the Arbitration Tribunal, which is in such case required to conform only to the rules which it has informed the parties it would observe.

The control of the discussions belongs to the President of the tribunal.

ART. 13.—Each of the parties may appoint one or more persons to represent it before the tribunal.

ART. 14.—Exceptions based on the incompetency of the arbitrators must be taken before any others. In case of the silence of the parties, any later contestation is excluded, except for cases of incompetency that have subsequently supervened.

ART. 9.—Le tribunal arbitral, s'il est composé de plusieurs membres, nomme un président, pris dans son sein, et s'adjoit un ou plusieurs secrétaires.

Le tribunal arbitral décide en quelle langue ou quelles langues devront avoir lieu ses délibérations et les débats des parties, et devront être présentés les actes et les autres moyens de preuve. Il tient procès-verbal de ses délibérations.

ART. 10.—Le tribunal arbitral délibère tous membres présents. Il lui est loisible toutefois de déléguer un ou plusieurs membres ou même de commettre des tierces personnes pour certains actes d'instruction.

Si l'arbitre est un Etat ou son chef, une commune ou autre corporation, une autorité, une faculté de droit, une société savante, ou le président actuel de la commune, corporation, autorité, faculté, compagnie, tous les débats peuvent avoir lieu du consentement des parties devant le commissaire nommé *ad hoc* par l'arbitre. Il en est dressé protocole.

ART. 11.—Aucun arbitre n'est autorisé sans le consentement des parties à se nommer un substitut.

ART. 12.—Si le compromis ou une convention subséquente des compromettants prescrit au tribunal arbitral le mode de procédure à suivre, ou l'observation d'une loi de procédure déterminée et positive, le tribunal arbitral doit se conformer à cette prescription. A défaut d'une prescription pareille, la procédure à suivre sera choisie librement par le tribunal arbitral, lequel est seulement tenu de se conformer aux principes qu'il a déclaré aux parties vouloir suivre.

La direction des débats appartient au président du tribunal arbitral.

ART. 13.—Chacune des parties pourra constituer un ou plusieurs représentants auprès du tribunal arbitral.

ART. 14.—Les exceptions tirées de l'incapacité des arbitres doivent être opposées avant toute autre. Dans le silence des parties, toute contestation ultérieure est exclue, sauf les cas d'incapacité postérieurement survenue.

The arbitrators must pronounce upon the exceptions taken to the incompetency of the Court of Arbitration (subject to the appeal referred to in the next paragraph), and must pronounce in accordance with the provisions of the Agreement to arbitrate.

There shall be no appeal from the preliminary judgments on the question of competency, except in connection with the appeal from the final judgment in the arbitration.

In case the doubt on the question of competency depends upon the interpretation of a clause of the Agreement to arbitrate, the parties are deemed to have given to the arbitrators full power to settle the question, unless there be a clause to the contrary.

ART. 15.—Unless there be provisions to the contrary in the Agreement to arbitrate, the Arbitration Tribunal has the right :

1. To determine the forms, and the periods of time, in which each litigant must, by his duly authorised representatives, present his conclusions, support them in fact and in law, lay his proofs before the tribunal, communicate them to his opponent, and produce the documents the production of which his opponent demands.

2. To consider as conceded the claims of each Party which are not plainly contested by his opponent, as, for instance, the alleged contents of documents which the opponent, without sufficient reason, fails to produce.

3. To order new hearings of the Parties, and to demand from each of them the clearing up of doubtful points.

4. To make rules of procedure (for the conduct of the case), to compel the production of evidence, and, if necessary, to require of a Competent Court the performance of judicial acts which the Arbitration Tribunal is not qualified to perform, notably the swearing of experts and of witnesses.

5. To decide with its own free judgment on the interpretation of the documents produced, and in general on the merits of the evidence presented by the litigants.

The forms and the periods of time, mentioned in clauses 1 and 2 of the present article, shall be determined by the arbitrators by a preliminary order.

Les arbitres doivent prononcer sur les exceptions tirées de l'incompétence du tribunal arbitral, sauf le recours dont il est question à l'art. 24, 2^{me} al., et conformément aux dispositions du compromis.

Aucune voie de recours ne sera ouverte contre des jugements préliminaires sur la compétence, si ce n'est cumulativement avec le recours contre le jugement arbitral définitif.

Dans le cas où le doute sur la compétence dépend de l'interprétation d'une clause du compromis, les parties sont censées avoir donné aux arbitres la faculté de trancher la question, sauf clause contraire.

ART. 15.—Sauf dispositions contraires du compromis, le tribunal arbitral a le droit :

1^o De déterminer les formes et délais dans lesquels chaque partie devra, par ses représentants dûment légitimés, présenter ses conclusions, les fonder en fait et en droit, proposer ses moyens de preuve au tribunal, les communiquer à la partie adverse, produire les documents dont la partie adverse requiert la production ;

2^o De tenir pour accordées les prétentions de chaque partie qui ne sont pas nettement contestées par la partie adverse, ainsi que le contenu prétendu des documents dont la partie adverse omet la production sans motifs suffisants ;

3^o D'ordonner de nouvelles auditions des parties, d'exiger de chaque partie l'éclaircissement de points douteux ;

4^o De rendre des ordonnances de procédure (sur la direction du procès), faire administrer des preuves et requérir, s'il le faut, du tribunal compétent les actes judiciaires pour lesquels le tribunal arbitral n'est pas qualifié, notamment l'assermentation d'experts et de témoins ;

5^o De statuer, selon sa libre appréciation, sur l'interprétation des documents produits et généralement sur le mérite des moyens de preuves présentés par les parties.

Les formes et délais mentionnés sous les numéros 1 et 2 du présent article seront déterminés par les arbitres dans une ordonnance préliminaire.

ART. 16.—Neither the parties nor the arbitrators can officially implead other States or third persons, without the special and express authorization of the Agreement to arbitrate, and the previous consent of such third parties.

The voluntary intervention of a third party can be allowed only with the consent of the parties who originally concluded the Agreement to arbitrate.

ART. 17.—Cross-actions can be brought before the Arbitration Tribunal only so far as they are provided for by the original Agreement to arbitrate, or as the parties and the tribunal may agree to allow them.

ART. 18.—The Arbitration Tribunal decides in accordance with the principles of international law, unless the Agreement to arbitrate prescribes different rules or leaves the decision to the free judgment of the arbitrators.

ART. 19. — The Arbitration Tribunal cannot refuse to pronounce judgment, on the pretext that it is insufficiently informed either as to the facts, or as to the legal principles to be applied.

It must decide finally each of the points at issue. If, however, the Agreement to arbitrate does not require a final decision to be given simultaneously on all the points, the Tribunal may, while deciding finally on certain points, reserve others for subsequent disposition.

The Arbitration Tribunal may render interlocutory or preliminary judgments.

ART. 20.—The final decision must be pronounced within the period of time fixed by the Agreement to arbitrate, or by a subsequent agreement. If there be no other provision, a period of two years, from the day of the conclusion of the Agreement to arbitrate, is to be considered as agreed on. The day of the conclusion of the Agreement is not included, nor the time during which one or more arbitrators have been prevented, by *force majeure*, from fulfilling their duties.

In case the arbitrators, by interlocutory judgments, order preliminary proceedings, the period is to be extended for a year.

ART. 21.—Every judgment, final or provisional, shall be deter-

ART. 16.—Ni les parties, ni les arbitres ne peuvent d'office mettre en cause d'autres États ou des tierces personnes quelconques, sauf autorisation spéciale exprimée dans le compromis et consentement préalable du tiers.

L'intervention spontanée d'un tiers n'est admissible qu'avec le consentement des parties qui ont conclu le compromis.

ART. 17.—Les demandes reconventionnelles ne peuvent être portées devant le tribunal arbitral qu'en tant qu'elles lui sont déférées par le compromis, ou que les deux parties et le tribunal sont d'accord pour les admettre.

ART. 18.—Le tribunal arbitral juge selon les principes du droit international, à moins que le compromis ne lui impose des règles différentes ou ne remette la décision à la libre appréciation des arbitres.

ART. 19.—Le tribunal arbitral ne peut refuser de prononcer sous le prétexte qu'il n'est pas suffisamment éclairé soit sur les faits, soit sur les principes juridiques qu'il doit appliquer.

Il doit décider définitivement chacun des points en litige. Toutefois, si le compromis ne prescrit pas la décision définitive simultanée de *tous* les points, le tribunal peut, en décidant définitivement certains points, réserver les autres pour une procédure ultérieure.

Le tribunal arbitral peut rendre des jugements interlocutoires ou préparatoires.

ART. 20.—Le prononcé de la décision définitive doit avoir lieu dans le délai fixé par le compromis ou par une convention subséquente. A défaut d'autre détermination, on tient pour convenu un délai de deux ans à partir du jour de la conclusion du compromis. Le jour de la conclusion n'y est pas compris; on n'y comprend pas non plus le temps durant lequel un ou plusieurs arbitres auront été empêchés, par force majeure, de remplir leurs fonctions.

Dans le cas où les arbitres, par des jugements interlocutoires, ordonnent des moyens d'instruction, le délai est augmenté d'une année.

ART. 21.—Toute décision définitive ou provisoire sera prise à

mined by a majority of all the arbitrators appointed, even in case one or more of them should refuse to concur in it.

ART. 22.—If the Arbitration Tribunal finds the claims of neither of the parties justified, it shall so declare, and, unless limited in this respect by the Agreement to arbitrate, shall determine the true state of the law with regard to the parties to the dispute.

ART. 23.—The arbitral Sentence must be drawn up in writing, and contain an exposition of the grounds of the decision, unless exemption from this be stipulated in the agreement to arbitrate. It must be signed by each of the members of the court of arbitration. If a minority refuse to sign it, the signature of the majority is sufficient, with a written statement that the minority refuse to sign.

ART. 24.—The Sentence, together with the grounds, if an exposition of them be given, is formally communicated to each party. This is done by communicating a certified copy to the representative of each party, or to its attorney appointed *ad hoc*.

After the Sentence has been communicated to the representative or attorney of one of the parties, it cannot be changed by the Arbitration Tribunal.

Nevertheless, the tribunal has the right, so long as the time limits of the Agreement to arbitrate have not expired, to correct errors in writing or in reckoning, even though neither of the parties should suggest it; and to complete the Sentence on points at issue not decided, on the suggestion of one of the parties, and after giving the other party a hearing. An interpretation of the Sentence is allowable only on demand of both parties.

ART. 25.—The Sentence duly pronounced decides, within the scope of its operation, the point at issue between the parties.

ART. 26.—Each party shall bear its own costs, and half of the costs of the Arbitration Tribunal, without prejudice to the decision of the Court as to the indemnity that one or the other party may be condemned to pay.

ART. 27.—The Arbitral Sentence shall be void in case of the avoidance of the Agreement to arbitrate, or of an excess of power, or of proved corruption of one of the arbitrators, or of essential error.

la majorité de tous les arbitres nommés, même dans le cas où l'un ou quelques-uns des arbitres refuseraient d'y prendre part.

ART. 22.—Si le tribunal arbitral ne trouve fondées les prétentions d'aucune des parties, il doit le déclarer, et, s'il n'est limité sous ce rapport par le compromis, établir l'état réel du droit relatif aux parties en litige.

ART. 23.—La sentence arbitrale doit être rédigée par écrit et contenir un exposé des motifs, sauf dispense stipulée par le compromis. Elle doit être signée par chacun des membres du tribunal arbitral. Si une minorité refuse de signer, la signature de la majorité suffit, avec déclaration écrite que la minorité a refusé de signer.

ART. 24.—La sentence, avec les motifs, s'ils sont exposés, est notifiée à chaque partie. La notification a lieu par signification d'une expédition au représentant de chaque partie ou à un fondé de pouvoirs de chaque partie constitué *ad hoc*.

Même si elle n'a été signifiée qu'au représentant ou au fondé de pouvoirs d'une seule partie, la sentence ne peut plus être changée par le tribunal arbitral.

Il a néanmoins le droit, tant que les délais du compromis ne sont pas expirés, de corriger de simples fautes d'écriture ou de calcul, lors même qu'aucune des parties n'en ferait la proposition, et de compléter la sentence sur les points litigieux non décidés, sur la proposition d'une partie et après audition de la partie adverse. Une interprétation de la sentence notifiée n'est admissible que si les deux parties la requièrent.

ART. 25.—La sentence dûment prononcée décide, dans les limites de sa portée, la contestation entre les parties.

ART. 26.—Chaque partie supportera ses propres frais et la moitié des frais du tribunal arbitral, sans préjudice de la décision du tribunal arbitral touchant l'indemnité que l'une ou l'autre des parties pourra être condamnée à payer.

ART. 27.—La sentence arbitrale est nulle en cas de compromis nul, ou d'excès de pouvoir, ou de corruption prouvée d'un des arbitres, ou d'erreur essentielle.

PROPOSED RULES FOR THE ORGANISATION OF AN
INTERNATIONAL TRIBUNAL OF ARBITRATION.

Submitted by Messrs. *Wm. Allen Butler, Dorman B. Eaton,*
and *Cephas Brainerd*, to the Universal Peace
Congress at Chicago, in 1893.

In order to maintain peace between the High Contracting Parties, they agree as follows :

FIRST.—If any cause of complaint arise between any of the nations parties hereto, the one aggrieved shall give formal notice thereof to the other, specifying in detail the cause of complaint and the redress which it seeks.

SECOND.—The nation which receives from another notice of any cause of complaint shall, within one month thereafter, give a full and explicit answer thereto.

THIRD.—If the nation complaining and the nation complained of do not otherwise, within two months after such answer, agree between themselves, they shall each appoint three members of a Joint Commission, who shall confer together, discuss the differences, endeavour to reconcile them, and within one month after their appointment shall report the result to the nations appointing them respectively.

FOURTH.—If the Joint Commissioners fail to agree, or the nations appointing them fail to ratify their acts, those nations shall, within twelve months after the appointment of the Joint Commission, give notice of such failure to the other parties to the treaty, and the cause of complaint shall be referred to the Tribunal of Arbitration, instituted as follows :

1. Each Signatory Nation shall, within one month after the ratification of this treaty, transmit to the other signatory nations the names of four persons as fit to serve on such tribunal.

2. From the list of such persons, the nations at any time in controversy shall alternately, and as speedily as possible, select one after another until seven are selected, which seven shall constitute

PLAN POUR L'ORGANISATION D'UN TRIBUNAL INTERNATIONAL D'ARBITAGE.

(Projet soumis au V^e Congrès universel de la Paix, à Chicago, par
MM. *William Allen Butler, Dorman B. Eaton, et Céphas
Brainerd*, tous trois jurisconsultes à New-York.

En vue de maintenir la paix entre elles, les hautes parties contractantes conviennent de ce qui suit :

1^o Si un litige survient entre des Etats qui sont parties dans le présent contrat, celui qui croit avoir à se plaindre en informe l'autre en spécifiant ses griefs et les mesures qu'il réclame.

2^o La nation qui reçoit d'une autre une notification de ce genre doit y répondre d'une manière complète et explicite dans le délai d'un mois.

3^o Si la nation plaignante et l'autre n'en disposent pas autrement et que la réponse n'ait pas mis fin au litige, chacune d'elles nommera trois membres d'une Commission qui discutera les questions litigieuses et cherchera à concilier les parties. Chacune de ces délibérations informera ses mandants du résultat des délibérations.

4^o Si les commissaires ne peuvent se mettre d'accord ou que leurs Etats n'acceptent pas leurs propositions, ces Etats en informent dans le délai de douze mois les autres signataires du présent traité, et le litige est alors renvoyé au Tribunal d'arbitrage, institué comme suit :

a. Chacune des nations signataires doit, dans le délai d'un mois, après la signature du présent traité, transmettre aux autres nations signataires les noms de quatre personnes capables de siéger dans le tribunal.

b. Sur la liste de ces personnes, les nations litigantes ont à choisir alternativement et aussi vite que possible, l'une après l'autre celles qui leur agréent, jusqu'à ce qu'il en ait été désigné sept, qui constituent le tribunal appelé à prononcer sur le litige.

the tribunal for the hearing and decision of that controversy. Notice of each selection shall immediately be given to the permanent Secretary, who shall at once notify the person so selected.

3. The tribunal thus constituted shall, by writing signed by the members or a majority of them, appoint a time and place of meeting, and give notice thereof through the permanent Secretary to the parties in controversy; and at such time and place, or at other times and places to which an adjournment may be had, it shall hear the parties and decide between them, and such decision shall be final and conclusive.

4. If either of these parties fail to signify its selection of names from the lists within one month after a request from the other to do so, the other may select for it; and if any of the persons selected to constitute the tribunal shall die or fail from any cause to serve, the vacancy shall be filled by the nation which originally named the person whose place is to be filled.

FIFTH. — Each of the parties to this treaty binds itself to unite, as herein prescribed, in forming a Tribunal of Arbitration for all cases in controversy between any of them not adjusted by a Joint Commission, as hereinbefore provided, except that such arbitration shall not extend to any question respecting the independence or sovereignty of a nation, or its equality with other nations, or its form of government or its internal affairs.

1. The Tribunal of Arbitration shall consist of seven members, and shall be constituted in a manner provided in the foregoing fourth rule; but it may, if the nations in controversy so agree, consist of less than seven persons, and in that case the members of the tribunal shall be selected jointly by them from the whole list of persons named by the signatory nations. Each nation claiming a distinct interest in the question at issue shall have the right to appoint one additional arbitrator on its own behalf.

2. When the tribunal shall consist of several arbitrators a Majority of the whole number may act, notwithstanding the absence

Chaque choix sera immédiatement porté à la connaissance du Secrétaire permanent, qui en avisera chaque fois la personne ainsi élue.

c. Le Tribunal ainsi constitué désigne par écrit et avec la signature de ses membres ou de la majorité de ceux-ci, la date et le lieu de sa réunion et en donne connaissance aux parties en cause par l'intermédiaire du Secrétaire permanent. A cette date et à ce lieu ou à une autre date et à un autre lieu s'il y a ajournement, il entend les parties et prononce entre elles. Son jugement est définitif et sans appel.

d. Si l'une des parties n'a pas indiqué les choix qu'elle a faits sur la liste dans le délai d'un mois après en avoir été requise par l'autre partie, c'est celle-ci qui fera les choix pour elle, et si l'une des personnes choisies pour constituer le tribunal était empêchée par suite de décès ou pour toute autre cause, la lacune serait comblée par la nation qui avait désigné primitivement la personne à remplacer.

5° Chacune des parties signataires du présent traité s'engage à contribuer, comme il est dit plus haut, à la formation d'un tribunal d'arbitrage pour tous les différends qui viendraient à surgir entre elles et n'auraient pu être réglés par la Commission de conciliation prévue ci-dessus, sauf que l'arbitrage ne peut s'étendre à des questions touchant l'indépendance ou la souveraineté d'une nation, son égalité avec d'autres nations, la forme de son gouvernement ou ses affaires intérieures.

a. Le tribunal d'arbitrage se composera de sept membres et sera constitué de la manière prévue dans les quatre articles qui précèdent ; mais il peut se composer de moins de sept personnes, si cela convient aux parties, et dans ce cas les membres du tribunal seront choisis conjointement sur toute la liste des noms désignés par les nations signataires. Toute nation qui déclare avoir un intérêt spécial dans la question litigieuse a le droit d'adjoindre un arbitre au tribunal pour sa propre défense.

b. Quand le tribunal se compose de plusieurs arbitres, la majorité de ses membres délibère valablement nonobstant l'absence

or withdrawal of the minority. In such case the majority shall continue in the performance of their duties until they shall have reached a final determination of the question submitted for their consideration.

3. The Decision of a majority of the whole number of arbitrators shall be final, both on the main and incidental issues, unless it shall have been expressly provided by the nations in controversy that unanimity is essential.

4. The Expenses of an arbitration proceeding, including the compensation of the arbitrators, shall be paid in equal proportions by the nations that are parties thereto, except as provided in subdivision 6 of this article ; but expenses of either party in the preparation and prosecution of its case shall be defrayed by it individually.

5. Only by the mutual consent of all the signatory nations may the provisions of these articles be disregarded and Courts of Arbitration appointed under different arrangements.

6. A permanent Secretary shall be appointed by agreement between the signatory nations, whose office shall be at Berne, Switzerland, where the records of the tribunal shall be preserved. The permanent Secretary shall have power to appoint two assistant secretaries, and such other assistants as may be required for the performance of the duties incident to the proceedings of the tribunal.

The Salary of the permanent secretary, assistant secretaries and other persons connected with his office shall be paid by the signatory nations, out of a fund to be provided for that purpose, to which each of such nations shall contribute in a proportion corresponding to the population of the several nations.

7. Upon the Reference of any controversy to the tribunal, and after the selection of the arbitrators to constitute the tribunal for the hearing of such controversy, it shall fix the time within which the case, the counter-case, reply, evidence and arguments of the

ou la retraite de la minorité. Dans un cas de ce genre, la majorité doit suivre à l'exécution du mandat confié au tribunal jusqu'à ce qu'une détermination définitive ait été prise sur les questions soumises à l'arbitrage.

c. La décision de la majorité des arbitres est valable, soit sur la question principale, soit sur les questions incidentes, à moins que les nations en cause n'aient expressément exigé l'unanimité.

d. Les frais d'un arbitrage, y compris les honoraires des arbitres, sont mis par parts égales à la charge des nations en cause, sauf ce qui est prévu au chiffre 6 du présent article ; les dépenses faites par chacune des parties pour la préparation et la poursuite de sa cause sont exclusivement supportées par elle.

e. Il ne peut être dérogé aux dispositions des articles ci-dessus et les tribunaux d'arbitrage ne peuvent être constitués sur d'autres bases qu'avec l'assentiment de toutes les nations signataires.

f. Un secrétaire permanent sera nommé d'un commun accord entre les nations signataires. Son siège sera à Berne (Suisse), où ses archives du Tribunal seront conservées. Le Secrétaire permanent peut s'adjoindre deux secrétaires et autant d'autres auxiliaires que l'exigeront les travaux se rapportant à la procédure devant le Tribunal.

Les honoraires du secrétaire permanent, de ses secrétaires auxiliaires et des autres employés de son bureau sont payés par les nations signataires ou au moyen d'un fonds à prévoir à cet effet et à la formation duquel chacune des nations contribuera au prorata de sa population.

g. Quand une cause est portée devant l'arbitrage et après le choix des arbitres qui doivent constituer le tribunal appelé à prononcer sur le litige, les délais pour la demande, la défense, la réplique et les autres moyens à présenter par les parties seront

respective parties shall be submitted to it, and shall make rules regulating the proceedings under which that controversy shall be heard.

8. The tribunal as first constituted, for the determination of a controversy, may establish general Rules for practice and proceeding before all tribunals assembled for the hearing of any controversy submitted under the provisions of these articles, which rules may from time to time be amended or changed by any subsequent tribunal ; and all such rules shall immediately, upon their adoption, be notified to the various signatory powers.

SIXTH.—If any of the parties to this treaty shall begin Hostilities against another party without having first exhausted the means of reconciliation herein provided for, or shall fail to comply with the decisions of the Tribunal of Arbitration, within one month after receiving notice of the decision, the chief executive of every other nation, party hereto, shall issue a proclamation declaring (such) hostilities or failure, to be an infraction of this treaty, and at the end of thirty days thereafter, the ports of the nations from which the proclamation proceeds shall be closed against the offending or defaulting nation, except upon condition that all vessels and goods coming from or belonging to any of its citizens shall, as a condition, be subjected to double the duties to which they would otherwise have been subjected. But the exclusion may be at any time revoked by another proclamation of like authority, issued at the request of the offending nation declaring its readiness to comply with this treaty in its letter and spirit.

SEVENTH.—A Conference of representatives of the nations, parties to this treaty, shall be held every alternate year, beginning on the first of January, at the capital of each in rotation, and in the order of the signatures to this treaty, for the purpose of discussing the provisions of the treaty, and desired amendments thereof, averting war, facilitating intercourse, and preserving peace.

fixés et des règles seront établies pour déterminer la procédure à suivre.

h. Le Tribunal constitué le premier pour juger un litige peut établir des règles générales de procédure pour tous les Tribunaux appelés à arbitrer des différends en conformité des dispositions ci-dessus. Ces règles peuvent être modifiées ou changées en tout temps par des tribunaux subséquents ; elles doivent être notifiées aux pouvoirs signataires aussitôt après leur adoption.

6° Si l'une des parties signataires du présent traité entamait des hostilités contre une autre partie avant d'avoir essayé des moyens de réconciliation prévus dans ce traité, ou si elle refuse de se soumettre aux décisions du Tribunal d'arbitrage dans le délai d'un mois après que ces décisions lui ont été notifiées, le pouvoir exécutif de chacune des autres nations en cause lancera une proclamation déclarant que les hostilités ou le refus constitue une infraction au traité, et à l'expiration du 30^e jour après cette proclamation, les ports de la nation de laquelle provient la proclamation seront fermés à la nation agressive ou réfractaire, en ce sens que tous les vaisseaux et toutes les marchandises en provenance ou à destination des citoyens de cette dernière nation seront frappés d'un droit double de celui auquel ils auraient été soumis sans cela. Toutefois cette exclusion peut en tout temps être révoquée par une autre proclamation de la même autorité, faite à la requête de la nation agressive se déclarant prête à se soumettre au traité dans sa lettre et dans son esprit.

7° Une conférence de représentants des nations signataires du présent traité se tiendra tous les deux ans ; elle s'ouvrira le 1^{er} janvier alternativement dans la capitale de chacune de ces nations en suivant l'ordre des signatures, en vue de discuter les mesures d'application du traité et les amendements au traité qui peuvent être proposés, de prévenir les guerres, de faciliter les relations et de sauvegarder la paix.

MEMORIAL OF THE BAR ASSOCIATION OF THE
STATE OF NEW YORK.

Adopted in the City of Albany, 22nd January, 1896.

To the President:—

The Petition of the Bar Association of the State of New York respectfully shows:—

That, impelled by a sense of duty to the state and nation and a purpose to serve the cause of humanity everywhere, your Petitioner at its annual session held in the city of Albany on the 22nd day of January, 1896, appointed a committee to consider the subject of International Arbitration and to devise and submit to it a plan for the organisation of a tribunal to which may hereafter be submitted controverted international questions between the Governments of Great Britain and the United States.

That said committee entered upon the performance of its duty at once, and, after long and careful deliberation, reached the conclusion that it is impracticable, if not impossible, to form a satisfactory Anglo-American Tribunal, for the adjustment of grave international controversies, that shall be composed only of representatives of the two Governments of Great Britain and the United States.

That, in order that the subject might receive more mature and careful consideration, the matter was referred to a sub-committee, by whom an extended report was made to the full committee. This report was adopted as the report of the full committee, and, at a Special Meeting of the State Bar Association called to consider the matter, and held at the State Capitol in the city of

Albany on the 16th day of April, 1896, the action of the committee was affirmed and the plan submitted fully endorsed. As the report referred to contains the argument in brief, both in support of the contention that it is impracticable to organise a court composed only of representatives of the Governments of Great Britain and the United States, and in support of the plan outlined in it, a copy of the report is hereto appended, and your Petitioner asks that it be made and considered a part of this Petition.

That your Petitioner cordially endorses the principle of Arbitration for the settlement of all controversies between civilised nations, and it believes that it is quite within the possibility of the educated intellects of the leading Powers of the world to agree upon a plan for a great central World's Court that, by the common consent of nations, shall eventually have jurisdiction of all disputes arising between Independent Powers that cannot be adjusted by friendly diplomatic negotiations. Holding tenaciously to this opinion and, conscious that there must be a first step in every good work, else there will never be a second, your Petitioner respectfully but earnestly urges your early consideration of the subject that ultimately—at least during the early years of the coming century—the honest purpose of good men of every nation may be realised in devising means for the peaceful solution of menacing disputes between civilised nations. Your Petitioner therefore submits to you the following recommendations :—

FIRST.—The establishment of a permanent International Tribunal, to be known as “The International Court of Arbitration.”

SECOND.—Such Court shall be composed of nine members, one each from nine independent states or nations, such representative to be a member of the Supreme or Highest Court of the nation he shall represent, chosen by a majority vote of his associates, because

of his high character as a publicist and judge, and his recognised ability and irreproachable integrity. Each judge thus selected to hold office during life or the will of the Court selecting him.

THIRD.—The Court thus constituted shall make its own rules of procedure, shall have power to fix its place of sessions and to change the same from time to time as circumstances and the convenience of litigants may suggest, and to appoint such clerks and attendants as the Court may require.

FOURTH.—Controverted questions arising between any two or more Independent Powers, whether represented in said “International Court of Arbitration” or not, at the option of said Powers, may be submitted by treaty between said Powers to said Court, providing only that said treaty shall contain a stipulation to the effect that all parties thereto shall respect and abide by the rules and regulations of said Court, and conform to whatever determination it shall make of said controversy.

FIFTH.—Said Court shall be opened at all times for the filing of cases and counter cases under treaty stipulations by any nation, whether represented in the Court or not, and such orderly proceedings in the interim between sessions of the Court, in preparation for argument, and submission of the controversy, as may seem necessary, to be taken as the rules of the Court provide for and may be agreed upon between the litigants.

SIXTH.—Independent Powers not represented in said Court, but which may have become parties litigant in a controversy before it, and, by treaty stipulation, have agreed to submit to its adjudication, shall comply with the rules of the Court and shall contribute such stipulated amount to its expenses as may be provided for by its rules, or determined by the Court.

SEVENTH.—Your Petitioner also recommends that you enter at

once into correspondence and negotiation, through the proper diplomatic channels, with representatives of the Governments of Great Britain, France, Germany, Russia, The Netherlands, Mexico, Brazil and the Argentine Republic, for a union with the Government of the United States in the laudable undertaking of forming an International Court substantially on the basis herein outlined.

Your Petitioner presumes it is unnecessary to enter into further argument in support of the foregoing propositions than is contained in the report of its committee, which is appended hereto and which your Petitioner has already asked to have considered a part of this Petition. Your Petitioner will be pardoned, however, if it invite especial attention to that part of the report emphasising the fact that the plan herein outlined is intended, if adopted, at once to meet the universal demand among English-speaking people for a permanent tribunal to settle contested international questions that may hereafter arise between the Governments of Great Britain and the United States.

While it is contended that it is wholly impracticable to form such a tribunal without the friendly interposition of other nations on the joint invitation of the Powers who unite in its organization, it is very evident that a most acceptable permanent International Court may be speedily secured by the united and harmonious action of said Powers as already suggested. Should obstacles be interposed to the acceptance, by any of the Powers named by your Petitioner, of the invitation to name a representative for such a court on the plan herein generally outlined, some other equally satisfactory Power could be solicited to unite in the creation of such a court.

Believing that, in the fulfilment of its destiny among the civilised nations of the world, it has devolved upon the younger of the two Anglo-Saxon Powers, now happily in the enjoyment of nothing but future peaceful prospects, to take the first step looking to the permanency of peace among nations, your Petitioner, representing the Bar of the Empire State, earnestly

appeals to you as the Chief Executive Officer of the Government of the United States, to take such timely action as shall lead eventually to the organisation of such a tribunal as has been outlined in the foregoing recommendations. While ominous sounds of martial preparations are in the air, the shipbuilder's hammer is industriously welding the bolt, and arsenals are testing armour-plates, your Petitioner, apprehensive for the future, feels that delays are dangerous, and it urgently recommends that action be taken at once by you to compass the realisation of the dream of good men in every period of the world's history, when nations shall learn war no more and enlightened Reason shall fight the only battles fought among the children of men.

And your Petitioner will ever pray.

Attested in behalf of the New York State Bar Association at the Capitol in the City of Albany, N.Y., April 16th, 1896.

ED. G. WHITAKER, President.

L. B. PROCTOR, Secretary.

A SPECIFIC TREATY OF ARBITRATION.

The following short Treaty has some unique features which entitle it to a place here :—

ART. I.—The Republic of Honduras and the United States of Colombia hereby enter into a perpetual obligation to submit to Arbitration, whenever they cannot be arranged by their ordinary diplomacy, the differences and difficulties of every kind which may henceforth arise between the two nations, in spite of the earnest and constant desire of their respective Governments to obviate such.

ART. II.—The appointment of an Arbitrator, whenever there may be occasion for such, shall be made by a Special Commission, who shall clearly define the question in dispute and the mode of procedure which the Arbitral Judge will be expected to adopt. In case the disputing parties cannot agree upon such a Commission, or if in any case these parties shall agree to dispense with this formality, the Arbitrator, with full power to exercise the functions of a Judge in the matter, shall be the President, for the time being, of the United States of America.

ART. III.—The Republic of Honduras and the Republic of the United States of Colombia will endeavour to take the first suitable opportunity of making Treaties, similar to the present, between themselves and the other American Nations, so that every dispute between them may be settled by Arbitration, and that this mode of settlement may become a principle of General American Law.

ART. IV.—The present Treaty shall be ratified by the High Contracting Parties, according to their respective formalities, and the ratifications shall be exchanged with the shortest delay possible, at Tegucigalpa, at Bogota, at Panama, or in this city (San Salvador).

In confirmation of which, these presents have been signed and sealed, in New San Salvador, the 10th day of April 1882.

C. ULLOA (for Honduras).

R. AIZPURU (for the United States of Colombia).

SCHEME ADOPTED BY THE INTER-PARLIAMENTARY
CONFERENCE AT BRUSSELS.

1895.

The Inter-Parliamentary Conference, assembled at Brussels, considering the frequency of cases of International Arbitration and the number and extension of arbitral clauses in treaties, and desiring to see an International Justice and an International Jurisdiction established on a stable basis, charges its President to recommend to the favourable consideration of the governments of civilised states the following provisions, which may be made the subject of a diplomatic conference or of special conventions :

1. The High Contracting Parties constitute a PERMANENT COURT OF INTERNATIONAL ARBITRATION to take cognisance of differences which they shall submit to its decision.

In cases in which a difference shall arise between two or more of them, the parties shall decide whether the contest is of a nature to be brought before the Court, under the obligations which they have contracted by treaty.

2. The Court shall sit at.....

Its seat may be transferred to another place by the decision of a majority of three-fourths of the adhering Powers.

The government of the State in which the Court is sitting guarantees its safety as well as the freedom of its discussions and decisions.

3. Each signatory or adhering Government shall name two members of the Court.

Nevertheless, two or more Governments may unite in designating two members in common.

The members of the Court shall be appointed for a period of five years, and their powers may be renewed.

COUR D'ARBITRAGE INTERNATIONAL.

RÉSOLUTION ADOPTÉE

PAR LA VI^e CONFÉRENCE INTERPARLEMENTAIRE.

La Conférence interparlementaire réunie à Bruxelles, considérant la fréquence des cas d'arbitrage international, le nombre et l'extension des clauses compromissoires dans les traités, désirant voir s'établir sur des bases stables une justice et une juridiction internationales,

Charge son président de recommander à l'examen bienveillant des gouvernements des Etats civilisés les dispositions suivantes qui pourront faire l'objet d'une conférence diplomatique ou de conventions spéciales.

1. Les parties contractantes constituent une *Cour permanente d'arbitrage international* pour connaître des différends qui seront soumis à sa décision.

Dans le cas où un différend surgirait entre deux ou plusieurs d'entre elles, les parties contractantes décideront si le litige est de nature à être porté devant la Cour, sous réserve des obligations qu'elles peuvent avoir contractées par traité.

2. La cour siège à.....

Le siège en pourra être transféré ailleurs par décision prise à la majorité des trois quarts des puissances adhérentes.

Le gouvernement de l'Etat dans lequel siège la Cour garantit sa sûreté, ainsi que la liberté de ses discussions et décisions.

3. Chaque gouvernement signataire ou adhérent nomme deux membres de la Cour. Néanmoins, deux ou plusieurs Etats peuvent se réunir pour désigner en commun deux membres. Les membres de la Cour sont nommés pour une durée de cinq ans ; leurs pouvoirs peuvent être renouvelés.

4. The support and compensation of the members of the Court shall be defrayed by the State which names them.

The expenses of the Court shall be shared equally by the adhering States.

5. The Court shall elect from its members a President and a Vice-president for a period of a year. The president is not eligible for re-election after a period of five years. The vice-president shall take the place of the president in all cases in which the latter is unable to act.

The Court shall appoint its Clerk and determine the number of employees which it deems necessary.

The clerk shall reside at the seat of the Court, and have charge of its archives.

6. The parties may, by common accord, lay their suit directly before the Court.

7. The Court is invested with jurisdiction by means of a notification given to the clerk, by the parties, of their intention to submit their difference to the Court.

The clerk shall bring the notification at once to the knowledge of the president.

If the parties have not availed themselves of their privilege of bringing their suit directly before the Court, the president shall designate two members who shall constitute a tribunal to act in the first instance.

On the request of one of the parties, the members called to constitute this tribunal shall be designated by the Court itself.

The members named by the States that are parties to the suit shall not be a part of the tribunal.

The members designated to sit cannot refuse to do so.

8. The form of the submission shall be determined by the disputing governments, and, in case they are unable to agree, by the Tribunal, or, when there is occasion for it, by the Court.

There may also be formulated a Counter case.

4. Les traitements ou indemnités des membres de la Cour sont payés par l'Etat qui les nomme.

Les frais de la Cour sont supportés par parts égales par les Etats adhérents.

5. La cour élit dans son sein un président et un vice-président pour une durée d'une année. Le président n'est rééligible qu'après une période de cinq ans. Le vice-président remplace le président dans tous les cas où celui-ci est empêché.

La Cour nomme son greffier et fixe le nombre d'employés qu'elle juge nécessaire.

Le greffier réside au siège de la Cour et a le soin des archives.

6. Les parties peuvent, de commun accord, porter directement leur litige devant la Cour.

7. La Cour est saisie au moyen d'une notification faite au greffier par les parties de leur intention de soumettre leur différend à la Cour.

Le greffier porte immédiatement cette notification à la connaissance du président.

Si les parties n'ont pas usé de la faculté de porter directement leur litige devant la Cour, le président désigne les membres de la Cour qui devront constituer un tribunal appelé à prononcer en première instance.

A la requête d'une des parties, les membres appelés à constituer ce tribunal devront être désignés par la Cour elle-même.

Les membres nommés par les Etats en litige ne peuvent faire partie du tribunal.

Les membres désignés pour siéger ne peuvent s'y refuser.

8. Le compromis est arrêté par les gouvernements litigants, à défaut d'entente, il est arrêté par le tribunal ou, s'il y a lieu, par la Cour.

Il peut être formulé une demande reconventionnelle.

9. The Judgment shall disclose the reasons on which it is based, and it shall be pronounced within a period of two months after the close of the discussions. It shall be notified to the parties by the clerk.

10. Each party has the right to interpose an Appeal within three months after the notification of the judgment.

The Appeal shall be brought before the Court. The members named by the States concerned in the litigation, and those who formed part of the tribunal, cannot sit in the appeal.

The case shall proceed as in the first instance. The Judgment of the Court shall be definitive. It shall not be attacked by any means whatsoever.

11. The Execution of the decisions of the Court is committed to the honour and good faith of the litigating States.

The Court shall make a proper application of the agreements of parties who, in an arbitration, have given it the means of attaching a pacific sanction to its decisions.

12. The Nominations prescribed by Article 3 shall be made within six months from the exchange of the ratifications of the Convention. They shall be brought by diplomatic channels, to the knowledge of the adhering powers.

The Court shall assemble and fully organise one month after the expiration of that period, whatever may be the number of its members. It shall proceed to the election of a president, of a vice-president, and of a clerk, as well as to the formulation of rules for its internal regulation.

13. The Contracting Parties shall formulate the organic Law of the Court. It shall be an integral part of the Convention.

14. States which have not taken part in the Convention may adhere to it in the ordinary way.

Their adhesion shall be notified to the Government of the country in which the Court sits, and by that to the other adhering Governments.

9. Le jugement est motivé ; il est prononcé dans un délai de deux mois après la clôture des débats. Il est notifié aux parties par le greffier.

10. Chaque partie a le droit d'interjeter appel dans les trois mois de la notification.

L'appel est porté devant la Cour. Les membres nommés par les Etats en litige et ceux qui ont fait partie du tribunal ne peuvent y siéger.

Il est procédé comme en première instance. L'arrêt de la Cour est définitif. Il ne peut être attaqué par un moyen quelconque.

11. L'exécution des décisions de la Cour est confiée à l'honneur et à la bonne foi des Etats en litige.

La Cour fera application des conventions des parties qui, dans un compromis, lui auraient donné les moyens de sanctionner pacifiquement ses décisions.

12. Les nominations prescrites sous le chiffre III seront faites dans les six mois de l'échange des ratifications de la convention. Elles seront portées, par la voie diplomatique, à la connaissance des Etats adhérents.

La Cour sera instituée et se réunira de plein droit à son siège un mois après l'expiration de ce délai, quel que soit le nombre de ses membres. Elle procédera à l'élection d'un président, d'un vice-président et d'un greffier, ainsi qu'à l'élaboration de son règlement d'ordre intérieur.

13. Les parties contractantes formuleront le règlement organique de la Cour. Il fera partie intégrante de la convention.

14. Les Etats qui n'ont point pris part à la convention sont admis à y adhérer dans les formes habituelles.

Leur adhésion sera notifiée au gouvernement du pays où siège la Cour et par celui-ci aux autres gouvernements adhérents.

RULES FOR INTERNATIONAL ARBITRATION.

BY PROFESSOR THE MARQUIS CORSI.

SECTION I.—FORM AND OBJECT OF ARBITRATION CONVENTIONS.

ART. 1.—The Agreement for Arbitration is a Convention by which two or more international juridical personalities engage to submit to the decision of one or more Arbitrators all the disputes, or a specified class of disputes, which might arise between them, as also one or some disputes already existent ; and by which they formulate the conditions for the validity of their decision, and engage to conform thereto.

This Convention may result, either from a general Treaty, or a special Treaty (called an Arbitration Treaty), or from a clause (termed an Arbitral Clause) inserted in a Treaty, or in a protocol of an International Congress, to which the same States have been parties.

ART. 2.—The Agreement is valid when it has been ratified by the chiefs of the signatory States in the conditions and forms required by their respective laws, and if such is the case, by the treaties which limit their liberty in regard to other States.

ART. 3.—The Agreement should specify the questions of fact or law which the Arbitrators are called on to settle, and the extent of their powers.

In case of doubt as to the object of the Agreement, the Arbitrators may, at the opening of their sittings, invite the parties to state definitely their intentions. But, especially if the Agreement is not limited to one or several specified questions, lack of precision in the definition of the object of the Agreement gives the Arbitrators the right to interpret it, and to refer, for the extension of their powers, to previous Arbitrations and the following Articles.

PROJET DE RÈGLEMENT POUR LES ARBITRAGES INTERNATIONAUX.

PAR LE PROF. LE MARQUIS A. CORSI.

SECTION I.— FORME ET OBJET DES CONVENTIONS D'ARBITRAGES.

ARTICLE 1^{er}. — Le compromis est une convention par laquelle deux ou plusieurs personnes juridiques internationales s'engagent à soumettre à la décision d'un ou de plusieurs arbitres tous les conflits, ou une espèce déterminée de conflits, qui pourraient s'élever entre eux, aussi bien qu'une ou certaines contestations déjà nées ; et par laquelle ils régulent les conditions pour la validité de leur décision et ils s'engagent à s'y conformer.

Cette convention peut résulter, soit d'un traité général ou spécial (dit traité d'arbitrage), soit d'une clause (dite compromis-soire) insérée dans un traité, ou dans un protocole de Congrès international auquel les mêmes Etats aient adhéré.

ART. 2. — Le compromis est valide lorsqu'il a été ratifié par les chefs des Etats signataires dans les conditions et dans les formes requises par leurs lois respectives, et, si tel est le cas, par les traités qui limitent leur liberté vis-à-vis d'autres Etats.

ART. 3. — Le compromis doit spécifier les questions de fait ou de droit que les arbitres sont appelés à résoudre, et l'extension de leurs pouvoirs.

En cas de doute sur l'objet du compromis les arbitres à l'ouverture de leurs séances peuvent inviter les parties à préciser leurs intentions.

Au reste, surtout si le compromis n'est pas limité à une ou à plusieurs questions déterminées, le manque de précision dans la définition de l'objet du compromis attribue aux arbitres la faculté de l'interpréter et de s'en rapporter, pour l'extension de leurs pouvoirs, aux arbitrages précédents et aux articles qui suivent :

ART. 4.—Disputes as to whether a question which may arise between the States united by a Treaty of Arbitration, is comprised amongst those intended by the Treaty, should be submitted to the decision of the Arbitrators, if one of the States requires it ; only the other signatory States may require the judgment to be limited to the admissibility of the demand for Arbitration, reserving the right to raise the question afresh by a new Arbitration later on, if need be.

SECTION II.—APPOINTMENT OF ARBITRATORS—REFUSAL TO SERVE—FRESH APPOINTMENTS.

ART. 5.—The Arbitrators may be one only, or several, constituting an Arbitral Tribunal, or Arbitration Court.

Whatever be their number, they are appointed conjointly by the contracting States, in accordance with the stipulations of the Agreement.

In default of such stipulations, or in case of disagreement as to the manner of choosing, each of the parties chooses two Arbitrators, and the Arbitrators thus nominated choose another, or appoint a third person who shall choose him.

ART. 6.—When it is agreed that, the Arbitrators being an even number, if they do not succeed in coming to an agreement, the question shall be submitted to an Umpire, the latter should be nominated and accepted before the Arbitrators begin to treat of the questions which form the object of the Arbitral Agreement ; but he shall not act as a member of the Tribunal, but shall only be called on to give an award on their invitation, and for the principal or incidental questions in which they shall have been unable to agree.

ART. 7.—If the Arbitrators are nominated or appointed in the Agreement, either one of the contracting parties may take the initiative in calling them together, while inviting the other party to join them in taking the necessary steps.

ART. 4. — Les contestations sur le point de savoir si une question qui s'agite entre les Etats liés par un traité d'arbitrage est comprise parmi celles prévues par ce traité, doivent être soumises à la décision des arbitres, si l'un des Etats l'exige ; seulement les autres Etats signataires peuvent exiger que le jugement soit limité à l'admissibilité de la demande d'arbitrage, se réservant à provoquer ensuite, s'il en sera le cas, par un nouvel arbitrage, la décision de la question de fond.

SECTION II. — DÉSIGNATION, RÉCUSATION ET SUBSTITUTION DES ARBITRES.

ART. 5. — Les arbitres peuvent être un seul, ou plusieurs constituant un Tribunal arbitral, ou Cour d'arbitrage.

Quel que soit leur nombre, ils sont nommés conjointement par les Etats contractants, suivant les dispositions du compromis.

A défaut de ces dispositions, ou en cas de désaccord dans la forme du choix, chacune des parties choisit deux arbitres, et les arbitres ainsi nommés en choisissent un autre, ou désignent une personne tierce qui l'indiquera.

ART. 6. — Lorsqu'il est convenu que, les arbitres étant en nombre pair, s'ils ne réussissent à se mettre d'accord, la question soit soumise à un sur-arbitre (*umpire*), celui-ci devra être nommé et accepté avant que les arbitres commencent à traiter les questions qui font l'objet du compromis ; mais il n'agira pas comme membre du tribunal, étant appelé à prononcer sa décision seulement d'après leur invitation, et pour les questions principales ou incidentelles dans lesquelles ils n'auront pu tomber d'accord.

ART. 7. — Si les arbitres sont nommés ou désignés dans le compromis, chacune des parties contractantes peut prendre l'initiative de leur réunion, en invitant l'autre à faire ensemble les démarches nécessaires.

The express or tacit refusal to provide for the formation or the first convocation of the Tribunal, shall be considered tantamount to a withdrawal from the Treaty by the State which thus refuses ; so that it shall no longer be able to profit thereby when it may choose to appeal to it.

If the third person charged with the choice of the Arbitrators refuses to make a choice, the Treaty obligation is suspended until the parties have substituted another in his place.

ART. 8.—All those persons are eligible for appointment as Arbitrators who, according to the law of the country by which, or in the name of which, they are appointed, might be charged, if they were under its jurisdiction, with a diplomatic or judicial mission.

ART. 9.—The name of the Arbitrators chosen in accordance with the last paragraph of Art. 5 should be notified immediately by the party which has chosen them, to all the others.

Each of these will (for the space of fifteen days) have the right to object to them on any of the following grounds:—

- (1.) If they are subjects of one of the contracting States ;
- (2.) If they have a personal interest in the questions which are the object of the Arbitration ;
- (3.) If they have published their opinion on these same questions by pamphlets, or by speeches in public meetings, or even as members of some national or international tribunal, which has already pronounced its verdict.

ART. 10.—If the Arbitrators are individually appointed in the Agreement, and they become incapacitated for one of the reasons mentioned above before they enter upon their duties, the Agreement is thereby invalidated, unless the parties can agree upon another suitable Arbitrator.

But if the Agreement does not contain an individual appointment of the Arbitrators, the objection to an Arbitrator made by one Government to the other, by means of a note containing the reasons for the objection, obliges the nominating Government to appoint another without discussing the validity of the objection.

Le refus exprès ou tacite de pourvoir à la formation ou à la première convocation du tribunal donne lieu à considérer le compromis, ou la clause compromissoire, comme dénoncés par l'Etat qui refuse ; en sorte que celui-ci ne pourra plus se prévaloir de cette clause lorsqu'il lui arrivait de l'invoquer en sa faveur.

Si la tierce personne chargée du choix des arbitres refuse de choisir, l'obligation de compromettre est suspendue jusqu'à ce que les parties lui en aient substitué une autre.

ART. 8.—Sont capables d'être nommés arbitres toutes les personnes qui, d'après la loi du pays par lequel, ou au nom duquel, elles sont désignées, pourraient être chargées, si elles étaient ses ressortissants, d'une mission diplomatique ou judiciaire.

ART. 9.—Le nom des arbitres choisis suivant le dernier alinéa de l'art. 5 doit être immédiatement notifié par la partie qui les a désignés à toutes les autres.

Chacune d'elles pourra les récuser dans le délai de quinze jours pour un des motifs suivants :

1° s'ils sont sujets d'un des Etats contractants ;

2° s'ils ont un intérêt personnel dans les questions qui sont l'objet de l'arbitrage ;

3° s'ils ont publié leur opinion sur ces mêmes questions par des brochures, ou par des discours dans des conférences publiques, ou bien comme membres de quelque tribunal national ou international qui ait déjà prononcé son arrêt.

ART. 10.—Si les arbitres sont individuellement déterminés dans le compromis, l'incapacité survenue pour un des motifs précédents, avant qu'ils commencent leurs fonctions, infirme le compromis pour autant que les parties ne se mettent d'accord sur un autre arbitre capable.

Mais, si le compromis ne contient pas détermination individuelle des arbitres, la récusation faite par une note motivée d'un gouvernement à l'autre, oblige celui qui l'a nommé à en désigner un autre sans discuter sur la validité de la récusation.

ART. 11.—The successive challenging of more than three Arbitrators by a Government is equivalent to refusal to carry out the Agreement, and produces as a consequence the effect provided for by the second paragraph of Art. 7.

ART. 12.—The acceptance of the office of Arbitrator must be by writing, and should be notified to the other parties in the same manner as his nomination.

ART. 13.—The Arbitrators who have been nominated by one party and accepted by the other may not be represented by substitutes, nor removed from their office unless by reason of death, or an incurable malady within one month, or a like case of *force majeure*.

In making new appointments the same forms and conditions must be observed as in the original appointment.

No Arbitrator is authorised to appoint a substitute unless with the consent of all the parties, or of all the other Arbitrators, if he has been chosen by them.

ART. 14.—If one of the Arbitrators chosen is a State, a township, or other corporation, a religious authority, a faculty of law, a learned society, or the actual head of one of these bodies, the arbitral functions may be performed entirely or in part by a Commissioner appointed *ad hoc* by this Arbitrator.

This Commissioner once invested with his functions, should preserve them, in the measure that they have been confided to him, during the whole course of the Arbitration, unless changes regarding the person he represents were such as could justify him in replacing him, or giving him fresh instructions, or modifying the extent of his powers.

SECTION III.—PLACE AND PRIVILEGES OF THE TRIBUNAL.

ART. 15.—If the Arbitral Tribunal has to be formed expressly for a particular dispute, its place of meeting will be arranged for in the Agreement, or by the Arbitrators, possibly outside the territory of the parties.

ART. 11.—La récusation successive de plus de trois arbitres de la part d'un gouvernemen t, équivaut à refus d'exécuter le compromis et produit à sa charge l'effet prévu par le 2^e al. de l'art. 6.

ART. 12.—L'acceptation de l'office d'arbitre a lieu par écrit et doit être notifiée aux autres parties dans la même forme que sa nomination.

ART. 13.—Les arbitres qui ont été nommés d'une part et acceptés de l'autre ne peuvent être substitués, ni éloignés de leur office, si ce n'est à cause de mort, ou d'une maladie incurable dans un mois, ou d'un cas semblable de force majeure.

Alors pour les remplacer on doit observer les formes et les conditions adoptées pour leur nomination.

Aucun arbitre n'est autorisé à se nommer lui-même un substitut, si ce n'est avec le consentement de toutes les parties, ou de tous les autres arbitres, s'il a été choisi par ces derniers.

ART. 14.—Si un des arbitres choisis est un Etat, une commune ou autre corporation, une autorité religieuse, une faculté de droit, une société savante, ou le chef actuel d'une de ces personnes morales, ses fonctions d'arbitre peuvent être remplies entièrement ou en partie par un commissaire nommé *ad hoc* par cet arbitre.

Ce commissaire une fois investi de ses fonctions doit les conserver, dans la mesure qu'elles lui ont été confiées, pendant toute la durée de l'arbitrage, sans que les changements survenus à l'égard de la personne qu'il représente puissent autoriser cette dernière à le remplacer, ou à lui donner des instructions nouvelles, ou à modifier l'extension de ses pouvoirs.

SECTION III.—SIÈGE ET IMMUNITÉS DU TRIBUNAL.

ART. 15.—Si le tribunal arbitral doit être constitué exprès pour un conflit déterminé, le lieu de ses réunions sera établi dans le compromis ou par les arbitres, possiblement en dehors du territoire des parties.

Even when the seat of the Tribunal has been fixed beforehand by the Agreement, the Arbitrators, by a simple majority, may resolve to transfer it elsewhere, when the accomplishment of their functions at the place agreed has become manifestly perilous for their health, or if it no longer presents the guarantees of independence which are necessary to them.

ART. 16.—In all cases the Arbitral Tribunal should be treated as a diplomatic mission of the first rank, both as to the honours to be paid to the members and the immunities which they enjoy in the exercise of their functions, and also as to the punishment of offences which might be directed, even through the Press, against their deliberations or against their persons.

SECTION IV.—CONSTITUTION AND ORGANISATION OF THE ARBITRAL TRIBUNAL.

ART. 17.—Each of the parties in the case may appoint an Agent who shall watch over its interests or the interests of those under its jurisdiction, and undertake their defence; who shall present petitions, documents, and interrogatories, state conclusions, or reply to them, and furnish the proofs of his statements, and who by himself or through the medium of a lawyer, verbally or in writing, according to the rules of procedure (which the Commission itself shall publish when beginning its functions), shall state the points of his case, and the legal principles or the precedents which support his case.

ART. 18.—The Arbitrators, in their first meetings, shall take the following steps:—

(1.) They shall choose from their own number a President; they shall name the Secretaries and other officers charged with the editing of the minutes of their conferences, the transmission of documents, the care of archives, &c.; they shall recognise the agents and the counsel appointed by the parties for their defence, as appears in the previous article; and see to other matters necessary for the conduct of business.

Même dans le cas où le siège du tribunal a été fixé d'avance par le compromis, les arbitres, à la simple majorité, peuvent délibérer de le transférer ailleurs, lorsque l'accomplissement de leurs fonctions au lieu convenu est devenu manifestement périlleux pour leur santé, ou bien s'il ne présente plus les garanties d'indépendance qui leur sont nécessaires.

ART. 16.—Dans tous les cas le tribunal arbitral doit être traité comme une mission diplomatique de premier rang, soit quant aux honneurs qui lui sont dûs et aux immunités dont jouissent ses membres dans l'exercice de leurs fonctions, soit quant à la punition des offenses qui pourraient être dirigées, même au moyen de la presse, contre leurs délibérations, ou contre leurs personnes.

SECTION IV.—CONSTITUTION ET ORGANISATION DU TRIBUNAL ARBITRAL.

ART. 17.—Chacune des parties en cause pourra constituer un agent qui veille à ses intérêts ou à ceux de ses ressortissants et qui en prenne la défense; qui présente des pétitions, documents, interrogatoires, qui pose des conclusions ou y réponde, qui fournisse les preuves de ses affirmations, qui, par lui-même, ou par l'organe d'un homme de loi, verbalement ou par écrit, conformément aux règles de procédure que la Commission elle-même arrêtera en commençant ses fonctions, expose les doctrines, les principes légaux ou les précédents qui conviennent à sa cause.

ART. 18.—Les arbitres dans leurs premières réunions accomplissent les opérations suivantes :

1° Ils choisissent dans leur sein un président; ils nomment les secrétaires et autres officiers chargés de la rédaction des procès-verbaux des séances, de la transmission des actes, de la conservation des archives, etc.; ils reconnaissent les agents, et les conseils délégués par les parties pour leur défense comme il est dit à l'article précédent; et ils pourvoient aux autres conditions nécessaires pour fonctionner.

(2.) They shall investigate the object of the Arbitration, and where this is not clearly specified in the Agreement, invite the parties to define its scope and the limits of their powers.

(3.) They shall decide in what language their records should be drawn up, the means of proof or defence, and oral discussions; and also whether the public may be admitted at all to be present at these discussions, and which of their documents can be published, and in what form.

(4.) When accessory questions have been presented since the commencement, they shall decide whether they ought to settle them apart from the main question: and in general they shall decide all preliminary questions of competence, while keeping in view the principle that the aim and object of the Agreement is to efface all traces of the conflict which the parties have submitted to them.

(5.) They shall establish the procedure to be followed, whether by taking note of the rules contained in the Agreement, or by agreeing to rules adopted by other tribunals, or in enacting new rules.

ART. 19.—The Arbitrators are not bound in their opinion, nor in the measure of their jurisdiction by previous decrees of the Tribunals of a State on the questions which are proposed to them. In this respect they should place themselves in the position of a constituted Authority outside of every judicial hierarchy, to settle these questions *de novo*, in the first and last resort, relatively to the contesting Governments, as much as to their Tribunals and their citizens.

ART. 20.—The decision of the majority of the Arbitrators will be definitive both on the principal questions and on those of minor importance, unless it has been expressly settled in the conditions of the Arbitration that unanimity is indispensable.

In the latter case there will be drawn up a minute of the decision proposed by the majority, and the reasons which prevent the minority from concurring.

2° Ils reconnaissent l'objet de l'arbitrage, et dans le cas qu'il ne soit clairement spécifié dans le compromis ils invitent les parties à déclarer sa portée et les limites de leurs pouvoirs.

3° Ils établissent dans quelle langue doivent être rédigés leurs actes, les moyens de preuve ou de défense et les discussions orales ; et ils décident si le public pourra être admis en quelque partie à assister à ces discussions, et lesquels parmi leurs actes pourront être publiés, et en quelle forme.

4° Les questions accessoires ayant été présentées dès le commencement, ils décident s'ils doivent les résoudre séparément de la question principale ; et en général ils décident toute question *préliminaire* de compétence, en tenant compte du principe que le but du compromis est celui d'effacer toutes les traces du conflit que les parties leur ont soumis.

5° Ils établissent la procédure à suivre, soit en prenant acte des règles contenues dans le compromis, soit en se rapportant à des réglemens adoptés par d'autres tribunaux, soit en édictant des règles nouvelles.

ART. 19.—Les arbitres ne sont pas liés dans leur opinion, ni dans la mesure de leur juridiction, par les arrêts précédents des tribunaux d'un Etat sur les questions qui leur sont proposées. A cet égard ils doivent se placer dans la condition d'une autorité constituée, en dehors d'une hiérarchie judiciaire quelconque, pour résoudre ces questions *ex novo* en premier et en dernier ressort, tant relativement aux gouvernements en conflit, qu'à leurs tribunaux et à leurs citoyens.

ART. 20.—La décision de la majorité des arbitres sera définitive aussi bien sur les questions principales que sur celles secondaires, à moins que dans les conditions de l'arbitrage on ait expressément déterminé que l'unanimité serait indispensable.

Dans ce dernier cas il sera rédigé procès-verbal de la décision proposée par la majorité et des raisons qui empêchent à la minorité d'y adhérer.

In the former case the dissentient members shall be allowed to insert in the records their dissent, with the reasons therefor, only if the majority has expressly refused to take cognisance of some document, fact, or argument on which their dissent is based.

SECTION V.—REGULATIONS FOR DEBATE—ADMISSION OF PROOFS—INCIDENTAL DEMANDS.

ART. 21.—If the Convention does not prescribe a mode of procedure, the following rules are adopted :—

The Tribunal, at its opening meeting, fixes the forms and the periods of time in which each party shall, by its accredited agents, present simultaneously its arguments or counter-arguments in matters of fact and law, state its means of proof (written or oral), present its documents and communicate them to the opposing party.

In like manner a suitable period of time shall be fixed for each party, after the examination of the case and the reply, to present its replies on matters of fact and points of law, or, after the admission of some other evidence, to explain or modify its demands, and, if occasion arise, a preliminary discussion shall be allowed on the points of fact or law on which the written argument seems insufficient.

Finally, a time limit shall be fixed at the beginning for the final discussion and the termination of the pleadings, so that the award may be given within the time fixed in the Agreement.

ART. 22.—The periods of time fixed by the Tribunal may be prolonged by it, provided that all the parties be admitted to profit by it in an equal degree.

ART. 23.—The rules of procedure approved by the Tribunal cannot be modified or annulled, except with the consent of all parties, if they were fixed in the Arbitration Convention, or with the consent of the majority of the Arbitrators if they were framed by them.

Dans le premier cas les membres de la minorité pourront faire insérer dans les actes un vœu contraire motivé, seulement si la majorité a expressément refusé de prendre connaissance de quelque document, fait, ou argument sur lequel est basé son dissentiment.

SECTION V.—INSTRUCTION DU DÉBAT.—ADMISSION DES
PREUVES.—DEMANDES INCIDENTELLES.

ART. 21.—Dans le silence des conventions, les règ'es suivantes sont adoptées :

Le tribunal, dans sa séance préliminaire, fixe les formes et délais dans lesquels chaque partie devra, par ses agents accrédités auprès du tribunal, présenter simultanément ses mémoires ou contre-mémoires en fait et en droit, proposer ses moyens de preuve écrite ou orale, produire ses documents et les communiquer à la partie adverse.

Egalement un délai convenable sera établi afin que chaque partie, après l'examen des mémoires et des moyens de défense de l'adversaire, présente ses répliques en fait et en droit, ou après l'admission de quelque autre preuve, éclaircisse ou modifie ses demandes, et, le cas échéant, soit admise à une discussion préliminaire sur les points de fait ou de droit sur lesquels le débat écrit semble insuffisant.

Enfin un délai sera établi d'avance pour la discussion finale et pour la clôture du débat, en sorte que la décision puisse être rendue dans le délai convenu dans le compromis.

ART. 22.—Les délais établis par le tribunal pourront être prolongés par lui-même, à condition que toutes les parties soient admises à en profiter en égale mesure.

ART. 23.—Les règles de procédure approuvées par le tribunal ne peuvent être modifiées ou abrogées, si ce n'est avec le consentement de toutes les parties, si elles étaient établies dans les conventions d'arbitrage,—ou avec le consentement de la majorité des arbitres si elles étaient leur œuvre.

The Tribunal may always, by a simple majority of votes, interpret these rules so as to render the application of them easier, and develop them by others which might appear necessary for the accomplishment of their task.

ART. 24.—The rules relative to the nature of the proofs admissible, and the conditions and formalities necessary to render them admissible, whether fixed in the Agreement or announced by the Arbitrators at the commencement of their meetings, may not be changed during the pleadings.

But if there is nothing in the Agreement or the Rules of Procedure to forbid, or in case of doubt as to the force of the provisions, the Tribunal shall admit, by General Orders, those means of proof which are not excluded by the Rules or the Agreement, and which are not irreconcilable with the character of the questions to be decided, or with the principles of international public order.

ART. 25.—Each party may demand of the other the production of any reserved documents at its disposal, which the Tribunal declares to be vital to the question.

But no party shall have the right to submit to examination those documents (hereinafter called "domestic documents") which, having existed before the difference arose, and being since then in the possession of, or known by, one party or its predecessors in title, have not been communicated to the other party or its predecessors in title, before the difference arose.

ART. 26.—Solemn written statements, made in due form by a witness before a public officer, should be admissible in evidence as proof of relevant facts, subject to the right of cross-examining the witness. The probative value of such statements would always be for the Tribunal.

ART. 27.—Each party should be entitled to require the other to produce, for oral examination before the Tribunal, any witness making on behalf of that other party such a written statement as is mentioned in Art. 26.

Le tribunal pourra toutefois, à la simple majorité des voix, interpréter ces règles pour en rendre l'application plus facile, et les développer par d'autres qui paraîtraient nécessaires pour l'accomplissement de leur tâche.

ART. 24.—Les règles relatives à la nature des preuves admissibles et aux conditions de formes requises pour les admettre, qu'elles soient établies dans le compromis ou édictées par les arbitres au début de leurs séances, ne pourront être changées pendant le débat.

Mais en cas de silence du compromis et du règlement de procédure, ou en cas de doute sur la valeur de leurs dispositions, le tribunal admettra, par des arrêts d'ordre général, ces moyens de preuve qui n'ont été défendus par le règlement ni par le compromis, et qui ne sont pas inconciliables avec le caractère des questions à résoudre ou avec les principes d'ordre public international.

ART. 25.—Chaque partie pourra exiger de l'autre qu'elle produise les documents réservés dont elle dispose et que le tribunal juge décisifs pour la question.

Mais aucune partie n'aura le droit de soumettre à l'examen ces documents (que nous appellerons *privés*) dans le cas que,—ayant existé avant le conflit, et étant dès lors dans le domaine ou à connaissance d'une partie ou de ses auteurs,—ils n'aient été communiqués à l'autre ou à ses auteurs avant l'origine du conflit.

ART. 26.—Les dépositions écrites faites en due forme par un témoin devant un officier public devront être acceptées comme preuve des faits pertinents, avec le droit pour l'autre partie de contre-interroger le témoin.

Le tribunal sera pourtant toujours souverain dans l'appréciation de la valeur probante de ses dépositions.

ART. 27.—Chaque partie pourra exiger que l'autre présente, pour l'examen oral devant le tribunal, les témoins qui ont fait en faveur de l'autre partie les dépositions écrites mentionnées à l'art. 26.

When a witness cannot be produced before the Arbitral Tribunal, the Tribunal may commission the judicial authorities exercising jurisdiction over the place of the domicile of the witness to hold the necessary cross-examination. Domestic documents, and the statements of witnesses who, though required by one party, have not been produced for oral examination by the other party, may, on the application of the party (against which they are adduced) be expunged from the evidence, and not be included in the records which the Tribunal may have reprinted, if it please.

ART. 28.—When the Tribunal is forming its award, no one but the Secretaries who have the charge of recording the Minutes shall be present at the meetings of the Tribunal.

ART. 29.—Neither the parties nor the Arbitrators may bring into the Arbitration other States, or third persons, unless with the previous consent of all the parties and of this third person or State.

The spontaneous intervention of a third party is not admissible, except with the consent of the parties in the case.

ART. 30.—Cross claims may not be brought before the Tribunal unless they have been submitted to it by the Agreement, or the parties are agreed to submit them to its decision.

SECTION VI.—FORMATION AND PUBLICATION OF AWARDS, AND CONDITIONS OF THEIR VALIDITY.

ART. 31.—Interlocutory judgments need not be published, being notified to the agents of the parties, or their Governments.

Definitive awards, whether they decide one question only, or all the questions at once which were submitted to the Arbitrators, shall not be published until the final sitting of the Tribunal, by their being read on that occasion, and by notification to the agents, or to their Governments, in the periods of time fixed by the rules.

Lorsque ces témoins ne peuvent être traduits avant le tribunal arbitral, celui-ci pourra requérir à cet effet l'autorité judiciaire compétente d'après la loi de leur domicile.

Les documents privés et les dépositions des témoins qui, malgré les instances d'une partie, n'ont pas été présentés par l'autre à l'examen oral, peuvent être sur sa demande éliminés du procès, et ne pas être compris dans les actes, que le tribunal peut faire réimprimer à sa volonté.

ART. 28.—Lorsque le tribunal prend ses décisions, personne, excepté les secrétaires chargés de la rédaction des procès-verbaux, ne pourra assister aux séances du tribunal.

ART. 29.—Ni les parties ni les arbitres d'office ne peuvent appeler en cause d'autres Etats ou des tierces personnes, si ce n'est avec le consentement préalable de toutes les parties et de cette tierce personne ou Etat.

L'intervention spontanée d'un tiers n'est admissible qu'avec le consentement des parties en cause.

ART. 30.—Les demandes reconventionnelles ne peuvent être portées devant le tribunal que si elles lui sont déferées par le compromis, ou que les parties sont d'accord pour les soumettre à sa décision.

SECTION VI.—FORMATION, PUBLICATION DES ARRÊTS ET CONDITIONS DE LEUR VALIDITÉ.

ART. 31.—Les arrêts interlocutoires n'ont pas besoin d'être publiés, étant notifiés aux agents des parties, ou à leurs gouvernements.

Les arrêts définitifs, soit qu'ils décident une seule, ou toutes à la fois les questions soumises aux arbitres, ne seront publiés que le jour de la clôture des séances, par la lecture qu'il en sera donnée, et par la notification aux agents, ou à leurs gouvernements dans les délais établis par le règlement.

Nevertheless, when the Tribunal decides the questions separately, it may give the President the power to communicate a certified copy of such award to the parties who shall prove that delay in the publication is dangerous to their interests.

ART. 32.—The Tribunal should definitively decide all the points of the dispute, and should not be allowed to decline giving an award under any pretext.

Nevertheless, if the Agreement does not insist on a simultaneous definitive award on all points, the Tribunal may, whilst definitively deciding certain points, reserve the others for further hearing.

If the Tribunal does not find that the claims of any of the parties are well founded, it should declare so, establishing in its award the real state of the law between the parties on the subject of the dispute.

ART. 33.—The majority of the total number of the Arbitrators shall be able to act in spite of the absence or the departure of the minority. The decisions of this majority shall be definitive both on the principal questions and on the secondary questions, unless, in the conditions of the Arbitration, it is expressly stipulated that unanimity is indispensable.

ART. 34.—All the awards of the Tribunal should be drawn up in writing, and contain a recital of the reasons, unless the opposite is expressly stipulated in the Agreement.

They should be signed by each of the Arbitrators; if some refuse, there should be added to the signatures of the others the declaration that such members have refused to sign; and if they require it, a record shall be made in a separate Minute of the reasons by which they justify their refusal.

ART. 35.—The definitive award should be given within the period of time fixed by the Agreement or by the rules adopted at the commencement of the labours of the Tribunal.

Toutefois lorsque le tribunal décide les questions séparément, il pourra attribuer au président la faculté d'en donner communication par extrait, comme document authentique, aux parties qui prouveront que le retard dans la publication est dangereux pour leurs intérêts.

ART. 32.—Le tribunal doit décider définitivement tous les points du litige, ne pouvant refuser de prononcer sous aucun prétexte.

Toutefois, si le compromis ne prescrit pas la décision définitive simultanée de tous les points, le tribunal peut, en décidant définitivement certains points, réserver les autres pour une procédure ultérieure.

Si le tribunal ne trouve fondées les prétentions d'aucune des parties, il doit le déclarer établissant dans son arrêt l'état réel du droit entre les parties sur l'objet du litige.

ART. 33.—La majorité du nombre total des arbitres pourra agir malgré l'absence ou le départ de la minorité. Les décisions de cette majorité seront définitives aussi bien sur les questions principales que sur les questions secondaires, à moins que, dans les conditions de l'arbitrage, on ait expressément déterminé que l'unanimité serait indispensable.

ART. 34.—Tous les arrêts du tribunal doivent être rédigés par écrit et contenir un exposé des motifs, sauf dispense stipulée dans le compromis.

Ils doivent être signés par chacun des arbitres ; si quelques-uns s'y refusent, on ajoutera à la signature des autres la déclaration que les tels membres ont refusé de signer ; et on prendra acte, s'ils l'exigent, dans un procès-verbal à part, des raisons par lesquelles ils justifient leur refus.

ART. 35.—La décision définitive doit être prononcée dans le délai fixé par le compromis ou par le règlement adopté au début des travaux du tribunal.

There may be deducted, however, the time during which the Tribunal has been prevented by *force majeure* from continuing its work. In the case where the time (fixed by the Agreement or by the Arbitrators) has proved insufficient for full examination, or from some unforeseen circumstance, it cannot be extended except by a subsequent convention, or, respectively, by a decree of the Arbitrators, containing the reasons therefor.

SECTION VII.—EXECUTION AND REVISION OF THE AWARD.

ART. 36.—On the demand of one of the parties, the Award shall fix a limit of time within which it should be executed; and, if the Agreement expressly gives the Arbitrators this authority, it should further impose guarantees (either pecuniary or territorial or personal) which the condemned party must furnish in order to assure the accomplishment of the obligations imposed by the award.

If no limit of time or guarantee is specified, the award is to be executed immediately and spontaneously.

ART. 37.—If it be necessary for a third Power, which had not signed the Agreement, to conform to the award or to accomplish some act to enable it to be carried into effect, it must be notified to that Power by the more active party; but that Power may confine itself to taking note of this communication.

ART. 38.—In case of refusal or voluntary delay in the execution of the award, the President of the Tribunal or the Umpire, if it is he who has drawn it up, shall, on the demand of that party which complains of the delay or refusal, as soon as possible, invite the other party to present its defence within a fixed period of time.

Except in the cases where this proves a demand for revision according to Art. 40, the Tribunal or the Umpire will confine themselves to deciding whether the reasons on which the contesting party relies have been already considered implicitly or explicitly in the award.

On pourra toutefois faire déduction du temps pendant lequel le tribunal, par force majeure, aura été empêché de continuer ses fonctions.

Dans le cas où les moyens d'instruction ou quelque circonstance imprévue auraient rendu insuffisant le délai fixé par le compromis ou par les arbitres, il ne pourra être prolongé que par une convention subséquente, où, respectivement, par un arrêt motivé des arbitres.

SECTION VII. — EXÉCUTION ET RÉVISION DE LA SENTENCE.

ART. 36. — Sur la demande de l'une des parties, la sentence établira un délai dans lequel elle devra être exécutée ; et, si le compromis donne expressément aux arbitres cette autorité, elle devra en outre établir les garanties (soit pécuniaires, soit territoriales ou personnelles) que la partie condamnée devra fournir pour assurer l'accomplissement des obligations imposées par la sentence.

A défaut de délai et de garanties, la sentence devra être exécutée immédiatement et spontanément.

ART. 37. — S'il est nécessaire qu'une puissance tierce, qui n'avait pas signé le compromis, se conforme à la sentence ou accomplisse quelque acte, pour qu'elle puisse être exécutée, elle devra lui être notifiée par la partie plus diligente ; mais elle pourra se limiter à prendre acte de cette communication.

ART. 38. — En cas de refus ou de retard volontaire dans l'exécution de la sentence, le président du tribunal ou le sur-arbitre (si c'est lui qui l'a rédigée), sur la demande de cette partie qui se plaint du retard ou de refus, invitent, aussitôt que possible, l'autre partie à présenter ses défenses dans un délai déterminé.

Sauf les cas où celle-ci conclut à une demande en révision conforme à l'article 40, le tribunal ou le sur-arbitre se limitent à décider si les motifs sur lesquels s'appuie la partie contestante ont été déjà envisagés implicitement ou explicitement dans la sentence.

If these reasons have not been considered they will provide for this by an additional declaration, which shall form an integral part of the award.

In the contrary case, they declare by a new judgment, which shall be published in all forms, the refusal or voluntary delay in the execution of the award, and they fix a peremptory limit of time, after which the contesting party shall be exposed to the consequences provided for in the following article.

ART. 39.—Refusal to submit to the Award provided for by the preceding Article is not only the gravest violation of a treaty law, but a direct offence against the principles of law on which rests the society of States.

The Government which incurs this guilt exposes itself to all the consequences which may be arranged for in the Agreement, amongst others that Arbitral Clauses contained in other treaties with the same State can no longer be appealed to by it, and these treaties may be considered by the other party as lapsed *ipso iure* without any regard to the limits of time fixed for their lapsing.

It is, furthermore, liable to have the other States, with which it is united by Arbitration Treaties, refuse to observe their clauses unless it presents special guarantees for their execution.

ART. 40.—If the Agreement does not forbid it, there may be admitted before the same Arbitrators the demands for correction or revision of the award, presented by one of the parties, provided they are founded on one of the following reasons, and without prejudice to the rights acquired by interlocutory awards, or parts of the definitive award already executed :

(a) Contradiction in the purview, between the different parts of the definitive award, or between these and other awards published by the same Tribunal in the same case.

(b) Forgeries in the documents or in the proofs on which the award is expressly founded—on condition that the party which sustains the falsification of these means of evidence did not

Si ces motifs n'ont été envisagés, ils y pourvoient par une déclaration additionnelle qui fera partie intégrale de la sentence.

En cas contraire, ils constatent par un nouvel arrêt, qui sera publié en toutes formes, le refus ou le retard volontaire dans l'exécution de la sentence, et ils établissent un délai péremptoire, au delà duquel la partie contestante sera exposée aux conséquences prévues dans l'article suivant.

ART. 39. — Le manque de soumission à l'arrêt prévu par l'article précédent implique non seulement la plus grave violation d'un droit conventionnel, mais une offense directe aux principes de droit sur lesquels repose la société des Etats.

Le gouvernement qui s'en rend coupable s'expose à toutes les conséquences qui pourront être établies dans le compromis, entre autres à celle, que les clauses compromissaires contenues dans d'autres traités avec ce même Etat, ne pourront plus être invoquées par lui, et ces traités pourront être considérés par l'autre partie comme dissous *ipso jure* sans aucun égard aux délais établis pour pouvoir les dénoncer.

Il s'expose en outre à voir les autres Etats, avec lesquels il est lié par des traités d'arbitrage, refuser d'en observer les clauses s'il ne présente des garanties spéciales pour leur exécution.

ART. 40. — Si le compromis ne l'interdit pas, on pourra admettre devant les mêmes arbitres les demandes de correction ou de révision de la sentence présentées par l'une des parties, à condition qu'elles soient fondées sur l'un des motifs suivants, et sans préjudice des droits acquis par effet des arrêts interlocutoires, ou des parties de la sentence définitive, qui auraient été déjà exécutées :

(a) Contradiction dans le dispositif, entre les différentes parties de la sentence définitive, ou entre celles-ci et d'autres sentences publiées par le même tribunal dans la même cause.

(b) Faux dans les documents ou dans les preuves sur lesquelles est expressément fondée la décision, — à condition que la partie qui soutient la falsification de ces moyens d'instruction n'en ait pas

possess the knowledge of it during the argument, and that it has been declared by an authority whose competence is not, or cannot be contested, according to the principles of Common Law, by any of the parties in the case.

(c) Error of Fact ; provided that the award is founded expressly on the existence or on the want of a document or a fact, whose existence or want has not been observed before the Tribunal, or could not be proved, whereas after the publication of the award success has been attained in giving such proofs of it that all the parties must admit them as decisive.

ART. 41.—The demand for revision or correction should be notified by writing, with the reasons and the copies of the documents to all the Arbitrators, as also to each of the parties, with such a number of copies that they may be communicated immediately to their agents before the Arbitral Tribunal. Within one month after this notification each party must notify to the others and to the Arbitrators its reply or its defence with reasons, which shall not confer any right to further replies.

On these materials the Arbitrators shall pronounce their final award, fixing a positive period for its execution, that it may produce the same effects as that provided for by Art. 39.

ART. 42.—The costs of Arbitration procedure shall be paid in equal proportions by the Governments interested ; but the expenses incurred by the parties for the preparation and carrying on of their case shall be paid by each of them individually.

On the demand of the parties, the Tribunal may charge the one which has been condemned with the total, or the greater part, of the costs of the Arbitration.

et : connaissance pendant le débat, et qu'elle ait été déclarée par une autorité dont la compétence n'est, ou ne peut-être contestée, selon les principes de droit commun, par aucune des parties en cause.

(c) Erreur de fait, — à condition que la sentence soit fondée expressément sur l'existence ou sur le défaut d'un acte ou d'un fait, dont l'existence ou le défaut n'ait pas été observé avant le tribunal, ou n'ait pu être prouvé, tandis qu'après la publication de l'arrêt, on réussit à en donner de telles preuves que toutes les parties doivent les admettre comme décisives.

ART. 41.—La demande de révision ou correction doit être notifiée par écrit, avec les motifs et les copies des documents, à tous les arbitres, aussi bien qu'à chacune des parties, en tel nombre d'exemplaires qu'elle puisse être immédiatement communiquée à leurs agents auprès du tribunal arbitral.

Dans le délai d'un mois après cette notification, chaque partie devra notifier aux autres et aux arbitres sa réponse, ou sa défense motivée, qui ne donnera droit à d'autres répliques.

Sur ces éléments les arbitres prononceront leur dernier arrêt, établissant un délai péremptoire pour son exécution, afin qu'il puisse produire les mêmes effets que celui prévu par l'article 39.

ART. 42.—Les frais de procédure d'arbitrage seront payés en proportions égales par les gouvernements intéressés ; mais les dépenses faites par les parties pour la préparation et la poursuite de leur défense seront payées par chacune d'elles individuellement.

Sur la demande des parties, le tribunal pourra mettre à la charge de celle qui a été condamnée le total, ou une portion plus grande, des frais de l'arbitrage.

THE ARBITRATION TRIBUNAL.

BY SIGNOR P. FIORE,

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1897.

1. The Arbitration tribunal is composed of persons appointed in the capacity of arbiters to decide any particular difference arising between two or more States, or to pronounce a judgment thereon, according to the principles of Public Law, or any special law agreed upon by the parties by means of a Treaty stipulated between them.

2. Submission to the jurisdiction of the Arbitration tribunal is either voluntary or obligatory.

The former is that which follows from a stipulation in a Treaty by which the parties have agreed to submit to Arbitration any dispute which may arise respecting its interpretation or execution; or from a general Treaty by which they have bound themselves to refer to arbitrators any question between them; or from a special agreement (*compromis*) by which they combine to refer any particular question to arbitrators for their adjudication.

Compulsory submission to arbitral jurisdiction might arise from the deliberation of a Conference which had decided that a question of fact or particular law between the parties should be submitted to Arbitration; or if, in the absence of an agreement (*compromis*), should one of the parties consider it a case for arbitral jurisdiction and declare itself prepared to submit thereto, the Conference might consider that an Arbitration tribunal should be formed to decide the dispute in question.

3. It is incumbent on States, even if they have not previously

DEL TRIBUNALE ARBITRALE.

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1897.

1. Il tribunale arbitrale è costituito dalle persone nominate in qualità di arbitri per decidere una controversia d'interesse particolare nata fra due o più Stati, e per sentenziare intorno ad essa applicando i principii del Diritto comune, o il Diritto particolare stabilito fra le parti mediante i trattati fra di esse stipulati.

2. La sottomissione alla giurisdizione del tribunale arbitrale sarà volontaria o forzata.

La prima è quella che nasce in conseguenza del patto espresso concordato in un trattato, col quale le parti abbiano convenuto di sottomettere agli arbitri le controversie che possano nascere nella sua interpretazione, o nell'esecuzione; o quando con un trattato avessero assunto in generale l'obbligo reciproco di sottomettere ad arbitri qualunque vertenza fra di loro; o quando, con compromesso speciale, avessero convenuto di sottomettersi ad arbitri per far risolvere da essi una particolare controversia di ordine giuridico.

La giurisdizione arbitrale forzata potrà derivare dalla deliberazione di una Conferenza, con la quale, decisa la questione principale, fosse stata deferita agli arbitri la decisione d'una questione di fatto o di Diritto particolare fra le parti stesse; ovvero quando, mancando il compromesso, e sostenendo una delle parti che fosse il caso della giurisdizione arbitrale, e dichiarandosi pronta a sottomettersi, la Conferenza riconoscesse fondata tale istanza e decidesse che dovesse essere costituito un tribunale arbitrale per decidere sulla determinata controversia.

3. Incombe agli Stati, anche quando non si siano a ciò pre-

bound themselves to do so, to recognise the evident general utility of submitting to the decision of an arbitral tribunal all the differences of a juridical nature which may arise between them, which concern their particular interests, and which, according to the principles of Public Law might form matter for a reference to arbitration (*compromis*).

FORMATION OF THE ARBITRAL TRIBUNAL.

4. The arbitral tribunal shall be considered constituted when the arbitrators have been appointed, according to the agreement (*compromis*) entered into between the parties, or according to the following regulations; and they have accepted the mandate.

5. The constitution of an arbitral tribunal might also be effected by means of an arbitration clause in a Treaty by which the parties have agreed to refer all differences arising between them to Arbitration, if such differences can be considered a subject of reference, and to submit themselves to the regulations of International Public Law by means of the Arbitration.

6. The choice of the arbitrators must, in general, be left with the parties intending to submit themselves to the arbitral tribunal, or it may be made by persons invited by them to do so, these persons, of course, adhering strictly to the arrangement previously entered into in virtue of the Agreement.

7. The number of arbitrators ought generally to be restricted to three, but may, by agreement of the parties, be extended to five. The parties, however, may agree to refer the decision of the dispute to one person chosen by themselves to act as arbitrator.

8. If the parties have, by agreement, appointed the arbitrator or arbitrators, their functions must be personally exercised by the person or persons appointed; and if one of these persons should be unable, or should decline, to act, he cannot be represented by a substitute, unless a new agreement (*compromis*) be made between the parties for that purpose.

cedentemente obbligati, il riconoscere l'evidente comune utilità di sottoporre alla decisione di un tribunale arbitrale tutte le differenze di ordine giuridico che nascano fra di loro, e che concernano loro particolari interessi, e che, secondo i principii del Diritto comune, possano formar materia di compromesso.

FORMAZIONE DEL TRIBUNALE ARBITRALE.

4. Il tribunale arbitrale si reputerà costituito quando gli arbitri siano stati nominati a norma del compromesso concluso fra le parti o delle regole seguenti, ed essi abbiano accettato il mandato.

5. La costituzione del tribunale arbitrale potrà effettuarsi altresì in forza della clausola compromissoria contenuta in un trattato, con la quale le parti si siano obbligate di deferire agli arbitri tutte le controversie che potessero sorgere tra di loro, idonee ad essere oggetto di compromesso, rimettendosi poi alle regole del Diritto comune internazionale per l'attuazione dell'arbitrato.

6. La scelta degli arbitri dovrà ritenersi in massima deferita alle parti stesse che intendano sottomettersi al tribunale arbitrale, ovvero potrà essere fatta dalle persone designate da esse per fare tale scelta, attenendosi in ordine a ciò a quanto sia stato previamente stabilito in virtù del compromesso.

7. Il numero degli arbitri dovrà ritenersi in massima fissato a tre, e potrà per accordo delle parti essere esteso a cinque.

Potranno nonpertanto le parti convenire di deferire la decisione della controversia ad uno scelto da esse per decidere in qualità di arbitro.

8. Se le parti abbiano designato d'accordo l'arbitro, o gli arbitri, le funzioni dovranno essere esercitate individualmente dalla persona o dalle persone da esse determinate; e qualora una di dette persone non fosse capace o essendo tale ricasasse, non potrà procedersi a sostituirla, se non quando sia intervenuto tra le parti stesse un nuovo compromesso in ordine a ciò.

9. If the parties should not agree in the choice of arbitrators, or should no arbitral clause, previously stipulated as regards such choice, be in existence ; and if they cannot arrive at an agreement (*compromis*) for that purpose ; or if they have already severally appointed arbitrators, one of whom has proved unable or unwilling to serve ; generally speaking each of the parties retains the right to appoint an equal number of arbitrators, and the arbitrators thus nominated shall appoint an umpire, unless the parties are able to agree upon the appointment, as umpire, of a person selected by them. If it is left to the arbitrators themselves to appoint an umpire, they are at liberty to remit the choice to a third person.

QUALIFICATIONS OF AN ARBITRATOR.

10. The juridical qualification of an arbitrator, according to Public Law, is the ability to exercise the functions of an Arbitrator in private matters.

11. The moral qualification attaches by preference to those persons who, from their independent position, and their recognised judicial experience, inspire full confidence that they will decide with uprightness and impartiality ; and who have no interest whatever, directly or indirectly, in regard to the dispute in question.

12. The functions of an arbitrator may be confided to Sovereigns, jurisconsults, and publicists, on condition that the person accepting the appointment shall himself exercise the duties required, and cannot delegate them to some one else.

13. Regularly constituted bodies (such as a Faculty of Law or an appointed Tribunal) may be chosen as Arbitrators.

REFUSAL TO SUBMIT TO ARBITRAL JURISDICTION.

14. The party which desires a reference to Arbitration, and declares itself ready to submit thereto for the settlement of the

9. Qualora le parti non arrivino ad accordarsi sulla scelta degli arbitri, o che non esista fra di esse una clausola compromissoria previamente stipulata per procedere alla scelta, e che non arrivino a concordare un compromesso in ordine a ciò, o che essendosi accordate sulla scelta di arbitri individualmente designati una delle persone scelta sia divenuta incapace, o non abbia accettato, dovrà ritenersi in massima che ciascuna delle parti abbia diritto di nominare lo stesso numero di arbitri, e che gli arbitri da esse nominati debbano designare il terzo arbitro, salvo che le parti stesse non arrivino ad accordarsi per far designare il terzo arbitro da una delle persone da esse scelte. Gli arbitri nominati potranno, quando debbano essi designare l'arbitro, rimetterne la scelta ad un terzo.

CAPACITÀ PER ESSERE ARBITRO.

10. La capacità giuridica richiesta per essere arbitro è quella che, secondo il Diritto comune, occorre per esercitare la funzione di arbitro tra privati.

11. La capacità morale dovrà essere attribuita a preferenza alle persone che per la loro posizione indipendente e per le alte cognizioni giuridiche ispirino piena confidenza di decidere con rettitudine e imparzialità, e che non abbiano alcun interesse diretto o indiretto rispetto alla controversia insorta.

12. Le funzioni di arbitro possono essere attribuite ai Sovrani, ai giureconsulti ed ai pubblicisti, a condizione però che la persona designata, accettando, eserciti personalmente codeste funzioni e che non possa delegarle ad altri.

13. I corpi costituiti (*una Facoltà di Diritto o un Tribunale designato*) potranno essere scelti come arbitri.

RIFIUTO DI SOTTOMETTERSI ALLA GIURISDIZIONE ARBITRALE.

14. La parte, la quale sostenga che sia il caso di giurisdizione arbitrale, e che dichiari di essere pronta a sottomettersi ad essa

difference which has arisen, must, in the absence of any agreement (*compromis*) or arrangement, notify this, in a diplomatic way, to the other party, and appoint one or two arbitrators, at the same time inviting the other party to appoint an equal number, when they will be in a position to proceed to the appointment of an Umpire, according to the preceding regulations.

15. If, however, the opposite party, to which this diplomatic notification is made, does not accept the proposal, it must, as a rule, return a diplomatic notification in which the reasons for its refusal are specified. The absence of such notification will be considered sufficient proof of refusal to appoint arbitrators in accordance with the intimation made to it by the other party.

APPEAL TO THE CONFERENCE.

16. A refusal to go before an arbitration tribunal, constituted according to the preceding regulations, would justify an appeal to the Conference (provided for by Fiore, in a set of previous rules) at the instance of the party which considers itself aggrieved.

Such an appeal to the Conference may also be made by the opposite party, although refusing Arbitration, whether because it considers the subject of difference outside the limit of the arbitral clause, or for any particular circumstance of the case, as not being matter for reference, or because the refusal is based, generally, on Public Law.

17. An appeal to the Conference must also be made in the case where the parties may have undertaken by means of a formal Agreement (*compromis*) to submit to an arbitral tribunal, and as to the method of its constitution, if one of the parties does not appoint arbitrators according to the terms of the Agreement, or if the constitution of the tribunal cannot be completed because the appointed arbitrators cannot agree in the choice of an umpire, and if the parties cannot remove the difficulties in the way of proceeding with such choice.

per la decisione della controversia insorta, dovrà, in mancanza di compromesso o di accordo, notificare in via diplomatica ciò all'altra parte e nominare uno o due arbitri, invitando l'altra parte a nominare un numero eguale, onde procedere poi alla nomina del terzo arbitro, come nella regola precedente.

15. Qualora la parte avversa, alla quale sia stata fatta tale notificazione diplomatica, non accetti di sottomettersi alla giurisdizione arbitrale, dovrà in massima dichiararlo con nota diplomatica, nella quale i motivi del suo rifiuto siano formulati. Mancando tale nota, sarà ritenuta valida prova del suo rifiuto il non procedere essa alla nomina degli arbitri in seguito all'intimazione fatta dall'altra parte.

APPELLO ALLA CONFERENZA.

16. Il rifiuto di sottomettersi alla decisione del tribunale arbitrale, constatato come nella regola precedente, giustificherà appello alla Conferenza, ad istanza della parte che si ritenga lesa.

Tale appello alla Conferenza potrà aver luogo anche ad istanza della parte convenuta, qualora questa rifiuti la giurisdizione arbitrale, o perchè ritenga l'oggetto della controversia fuori dei limiti della clausola compromissoria, o perchè sostenga che l'oggetto della controversia stessa, per le particolari circostanze del caso, non possa essere materia di compromesso, o perchè in generale fondi sul Diritto comune il suo rifiuto a sottomettersi alla giurisdizione arbitrale.

17. Dovrà altresì ammettersi l'appello alla Conferenza, anche nel caso che le parti si siano accordate mediante il compromesso concluso di sottomettersi al tribunale arbitrale e circa il modo per costituirlo, se una delle parti non designi gli arbitri secondo fu convenuto col compromesso stesso, o quando la costituzione del tribunale arbitrale non possa essere effettuata a cagione del disaccordo degli arbitri designati circa la scelta del terzo arbitro; e che le parti non arrivino ad eliminare le difficoltà per procedere di questi alla scelta.

18. Whenever a dispute, because an arbitral tribunal has not been created, has to be referred to the Conference, the latter shall be competent to examine fully whether it is a case for arbitral reference, either because of an arbitral clause agreed upon by the parties themselves or on the general principles of Public Law. If, therefore, the Conference consider it a case for reference to an arbitral tribunal, it can itself appoint the necessary arbitrators.

19. The Conference may dispense with an arbitral jurisdiction for the decision of the dispute, and dispose of it itself, if it considers itself competent to do so, in accordance with the regulation determining its competency.

PROCEDURE BEFORE THE TRIBUNAL.

20. It is incumbent on the parties, between whom the contention exists, to give precise details of all writings and signatures made by them in connection with the Agreement (*compromis*). This will be drawn up in the form of a treaty, and will be indispensable in every case of voluntary submission to Arbitration, even if it should follow from an arbitral clause previously stipulated.

In case of obligatory submission, the difference to be submitted to the adjudication of the arbiters shall be formulated by the Conference.

21. The Agreement must contain a clear and exact statement of the points in dispute, regarding which the parties appeal to the decision of the arbitrators.

Such points of discussion may refer to a question of particular law established between the parties, or to a question of fact, if the parties are agreed on the question of law, and expressly declare the same, and if the discussion concerning the application of such law relate to a question of fact.

22. The parties shall produce all the documents, deeds and memoranda which may give information to the tribunal, and

18. Ogniqualvolta che la controversia, par la mancata costituzione del tribunale arbitrale, sia deferita alla Conferenza, questa dovrà ritenersi competente ad esaminare in principio se sia o no il caso di giurisdizione arbitrale, o in virtù della clausola compromissoria fra le parti stesse concordata, o in virtù dei generali principii di Diritto comune. Qualora la Conferenza ritenga che sia il caso di sottoporre la decisione della controversia ad un tribunale arbitrale, porrà essa stessa designare gli arbitri mancanti.

19. La Conferenza potrà escludere la giurisdizione arbitrale e decidere la controversia, se sia il caso di ritenersi a ciò competente essa stessa a norma della reg. 1046.

PROCEDIMENTO DINANZI AL TRIBUNALE ARBITRALE.

20. Incombe alle parti, fra le quali verte la controversia, il precisarne i punti mediante il compromesso da esse scritto e sottoscritto.

Tale atto serà fatto con le stesse forme di un trattato, e sarà necessario in ogni caso di giurisdizione arbitrale volontaria, anche quando essa abbia luogo, in virtù della clausola compromissoria, previamente stipulata.

In caso di giurisdizione arbitrale forzata, le controversie sottoposte al giudizio degli arbitri saranno formulate dalla Conferenza.

21. Il compromesso dovrà contenere la contestazione della controversia e precisare i punti, rispetto ai quali le parti debbano sottostare alla decisione degli arbitri.

Tali punti controversi possono concernere una questione di Diritto particolare stabilito far le parti stesse, o una questione di fatto, dato che le parti si trovino d'accordo sulla questione di Diritto e lo dichiarino espressamente, e che la controversia concerna l'applicazione di tale Diritto a questioni di fatto.

22. Incombe alle parti trasmettere tutti i documenti e gli atti e le memorie idonei ad illuminare il tribunale giudicante e

all documents and deeds which it may require for the elucidation of the case.

23. Delay on the part of either in producing the deeds and documents would justify a decision of the tribunal fixing a reasonable time for their production. If that period elapses, and the tribunal has not granted an extension of time, the inexcusable delay shall be considered as equivalent to a relinquishment, by the party, of the right to produce the documents necessary for its defence, and the tribunal may then give its award according to the information contained in the deeds placed at its disposal, and which are readily accessible.

24. The Tribunal has the right to call for any kind of proof it may consider necessary, and for all deeds and papers which may be useful and necessary for guiding it to a judicial decision.

THE NULLITY OR SUSPENSION OF THE REFERENCE.

25. The Reference (*compromis*) shall be considered invalid, if any of the particulars necessary to render it valid as an international treaty, are lacking.

26. The Reference (*compromis*) will remain without effect and be considered invalid, if the parties between whom it was concluded should settle the dispute by means of an unexpected agreement, or an amicable arrangement, or in any other way.

27. Similarly, the Reference (*compromis*) would be considered invalid, if the conditions are absent under which an arbitral jurisdiction might be voluntarily instituted by the parties. The chief instances are the following:—

(a) When the contention applies to various points, and the parties come to an agreement, as regards one or other of these, without declaring formally that they wish to retain the Agreement to refer (*compromis*) in respect of those still in dispute ;

(b) When the parties have agreed in appointing arbitrators and

tutti gli atti e documenti che da esso siano richiesti per l'istruzione della causa.

23. Il ritardo di una delle parti nel trasmettere gli atti e documenti potrà giustificare la decisione del tribunale arbitrale che fissi un termine ragionevole per la trasmissione di essi. Elaso tale termine, e qualora il tribunale stesso non abbia accordata una proroga, il ritardo ingiustificato sarà reputato di per se stesso equivalente a rinuncia della parte a trasmettere gli atti in sostegno delle sue pretese, ed il tribunale dovrà giudicare allo stato degli atti esistenti e presentati, e di quelli ch'esso medesimo d'ufficio potrà richiamare ed ottenere.

24. Il tribunale arbitrale potrà decretare ogni mezzo di prova e tutti gli atti istruttori che reputi utili od opportuni per decidere con illuminato giudizio.

ESTINZIONE O SOSPENSIONE DEL COMPROMESSO.

25. Il compromesso dovrà essere reputato nullo, se manchi dei requisiti richiesti per la validità di un trattato internazionale e che trovansi contemplati nel tit. I del Lib. II.

26. Il compromesso potrà rimanere senza effetto e reputarsi estinto, se le parti, fra le quali fu concluso, arrivino a comporre la lite, mediante accordo sopravvenuto. o mediante una transazione, o altrimenti.

27. Dovrà del pari ritenersi estinto il compromesso, se venissero a mancare le condizioni sotto le quali la giurisdizione arbitrale fu dalle parti volontariamente istituita. Questo dovrebbe ammettersi principalmente :

a) nel caso che la controversia concernesse diversi punti, e che le parti arrivassero a mettersi d'accordo intorno all'uno o all'alto di essi, e che non dichiarassero formalmente di volere lasciar sussistere il compromesso a riguardo di quelli tuttora disputati ;

b) quando essendosi accordate le parti circa la nomina di persone individualmente designate come arbitri, nel corso del giudizio

one of these, in the course of the proceedings, should become incapable, or die, or resign.

(c) When either of those appointed shall procure a substitute to discharge the functions specially intrusted to him.

28. The Reference must be considered suspended if one of the parties refuse to accept the arbitrator appointed by the other, if no agreement has been reached respecting the choice of another arbitrator, or (if it be established that the case of refusal ought to be held as well-founded in law) until another qualified arbitrator has been appointed.

REFUSAL TO ACCEPT AN APPOINTED ARBITRATOR.

29. An arbitrator appointed may be validly objected to :

(a) If he does not possess the necessary qualification, according to Rule 10 ;

(b) If it can be shown that he has an interest in the case ;

(c) If, when a Sovereign is appointed, it can be shown that an identical question in law would have to be decided in another case affecting his own interests and those of another State ;

(d) If the Sovereign appointed arbitrator had previously given his good offices to adjust the dispute, or had acted as mediator ;

(e) If, owing to the changed condition of affairs, it can be shown that he is no longer in a position to give an award with that impartiality which was contemplated when the appointment was made.

30. If the party, whose arbitrator has been objected to, does not wish to appoint another arbitrator, such an objection would invalidate the reference, and that would necessitate adhering strictly to Rule 16. The parties can, however, by a Special Reference (*compromis*) refer to the decision of an arbitrator the

una di esse fosse divenuta incapace, o fosse morta, o avesse rinunciato :

c) quando la persona nominata avesse delegato ad altri l'esercizio delle funzioni di arbitro ad essa confidate.

28. Il compromesso dovrà ritenersi sospeso se una delle parti abbia ricusato l'arbitro designato dall'altra, fino a tanto che le parti non si siano accordate sulla scelta di un altro arbitro, o (qualora sia stato deciso che l'istanza di ricusa debba ritenersi ben fondata in Diritto) finchè non sia stato designato un arbitro capace.

DELLA RICUSAZIONE DELL'ARBITRO DESIGNATO.

29. L'arbitro designato potrà essere validamente ricusato :

a) se non abbia i requisiti di capacità a norma della reg. 10 ;

b) quando possa essere stabilito e provato ch'egli abbia interesse nella controversia ;

c) quando, essendo designato un Sovrano, sia stabilito e provato che una questione identica in Diritto debba essere decisa in un'altra lite vertente nell'interesse di lui e di un altro Stato ;

d) quando il Sovrano nominato come arbitro abbia prestato i suoi buoni uffici per comporre la contesa, o abbia fatto da mediatore ;

e) quando, per le mutate condizioni di cose, possa essere stabilito e provato che esso non possa più pronunciare la sentenza con quella imparzialità sulla quale si faceva da prima principale assegnamento.

30. Qualora la parte, contro della quale l'arbitro fu ricusato, non voglia nominare un altro arbitro, tale rifiuto infirmerebbe il compromesso e converrà attenersi a quanto trovasi stabilito alla regola 16. Potranno però le parti stesse, con speciale compromesso, deferire ad un arbitrato di giudicare sull'incidente del

incident of the objection, but they cannot allow the constituted tribunal itself to judge the admissibility of the objection, neither can such faculty be considered as confided to them by the Instrument of Reference (*compromis*).

JUDGMENT OF THE TRIBUNAL.

31. An arbitral tribunal is declared to be definitively constituted as soon as the members are appointed, have accepted the appointment, have come together in the place and on the day appointed for their meeting, and each has been recognised as qualified to fulfil the duties of an arbitrator.

32. Whenever an arbitral tribunal is composed of several judges, they must be considered as invested with the power of exercising the functions entrusted to them, and of enjoying all the rights belonging to a judicial tribunal.

33. If the parties have not come to an agreement regarding the place which should form the seat of the tribunal, that choice shall be determined by the majority of the appointed arbitrators, and the place selected shall be changed at the will of the majority, if they should recognise any impediments to the convenient discharge of their functions existing in the place chosen for its seat.

34. The arbitral tribunal, when constituted, shall proceed to the appointment of one of its number as President; and those persons would be most eligible for the honour who, in the capacity of secretary, or some similar post, had acquitted themselves creditably in the exercise of their own functions. The President shall follow the rules of procedure adopted by the parties themselves, or those settled according to Public Law.

35. If the parties have not in the Agreement (*compromis*), or by a subsequent convention, fixed the procedure which has to be

rifiuto, ma non potrà ammettersi che il tribunale arbitrale costituito potesse giudicare esso medesimo dell'ammissibilità del rifiuto, nè che tale facoltà possa ritenersi compresa tra quelle attribuite ad esso col compromesso.

GIUDIZIO DEL TRIBUNALE ARBITRALE.

31. Il tribunale arbitrale si dichiarerà costituito definitivamente appena che i membri nominati avendo accettato, siano intervenuti alla riunione nel luogo e nel giorno designati per la sua convocazione, e ciascuno dei nominati sia stato riconosciuto capace di esercitare le funzioni di arbitro.

32. Il tribunale arbitrale ogni qual volta che sia composto di più giudici, deve essere reputato investito del potere di esercitare le funzioni ad esso attribuite, valendosi di tutti i diritti che spettano ad un tribunale giudicante.

33. Qualora le parti stesse non si siano accordate, a riguardo del luogo, che debba essere sede del tribunale arbitrale, la designazione di tale luogo sarà fatta a decisione della maggioranza degli arbitri nominati, e la sede stabilita potrà essere mutata, a giudizio pure della maggioranza, quando vi sia fondato impedimento, da questa riconosciuto, di adempiere convenientemente le funzioni nella località scelta come sede.

34. Il tribunale arbitrale costituito procederà alla nomina del Presidente scegliendolo nel proprio seno, e potrà aggregarsi le persone, che, in qualità di segretari o altrimenti, siano reputate da esso indispensabili per l'esercizio delle proprie funzioni. Esso seguirà per regolamento di procedura quello che sia stato provveduto dalle parti stesse, o che trovisi stabilito secondo il Diritto comune.

35. Se le parti non abbiano nel compromesso stesso o con convenzione susseguente stabilito d'accordo la procedura, che debba essere seguita dal tribunale arbitrale, e che non vi sieno norme di

followed by the tribunal, it is fully at liberty to determine its own procedure.

36. The tribunal shall give its decision without great or unjustifiable delay, and with a complete knowledge of the case; suitable periods must be fixed for the presentation of documents; reasonable time must be granted to the parties to prepare, without precipitation, the defence of their rights; they shall be allowed to present case and counter-case; and nothing shall be neglected which may prove useful in securing an honest, serious, and clear decision.

37. The arbitral tribunal must be considered competent to interpret the Arbitration Agreement (*compromis*); to decide regarding the admissibility, or inadmissibility, of certain means of proof, and to determine all that is incidental to the main question, and which has arisen in the course of the trial.

38. It is the duty of the arbitral tribunal to pronounce its judgments according to the principles of Public Law, and in applying these it will have the power to interpret the regulations fixed, taking account of the State documents in which they are specified and determined, of the law established by the tribunals which have interpreted the same rules judging analogous cases, and of the opinion of publicists. It will also be equally competent to interpret the principles of any particular law established between the contending States.

39. The tribunal will estimate the proofs according to its own convictions and discretion, will decide as to the confirmation of facts according to its independent estimate of the value of the documents produced, will consider the particular circumstances of the case, and weigh everything carefully according to the principles of natural equity.

AWARD OF THE TRIBUNAL.

40. The arbitral tribunal cannot decline to pronounce a defini-

Diritto comune, potrà il tribunale medesimo determinare liberamente le norme del procedimento.

36. Incombe al tribunale decidere la controversia senza grande ed ingiustificato ritardo e con perfetta cognizione di causa. E dovrà assegnare termini convenienti per la presentazione dei documenti: concedere alle parti un tempo ragionevole per preparare senza precipitazione la difesa dei loro diritti; ammetterle a presentare memorie e contromemorie; e non trascurare quanto possa riuscire utile per decidere con retto, serio ed illuminato giudizio.

37. Dovrà reputarsi di competenza del tribunale arbitrale l'interpretare il compromesso; il decidere circa l'ammissibilità o inammissibilità di certi mezzi di prova, e risolvere tutti gli incidenti, che possano concernere la questione principale e che siano sollevati nel corso del giudizio.

38. Incombe al tribunale arbitrale giudicare, secondo i principii del Diritto comune (*Confr. regole 6, 7*); e nell'applicarlo, potrà interpretare le regole fissate, tenendo conto dei documenti di Stato, nei quali il concetto di esse trovasi precisato e determinato; della giurisprudenza stabilita dai tribunali che abbiano interpretate le stesse regole giudicando casi analoghi; e dell'opinione dei pubblicisti. Esso sarà competente del pari ad interpretare i principii di Diritto particolare stabilito tra gli Stati contendenti.

39. Il tribunale valuterà le prove secondo le sue convinzioni ed il suo prudente arbitrio, e deciderà circa l'accertamento dei fatti, secondo il suo libero apprezzamento, circa la valutazione dei documenti prodotti, ed apprezzerà le particolari circostanze del caso, ponderandole accuratamente secondo i principii di equità naturale.

NORME PER PRONUNZIARE LA SENTENZA.

40. Il tribunale arbitrale non potrà rifiutarsi di pronunziare la

tive sentence on all points of the contention submitted for decision.

It cannot defer to an indefinite time, and beyond a reasonable limit, the pronouncement of the sentence, under pretext of not having been sufficiently enlightened either as to the questions of fact, or as to the juridical principles which they should apply.

41. If the parties have fixed the period within which the arbitrators shall give their award, such period shall date from the day on which the tribunal was definitely constituted in accordance with Rule 31.

They shall, however, consider themselves competent to decide whether they will be able to give their award within the fixed term, and if they cannot, they will fix the briefest period within which they can do so, and they will notify this in a provisional award to the parties interested; should such notification be accepted by them without comment, the period fixed in the Agreement (*compromis*) shall be considered legally extended according to the notification of the provisional award.

42. The tribunal may decide that, with the provisional award, an equitable proposal may be made to the parties with the design of promoting agreement, or of arriving at an amicable settlement. The refusal of such a proposal would not justify the suspension of its functions, but it will still be under obligation to settle the difference and to give a definite decision.

43. Every decision, whether provisional or definitive, shall be made by the majority of all the appointed arbitrators, and they must take part in voting, excepting in case of *force majeure*.

44. The excusable absence of one of the appointed arbitrators would authorise the tribunal to defer its decision, if the reason for his absence be only temporary. If, however, it is likely to be

sentenza definitiva su tutti i punti di controversia sottoposti alla sua decisione.

Esso non potrà ritardare a tempo indefinito e oltre un termine ragionevole la pronunziatione della sentenza col pretesto di non essere sufficientemente illuminato circa le questioni di fatto o circa i principii giuridici, che dovrebbe applicare.

41. Qualora le parti stesse avessero fissato il termine entro cui gli arbitri dovessero pronunciare la sentenza, tale termine non comincerebbe a decorrere, se non dal giorno in cui il tribunale dovesse ritenersi definitivamente costituito a norma della reg. 31.

Dovrà però ritenersi competente esso medesimo a decidere nel suo seno se possa pronunciare la sentenza nel termine fissato, e in caso di negativa fisserà il termine più breve entro cui potrà pronunciare la sua sentenza definitiva, e notificherà tale sua sentenza provvisoria alle parti interessate; e qualora fosse da esse accettata tale notificazione senza osservazioni, il termine fissato nel compromesso dovrà ritenersi legalmente protratto a norma di quanto sia stato stabilito con la sentenza provvisoria notificata.

42. Il tribunale arbitrale potrà decidere con sentenza provvisoria che sia fatta alle parti qualche proposta equa coll'intendimento di provocare fra di esse l'accordo o di arrivare ad una transazione. Il rifiuto di tali proposte non potrebbe giustificare la sospensione delle sue funzioni, esso sarà bensì sempre tenuto a risolvere la controversia e a decidere definitivamente la lite.

43. Ogni decisione sia essa provvisoria o definitiva, sarà presa a maggioranza di tutti gli arbitri nominati ed incombe a ciascuno di essi l'intervenire al momento della votazione, salvo il caso di forza maggiore.

44. L'assenza giustificata di uno degli arbitri nominati autorzerà il tribunale a differire la sua decisione, se la causa che avesse cagionato l'assenza potesse venire a cessare. Qualora essa fosse

permanent, or of long duration, the tribunal must adhere to the original regulation respecting the choice of an arbitrator, by replacing the absent arbitrator, and providing anew for its regular constitution.

45. If, on the contrary, the absence of the arbitrator, at the moment of taking the vote, was due to a resolution adopted, or to an intrigue, the tribunal must decide, by a majority of those present, the suitable method to be taken in order to obviate the inconvenience, and to place it-elf in a position to fulfil its functions and to give its award.

46. If the methods adopted by the tribunal should prove ineffective, and the fact transpire that it was due to the connivance of an interested Government, for the purpose of placing an obstacle in the way of pronouncing a definite award, such disloyal proceeding will be considered as in opposition to the principles of international law, and will justify an appeal to the Conference, as in the case of an arbitrary refusal to submit to arbitral jurisdiction.

47. It is incumbent on each of the arbitrators present at the moment of voting an award, to append his signature. Should, however, a dissenting arbitrator refuse to do so, the sentence will be valid, provided it be signed by the majority, and provided they sign a declaration to the effect that the arbitrator who dissented was present at the time of voting, and that he had refused to sign the decision arrived at by the majority.

48. The arbitral sentence must be given in writing, and must contain the reasons of fact and law and the definite provisions relating to the contested points, which formed the subject of the decision.

VALIDITY OF THE AWARD.

49. The award of the arbitrators shall be regarded as final, and as a complete settlement of the dispute submitted for Arbitration.

permanente o duratura bisognerà attenersi alle regole innanzi stabilite per la scelta degli arbitri a fine di surrogare l'arbitro assente e provvedere alla regolare costituzione del tribunale.

45. Laddove l'assenza di un arbitro, nel momento in cui si dovesse pronunciare la sentenza, fosse l'effetto d' un partito preso o di un intrigo, spetterà al tribunale di deliberare a maggioranza dei presenti circa i provvedimenti adatti ad ovviare all'inconveniente, onde poter essere in condizione di espletare le proprie funzioni pronunciando la sentenza.

46. Qualora i provvedimenti decretati dal tribunale riuscissero inefficaci, e vi fosse fondata presunzione di connivenza da parte del Governo interessato, col proposito di mettere così un ostacolo alla pronunziazione della sentenza definitiva, tale procedimento sleale sarà qualificato in opposizione ai principii del Diritto internazionale, e potrà motivare l'appello alla Conferenza, così come nel caso di arbitrario rifiuto di sottostare alla giurisdizione arbitrale.

47. Incombe a ciascuno degli arbitri presenti al momento della votazione della sentenza, il sottoscriverla. Qualora però un arbitro dissenziente rifiutasse di far ciò, la sentenza sarà valida, purchè sottoscritta dalla maggioranza, e purchè questa medesima sottoscriva la dichiarazione che l'arbitro che dissentiva era presente al momento della votazione, e che aveva rifiutato di sottoscrivere la decisione presa a maggioranza.

48. La sentenza arbitrale deve essere redatta in iscritto e dovrà contenere i motivi in fatto e in diritto e le disposizioni definitive relative ai punti contestati, che abbiano formato oggetto della decisione.

EFFICACIA DELLA SENTENZA.

49. La sentenza degli arbitri dovrà essere riguardata come definitiva e come soluzione compiuta della controversia sotto posta all'arbitrato.

It will be notified to both parties by the tribunal itself which has pronounced it, and its notification shall be considered legally made and completed, when an authentic copy thereof, containing the grounds and reasons of the decision, has been delivered to the representative of each of the parties and such delivery has been entered in the minutes.

50. The text of the award, together with all the documents and deeds relating to the case, shall be deposited in the archives of a neutral State, and publicity shall be given to the fact that this has been done, and also particulars of all documents, which will be enumerated in an annexed note.

51. The notification of the award places the contending parties under the obligation of recognising its judicial authority and of loyally carrying out all that the tribunal has decided, and that without any reserve or restriction.

52. If the award has imposed an obligation which weighs upon the finances, or if it otherwise requires legislative provisions before it can be executed, it shall nevertheless be valid in respect of the State involved, and its authority shall not be subordinated to the condition of approval or ratification on the part of the legislative powers of the said State.

53. The State which has formally refused to execute an arbitral award, or which, in effect, when requested by the other party, has not taken note of, or executed, its provisions, will be held answerable for such a proceeding, the non-observance of an award given by an arbitral tribunal being generally considered an arbitrary act, and in opposition to the principles of international law.

54. The proceeding of a State, which does not loyally execute the award of an arbitral tribunal, can be justified only in the single case of an appeal being made to the Conference, and of its recognising that, in some respect or other, the award might be considered null and void, or that through the intervention of some

Essa sarà notificata all'una ed all'altra parte a cura del tribunale stesso, che l'abbia proferita, e la sua notificazione sarà reputata legalmente fatta e compiuta, allorchè una copia autentica della medesima, contenente i motivi e le disposizioni, sia stata consegnata al rappresentante di ciascuna delle parti e di tale consegna sia stato redatto processo verbale.

50. Il testo della sentenza e tutti i documenti e gli atti del giudizio, saranno depositati negli archivi di Stato di un paese neutrale, e sarà data pubblicità a quanto concerna l'eseguito deposito della stessa e di tutti i documenti relativi che saranno enumerati in una nota annessa.

51. La notificazione della sentenza impone all'una ed all'altra delle parti contendenti di riconoscere nella decisione del tribunale l'autorità di giudicato e di osservare ed eseguire lealmente quanto mediante essa sia stato deciso, e senza alcuna riserva o restrizione.

52. Qualora la sentenza abbia imposto un onere, che graviti sulla finanza, o che altrimenti esiga provvedimenti legislativi onde adempirvi, essa sarà nondimeno efficace rispetto allo Stato gravato, e l'autorità sua come giudicato non potrà essere subordinata alla condizione della approvazione o della ratifica da parte del potere legislativo dello Stato stesso.

53. Lo Stato, il quale rifiutasse formalmente di eseguire la sentenza arbitrale, o che, di fatto, richiesto dall'altra parte non osservasse e non eseguisse quanto con la stessa fosse stato disposto, sarà tenuto a rispondere di tale suo procedimento, dovendo in massima presumersi l'inosservanza di una sentenza resa da un tribunale arbitrale un fatto arbitrario, e in opposizione coi principii del Diritto internazionale.

54. Il procedimento da parte di uno Stato, che non eseguisca lealmente la sentenza del tribunale arbitrale potrà essere giustificato nel solo caso che si facesse appello alla Conferenza e che questa riconosca la sentenza affetta da qualche vizio di nullità, o quando riconosca, che per le sopravvenute impreviste circostanze

unforeseen circumstances, it cannot be executed, or that its execution should be suspended either in part or altogether.

GROUND OF THE NULLITY OF AN ARBITRAL AWARD.

55. An arbitral sentence will be considered invalid :—

(a) If the decision be not made by the voting, and in the presence of, all the appointed arbitrators ;

(b) If the grounds of fact and of law are altogether absent ;

(c) If its terms are contradictory ;

(d) If it be not delivered in writing, and signed by all the arbitrators, or if the missing signature of one of them is not accompanied by a minute, recording the fact that the arbitrator who has not signed, was present at the voting, and took part in the decision.

56. An arbitral sentence may be disputed by the party which refuses to execute it, and may be annulled :—

(a) If the arbitrators have gone beyond the limits of the Reference (*compromis*), or has been nullified, or might be considered extinct ;

(b) If it had been given by persons who had not the legal or moral qualification to be arbitrators, or had lost such qualification in the course of the trial, or by an arbitrator who could not legally act as substitute for another ;

(c) When founded upon error, or obtained by fraud ;

(d) When the forms of procedure stipulated in the Agreement (*compromis*) under penalty of nullity, or those established by Public Law, or those which must be considered indispensable, because required by the very nature of an arbitral judgment, have not been observed.

57. The question of taking action for annulling an arbitral sentence must be referred to the Conference, either at the

essa debba essere reputata inesequibile, o che ne debba essere sospesa in tutto o in parte l'esecuzione.

MOTIVI DI NULLITÀ DI UNA SENTENZA ARBITRALE

55. La sentenza arbitrale sarà reputata nulla :

a) se la decisione non sia stata votata coll'intervento e la presenza di tutti gli arbitri nominati ;

b) se manchi del tutto di motivi in fatto e in diritto ;

c) se il dispositivo sia contraddittorio ;

d) se non sia stata redatta in iscritto e sottoscritta da tutti gli arbitri, o se la mancata sottoscrizione di uno di essi non resulti da processo verbale, che constati l'intervento dell'arbitro che non sottoscrisse e la sua presenza al momento della decisione e della votazione.

56. La sentenza arbitrale potrà essere impugnata dalla parte che rifiuti di eseguirla e potrà essere annullata :

a) se gli arbitri avessero pronunciato fuori dei limiti del compromesso, ovvero sopra un compromesso nullo o che dovesse reputarsi estinto ;

b) se fosse stata pronunciata da persona, che non avesse la capacità legale o morale per essere arbitro, o che avesse perduta tale capacità nel corso del giudizio, o da un arbitro che non potesse legalmente surrogare un altro assente ;

c) quando fosse fondata sull'errore, o estorta con dolo ;

d) quando le forme procedurali stipulate nel compromesso sotto pena di nullità, o quelle che fossero stabilite per Diritto comune, o quelle che secondo questo devono reputarsi indispensabili, perchè richieste dalla natura del giudizio arbitrale, non fossero state osservate.

57. Il giudizio intorno all'azione di annullamento di una sentenza arbitrale dovrà essere deferito alla Conferenza o sulla

instance of that party which began by calling the award in question, and based upon that reason its refusal to carry it into execution; or at the instance of the other party, which desires to obtain compulsory powers in order to make it execute what has been decided.

58. The Conference will judge the reasons adduced as the grounds of the nullity, and should it not recognise such reasons as valid, and therefore reject the appeal, it may itself adopt the coercive means by which the opposite party may be compelled to execute whatever was determined by the award.

59. The Conference may also declare the execution of the award suspended owing to a change of circumstances, as in the case of the suspension of a treaty.

60. The State which does not observe what the Conference has decided, in regard to the execution, nullity, or suspension, of an arbitral award, will subject itself to the procedure established by Rules 1054, 1055 (which refer to the procedure of the Conference).

istanza della parte stessa, che in via principale impugni la sentenza fondando su tale motivo il suo rifiuto di eseguirla, o sulla istanza dell'altra parte, che voglia ottenere il contringimento forzato, onde far eseguire quanto fu deciso.

58. La Conferenza giudicherà sui motivi dedotti a fondamento della nullità, e qualora essa non riconosca tali motivi esistenti e rigetti l'istanza di annullamento, potrà essa stessa decretare i mezzi coercitivi per costringere la parte opponente ad osservare e ad eseguire quanto con la sentenza sia stato disposto.

59. La Conferenza potrà inoltre dichiarare sospesa l'esecuzione della sentenza per le mutate sopravvenute circostanze così come per la sospensione di un trattato.

60. Lo Stato, che non osservasse quanto la Conferenza avesse deciso circa l'esecuzione, l'annullamento o la sospensione della sentenza arbitrale sarà assoggettato al procedimento stabilito alle regole 1054, 1055.

ARBITRATION TRIBUNALS.

AN EXPOSITION.

BY W. EVANS DARBY, LL.D.,

Secretary of the Peace Society.

1. Arbitration tribunals may be special or general, temporary or permanent, and (in the case of the last) restricted or open to all. In either case the mode of their creation is the same.

2. It is essential to Arbitration that contending States should formally agree to refer their difference to an independent tribunal, and should bind themselves to abide by its award.

3. It is also necessary that the persons, or the States, chosen to form the tribunal, should formally accord their consent, and accept the obligation to proceed with the enquiry and to give their award.

4. Accordingly, the reference to Arbitration is made by a special agreement (*compromis*), which is signed on behalf of the contending parties; which expressly states the question or questions to be submitted, giving a summary of the points of fact or law involved, defining the limits of the Arbitration, and, in some instances, indicating the course of procedure; and which, except in cases of material error or flagrant injustice, implies their engagement to submit in good faith to the award.

5. This Agreement may result, either from a general Treaty, a special (*i.e.* an Arbitration) Treaty, an arbitral clause inserted in a Treaty, or a Protocol of an International Congress to which the concurring States may have been parties.

TRIBUNAUX D'ARBITRAGES.

UN EXPOSÉ DE

M. W. EVANS DARBY

Docteur en Droit, Secrétaire de la "Peace Society."

1. L'arbitrage international est spécial ou général, occasionnel ou permanent, et dans ce cas, ouvert ou clos. Dans tous les cas, l'arbitrage est institué par une convention.

2. Pour constituer l'arbitrage il est essentiel que les Etats qui ont un sujet de contestation entre eux s'accordent préalablement à en déférer la décision à un tribunal étranger, au jugement duquel ils s'engagent à se conformer.

3. Il est nécessaire, en outre, que les personnes ou les Etats, choisis pour former ce tribunal, donnent leur consentement à en faire partie, à procéder à l'instruction du litige et à rendre jugement.

4. Or, les parties en présence signent un compromis, c'est-à-dire une convention spéciale, précisant nettement la question ou les questions à débattre, exposant l'ensemble des points de fait ou de droit qui s'y rattachent, traçant les limites du rôle dévolu à l'arbitre, et dans quelques instances, déterminant la procédure qui sera observée au cours de l'arbitrage, et, sauf les cas d'erreur matérielle ou d'injustice flagrante, impliquant l'engagement de se soumettre de bonne foi à la décision qui pourra intervenir.

5. Ce compromis peut résulter, soit d'un traité général ou spécial (dit traité d'arbitrage), soit d'une clause (dite compromissoire) insérée dans un traité, ou dans un protocole de congrès international auquel les mêmes Etats aient adhéré.

6. The Agreement is valid when it has been ratified by the chiefs of the signatory States in the conditions and forms required by their respective laws and, if necessary, by the Treaties which limit their liberty in regard to other States.

7. It is usual, in appointing an Arbitration tribunal, to fix, in the agreement, a period, counting from the date of its installation, during which it shall examine and decide upon the questions submitted to it for adjudication. It is, also, usual to fix a period for the Treaty to remain in force, reckoning from the date when it shall come into operation, and to agree that unless either of the parties to the Treaty shall have given notice to the other of a wish for its termination, it shall continue in force for another similar period, and so on.

8. Special Arbitration tribunals (*ad hoc*) may consist of one or more judges, who may be Princes, Sovereign Governments, Corporations, or individuals of repute and recognised fitness: where more than one are chosen, an umpire (*sur-arbitre*) is generally appointed, by agreement, in order to secure a definite award.

9. A permanent tribunal may be formed by the nomination of a given number of members by each of the concurring States, as agreed upon between themselves. These may not necessarily be jurists by profession, but statesmen, diplomatists, men who have filled judicial offices, publicists, or other persons of high reputation and standing. Ultimately these may be drawn from a recognised Corps, College, or Council.

10. Such a tribunal may be formed by any group of States, even two only, for international affairs relating to themselves. In case of doubt an Agreement providing for a permanent tribunal shall be considered as unrestricted (see No. 1.), *i.e.* any nation may accede to it by a simple declaration of its will.

11. Where the course of procedure is not prescribed in the Agreement, it is understood that the tribunal will determine it for

6. Le compromis est valide lorsqu'il a été ratifié par les chefs des Etats signataires dans les conditions et dans les formes requises par leurs lois respectives, et, s'il est nécessaire, par les traités qui limitent leur liberté vis-à-vis d'autres Etats.

7. Il est d'usage, en constituant un tribunal d'arbitrage, qu'on fixe dans le compromis le délai, compté du jour où il sera déclaré installé, pendant lequel il examinera et décidera sur les questions soumises pour son adjudication. Il est aussi d'usage qu'on fixe la période pendant laquelle le traité restera en vigueur, à partir du jour où il en sera fait application, et qu'on s'accorde qu'il continuera pour une nouvelle période, si le traité n'est pas dénoncé par une des parties avant la date de l'échéance ; et ainsi de suite.

8. Un tribunal spécial (*ad hoc*) peut consister en un seul ou plusieurs juges, qui peuvent être des princes, des gouvernements souverains, des corporations, ou de simples particuliers de bonne réputation et position. Quand il y en a plusieurs choisis, on nomme, en général, un sur-arbitre, d'un commun accord, afin d'arriver à une sentence définie.

9. Un tribunal permanent peut être constitué par la nomination d'une ou plusieurs personnes par chaque Etat signataire, suivant les dispositions du compromis. Ces membres ne seront pas nécessairement juristes de vocation, mais aussi hommes d'Etat, diplomates, publicistes ou autres hommes, citoyens les plus considérés. Plus tard, on les choisira d'un corps reconnu, collègue ou conseil.

10. La création du tribunal résulterait de la convention arrêtée entre deux ou plusieurs Etats de recourir à l'arbitrage pour tout différend surgissant entre eux. Dans le doute, une convention d'arbitrage permanent sera considérée comme ouverte ; c'est-à-dire que toute nation peut y accéder par une simple manifestation de sa volonté.

11. A défaut de stipulations spéciales, le tribunal établira lui-

itself ; and in any case where doubts arise as to the scope of the reference, the terms of the Agreement must be interpreted in the widest sense.

12. The establishment of a permanent international tribunal of Arbitration presupposes the possibility of framing its constitution, jurisdiction, and procedure on a basis which will secure impartiality of enquiry and decision on every question submitted to it.

13. The Arbitration tribunal, when constituted, forms an independent body, having a distinct judicial authority ; it is, therefore, not bound by the previous decrees of any other tribunal, on the questions submitted to its jurisdiction ; and, although nominated by Governments, its members are in no sense to be regarded as the representatives, subjects or mouthpieces of Governments.

14. It should be treated as a diplomatic mission of the first rank, both as to the honours to be paid to its members, the immunities which they enjoy, and the protection afforded to them in the exercise of their functions.

15. The members of a permanent tribunal, in order to secure their absolute independence, should be appointed for life or for a sufficiently long period ; they should be absolved from all political allegiance, while in office ; they should be provided with adequate salaries and retiring pensions, and assured of a social rank sufficient to satisfy the requirements of their office.

16. At the commencement of each year the members of the tribunal should, by ballot, elect one of their number to act as President.

17. The tribunal should also appoint a Chief Secretary, who shall be the only recognised official medium of communication, and who should rank on a footing of equality with the principal Secretaries of State of all nations.

même sa procédure. Toutefois, dans le doute sur la portée du litige, l'interprétation la moins stricte doit prévaloir.

12. La création d'un tribunal international permanent d'arbitrage présuppose la possibilité d'établir sa constitution, sa juridiction et sa procédure en manière d'assurer l'impartialité d'investigation et de décision sur tous les points en litige.

13. Le tribunal arbitral, une fois constitué, est un corps indépendant, ayant une autorité judiciaire. Les arbitres ne sont pas liés par les arrêts précédents d'un autre tribunal quelconque, sur les questions qui leur sont proposées. Bien que nommés par les gouvernements, les membres du tribunal ne pourront pas être considérés comme leurs représentants ou leurs instruments.

14. Le tribunal doit être traité comme une mission diplomatique de premier rang, soit quant aux honneurs qui lui sont dûs, et aux immunités et la protection dont jouissent ses membres dans l'exercice de leurs fonctions.

15. Pour assurer l'indépendance absolue du tribunal on donnera aux fonctions de ses membres une durée suffisante ; on les dégagera de toute attache avec un Etat quelconque pendant qu'ils seront en office ; on leur assurera des salaires et des pensions libérales, et on leur donnera un rang qui satisfasse à tous les besoins de leur office.

16. La cour élit, au scrutin secret, dans son sein, un président, pour une durée d'une année.

17. La cour nomme aussi un chef-secrétaire qui, seul, pourra entretenir des relations avec des gouvernements, etc. Il sera mis sur le même rang que les principaux secrétaires d'Etat de toutes les nations.

18. If the place of meeting be not designated in the Agreement, it should be decided by a majority of the members of the tribunal, and should be situated on neutral territory.

19. At their first meetings, the members should take the necessary steps for the constitution of the tribunal by the election of the requisite officers and servants, and for the proper conduct of its business, according to the rules of procedure, which may be already established, or which it shall determine for itself.

20. The tribunal shall further keep a record of its proceedings and also a register, in which shall be entered the procedure followed, the demands of the claimants, and the awards and decisions rendered.

21. The proceedings of the tribunal must be conducted according to the recognised rules of judicial procedure, subject only to the special provisions made by the tribunal for its own guidance.

22. One of the first duties of the tribunal should be to frame a code of procedure providing for the mode in which disputes and differences between nations should be submitted to it, and especially such a procedure in regard to the particular case to be adjudicated upon, as shall secure the presentment and development of distinct and clear issues upon which its judgment is sought.

23. The rules of procedure approved by the tribunal cannot be modified or annulled except with the consent of all parties, if they were fixed in the Arbitration Agreement, or with the consent of the majority of the members if they were framed by the tribunal itself. The interpretation of these rules, or additions to them, may always be decided by a simple majority of votes.

24. The periods of time fixed by the tribunal may be prolonged

18. A défaut de stipulation spéciale, le tribunal choisira l'endroit où il doit siéger, par une majorité des voix.

19. Les arbitres, dans leurs premières réunions, nomment les officiers et les facteurs nécessaires : ils décideront sur la direction des affaires du tribunal, selon la procédure déjà établie, ou qui sera établie par le tribunal.

20. Le tribunal tiendra parmi ses archives les procès-verbaux des séances et aussi un livre d'enregistrement dans lequel on inscrira la procédure suivie, les demandes des réclamants et les jugements et décisions rendus.

21. Le tribunal arbitral établit lui-même la procédure à suivre, en appliquant autant que possible les règles de la procédure ordinaire.

22. Le premier devoir du tribunal sera d'élaborer un code de procédure fixant la manière en laquelle les différends entre nations doivent lui être soumis et particulièrement telle procédure dans la contestation à juger, qui assurera la présentation et le développement de questions distinctes et claires sur lesquelles un jugement est désiré.

23. Les règles de procédure approuvées par le tribunal ne peuvent être modifiées ou abrogées, si ce n'est avec le consentement de toutes les parties, si elles étaient établies dans la convention d'arbitrage, ou avec le consentement de la majorité des arbitres, si elles étaient leur œuvre. Le tribunal pourra, toutefois, à la simple majorité des voix, interpréter ces règles ou les développer par d'autres.

24. Les délais établis par le tribunal pourront être prolongés

by it, provided that all the parties be admitted to profit by the extension in an equal degree.

25. Members of the tribunal may not be represented by substitutes; all vacancies shall be filled up as in the first appointment, provision being made in the Agreement for the appointment by the respective States, parties to the Agreement, of new members to fill the place of those who may cease to be members by retirement or death.

26. A submission to Arbitration is determined by the expiration of the period of time fixed by the Agreement, by the conclusion between the parties themselves of a direct arrangement, or, finally, by the delivery of the award, which should be given within the time fixed in the Agreement.

27. The intervention of a third party is not admissible, except with the consent of the parties in the case. But on the settlement of the issues, the tribunal should possess the power to permit the intervention of third parties on due and sufficient cause being shown that their interests are affected, or likely to be affected, by any decision the tribunal may arrive at, and on its decision on the main issue between the original parties to the dispute, the tribunal should be empowered to make such terms as regards such intervening parties as will safeguard their interests.

28. Cross claims may not be brought before the tribunal unless they have been submitted to it by the Agreement, or the parties concur in submitting them to its decision.

29. The tribunal may, before giving a formal award, and at any convenient point, make equitable propositions to the contending parties with a view to settlement, it being understood that such proposals have no judicial character.

30. The award must be in conformity with the principles of existing International Law, as established between, or accepted

par lui-même, à condition que toutes les parties soient admises à en profiter en mesure égale.

25. Les arbitres ne peuvent être substitués ; pour remplacer les arbitres, on doit observer les formes et les conditions adoptées pour leur nomination ; il sera pourvu dans le compromis que de nouveaux membres soient choisis par les Etats, parties au compromis, pour remplacer les arbitres empêchés de remplir leurs fonctions par suite de décès ou de résiliation.

26. L'arbitrage prend fin, soit à l'expiration du délai stipulé dans le compromis, soit par la conclusion entre les parties en cause d'un arrangement direct, soit enfin par le prononcé de la sentence, qui doit être rendue dans le délai fixé par le compromis.

27. L'intervention d'un tiers n'est admissible qu'avec le consentement des parties en cause. Mais dans ses exposés, le tribunal peut permettre l'intervention de tierces parties lorsqu'il est évident pour lui que leurs intérêts sont ou seront vraisemblablement mis en cause par le jugement qui sera rendu, et, dans la décision sur la partie essentielle du litige entre les litigants primitifs, il a le droit de faire des stipulations en vue de sauvegarder les intérêts des intervenants.

28. Les demandes reconventionnelles ne peuvent être portées devant le tribunal que si elles lui sont déférées par le compromis, ou que les parties sont d'accord pour les soumettre à sa décision.

29. Le tribunal arbitral peut, avant de rendre sa sentence, et lorsqu'il le croit utile, faire aux parties des propositions équitables dans le but d'arriver à une transaction ; mais il est bien entendu qu'il agit en dehors de ses fonctions proprement dites.

30. Les arbitres, pour prononcer leur sentence, doivent se conformer aux principes du droit international existant, tel qu'il

by, the contending parties; with general International Law, or, in other instances, with that National Law which appears applicable according to the precepts of International Law.

31. The award must be given by a majority of votes, unless it is expressly stipulated in the Agreement that unanimity is indispensable; whether this majority shall be relative or absolute is a point to be settled by the tribunal itself, the whole of which is bound by the majority.

32. The award should be made in the form of a written document, prepared in duplicate, and formally delivered to the Agents of the parties affected thereby.

33. The points submitted to Arbitration, once the decision has been formally given, cannot be reconsidered without a new Agreement.

34. The Award is obligatory and without appeal; but its execution does not lie within the functions of the tribunal, that being a matter for the contending parties alone.

35. The decision of the tribunal, however, has for the contending parties the effect of a regular transaction, and binds them for the same reasons and on the same conditions as Treaties. They are, therefore, honourably to execute it as they would a Treaty by which they themselves had settled their respective rights as the Arbitrators have done for them.

36. But its reconsideration by the same tribunal may be demanded if the judgment has been based upon any erroneous or false document, or is the result of an error arising in the course of the trial.

37. An arbitral decision may be disregarded in the following cases:—

1. When the tribunal has clearly exceeded the powers given to it by the instrument of submission.

est établi entre les parties par les traités ou la coutume ; le droit international général ; et aux points en litige d'une autre nature, le droit national qui paraît applicable d'après les préceptes du droit international.

31. Le jugement doit être rendu à la majorité des voix, à moins que, dans les conditions de l'arbitrage, on n'ait expressément déterminé que l'unanimité serait indispensable.

Le tribunal décidera si la majorité doit être relative ou absolue. La majorité lie le tribunal entier.

32. La décision sera rendue sous la forme de sentence écrite, en double exemplaire ; ceux-ci seront remis aux mandataires des parties.

33. On ne pourra pas admettre de demandes de correction ou de revision de la sentence sans une nouvelle convention.

34. La sentence est obligatoire et sans appel, mais les arbitres ne peuvent disposer d'aucun moyen pour contraindre les parties à s'y conformer. L'exécution de la sentence sera l'affaire des parties contestantes.

35. La décision des arbitres a pour les parties les effets d'une transaction régulière, et elle les oblige par les mêmes raisons et aux mêmes conditions que les traités ; elles sont tenues de l'exécuter comme elles feraient d'un traité par lequel elles régleraient leurs droits respectifs comme l'ont fait les arbitres.

36. Mais il est reconnu le droit d'en demander la revision devant le même tribunal, si on a jugé sur un document faux ou erroné, ou si la sentence a été l'effet d'une erreur quelconque dans le procès.

37. La sentence arbitrale est nulle dans les cas suivants :

1. Lorsque le tribunal a éprouvé un excès de pouvoir ;

2. When it is guilty of an open denial of justice.
3. When its award is proved to have been obtained by fraud or corruption.
4. And when the terms of the award are equivocal.
5. Some authorities add that the decision may also be disregarded if it is absolutely contrary to the rules of justice or International Law.

38. The cost of maintaining the tribunal shall be borne *pro rata* by the States concurring in its organisation. The cost of any particular reference to Arbitration shall be borne by the contending parties in equal shares; unless the award includes the payment of costs.

39. A permanent tribunal, besides hearing and deciding judicially matters in difference, should be empowered, at the instance of any two or more nations, to express an extra-judicial opinion on any question of law or interpretation of Treaties, with the object of preventing differences arising in the future.

40. It should also be ready, in view of conferences or congresses of Sovereigns and Statesmen, to suggest modifications and alterations with reference to International Law on points of difference which remain unsettled, and on which conflict of opinion may exist.

2. Lorsque la teneur de la sentence est absolument contraire aux règles de la justice ;
3. Lorsque la sentence a été obtenue par fraude ou corruption ;
4. Lorsque les termes de la sentence sont équivoques ;
5. Selon quelques autorités : lorsque la sentence est absolument contraire aux règles de justice ou de droit international.

38. Chacun des Etats contractants contribuera, dans des proportions à déterminer, aux frais du tribunal. Les frais de chaque procédure seront supportés par chacune des nations litigantes, par parts égales, à moins que le jugement ne comprenne le paiement des frais.

39. Outre le devoir de trancher par voie juridique les litiges qui lui sont soumis, le tribunal aura celui d'exprimer, sur la demande de deux ou plusieurs nations, son opinion sur des questions de droit ou sur l'interprétation de traités, en vue de prévenir des litiges dans l'avenir.

40. Il devra aussi se préparer à faire des propositions aux conférences ou congrès de souverains et d'hommes d'Etat, pour des modifications aux lois internationales sur des points qui n'ont pas encore été réglés, et sur lesquels les opinions diffèrent.

RULES RELATING TO A TREATY OF INTERNATIONAL ARBITRATION.

Prepared by the Special Committee of the International Law Association, appointed in London 10th October, 1893, and revised by the Conference at Brussels, 1st and 2nd October, 1895.

1. Unless it be intended that all possible differences between the nations, parties to the Treaty, are to be referred to Arbitration, the class of differences to be referred must be defined.
2. If the Agreement for Arbitration does not specify the number and names of the Arbitrators, the Tribunal of Arbitration shall be constituted according to rules prescribed by that Agreement or by another Convention.
3. If the Tribunal is to be specially constituted, the place of meeting must be fixed. This should be outside the territories of the parties to the controversy.
4. If the Tribunal consists of more than two members, provision should be made for the decision of all questions by a majority of the Arbitrators; but the dissentient members should have the right of recording their dissent.
5. Each party should be required to appoint an agent to represent it in all matters connected with the Arbitration.
6. The Treaty should provide that if doubts arise as to whether a given subject of controversy be comprised among those agreed upon as subjects of Arbitration in it, and if one of the parties require the doubt to be settled by Arbitration, the other party must submit to such Arbitration, but may require that the judgment be limited to the admissibility of the demand for Arbitration.
7. Unless the Treaty otherwise provide, the procedure should be by case, counter-case, and printed argument, each delivered by both parties simultaneously at a fixed date, with final oral argument. The periods of time allowed for the delivery of cases, counter-cases, and printed arguments should be fixed by the Treaty, but the Tribunal should have the power of extending the time. The Tribunal itself should fix the time for hearing the oral argument.

RÈGLES POUR SERVIR À L'ÉLABORATION D'UN TRAITÉ D'ARBITRAGE INTERNATIONAL

Etablie par un Comité Spécial de l'Association de Droit International constitué à Londres le 10^{me} Octobre 1893, révisées par le Congrès de Bruxelles le 1^{er} et 2^m: Octobre 1895.

1. La nature des contestations qui seront soumises à l'arbitrage, devra être déterminée, à moins toutefois qu'il ne soit convenu entre les nations, parties au traité, que toute contestation, quelle qu'elle soit, surgissant entre elles, relèvera du tribunal arbitral.

2. A défaut de désignation, dans le compromis, du nombre et des noms des arbitres, le tribunal arbitral sera composé selon les prescriptions du compromis ou d'une autre convention.

3. Si un tribunal spécial doit être constitué, le lieu de sa réunion sera fixé en dehors du territoire des nations en cause.

4. Au cas où le tribunal comprendrait plus de deux membres, des dispositions spéciales devront être prises pour que la décision de toutes les questions soient tranchées à la majorité des arbitres. Mais la minorité aura le droit de faire consigner son dissentiment.

5. Chaque partie sera invitée à désigner un mandataire pour la représenter pour tout ce qui pourrait toucher à l'arbitrage.

6. Au cas où un doute s'élèverait sur le point de savoir si tel sujet donné de contestation est compris parmi ceux soumis à l'arbitrage, et où l'une des parties demanderait que ce doute fût tranché par arbitrage, le traité prévoira que l'autre partie devra accepter le dit arbitrage, sauf le droit pour elle de réclamer que le jugement à intervenir soit restreint à la recevabilité de cette demande d'arbitrage.

7. A moins de disposition contraire dans le traité, la procédure consistera en un exposé de la demande, une réponse et des mémoires imprimés produits par les deux parties, concurremment, à la date déterminée; elle se terminera par un débat oral. Le délai pour produire la demande, la réponse et les mémoires imprimés sera fixé par le traité, mais le tribunal aura le pouvoir de proroger le délai. Le tribunal lui-même fixera la date du débat oral.

8. Either party should be entitled to require production of any document in the possession or under the control of the other party, which in the opinion of the Tribunal is relevant to a question in dispute, and to the production of which there is, in its opinion, no sufficient objection.

9. Neither party should be entitled to put in evidence documents (hereinafter called "domestic documents") which, having existed, or purporting to have existed, before the difference arose, were in possession of or known by one party or its predecessors in title, and not communicated to the other party or its predecessors in title before the difference arose.

10. Solemn written statements made by a witness before a public officer should be admissible in evidence as proof of relevant facts, subject to the right hereinafter mentioned of cross-examining the witness. The value of such statements would be for the Tribunal to determine.

11. Either party should be entitled to require the other to produce, for oral examination before the Tribunal at the hearing, any witness making on behalf of that other party such a statement as is mentioned in Article 10, whether the witness be amenable to the jurisdiction of the other party or not. When a witness cannot be produced before the Tribunal, the Tribunal may commission the judicial authorities exercising jurisdiction over the place of the witness's domicile to hold the necessary cross-examination. If it is found impossible to procure the attendance of the witness for cross-examination, it shall be open to the Tribunal to reject his evidence.

12. Irrelevant evidence, domestic documents, and the statements of witnesses not produced for oral examination though required, may, on the application of the party against which they are adduced, be expunged by the Tribunal; and the Tribunal, on a like application, should be at liberty to direct the reprinting of any volume of case, counter-case, printed argument, or appendix, in which the same should appear or be discussed.

13. The decision should be embodied in a written award in duplicate, made and delivered to the agents within a specified time from the close of the hearing. Interlocutory judgments or orders need not be published, but shall be notified to the agents of the parties.

8. Chacune des parties en cause aura le droit d'exiger la production de tout document qui sera en sa possession ou à sa disposition, que le tribunal jugera pertinent à la cause et à la production duquel il ne trouvera pas d'objection suffisante.

9. Aucune des parties ne pourra apporter comme preuve des documents qualifiés ci-dessous "écrits privés," qui, ayant existé ou étant présumé avoir existé avant que le différend ne surgît auraient été en la possession ou à la connaissance d'une des parties ou de ses auteurs et qui n'auraient pas été communiqués à l'autre partie ou à ses auteurs avant que la contestation ne surgît.

10. Les dépositions écrites faites par un témoin devant un officier public pourront être admises comme preuve des faits pertinents, sauf le droit mentionné plus bas de faire contre-examiner le témoin. Le tribunal appréciera la valeur de ces dépositions.

11. Chaque partie aura le droit d'exiger que l'autre partie produise, pour être interrogé oralement devant le tribunal, tout témoin ayant fait en faveur de cette partie la déposition prévue à l'art. 10, que ce témoin soit ou non justiciable des cours et tribunaux de la dite partie. Si un témoin ne peut être produit devant le tribunal, celui-ci aura la faculté de charger l'autorité judiciaire ayant juridiction au lieu du domicile du témoin pour procéder au contre-interrogatoire. Au cas où il serait impossible d'amener le témoin pour être contre-examiné, le tribunal aura la faculté de repousser la déposition.

12. A la demande de la partie contre laquelle ils sont produits, le tribunal peut rejeter toute preuve non pertinente, tous écrits privés, ainsi que les dépositions de témoins qui n'auront pas été soumis à l'interrogatoire oral, quoique cette formalité ait été requise; à la même requête, le tribunal aura la faculté de faire réimprimer tous exposés de demandes, réponses, mémoires imprimés ou annexes, dans lesquels ceux-ci seraient produits ou discutés.

13. La décision sera rendue sous la forme de sentence écrite, en double exemplaire; ceux-ci seront remis aux mandataires des parties dans un délai déterminé qui courra à partir de la clôture des débats. Les jugements et ordonnances interlocutoires ne seront pas publiés; mais ils seront notifiés aux mandataires des parties.

RULES RELATING TO A PERMANENT TRIBUNAL
OF INTERNATIONAL ARBITRATION.

Prepared by the Special Committee of the International Law Association, appointed in Brussels, 2nd October, 1895, and accepted by the Conference at Buffalo, U.S.A., 31st August, 1899

1. A permanent High Court of International Arbitration shall be formed by any number of Independent States associating themselves together for the purpose.

2. This High Court shall undertake the settlement of International disputes by means of Arbitration, and the Contracting Parties shall bind themselves to submit to its decision all the disputes, whatever be their nature or cause, which may arise between them, when such cannot be adjusted in a friendly way by the ordinary course of diplomacy.

3. The Court shall be composed of a given equal number of Members, nominated by each State, and any State afterwards acceding to the Court shall thereupon nominate its quota of members.

4. The appointment of the Members of the Court shall be for life, or for a definite number of years. In the event of death, bodily or mental incapacity, or resignation of a Member, the State by which he was appointed shall fill up the vacancy within six months.

5. If a State for some grave cause desires to remove one of its Members, it shall notify his proposed removal, with the cause,

RÈGLEMENTS ET STATUTS RELATIFS À LA CRÉATION
D'UN TRIBUNAL PERMANENT D'ARBITRAGE
INTERNATIONAL.

Etablis par un Comité Spécial de l'Association de Droit International constitué à Bruxelles le 2 Octobre 1895, acceptées par le Congrès de Buffalo, E.U.A., le 31 Août 1899.

1. La Haute Cour permanente d'Arbitrage international sera établie par l'entente spéciale de deux ou de plusieurs Etats indépendants.

2. La Haute Cour se charge du règlement des différends internationaux par la voie d'arbitrage. Les parties contractantes s'engageront à soumettre à son jugement tous les litiges, qu'elles qu'en soient la nature et la cause qui viendraient à surgir entre elles, si l'on n'a pu les régler à l'amiable par des négociations diplomatiques ordinaires.

3. Tous les Etats nommeront le même nombre de membres (nombre à déterminer) devant siéger à la Haute Cour. Tout Etat qui entre plus tard dans l'Association nommera, dès son accession, son contingent de représentants.

4. Les membres de la Haute Cour seront nommés à vie ou pour une période à déterminer. Au cas où l'un des membres vient à mourir ou à se démettre de ses fonctions, ou se trouve par suite d'incapacité mentale ou physique dans l'impossibilité de siéger, l'Etat nominateur devra, dans les six mois qui suivront, pourvoir à son remplacement.

5. Si, pour un motif grave, un Etat voulait retirer le mandat de l'un de ses Représentants, le fait motivé sera porté à la connaissance de tous les autres Etats contractants. Et si dans le délai

to the other States, and the removal shall take effect, unless some other contracting State shall within one month protest against it.

6. In lieu of appointing permanent Members the contracting States may agree that their Members be appointed as occasion for their action arises. But in that case they shall be chosen from among the higher judicial officers of the appointing State.

7. Members shall not be represented by substitutes.

8. The Court, when its Members are appointed, shall organise itself by choosing a President and a Vice-president from among its Members, and shall appoint such officers and attendants as it may require.

9. The Court thus constituted shall have power to fix and vary its place of meeting, and the place of its permanent office (bureau). It shall make its own rules of procedure, and shall especially give its attention to the establishment and development of a system or code of International Law, which shall have a recognised authority. Its office shall have care of the archives, and the conduct of all administrative business.

10. It may also establish general rules for practice and procedure before the Commissions or Tribunals appointed by it, as hereinafter provided, for the hearing of any controversy submitted under the provision of these rules.

11. Controversies arising between any two or more of the contracting States shall be by those States referred to the Court by a Special Treaty, which shall clearly and definitely state the object and scope of the litigation, bind the parties to place at the disposal of the Court all means in their power for the elucidation of the case, and shall also contain a stipulation to the effect that all the parties to the Agreement shall abide by the rules and regulations of the Court, and loyally execute whatever Award it may give in regard to the said controversy. Any State, though not a Contracting State, can apply to the Court, under the conditions prescribed by the Court's rules of procedure.

d'un mois, à partir de la dite notification, aucune réclamation ou protestation ne parvient au Gouvernement nominateur, la révocation aura son plein effet.

6. Au lieu de membres permanents, les Etats contractants peuvent, par arrangement général, nommer des membres temporaires désignés au fur et à mesure des besoins. En ce cas, les Représentants seront choisis parmi les magistrats de l'ordre le plus élevé de l'Etat nominateur.

7. Les arbitres ne pourront se faire remplacer par des substituts.

8. Sitôt réunie, la Cour devra choisir dans son sein un Président et un Vice-Président, lesquels nommeront à leur tour tels fonctionnaires et employés qu'ils jugeront convenable.

9. La Cour, ainsi constituée, aura le droit de désigner et changer le lieu de ses délibérations et le siège de son bureau. La Cour établira elle-même sa procédure et donnera tous ses soins à l'élaboration d'un Code de Droit International. Ce Code jouira d'une autorité incontestée. Le Bureau aura charge des Archives de la Cour et gèrera les affaires purement administratives.

10. Elle peut aussi établir des règlements de procédure pour toutes les Commissions et Tribunaux constitués par elle, ainsi qu'il le sera expliqué ci-après, pour l'arbitrage des différends à elle soumis en conformité des présentes dispositions.

11. Dès qu'il surgira un différend entre deux ou plusieurs des Etats contractants, ces Etats en déféreront le règlement à la Cour, en vertu d'une Convention spéciale (ou Compromis), laquelle spécifiera, clairement et distinctement, la cause et l'objet du différend. Par le Compromis les Etats s'engageront à placer devant la Cour tous les documents concernant l'affaire en question. Elle contiendra aussi l'engagement spécial d'accepter comme final l'arrêt de la Cour et d'en assurer l'exécution. Tout Etat, bien que non contractant, peut s'adresser à la Cour dans les conditions prescrites par les règlements de procédure de la Cour.

12. No question shall be revived by virtue of this Treaty, concerning which a definite Agreement shall already have been reached. In such cases Arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation, or enforcement of such Agreement.

13. When a controversy is to be adjudicated upon by the High Court, it shall be referred to a Special Commission or Delegation of the whole body, hereinafter styled the Arbitral Tribunal.

14. The Arbitral Tribunal is thus composed :—

(a) If the controversy is between two States only, each State chooses from among the Members of the High Court an equal number of arbitrators, one or more, as may be agreed upon by the Special Treaty.

(b) If three are parties to the controversy, and two have a common interest, the third State shall choose as many Arbitrators as the two other States together; and the same principle shall apply whenever there is an inequality in the number of States taking part on either side of the controversy.

(c) It shall be left to the Special Treaty (or Agreement) to determine whether a State shall or shall not choose its own Members of the High Court as its Arbitrators, or some of its Arbitrators.

(d) The other Members of the High Court shall then choose from among themselves, or otherwise, one additional Arbitrator.

(e) If, by reason of the fact that all the States are parties to the controversy there are no other Members of the High Court, one additional Arbitrator must be chosen from outside by the other Arbitrators, or he shall be chosen by virtue of some provision in the Special Treaty.

(f) The provisions of Article 5 shall be applied to the additional Arbitrator. He shall be Chairman *de jure* of the Tribunal.

15. When the Arbitrators are chosen, either one of the Con-

12. Le Compromis n'aura l'effet de réouvrir aucune affaire, qui aurait déjà été l'objet d'un arrangement préalable, si ce n'est pour soumettre à l'arbitrage la validité, l'interprétation, ou la mise en exécution du dit arrangement.

13. Tout différend dont la Cour sera saisie devra, être déféré à une Commission prise dans son sein et appelée le Tribunal Arbitral.

14. Ce Tribunal est ainsi composé :

(1°) Dans le cas d'un différend entre deux Etats, chacun choisira parmi les membres de la Haute Cour, un nombre égal de représentants, un ou plusieurs, selon ce qui aura été stipulé dans le Compromis.

(2°) Si le différend concerne trois Etats et que deux se trouvent avoir, dans la circonstance des intérêts identiques, le troisième Etat nommera autant de délégués à lui seul que les deux autres Etats réunis, et le même principe sera appliqué toutes les fois qu'il y aura inégalité dans le nombre des Etats formant les deux parties du différend.

(3°) Le Compromis spécifiera si chaque Etat pourra choisir ses délégués en totalité ou en partie parmi ses propres représentants près la Haute Cour.

(4°) Les représentants des divers Etats, non engagés dans l'affaire en question, désigneront un délégué additionnel pris parmi eux ou choisi en dehors de la Cour.

(5°) Dans le cas où le différend concernerait tous les Etats représentés à la Haute Cour, on pourvoirait à la nomination d'un délégué additionnel choisi en dehors de la Cour par les autres délégués ou bien choisi en vertu d'un arrangement spécialement mentionné dans le Compromis.

(6°) Les dispositions de l'article 5 s'appliquent au délégué additionnel. Le délégué additionnel sera de droit président du Tribunal Arbitral.

15. Sitôt que la nomination des délégués est bien et dûment

tracting Parties may take the initiative in calling them together, while inviting the other party, or parties, to join them in taking the necessary steps. The express or tacit refusal to provide for the formation, or the first convocation, of the Arbitral Tribunal shall be considered tantamount to a withdrawal from the Treaty by the State which thus refuses ; so that it shall no longer be able to profit thereby when it may choose to appeal to it.

16. If the Arbitral Tribunal is formed expressly for a particular dispute, its place of meeting will be arranged for in the Agreement, or decided by the Arbitrators themselves, and should be outside the territory of the parties to the controversy.

17. Its Members, at their first meetings, shall take the necessary steps for the constitution of the Arbitral Tribunal by the election of the officers and servants, and for the proper conduct of its business, according to the rules of procedure, which may be already established, or which it shall determine for itself.

18. Where the course of procedure is not prescribed in the Agreement, or by the Court (Rule 10) it is understood that the Arbitral Tribunal will determine it for itself.

19. The Arbitral Tribunal, when constituted, forms an independent body, having a distinct judicial authority ; it is, therefore, not bound by the previous decrees of any other Tribunal, on the questions submitted to its jurisdiction ; and although nominated by Governments, its Members are in no sense to be regarded as the representatives, subjects, or mouthpieces, of Governments.

20. It should be treated as a diplomatic mission of the first rank, both as to the honours to be paid to its Members, the immunities which they enjoy, and the protection afforded to them in the exercise of their functions.

faite, l'une des deux parties peut prendre l'initiative de leur convocation en invitant l'autre ou les autres parties à s'unir à elle à cet effet. Tout refus tacite ou exprimé de concourir à la formation, ou convocation, du Tribunal Arbitral, équivaut à la radiation de l'Etat qui refuse de la liste des Etats contractants ; cet Etat sera dès lors exclus de toute participation aux avantages de la Haute Cour au cas où il lui plairait plus tard de faire appel à ses décisions.

16. Si le Tribunal Arbitral est convoqué à seule fin de régler un litige spécial, le Compromis désignera le lieu de réunion du Tribunal. Le choix du lieu de réunion peut être laissé à la décision des délégués. En tout cas les assises du Tribunal devront se tenir hors du territoire des parties.

17. Dès leur première réunion les membres du Tribunal auront soin de pourvoir à l'élection de son bureau, et à la solution des différentes questions en conformité des règlements de procédure déjà existants au moment de la convocation du Tribunal, ou bien de ceux qu'il jugerait opportuns dans la circonstance.

18. En tant que la procédure n'aura pas été déterminée, soit par le Compromis soit par la Haute Cour, le Tribunal déterminera lui-même son mode de sa procédure.

19. Dès le moment de sa constitution, le Tribunal forme un corps indépendant, d'une compétence judiciaire distincte ; et dans les questions, soumises à sa juridiction, il n'est donc pas lié par les décisions d'aucun autre tribunal, et ses membres, bien que nommés par les Gouvernements, ne peuvent être considérés sous aucun rapport comme les représentants, sujets, ou avocats de leurs Gouvernements respectifs.

20. En ce qui concerne les honneurs, immunités, privilèges et protection à eux dûs, pendant l'exercice de leurs fonctions, les membres du Tribunal seront assimilés aux diplomates de premier ordre.

21. The Arbitral Tribunal has jurisdiction to decide on the regularity of its constitution, and on the validity and interpretation of the reference to itself.

22. In any case where doubts arise as to the scope of the reference, the terms of the Agreement must be interpreted in the widest sense.

23. The Agent appointed by each of the parties in the case shall watch over its interests or the interests of those under its jurisdiction, and undertake their defence; and shall present the case, counter-case, and printed argument and proofs.

24. Rules of procedure cannot be modified or annulled except with the consent of all parties, if they were fixed in the Arbitration Agreement, or with the consent of the majority of the Members if they were framed by the Court, or by the Arbitral Tribunal itself. The interpretation of these rules, or additions to them, may always be decided by a simple majority of votes.

25. Any periods of time fixed by the Arbitral Tribunal may be prolonged by it provided that all the parties be admitted to profit by the extension in an equal degree.

26. The Arbitral Tribunal cannot avail itself of the services of Experts, except with the approval of all parties, or by a unanimous vote of its Members.

27. A submission to Arbitration is determined by the expiration of the period of time fixed by the Agreement, by the conclusion between the parties themselves of a direct arrangement, or, finally, by the delivery of the Award, which should be given within the time fixed in the Agreement.

28. The intervention of a third party is not admissible, except with the consent of the parties in the case. But on the settlement

21. Le Tribunal Arbitral est juge compétent de la régularité de sa constitution, et de la validité et interprétation de son mandat.

22. Au cas où l'étendue de son mandat ne serait pas clairement et distinctement spécifiée, les articles du Compromis seront interprétés dans leur sens le plus large.

23. Le chargé d'affaires nommé par chacune des parties prendra soin des intérêts de la partie qui l'aura nommé, ou des clients de cette partie ; il se chargera de leur défense, établira le dossier de l'affaire, présentera leurs arguments, fournira les imprimés et autres documents s'y rapportant au Tribunal Arbitral.

24. Les Règlements de Procédure établis par le Compromis ne peuvent être modifiés ou annulés que par le consentement des toutes les parties, ou sans la majorité des voix des membres s'ils étaient établis par la Cour, ou par le Tribunal. Leur interprétation ou les additions désirables sont laissées à la majorité simple du Tribunal.

25. Le Tribunal Arbitral sera libre d'étendre toute période de temps préalablement fixée par lui, pourvu que l'extension soit à l'avantage commun et égal de toutes les parties.

26. Le Tribunal ne peut faire appel aux lumières et connaissances spéciales d'Experts, si ce n'est avec l'approbation de toutes les parties ou bien par un vote unanime de ses membres.

27. La soumission d'un différend à l'Arbitrage devient de nulle valeur quand la période de temps fixée par le Compromis est expirée, quand les parties se sont mises d'accord par un arrangement direct, ou par le fait même de la sentence arbitrale du Tribunal, sentence qui doit être rendue dans la limite de temps spécifiée dans le Compromis.

28. L'intervention d'un tiers n'est admissible que si toutes les parties consentent.

of the issues, the Arbitral Tribunal shall possess the power to permit the intervention of third parties on due and sufficient cause being shown that their interests are affected, or likely to be affected, by any decision the Tribunal may arrive ; at and on its decision on the main issue between the original parties to the dispute, the Tribunal shall be empowered to make such terms in regard to such intervening parties as will safeguard their interests.

29. Cross claims may not be brought before the Arbitral Tribunal unless they have been submitted to it by the Agreement, or the parties concur in submitting them to its decision.

30. The Award must be given by a majority of votes, unless it is expressly stipulated in the Agreement that unanimity is indispensable ; whether this majority shall be relative or absolute is a point to be settled by the Arbitral Tribunal itself, the whole of which is bound by the majority.

31. Both the High Court and the Tribunals appointed from it shall keep an exact record, and shall preserve correct and dated minutes or notes, of all their proceedings.

32. The cost of maintaining the Court shall be borne equally by all the States concurring in its creation and maintenance. The cost of any particular reference to Arbitration shall be borne by the contending parties in equal shares (each, however, bearing the cost of preparing and presenting its own case, counter-case, and printed argument), unless the Award includes the payment of costs.

Cependant dans les cas où l'arrêt du Tribunal affecterait les intérêts d'un tiers, le Tribunal, après preuve faite par ce dernier de l'effet probable de la sentence arbitrale sur les dits intérêts, pourra admettre l'intervention. Dans ces cas, le Tribunal, en rendant sa sentence définitive entre les parties, pourra leur imposer les conditions qu'il jugera nécessaires pour sauvegarder les intérêts de ces tiers.

29. Aucune contre-réclamation ne sera admise devant le Tribunal Arbitral, à moins qu'elle n'ait été mentionnée dans le Compromis, ou bien que les parties en soient d'accord pour la soumettre aux décisions du Tribunal.

30. La sentence arbitrale doit être rendue à la majorité des voix, à moins que le Compromis ne demande expressément l'unanimité; la question de savoir si la majorité devra être absolue ou relative, est un point laissé à la discrétion du Tribunal lui-même, qui est, en tant que Corps, lié par le vote de la majorité.

31. La Haute Cour et les Tribunaux dresseront des procès-verbaux de toutes leurs réunions, délibérations, minutes ou comptes-rendus. Leurs actes et décisions seront dûment datés et conservés.

32. Les frais de la Haute Cour seront à la charge de tous les Etats contractants, chacun supportant une part égale. Les frais des cas soumis à l'arbitrage seront à la charge et par partie égale des Etats intéressés, à moins que la sentence arbitrale ne règle la question. Cependant, chaque Etat supportera les frais de préparation et de présentation de son dossier, de sa cause, de ses réclamations, documents imprimés et autres.

THE HAGUE PEACE CONFERENCE, 1899.

CONVENTION FOR THE PEACEFUL REGULATION
OF INTERNATIONAL CONFLICTS.

As the Convention will have to remain open for signature until the 31st December, 1899, the Contracting Powers and their Plenipotentiaries will, until this date, append their signatures according to the following order, adopted by the Conference at its plenary sitting of the 28th July, 1899:—

His Majesty the Emperor of Germany, King of Prussia ; His Majesty the Emperor of Austria, King of Bohemia, &c., and King Apostolic of Hungary ; His Majesty the King of the Belgians ; His Majesty the Emperor of China ; His Majesty the King of Denmark ; His Majesty the King of Spain, and, *in his name*, Her Majesty the Queen Regent of the Realm ; the President of the United States of America ; the President of the United States of Mexico ; the President of the French Republic ; Her Majesty the Queen of Great Britain and Ireland, Empress of India ; His Majesty the King of the Hellenes ; His Majesty the King of Italy ; His Majesty the Emperor of Japan ; His Royal Highness the Grand Duke of Luxembourg, Duke of Nassau ; His Highness the Prince of Montenegro ; Her Majesty the Queen of the Netherlands ; His Imperial Majesty the Shah of Persia ; His Majesty the King of Portugal and Algarves, &c. ; His Majesty the King of Roumania ; His Majesty the Emperor of all the Russias ; His Majesty the King of Servia ; His Majesty the King of Siam ; His Majesty the King of Sweden and Norway ; The Swiss Federal Council ; His Majesty the Emperor of the Ottomans ; and His Royal Highness the Prince of Bulgaria.

Animated by a strong desire to co-operate for the maintenance of general Peace ;

LA CONFERENCE DE LA PAIX.

LA HAYE, 1899.

CONVENTION POUR LE RÈGLEMENT PACIFIQUE DES CONFLITS INTERNATIONAUX.

La Convention devant rester ouverte à la signature jusqu'au 31 décembre 1899, les Puissances Contractantes et Leurs Plénipotentiaires seront inscrits à cette date conformément à l'ordre suivant, adopté par la Conférence dans sa séance plénière du 28 juillet 1899 :

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse ; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie ; Sa Majesté le Roi des Belges ; Sa Majesté l'Empereur de Chine ; Sa Majesté le Roi de Danemark ; Sa Majesté le Roi d'Espagne, et en Son Nom Sa Majesté la Reine-Régente du Royaume ; le Président des Etats-Unis d'Amérique ; le Président des Etats-Unis Mexicains ; le Président de la République Française ; Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes ; Sa Majesté le Roi des Hellènes ; Sa Majesté le Roi d'Italie ; Sa Majesté l'Empereur du Japon ; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau ; Son Altesse le Prince de Monténégro ; Sa Majesté la Reine des Pays-Bas ; Sa Majesté Impériale le Schah de Perse ; Sa Majesté le Roi de Portugal et des Algarves, etc. ; Sa Majesté le Roi de Roumanie ; Sa Majesté l'Empereur de Toutes les Russies ; Sa Majesté le Roi de Serbie ; Sa Majesté le Roi de Siam ; Sa Majesté le Roi de Suède et de Norvège ; le Conseil Fédéral Suisse ; Sa Majesté l'Empereur des Ottomans et Son Altesse Royale le Prince de Bulgarie.

Animés de la ferme volonté de concourir au maintien de la paix générale ;

Resolved to assist with all their efforts the friendly settlement of international disputes ;

Recognising the solidarity which unites the members of the Society of Civilised Nations ;

Wishing to extend the empire of law and to strengthen the sentiment of international justice ;

Convinced that the permanent institution of an Arbitral jurisdiction, accessible to all, in the midst of the independent Powers, may contribute effectively to this result ;

Considering the advantages of a general and regular organisation of Arbitral procedure ;

Deeming, with the August Initiator of the International Peace Conference, that it is of the utmost importance to embody in an international Agreement the principles of equity and of law on which repose the security of States and the welfare of peoples ;

And desiring to conclude a Convention for this purpose, have appointed the following as their Plenipotentiaries, viz. :

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Who, after having produced their full credentials, which have been found in proper and due form, have agreed upon the following provisions :

SECTION I.—THE MAINTENANCE OF GENERAL PEACE.

ART. 1.—In order to prevent, as far as possible, the recourse to force in the relations between States, the Signatory Powers agree to employ all their efforts to bring about the pacific adjustment of international differences.

SECTION II.—GOOD OFFICES AND MEDIATION.

ART. 2.—In case of grave disagreement or conflict, before appealing to arms, the Signatory Powers agree that they will have recourse, so far as circumstances permit, to the good offices or Mediation of one or more friendly Powers.

ART. 3.—Independently of this recourse, the Signatory Powers

Résolus à favoriser de tous leurs efforts le règlement amiable des conflits internationaux ;

Reconnaissant la solidarité qui unit les membres de la société des nations civilisées ;

Voulant étendre l'empire du droit et fortifier le sentiment de la justice internationale ;

Convaincus que l'institution permanente d'une juridiction arbitrale, accessible à tous, au sein des Puissances indépendantes peut contribuer efficacement à ce résultat ;

Considérant les avantages d'une organisation générale et régulière de la procédure arbitrale ;

Estimant avec l'Auguste Initiateur de la Conférence Internationale de la Paix qu'il importe de consacrer dans un accord international les principes d'équité et de droit sur lesquels reposent la sécurité des Etats et le bien-être des peuples ;

Désirant conclure une Convention à cet effet ont nommé pour Leurs plénipotentiaires, savoir :

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Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenues des dispositions suivantes :

TITRE I. — DU MAINTIEN DE LA PAIX GÉNÉRALE.

ARTICLE PREMIER. — En vue de prévenir autant que possible le recours à la force dans les rapports entre les Etats, les Puissances signataires conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

TITRE II. — DES BONS OFFICES ET DE LA MÉDIATION.

ART. 2. — En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances signataires conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

ART. 3. — Indépendamment de ce recours, les Puissances signa-

consider it useful that one or more Powers that are not concerned in the conflict should offer of their own initiative, so far as the circumstances lend themselves to it, their good offices or their Mediation to the contending States.

The Powers not concerned in the conflict have the right of offering their good offices or their Mediation even during the course of hostilities.

The exercise of this right can never be considered by either or the disputing parties as an unfriendly act.

ART. 4.—The function of Mediator consists in reconciling the opposing claims, and in appeasing the resentments which may be caused between the contending States.

ART. 5.—The duties of a Mediator cease from the moment when it is announced, either by one of the disputing parties, or by the Mediator himself, that the means of conciliation proposed by him are not accepted.

ART. 6.—Good offices and Mediation, whether at the request of the parties in conflict, or on the initiative of Powers taking no part therein, have exclusively the character of advice, and are devoid of any obligatory force.

ART. 7.—The acceptance of Mediation cannot have the effect, in the absence of an Agreement to the contrary, of interrupting, retarding, or hindering mobilisation and other measures preparatory to war.

If it (Mediation) is undertaken after the opening of hostilities, it will not, in the absence of an Agreement to the contrary, interrupt current military operations.

ART. 8.—The Signatory Powers agree to recommend the application, in circumstances which permit of it, of special Mediation in the following form :—

In the case of a grave disagreement endangering Peace, the contending States shall each choose one Power to which they may entrust the mission of entering into direct communication with the Power chosen by the other side, for the purpose of preventing the rupture of pacific relations.

taires jugent utile qu'une ou plusieurs Puissances étrangères au conflit, offrent de leur propre initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux Etats en litige.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des Parties en litige comme un acte peu amical.

ART. 4. — Le rôle du médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les Etats en conflit.

ART. 5. — Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ART. 6. — Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit ont exclusivement le caractère d'un conseil et n'ont jamais force obligatoire.

ART. 7. — L'acceptation de la médiation ne peut avoir pour effet, sauf convention contraire, d'interrompre, de retarder ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf convention contraire, les opérations militaires en cours.

ART. 8. — Les Puissances signataires sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante :

En cas de différend grave compromettant la Paix, les Etats en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

During the continuance of their mandate, the duration of which, unless the contrary is stipulated, cannot exceed 30 days, the disputing States cease all direct negotiation in reference to the subject of the dispute, which is to be considered as referred exclusively to the mediating Powers. These must apply all their efforts to arranging the difference.

In case of the actual rupture of pacific relations, these Powers remain charged with the common mission of profiting by every opportunity of re establishing Peace.

SECTION III.—INTERNATIONAL COMMISSIONS OF INQUIRY.

ART. 9.—In disputes of an international character, which involve neither their honour nor their essential interests, and which spring from a difference in their estimate of matters of fact, the Signatory Powers consider it useful that the Parties which have not been able to agree by diplomatic means, should institute, so far as circumstances will permit, an International Commission of Inquiry, entrusted with the duty of facilitating the settlement of these disputes by clearing up the questions of fact by means of an impartial and conscientious examination.

ART. 10.—International Commissions of Inquiry are constituted by Special Convention between the Parties in litigation. This Agreement of Inquiry shall specify the facts to be examined and the extent of the powers of the Commissioners.

It shall regulate the procedure of the Commission.

The inquiry proceeds by hearing the adverse parties.

The procedure and time allowed for the investigation, so far as they are not fixed by the Agreement of Inquiry, are determined by the Commission itself.

ART. 11.—International Commissions of Inquiry are to be formed, unless it is stipulated to the contrary, in the manner determined by Art. 32 of the present Convention.

ART. 12.—The disputing Powers undertake to furnish to the

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les Etats en litige cessent tout rapport direct au sujet du conflit lequel est considéré comme déferé exclusivement aux Puissances médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

TITRE III. — DES COMMISSIONS INTERNATIONALES D'ENQUÊTE.

ART. 9. — Dans les litiges d'ordre international n'engageant ni l'honneur ni les intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les Puissances signataires jugent utile que les Parties, qui n'auraient pu se mettre d'accord par les voies diplomatiques, instituent, en tant que les circonstances le permettront, une Commission internationale d'enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

ART. 10.—Les Commissions internationales d'enquête sont constituées par Convention spéciale entre les Parties en litige.

La Convention d'enquête précise les faits à examiner et l'étendue des pouvoirs des commissaires.

Elle règle la procédure.

L'enquête a lieu contradictoirement.

La forme et les délais à observer, en tant qu'ils ne sont pas fixés par la Convention d'enquête, sont déterminés par la Commission elle-même.

ART. 11. — Les Commissions internationales d'enquête sont formées, sauf stipulation contraire, de la manière déterminée par l'article 32 de la présente Convention.

ART. 12. — Les Puissances en litige s'engagent à fournir à la

International Commission of Inquiry, to the fullest extent that they shall consider possible, all the means and all the facilities necessary for the complete knowledge and exact appreciation of the facts in question.

ART. 13.—The International Commission of Inquiry shall present to the disputing Powers its report signed by all the members of the Commission.

ART. 14.—The report of the International Commission of Inquiry, being limited to the determination of matters of fact, has by no means the character of an Arbitral decision. It leaves the disputing Powers entire freedom as to the effect to be given to this determination.

SECTION IV.—OF INTERNATIONAL ARBITRATION.

I.—OF ARBITRAL JURISDICTION (*justice arbitrale*).

ART. 15.—International Arbitration has for its object the settlement of disputes between States by judges of their own choosing and on the basis of respect for Law.

ART. 16.—In questions of a judicial character, and especially in questions of the interpretation or application of International Treaties, Arbitration is recognised by the Signatory Powers as the most effective, and at the same time the most equitable, method of settling disputes which have not been determined by diplomacy.

ART. 17.—The Agreement to Arbitrate may be concluded for disputes already in existence, or for disputes about to arise (*contestations éventuelles*). It may deal with every sort of dispute or only with disputes of a specified category.

ART. 18.—The Arbitral Convention implies an engagement to submit in good faith to the Arbitral decision.

ART. 19.—Independently of general or special Treaties, which may already impose the obligation upon the Signatory Powers to have recourse to Arbitration, these Powers reserve to themselves

Commission internationale d'enquête, dans la plus large mesure qu'Elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

ART. 13. — La Commission internationale d'enquête présente aux Puissances en litige son rapport signé par tous les membres de la Commission.

ART. 14. — Le rapport de la Commission internationale d'enquête, limité à la constatation des faits, n'a nullement le caractère d'une sentence arbitrale. Il laisse aux Puissances en litige une entière liberté pour la suite à donner à cette constatation.

TITRE IV. — DE L'ARBITRAGE INTERNATIONAL.

Chapitre I. — De la Justice arbitrale.

ART. 15. — L'arbitrage international a pour objet le règlement de litiges entre les Etats par des juges de leur choix, et sur la base du respect du droit.

ART. 16. — Dans les questions d'ordre juridique et en premier lieu dans les questions d'interprétation ou d'application des conventions internationales, l'arbitrage est reconnu par les Puissances signataires comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

ART. 17. — La convention d'arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

ART. 18. — La convention d'arbitrage implique l'engagement de se soumettre de bonne foi à la sentence arbitrale.

ART. 19. — Indépendamment des traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbitrage pour les Puissances signataires, ces Puissances se réservent

the liberty to conclude, either before the ratification of the present Act, or afterwards, new Agreements, general or particular, with the object of extending obligatory Arbitration to all cases which they judge capable of being submitted to it.

II.—OF THE PERMANENT COURT OF ARBITRATION.

ART. 20.—For the purpose of facilitating immediate recourse to Arbitration for international differences which have not been settled by diplomatic means, the Signatory Powers engage themselves to organise a permanent Court of Arbitration, accessible at all times and working, except there be a contrary stipulation of the Parties, in conformity with the rules of procedure inserted in the present Convention.

ART. 21.—The permanent Court has competence in all cases of Arbitration, unless the Parties agree to establish a special jurisdiction.

ART. 22.—An International Bureau established at The Hague is to act as the clerk's office (*greffe*) of the Court.

This Bureau is to be the intermediary for the communication relative to the meetings of the latter.

It will have care of the archives and the conduct of all the administrative business.

The Signatory Powers pledge themselves to communicate to the International Bureau of the Hague a faithful and certified copy of every Arbitral stipulation agreed upon between them, and of all judgments which affect them resulting from arbitral jurisdictions other than that of the Court.

They pledge themselves to communicate also to the Bureau the laws and regulations, and the documents eventually announcing the execution of the judgments pronounced by the Court.

ART. 23.—Each of the Signatory Powers shall designate, in the course of the three months following the ratification by it of the present Act, four persons, at the most, of recognised competence

de conclure, soit avant la ratification du présent Acte, soit postérieurement, des accords nouveaux, généraux ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'Elles jugeront possible de lui soumettre.

Chapitre II. — DE LA COUR PERMANENTE D'ARBITRAGE.

ART. 20.—Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances signataires s'engagent à organiser une Cour permanente d'arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des Parties, conformément aux Règles de procédure insérées dans la présente Convention.

ART. 21.— La Cour permanente sera compétente pour tous les cas d'arbitrage, à moins qu'il n'y ait entente entre les Parties pour l'établissement d'une juridiction spéciale d'arbitrage.

ART. 22.—Un Bureau international établi à la Haye, sert de greffe à la Cour.

Ce Bureau est l'intermédiaire des communications relatives aux réunions de celle-ci.

Il a garde des archives et la gestion de toutes les affaires administratives.

Les Puissances signataires s'engagent à communiquer au Bureau international de la Haye, une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre elles et de toute sentence arbitrale les concernant et rendue par des juridictions spéciales.

Elles s'engagent à communiquer de même au Bureau, les lois, règlements et documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ART. 23.—Chaque Puissance signataire désignera, dans les trois mois qui suivront la ratification par elle du présent acte, quatre personnes au plus, d'une compétence reconnue dans les questions

in questions of international law, enjoying the highest moral reputation, and willing to accept the duties of Arbitrators.

The persons thus nominated will be entered, with the title of Members of the Court, on a list which will be communicated by the Bureau to all the Signatory Powers.

Every modification of the list of Arbitrators shall be brought to the notice of the Signatory Powers by the Bureau.

Two or more Powers may agree to nominate one or more members in common.

The same person may be nominated by different Powers.

The members of the Court are appointed for a term of six years. Their appointment may be renewed.

In case of the decease, or the retirement of a member of the Court, the vacancy will be filled in accordance with the method established for nomination.

ART. 24.—When the Signatory Powers desire to apply to the permanent Court for the settlement of a difference which has arisen between them, the choice of Arbitrators to form a Tribunal qualified to deal with such difference, should be made from the general list of the members of the Court.

Failing the constitution of an Arbitral Tribunal by the direct agreement of the Parties, the procedure shall be as follows:—

Each Party names two Arbitrators, and these together choose an Umpire.

In case of an equality of votes, the choice of an Umpire is entrusted to a third Power, designated by the common agreement of the Parties.

If an agreement is not reached on this subject, each Party shall select a different Power, and the choice of the Umpire shall be made by the united action of the Powers thus selected.

The Tribunal being thus composed, the Parties shall notify to the Bureau their decision to make application to the Court, and the names of the Arbitrators.

The Arbitral Tribunal shall meet on the date fixed by the Parties.

de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'arbitres.

Les personnes ainsi désignées seront inscrites, au titre de membres de la Cour, sur une liste qui sera notifiée à toutes les Puissances signataires par les soins du bureau.

Toute modification à la liste des arbitres est portée, par les soins du Bureau, à la connaissance des Puissances signataires.

Deux ou plusieurs Puissances peuvent s'entendre pour la désignation en commun d'un ou de plusieurs membres.

La même personne peut être désignée par des Puissances différentes.

Les membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

En cas de décès ou de retraite d'un membre de la Cour il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ART. 24.—Lorsque les Puissances signataires veulent s'adresser à la Cour permanente pour le règlement d'un différend survenu entre elles, le choix des arbitres appelés à former le Tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des membres de la Cour.

A défaut de constitution du Tribunal arbitral par l'accord immédiat des Parties, il est procédé de la manière suivante :

Chaque Partie nomme deux arbitres et ceux-ci choisissent ensemble un sur-arbitre.

En cas de partage des voix, le choix du sur-arbitre est confié à une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du sur-arbitre est fait de concert par les Puissances ainsi désignées.

Le Tribunal étant ainsi composé, les Parties notifient au Bureau leur décision de s'adresser à la Cour et les noms des arbitres.

Le Tribunal arbitral se réunit à la date fixée par les Parties.

The members of the Court shall enjoy diplomatic privileges and immunities, in the exercise of their functions, and outside their own Country.

ART. 25.—The Arbitral Tribunal shall usually sit at The Hague.

The place of its session can be changed by the Tribunal, except in case of *force majeure*, only with the consent of the Parties.

ART. 26.—The International Bureau at the Hague is authorised to place its offices and its staff at the disposal of the Signatory Powers for the performance of the duties of every special case of Arbitral jurisdiction.

The jurisdiction of the permanent Court may be extended, under the conditions prescribed by its Rules, to disputes existing between non-signatory Powers, or between Signatory Powers and those that are not signatory, if the Parties are agreed to have recourse to its jurisdiction.

ART. 27.—The Signatory Powers consider it a duty, in case a sharp conflict should threaten to break out between two or more of them, to remind these Powers that the permanent Court is open to them.

Consequently, they declare that the fact of reminding the Parties in conflict of the provisions of the present Convention and the advice given, in the higher interests of Peace, to apply to the permanent Court, can only be considered an exercise of Good Offices.

ART. 28.—A Permanent Administrative Council, composed of the diplomatic representatives of the Signatory Powers accredited to The Hague, and of the Minister for Foreign Affairs of the Netherlands, who shall discharge the functions of President, shall be constituted in that city as soon as possible after the ratification of the present Act by at least nine Powers.

Les membres de la Cour, dans l'exercice de leurs fonctions et en dehors de leur Pays, jouissent des privilèges et immunités diplomatiques.

ART. 25.—Le Tribunal arbitral siège d'ordinaire à La Haye.

Le siège ne peut, sauf le cas de force majeure, être changé par le Tribunal que de l'assentiment des Parties.

ART. 26.—Le Bureau international de La Haye est autorisé à mettre ses locaux et son organisation à la disposition des Puissances signataires pour le fonctionnement de toute juridiction spéciale d'arbitrage.

La juridiction de la Cour permanente peut être étendue dans les conditions prescrites par les Règlements, aux litiges existant entre des Puissances non signataires ou entre des Puissances signataires et des Puissances non signataires, si les Parties sont convenues de recourir à cette juridiction.

ART. 27.—Les Puissances signataires considèrent comme un devoir, dans le cas où un conflit aigu menacerait d'éclater entre deux ou plusieurs d'entre Elles, de rappeler à celles-ci que la Cour permanente leur est ouverte.

En conséquence, Elles déclarent que le fait de rappeler aux Parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt supérieur de la paix, de s'adresser à la Cour permanente ne peuvent être considérés que comme actes de Bons Offices.

ART. 28.—Un Conseil administratif permanent, composé des représentants diplomatiques des Puissances signataires accrédités à La Haye et du Ministre des Affaires Etrangères des Pays-Bas qui remplira les fonctions de Président, sera constitué dans cette ville le plus tôt possible après la ratification du présent Acte par neuf Puissances au moins.

This Council shall be charged with establishing and organising the International Bureau, which shall remain under its direction and under its control.

It shall notify the Powers of the constitution of the Court, and shall provide for its installation.

It shall determine its procedure, as well as all other necessary regulations.

It shall decide all administrative questions which may arise touching the official working of the Court.

It shall have absolute power as to the nomination, suspension, or dismissal of the functionaries and *employés* of the Bureau.

It shall fix their emoluments and salaries, and control the general expenditure.

The presence of five members, at meetings duly convoked, shall suffice to enable the Council to deliberate in valid form. Decisions are taken by a majority of votes.

The Council shall communicate without delay to the Signatory Powers the Rules adopted by it, and shall address to them each year a report on the labours of the Court, on the discharge of the administrative services, and on the expenditure.

ART. 29.—The expenses of the Bureau shall be borne by the Signatory Powers in the proportion established for the International Bureau of the Universal Postal Union.

III.—OF ARBITRAL PROCEDURE.

ART. 30.—With a view to promote the development of Arbitration the Signatory Powers have resolved on the following Rules, which shall apply to arbitral procedure so far as the Parties have not agreed on other rules.

ART. 31.—Powers which have recourse to Arbitration shall sign a special Agreement, or *compromis*, clearly defining the object of the dispute, as well as the extent of the powers of the Arbitrators. This Agreement implies an engagement by

Ce Conseil sera chargé d'établir et d'organiser le Bureau international, lequel demeurera sous sa direction et sous son contrôle.

Il notifiera aux Puissances la constitution de la Cour et pourvoira à l'installation de celle-ci.

Il arrêtera son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décidera toutes les questions administratives qui pourraient surgir touchant le fonctionnement de la Cour.

Il aura tout pouvoir quant à la nomination, la suspension ou la révocation des fonctionnaires et employés du Bureau.

Il fixera les traitements et salaires et contrôlera la dépense générale.

La présence de cinq membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances signataires les règlements adoptés par lui. Il leur adresse chaque année un rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs et sur les dépenses.

ART. 29.—Les frais du Bureau seront supportés par les Puissances signataires dans la proportion établie pour le Bureau international de l'Union postale universelle.

Chapitre III.

DE LA PROCÉDURE ARBITRALE.

ART. 30.—En vue de favoriser le développement de l'arbitrage, les Puissances signataires ont arrêté les règles suivantes qui seront applicables à la procédure arbitrale, en tant que les Parties ne sont pas convenues d'autres règles.

ART. 31.—Les Puissances qui recourent à l'arbitrage signent un acte spécial (compromis) dans lequel sont nettement déterminés l'objet du litige ainsi que l'étendue des pouvoirs des arbitres.

the Parties to submit themselves in good faith to the Arbitration decision.

ART. 32.—Arbitration functions may be conferred upon a single Arbitrator, or on several Arbitrators, named by the Parties at their discretion, or chosen by them from among the members of the permanent Court of Arbitration established by the present Act.

In default of the constitution of the Tribunal by the direct agreement of the Parties it shall be formed in the following manner :—

Each Party shall name two Arbitrators, and they shall choose together an umpire (*sur-arbitre*).

In case of an equality of votes, the choice of the Umpire shall be entrusted to a third Power, designated by the agreement of the Parties.

If an agreement is not come to on this subject, each Party shall designate a different Power, and the choice of the Umpire shall be made by agreement between the Powers thus designated.

ART. 33.—When a Sovereign, or the Head of a State is chosen as an Arbitrator, the Arbitration procedure shall be settled by him.

ART. 34.—The Umpire is by right President of the Tribunal.

When the Tribunal does not include an Umpire it shall itself appoint its President.

ART. 35.—In case of the decease or resignation or incapacity from any cause of one of the Arbitrators, the vacancy shall be filled in the way appointed for his nomination.

ART. 36.—The place where the Tribunal shall sit is to be designated by the Parties. In default of such designation, the Tribunal shall sit at the Hague.

The place of session thus fixed upon cannot be changed, except in case of *force majeure*, by the Tribunal without the consent of the Parties.

ART. 37.—The Parties have the right to name to the Tribunal

Cet acte implique l'engagement des Parties de se soumettre de bonne foi à la sentence arbitrale.

ART. 32.—Les fonctions arbitrales peuvent être conférées à un arbitre unique ou à plusieurs arbitres désignés par les Parties à leur gré, ou choisis par Elles parmi les membres de la Cour permanente d'arbitrage établie par le présent Acte.

A défaut de constitution du Tribunal par l'accord immédiat des Parties, il est procédé de la manière suivante :

Chaque Partie nomme deux arbitres et ceux-ci choisissent ensemble un sur-arbitre.

En cas de partage des voix, le choix du sur-arbitre est confié à une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du sur-arbitre est fait de concert par les Puissances ainsi désignées.

ART. 33.—Lorsque un Souverain ou un Chef d'Etat est choisi pour arbitre a procédure arbitrale est réglée par Lui.

ART. 34.—Le sur-arbitre est de droit Président du Tribunal.

Lorsque le Tribunal ne comprend pas de sur-arbitre, il nomme lui-même son président.

ART. 35.—En cas de décès, de démission, ou d'empêchement, pour quelque cause que ce soit, de l'un des arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ART. 36.—Le siège du Tribunal est désigné par les Parties. A défaut de cette désignation le Tribunal siège à la Haye.

Le siège ainsi fixé ne peut, sauf le cas de force majeure, être changé par le Tribunal que de l'assentiment des Parties.

ART. 37. — Les Parties ont le droit de nommer auprès

delegates or special Agents, to act as intermediaries between them and the Tribunal.

They are, moreover, authorised to entrust the defence of their rights and interests before the Tribunal to Counsel or Advocates named by them for that purpose.

ART. 38.—The Tribunal decides upon the choice of languages of which it will make use, and which it shall authorise to be employed before it.

ART. 39.—The arbitral procedure comprises as a general rule two distinct phases : the Examination of evidence and the Hearing.

The Examination of evidence consists in the presentation made by the respective Agents to the members of the Tribunal and to the opposing Party, of all printed or written instruments and of all documents containing the matters pleaded in the case.

This communication shall take place in the form, and at the times fixed by the Tribunal by virtue of Article 49.

The Hearing shall consist in the oral discussion of the matters presented by the Parties before the Tribunal.

ART. 40.—Every document produced by one of the Parties must be communicated to the other Party.

ART. 41.—The oral hearing shall be under the direction of the President.

It shall be published only in accordance with a decision of the Tribunal made with the consent of the Parties.

It shall be recorded in minutes written out by secretaries appointed by the President. These minutes alone are to be regarded as authentic.

ART. 42.—The examination of evidence being closed, the Tribunal has the right to refuse to admit all new acts or documents which the Representatives of one of the Parties wish to submit to it without the consent of the other.

ART. 43.—The Tribunal, however, shall be free to take into

du Tribunal des délégués ou agents spéciaux, avec la mission de servir d'intermédiaires entre Elles et le Tribunal.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal, des conseils ou avocats nommés par Elles à cet effet.

ART. 38.—Le Tribunal décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

ART. 39.—La procédure arbitrale comprend en règle générale deux phases distinctes : l'instruction et les débats.

L'instruction consiste dans la communication faite par les agents respectifs, aux membres du Tribunal et à la Partie adverse, de tous actes imprimés ou écrits et de tous documents contenant les moyens invoqués dans la cause. Cette communication aura lieu dans la forme et dans les délais déterminés par le Tribunal en vertu de l'article 49.

Les débats consistent dans le développement orale des moyens des Parties devant le Tribunal.

ART. 40.—Toute pièce produite par l'une des Parties doit être communiquée à l'autre Partie.

ART. 41. — Les débats sont dirigés par le Président.

Ils ne sont publiés qu'en vertu d'une décision du Tribunal, prise avec l'assentiment des Parties.

Ils sont consignés dans les procès-verbaux rédigés par des secrétaires que nomme le Président. Ces procès-verbaux ont seuls caractère authentique.

ART. 42. — L'instruction étant close, le Tribunal a le droit d'écartier du débat tous actes ou documents nouveaux qu'une des Parties voudrait lui soumettre sans le consentement de l'autre.

ART. 43. — Le Tribunal demeure libre de prendre en considé-

consideration any new acts or documents to which the Agents or Counsel of the Parties shall call its attention.

In this case the Tribunal has the right to require the production of these acts or documents apart from the obligation of making them known to the opposite Party.

ART. 44.—The Tribunal may, moreover, require from the Agents of the Parties the production of all deeds, and demand all necessary explanations. In case of refusal the Tribunal may have the fact put on record.

ART. 45.—The Agents and Counsel of the Parties are authorised to present orally to the Tribunal all the pleas they consider useful for the defence of their cause.

ART. 46.—They have the right to raise objections or take exception. The decisions of the Tribunal upon these points shall be final and shall not give rise to any further discussion.

ART. 47.—The members of the Tribunal have the right to put questions to the Agents and Counsel of the Parties, and to demand from them explanations of doubtful points.

Neither questions put nor observations made by the members of the Tribunal in the course of the hearing shall be regarded as expressions of the opinion of the Tribunal in general, or of its members in particular.

ART. 48.—The Tribunal is authorised to settle its own competence, by interpreting the Agreement to arbitrate (*compromis*), as well as any other treaties which may be invoked in the matter, and also by applying the principles of International Law.

ART. 49.—The Tribunal has the right to make rules of procedure for the direction of the trial, to settle the forms and periods within which each Party must submit its motions, and to conduct all the formalities which shall regulate the taking of evidence.

ART. 50.—The Agents and Counsel of the Parties having

ration les actes ou documents nouveaux sur lesquels les agents ou conseils des Parties appelleraient son attention.

En ce cas, le Tribunal a le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la Partie adverse.

ART. 44. — Le Tribunal peut, en outre, requérir des agents des Parties la production de tous actes et demander toutes explications nécessaires. En cas de refus, le Tribunal en prend acte.

ART. 45. — Les agents et les conseils des Parties sont autorisés à présenter oralement au Tribunal tous les moyens qu'ils jugent utiles à la défense de leur cause.

ART. 46. — Ils ont le droit de soulever des exceptions et incidents. Les décisions du Tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

ART. 47. — Les membres du Tribunal ont le droit de poser des questions aux agents et aux conseils des Parties et de leur demander des éclaircissements sur des points douteux.

Ni les questions posées, ni les observations faites par les membres du Tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du Tribunal en général ou de ses membres en particulier.

ART. 48. — Le Tribunal est autorisé à déterminer sa compétence en interprétant le compromis ainsi que les autres traités qui peuvent être invoqués dans la matière et en appliquant les principes du droit international.

ART. 49. — Le Tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes et délais dans lesquels chaque Partie devra prendre ses conclusions et de procéder à toutes les formalités que comporte l'administration des preuves.

ART. 50. — Les agents et les conseils des Parties ayant présenté

presented all the explanations and evidence in support of their cause, the President of the Tribunal shall announce the hearing closed.

ART. 51.—The deliberations of the Tribunal shall take place with closed doors.

Every decision shall be taken by a majority of the members of the Tribunal.

The refusal of any member to take part in the vote shall be formally set forth in the minutes.

ART. 52.—The arbitral Judgment reached by a majority vote shall be accompanied by the reasons on which it is based. This shall be reduced to writing and signed by each member of the Tribunal.

Those of the members who are in a minority may, when signing, record their dissent.

ART. 53.—The arbitral Judgment shall be read out at a public session of the Tribunal, the Agents and Counsel of the Parties being present, or duly summoned.

ART. 54. — The arbitral Judgment, duly pronounced and notified to the Agents of the disputing parties, shall decide the question at issue finally and without appeal.

ART. 55.—The Parties may, however, in the Agreement to arbitrate, reserve to themselves the right to ask for a revision of the arbitral Judgment.

In this case, and in the absence of an Agreement to the contrary, the request should be addressed to the Tribunal which has given the Judgment. It can be based only on the discovery of new evidence, which would have been of such a nature as to exercise a decisive influence on the Judgment, and which, at the time the hearing was closed was unknown to the Tribunal itself and to the Party which has asked for the revision.

The revision can be granted only by a decision of the Tribunal expressly stating the existence of the new evidence

tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ART. 51. — Les délibérations du Tribunal ont lieu à huis clos.

Toute décision est prise à la majorité des membres du Tribunal.

Le refus d'un membre de prendre part au vote doit être constaté dans le procès-verbal.

ART. 52. — La sentence arbitrale, votée à la majorité des voix, est motivée. Elle est rédigée par écrit et signée par chacun des membres du Tribunal.

Ceux des membres qui sont restés en minorité peuvent constater, en signant, leur dissentiment

ART. 53. — La sentence arbitrale est lue en séance publique du Tribunal, les agents et les conseils des Parties présents ou dûment appelés.

ART. 54. — La sentence arbitrale, dûment prononcée et notifiée aux agents des Parties en litige, décide définitivement et sans appel la contestation.

ART. 55.—Les Parties peuvent se réserver dans le compromis de demander la revision de la sentence arbitrale.

Dans ce cas et sauf convention contraire, la demande doit être adressée au Tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du Tribunal lui-même et de la Partie qui a demandé la revision.

La procédure de revision ne peut être ouverte que par une décision du Tribunal constatant expressément l'existence du fait

possessing the character set forth in the preceding paragraph, and declaring that the demand is admissible on that ground.

The Agreement (*compromis*) shall determine the period of time within which the request for revision must be made.

ART. 56.—The arbitral Judgment is obligatory only on the Parties who concluded the Agreement.

When it consists in the interpretation of a Convention to which other Powers than those in litigation have been parties, these shall notify to the other Powers the Agreement to arbitrate which they have made. Each of these other Powers has the right to intervene in the proceedings. If one or more of them shall avail themselves of this right, the interpretation embodied in the Judgment shall be equally binding on them also.

ART. 57.—Each Party shall bear its own expenses and an equal part of the expenses of the Tribunal.

GENERAL PROVISIONS.

ART. 58.—The present Convention shall be ratified with the briefest delay possible.

The ratifications shall be deposited at the Hague. There shall be drawn up a minute of the deposit of each ratification, of which a copy, certified correct, will be transmitted through diplomatic channels to all the Powers which have been represented at the International Peace Conference at the Hague.

ART. 59.—Non-signatory Powers, which have been represented at the International Peace Conference, may give their adhesion to the present Convention. For this purpose they will have to make known their adhesion to the contracting Powers by means of a written notification addressed to the Government of the Netherlands, and communicated by it to all the other contracting Powers.

nouveau, lui reconnaissant les caractères prévus par le paragraphe précédent et déclarant à ce titre la demande recevable.

Le compromis détermine le délai dans lequel la demande de revision doit être formée.

ART. 56.—La sentence arbitrale n'est obligatoire que pour les parties qui ont conclu le compromis.

Lorsqu'il s'agit de l'interprétation d'une convention, à laquelle ont participé d'autres Puissances que les Parties en litige, celles-ci notifient aux premières le compromis qu'elles ont conclu. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligatoire à leur égard.

ART. 57.—Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

DISPOSITIONS GÉNÉRALES.

ART. 58.—La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à la Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances, qui ont été représentées à la Conférence Internationale de la Paix de la Haye.

ART. 59.—Les Puissances non signataires qui ont été représentées à la Conférence Internationale de la Paix pourront adhérer à la présente Convention. Elles auront à cet effet à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes

ART. 60.—The conditions on which the Powers which have not been represented at the International Peace Conference, may give their adhesion to the present Convention will form the object of a later agreement between the Contracting Powers.

ART. 61.—If it should happen that one of the High Contracting Parties denounce the present Convention, this denunciation would only take effect one year after the notification made by writing to the Government of the Netherlands and communicated by it immediately to all the other contracting Powers.

This denunciation will take effect only with regard to the Power which has given notification of it.

In witness hereof, the Plenipotentiaries have signed the present Convention, and have thereto affixed their seals.

Done at the Hague, the 29th July, 1899, in a single original which shall remain deposited in the Archives of the Government of the Netherlands, and copies of which, certified correct, shall be sent through diplomatic channels to the Contracting Powers.

ART. 60.—Les conditions auxquelles les Puissances, qui n'ont pas été représentées à la Conférence Internationale de la Paix, pourront adhérer à la présente Convention, formeront l'objet d'une entente ultérieure entre les Puissances Contractantes.

ART. 61.—S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à La Haye, le vingt-neuf juillet mil huit cent quatre vingt-dix-neuf, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

HISTORY OF THE PEACE CONFERENCE AT THE HAGUE.

THE EMPEROR'S MESSAGE.

On the 24th August, 1898, Count Muravieff, Russian Minister for Foreign Affairs, by order of the Emperor, made the following communication to all the foreign representatives accredited to the Court of St. Petersburg :—

The maintenance of general Peace, and a possible reduction of the excessive armaments which weigh upon all nations, present themselves in the existing condition of the whole world as the ideal towards which the endeavours of all Governments should be directed.

The humanitarian and magnanimous intentions of his Majesty the Emperor, my august master, have been entirely won over to this object.

In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate views of all the Powers, the Imperial Government thinks that the present moment would be very favourable for an inquiry, by means of international discussion, as the most effectual means of securing to all peoples the benefits of a real and durable Peace, and, before all, of putting an end to the progressive development of the present armaments.

In the course of the last twenty years the longings for a general appeasement have grown especially pronounced in the conscience of civilised nations. The preservation of Peace has been put forward as the object of international policy. It is in its name that the great States have concluded between themselves powerful alliances ; it is the better to guarantee Peace that they have developed their military forces in proportions hitherto

unprecedented, and still continue to increase them without shrinking from any sacrifice,

All these efforts, nevertheless, have not yet been able to bring about the beneficent results of the desired pacification.

The financial charges, following an upward course, strike at and paralyse public prosperity at its very source. The intellectual and physical strength of the nations, their labour and capital, are, for the most part, diverted from their natural application, and unproductively consumed. Hundreds of millions are devoted to obtaining terrible engines of destruction, which, though to-day regarded as the last word of science, are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are checked, paralysed, or perverted in their development.

Moreover, in proportion as the armaments of each Power increase, do they less and less fulfil the objects which the Governments have set before themselves. Economic crises, due in great part to the system of *armements à outrance* and the continual danger which lies in this accumulation of war material, are transforming the armed Peace of our days into a crushing burden which the peoples have more and more difficulty in bearing.

It appears evident, then, that if this state of things continue it will inevitably lead to the very cataclysm which it is desired to avert, and the horrors of which make every thinking being shudder in anticipation.

To put an end to these continual armaments, and to seek the means of warding off the calamities which are threatening the whole world—such is the supreme duty which is to-day imposed upon all States.

Filled with this sentiment, his Majesty has been pleased to order me to propose to all the Governments which have accredited representatives at the Imperial Court, the meeting of a Conference which should occupy itself with this grave problem.

This Conference would be, by the help of God, a happy

presage for the century which is about to open. It would collect into one powerful focus the efforts of all the States which are sincerely seeking to make the great conception of universal Peace triumph over the elements of disturbance and discord. It would at the same time cement their agreement by a corporate consecration of the principles of equity and right on which rest the security of States and the welfare of peoples.

SAINT PETERSBURG, 12/24 August, 1898.

(Signed) COUNT MURAVIEFF.

The original ran as follows :—

D'ordre de l'Empereur, le comte Mouravieff a remis, le 24 août, à tous les représentants étrangers accrédités à St.-Pétersbourg la communication suivante :

Le maintien de la paix générale et une réduction possible des armements excessifs qui pèsent sur toutes les nations se présentent, dans la situation actuelle du monde entier, comme l'idéal auquel devraient tendre les efforts de tous les Gouvernements.

Les vues humanitaires et magnanimes de Sa Majesté l'Empereur, mon Auguste Maître, y sont entièrement acquises.

Dans la conviction que ce but élevé répond aux intérêts les plus essentiels et aux vœux légitimes de toutes les Puissances, le Gouvernement Impérial croit que le moment présent serait très favorable à la recherche, dans la voie d'une discussion internationale, des moyens les plus efficaces d'assurer à tous les peuples les bienfaits d'une paix réelle et durable, et de mettre avant tout un terme au développement progressif des armements actuels.

Au cours des vingt dernières années, les aspirations à un apaisement général se sont particulièrement affirmées dans la conscience des nations civilisées.

La conservation de la paix a été posée comme le but de la

politique internationale ; c'est en son nom que les grands Etats ont conclu entre eux de puissantes alliances ; c'est pour mieux garantir la paix qu'ils ont développé, dans des proportions inconnues jusqu'ici, leurs forces militaires, et qu'ils continuent encore à les accroître sans reculer devant aucun sacrifice.

Tous ces efforts pourtant n'ont pu aboutir encore aux résultats bienfaisants de la pacification souhaitée.

Les charges financières, suivant une marche ascendante, atteignent et paralysent la prospérité publique dans sa source ; les forces intellectuelles et physiques des peuples, le travail et le capital, sont en majeure partie détournés de leur application naturelle et consumés improductivement. Des centaines de millions sont employés à acquérir des engins de destruction effroyables qui, considérés aujourd'hui comme le dernier mot de la science, sont destinés demain à perdre toute valeur à la suite de quelque nouvelle découverte dans ce domaine. La culture nationale, le progrès économique, la production des richesses se trouvent entravés, paralysés ou faussés dans leur développement.

Aussi, à mesure qu'ils s'accroissent les armements de chaque Puissance, répondent-ils de moins en moins au but que les Gouvernements s'étaient proposé. Les crises économiques, dues en grande partie au régime des armements à outrance, et au danger continuel qui gît dans cet amoncellement du matériel de guerre, transforment la paix armée de nos jours en fardeau écrasant, que les peuples ont de plus en plus de peine à porter. Il paraît évident dès lors, que si cette situation se prolongeait, elle conduirait fatalement à ce cataclysme même qu'on tient à écarter, et dont les horreurs font frémir à l'avance toute pensée humaine.

Mettre un terme à ces armements incessants et rechercher le moyen de prévenir des calamités qui menacent le monde entier, tel est le devoir suprême qui s'impose aujourd'hui à tous les Etats.

Pénétré de ce sentiment, Sa Majesté l'Empereur a daigné m'ordonner de proposer à tous les Gouvernements, dont les Représentants sont accrédités près la Cour Impériale, la réunion d'une Conférence qui aurait à s'occuper de ce grave problème.

Cette Conférence serait, Dieu aidant, d'un heureux présage pour le siècle qui va s'ouvrir. Elle rassemblerait dans un puissant faisceau les efforts de tous les Etats qui cherchent sincèrement à faire triompher la grande conception de la paix universelle sur les éléments de trouble et de discorde. Elle cimenterait en même temps leurs accords par une consécration solidaire des principes d'équité et de droit sur lesquels reposent la sécurité des Etats et le bien-être des peuples.

(Signé) COMTE MOURAVIEFF.

SAINT-PÉTERSBOURG,

Le 12/24 Août 1898.

DEFINITION OF THE SCOPE OF THE CONGRESS.

This invitation having been accepted by a number of the Powers, it was followed by a second circular addressed on December 30th, 1898, by Count Muravieff, to the representatives of the Powers at St. Petersburg defining the scope of the proposed Conference, and indicating the topics to be discussed, as follows:—

When, in the month of August last, my August Master instructed me to propose to the Governments which have accredited representatives at St. Petersburg the holding of a Conference with the object of seeking the most effective means of securing to all peoples the blessings of real and lasting Peace, and before all, of putting a stop to the progressive development of the present armaments, there appeared to be nothing in the way of the realisation, at no distant date, of this humanitarian scheme.

The warm welcome given to the proceeding of the Imperial Government by nearly all the Powers, could not fail to strengthen this expectation. While highly appreciating the sympathetic terms in which the adhesions of most of the Powers were drafted,

the Imperial Cabinet has also felt lively satisfaction at the testimonies of the very warm approval which have been addressed to it, and continue to be received, from all classes of society in various parts of the globe.

Notwithstanding the strong current of opinion which set in in favour of the ideas of general pacification, the political horizon has lately undergone a sensible change. Several Powers have undertaken fresh armaments, striving still further to increase their military forces, and in the presence of this uncertain situation it might be asked whether the Powers considered the present moment opportune for the international discussion of the ideas set forth in the circular of August (12th, old style) 24th, 1898.

Hoping, however, that the elements of disturbance agitating the political spheres will soon give place to a calmer disposition, of a nature to favour the success of the proposed Conference, the Imperial Government is of opinion that it would be possible to proceed forthwith to a preliminary exchange of views between the Powers, with the object—

(a.) Of seeking without delay means for putting a stop to the progressive increase of military and naval armaments—a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments; and

(b.) Of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy.

In the event of the Powers considering the present moment favourable for the meeting of a Conference on these bases, it would certainly be useful for the Cabinets to come to an understanding on the subject of the programme of their labours. The proposals to be submitted for international discussion at the Conference could in general terms be summarised as follows:—

1. An understanding not to increase for a fixed period the present effective of the armed military and naval forces, or the budgets pertaining to them; a preliminary examination of the means by which a reduction might even be effected in future in the forces and budgets above mentioned.

2. To prohibit the use in the armies and fleets of any new kind of firearms whatever, and of new explosives, or any powders more powerful than those now in use either for rifles or cannon.

3. To restrict the use in military warfare of the formidable explosives already existing, and to prohibit the throwing of projectiles or explosives of any kind from balloons, or by any similar means.

4. To prohibit the use in naval warfare of submarine torpedo boats or plungers, or other similar engines of destruction; to give an understanding not to construct vessels with rams in the future.

5. To apply to naval warfare the stipulations of the Geneva Convention of 1864 on the basis of the articles added to the Convention of 1868.

6. To neutralise ships and boats employed in saving those overboard during or after an engagement.

7. To revise the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, which has remained unratified to the present day.

8. To accept in principle the employment of the good offices, of mediation and facultative Arbitration, in cases lending themselves thereto, with the object of preventing armed conflicts between nations; an understanding with respect to the mode of applying these good offices, and the establishment of a uniform practice in using them.

It is well understood that all questions concerning the political relations of States, and the order of things established by treaties, as generally all questions which do not directly fall within the programme adopted by the Cabinets, must be absolutely excluded from the deliberations of the Conference.

In requesting you, Monsieur, to be good enough to apply to your Government for instructions on the subject of my present communication, I beg you at the same time to inform it that, in the interest of the great cause which my August Master has so much at heart, his Imperial Majesty considers it advisable that

the Conference should not sit in the capital of one of the Great Powers, where so many political interests are centred, which might perhaps impede the progress of a work in which all the countries of the universe are equally interested.

Accept, Monsieur, etc.,

(Signed) COUNT MURAVIEFF.

The following is the original text of this Circular :—

MONSIEUR L'ENVOYÉ.

Lorsqu'au mois d'août dernier mon Auguste Maître m'ordonnait de proposer aux Gouvernements, dont les Représentants se trouvent accrédités à Saint-Pétersbourg, la réunion d'une Conférence destinée à rechercher les moyens les plus efficaces d'assurer à tous les peuples les bienfaits d'une paix réelle et durable et de mettre avant tout un terme au développement progressif des armements actuels—rien ne semblait s'opposer à la réalisation plus au moins prochaine, de ce projet humanitaire.

L'accueil empressé fait à la démarche du Gouvernement Impérial par presque toutes les Puissances ne pouvaient que justifier cette attente. Appréciant hautement les termes sympathiques dans lesquels était conçue l'adhésion de la plupart des Gouvernements, le Cabinet Impérial a pu recueillir, en même temps avec une vive satisfaction, les témoignages du plus chaleureux assentiment qui lui étaient adressés et ne cessent de lui parvenir de la part de toutes les classes de la société de différents points du globe terrestre.

Malgré le grand courant d'opinion qui s'était produit en faveur des idées de pacification générale, l'horizon politique a sensiblement changé d'aspect en dernier lieu.

Plusieurs Puissances ont procédé à des armements nouveaux, s'efforçant d'accroître encore leurs forces militaires, et, en présence de cette situation incertaine, on pouvait être amené à se de-

mander si les Puissances jugeaient le moment actuel opportun à la discussion internationale des idées émises dans la Circulaire du 12/24 août.

Espérant, toutefois, que les éléments de trouble qui agitent les sphères politiques feront bientôt place à des dispositions plus calmes et de nature à favoriser le succès de la Conférence projetée le Gouvernement Impérial est, pour sa part, d'avis qu'il serait possible de procéder dès à présent à un échange préalable d'idées entre les Puissances dans le but :

(a) de rechercher sans retard les moyens de mettre un terme à l'accroissement progressif des armements de terre et de mer—question dont la solution devient évidemment de plus en plus urgente en vue de l'extension nouvelle donnée à ces armements, et,

(b) de préparer les voies à une discussion des questions se rapportant à la possibilité de prévenir les conflits armés par les moyens pacifiques dont peut disposer la diplomatie internationale.

Dans le cas où les Puissances jugeraient le moment actuel favorable à la réunion d'une Conférence sur ces bases, il serait certainement utile d'établir entre les Cabinets une entente au sujet du programme de ses travaux.

Les thèmes à soumettre à une discussion internationale au sein de la Conférence pourraient, en traits généraux, se résumer comme suit :

1° Entente stipulant la non-augmentation pour un terme à fixer des effectifs actuels des forces armées de terre et de mer, ainsi que des budgets de guerre y afférents, étude préalable des voies dans lesquelles pourrait même se réaliser, dans l'avenir, une réduction des effectifs et des budgets ci-dessus mentionnés ;

2° Interdiction de la mise en usage, dans les armées et les flottes, de nouvelles armes à feu quelconques et de nouveaux explosifs, aussi bien que de poudres plus puissantes que celles adoptées actuellement, tant pour les fusils que pour les canons ;

3^o Limitation de l'emploi, dans les guerres de campagne, des explosifs d'une puissance formidable déjà existants et prohibition du lancement de projectiles ou d'explosifs quelconques du haut des ballons ou par des moyens analogues ;

4^o Défense d'employer dans les guerres navales des bateaux-torpilleurs sous-marins ou plongeurs, ou d'autres engins de destruction de la même nature ; engagement de ne pas construire, à l'avenir, des navires de guerre à éperon ;

5^o Adaptation aux guerres maritimes des stipulations de la Convention de Genève de 1864, sur la base des articles additionnels de 1868 ;

6^o Neutralisation, au même titre, des navires ou chaloupes chargées du sauvetage des naufragés, pendant ou après les combats maritimes ;

7^o Revision de la Déclaration concernant les avis et coutumes de la guerre, élaborée en 1874 par la Conférence de Bruxelles et restée non-ratifiée jusqu'à ce jour ;

8^o Acceptation, en principe, de l'usage des bons offices, de la médiation et de l'arbitrage facultatif, pour des cas qui s'y prêtent, dans le but de prévenir des conflits armés entre les nations ; entente au sujet de leur mode d'application et établissement d'une pratique uniforme dans leur emploi.

Il est bien entendu que toutes les questions concernant les rapports politiques des Etats et l'ordre de choses établi par les traités, comme en général toutes les questions qui ne rentreront pas directement dans le programme, adopté par les Cabinets, devront être absolument exclues des délibérations de la Conférence.

En vous adressant, Monsieur l'Envoyé, la demande de bien vouloir prendre au sujet de ma présente communication les ordres de votre Gouvernement, je vous prie en même temps de porter à sa connaissance que dans l'intérêt de la grande cause, qui tient si particulièrement à cœur à mon Auguste Maître, Sa Majesté Impériale juge qu'il serait utile que la Conférence ne siège pas dans la capitale de l'une des grandes Puissances, où se

concentrent tant d'intérêts politiques qui pourraient, peut-être, réagir sur la marche d'une œuvre à laquelle sont intéressés à un égal degré tous les pays de l'univers.

Veillez recevoir, Monsieur l'Envoyé, l'assurance de ma considération la plus distinguée.

(Signé) COMTE MOURAVIEFF.

INVITATION TO THE HAGUE.

The next step in the development of the Emperor's proposal was the issue by the Foreign Minister of the Netherlands, after correspondence with the Court at St. Petersburg, of a circular addressed, on April 6th, 1899, to the diplomatic representatives of his country at the various Courts. After detailing the steps already taken, and noting that the Russian Government considered, for political reasons, that it was not desirable that the Conference should meet in either of the great capitals, he informed them that the Hague had been selected as its place of session, and instructed them to invite the Governments to which they were severally accredited, to take the necessary steps for their representation, and for the attendance of their delegates on May 18th following, at "the opening of the Conference, in which each Power, whatever may be the number of its Representatives, would have only one vote."

MEETING OF THE CONFERENCE.

The Conference held its first session in the "Huis ten Bosch" (House in the Wood), at the Hague, in the famous Orange Hall, on Thursday, May 18th, 1899. Twenty-six States were represented by rather more than a hundred Delegates. All the Delegates appointed, with their technical advisers, were present. The first sitting was of a merely formal character, and lasted only twenty-five minutes. M. de Beaufort, Foreign Minister of Holland, presided, and after welcoming the Delegates in a very

felicitous speech, moved the despatch of a telegram of congratulation to the Tzar, and the appointment of M. de Staal as President of the Conference. Both resolutions were unanimously adopted. M. de Staal then assumed the presidential chair, made a suitable response, and proposed the sending of a message to Her Majesty the Queen of the Netherlands, which was warmly applauded by all present.

APPOINTMENT OF COMMITTEES.

The following day, Friday, May 19th, the delegates met by invitation of the President, M. de Staal, in his apartments in the Vieux Doelen Hotel. It was agreed to appoint three Committees, to deal with the three groups of questions to be discussed, as follows:—

I.—ARMAMENTS.

- (a.) The limitation of expenditure.
- (b.) The prohibition of new firearms.
- (c.) The limitation of the use of explosives.
- (d.) The prohibition of the use of submarine boats.

II.—LAWS OF WARFARE.

(a.) The application of the Geneva Convention to naval warfare.

(b.) The neutralisation of vessels engaged in saving the shipwrecked, during or after naval engagements.

(c.) The revision of the Declaration of Brussels of 1874, on the laws and customs of war.

III.—MEDIATION AND ARBITRATION.

The Armaments Committee (43 members) was further divided into two sections; one military, with M. Beernaert, of Belgium as President, and Sir John Ardagh (Great Britain),

Captain Crozier (U.S.A.) and General Mounier (France) among the members; the other naval, with M. van Karnebeek (Holland) as President, and Sir John Fisher (Britain), Captain Mahan (U.S.A.) and Captain Siegel (Germany) among the members. The Laws of Warfare Committee (58 members) was also subdivided; M. Asser (Holland) becoming President of the Geneva Convention Section, and Professor Martens (Russia) of the Brussels Conference Section. On both these Committees, most of the States were represented by their military and naval delegates. M. Bourgeois (France) was chosen President of the Mediation and Arbitration Committees (51 members) of which Sir Julian Pauncefote (Britain), Sir Henry Howard (Britain), Count Münster (Germany), Count Nigra (Italy), Dr. Andrew White (U.S.A.) and Mr. Seth Low (U.S.A.) were members.

SECOND SITTING

Next day, Saturday, May 20th, there was a plenary sitting of the Conference, when Baron de Staal gave an important address, and communicated the replies of the Tzar and of Queen Wilhelmina. The sitting lasted thirty-five minutes, and the delegates separated for Whitsuntide, after which the work of the various Committees began.

THE ARBITRATION COMMITTEE

It is not proposed to follow the details of the work in these Committees. That of the third, the Arbitration Committee necessarily excites most interest. In its sitting of May 26th, M. de Staal brought forward the Russian project of Mediation and Arbitration. He was immediately followed by Sir Julian Pauncefote, who, on behalf of Great Britain, said that while gladly accepting the Russian Scheme as far as it went, he would have to propose that it be supplemented by the constitution of a Permanent International Tribunal. Mr. Holls on behalf of the American Delegates, announced that they were also preparing a scheme. A Committee was appointed to consider these projects,

consisting of M. Descamps (President), Sir J. Pauncefote, Count Nigra and MM. Asser, D'Estournelles, Holls, Lammasch, Martens, Odier, and Zorn. This Comité de Redaction, which met, for the first time, on May 29th, had to consider the following schemes :—

DOCUMENTS ÉMANÉS DE LA DÉLÉGATION RUSSE.

I.—ÉLÉMENTS POUR L'ÉLABORATION D'UN PROJET DE CONVENTION À CONCLURE ENTRE LES PUISSANCES PARTICIPANT À LA CONFÉRENCE DE LA HAYE.

BONS OFFICES ET MÉDIATION.

ARTICLE PREMIER.—A l'effet de prévenir, autant que possible le recours à la force dans les rapports internationaux, les Puissances signataires sont convenues d'employer tous leurs efforts pour amener, par des moyens pacifiques, la solution des conflits qui pourraient surgir entre Elles.

ART. 2.—En conséquence, les Puissances signataires ont décidé qu'en cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, elles auront recours, en tant que les circonstances l'admettraient, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

ART. 3.—En cas de médiation, acceptée spontanément par des Etats se trouvant en conflit, le but du Gouvernement médiateur consiste dans la conciliation des prétentions opposées et dans l'apaisement des ressentiments qui peuvent s'être produits entre ces Etats.

ART. 4.—Le rôle du Gouvernement médiateur cesse du moment que la transaction proposée par lui ou les bases d'une entente amicale qu'il aurait suggérées ne seraient point acceptées par les Etats en conflit.

ART. 5.—Les Puissances jugent utile que, dans les cas de

dissentiment grave ou de conflit entre Etats civilisés concernant des questions d'intérêt politique—indépendamment du recours que pourraient avoir les Puissances en litige aux bons offices ou à la médiation des Puissances non impliquées dans le conflit—ces dernières offrent de leur propre initiative, en tant que les circonstances s'y prêteraient, aux Etats en litige leurs bons offices ou leur médiation, afin d'aplanir le différend survenu, en leur proposant une solution amiable qui, sans toucher aux intérêts des autres Etats, serait de nature à concilier au mieux les intérêts des Parties en litige.

ART. 6.—Il demeure bien entendu que la médiation et les bons offices, soit sur l'initiative des Parties en litige, soit sur celle des Puissances neutres, ont strictement le caractère de conseil amical, et nullement force obligatoire.

ARBITRAGE INTERNATIONAL.

ART. 7.—En ce qui regarde les cas de litige se rapportant à des questions de droit, et, en premier lieu, à celles qui concernent l'interprétation ou l'application des traités en vigueur,—l'arbitrage est reconnu par les Puissances signataires comme étant le moyen le plus efficace et en même temps le plus équitable pour le règlement à l'amiable de ces litiges.

ART. 8.—Les Puissances contractantes s'engagent par conséquent à recourir à l'arbitrage dans les cas se rapportant à des questions de l'ordre mentionné ci-dessus, en tant que celles-ci ne touchent ni aux intérêts vitaux, ni à l'honneur national des Parties en litige.

ART. 9.—Chaque Etat reste seul juge de la question de savoir si tel ou tel cas doit être soumis à l'arbitrage, excepté ceux énumérés dans l'article suivant et dans lesquels les Puissances signataires du présent Acte considèrent l'arbitrage comme obligatoire pour Elles.

ART. 10.—A partir de la ratification du présent Acte par toutes les Puissances signataires, l'arbitrage est obligatoire dans les cas

suivants, en tant qu'ils ne touchent ni aux intérêts vitaux, ni à l'honneur national des Etats contractants.

I. En cas de différends ou de contestations se rapportant à des dommages pécuniaires éprouvés par un Etat, ou ses ressortissants, à la suite d'actions illicites ou de négligence d'un autre Etat ou des ressortissants de ce dernier.

II. En cas de dissentiments se rapportant à l'interprétation ou l'application des traités et conventions ci-dessous mentionnés :

1. Traités et conventions postales et télégraphiques, de chemins de fer ainsi qu'ayant trait à la protection de câbles télégraphiques sous-marins ; règlements concernant les moyens destinés à prévenir les collisions de navires en pleine mer ; conventions relatives à la navigation des fleuves internationaux et canaux interocéaniques.

2. Convention concernant la protection de la propriété littéraire et artistique, ainsi que la propriété industrielle (brevets d'invention, marques de fabrique ou de commerce et nom commercial) ; conventions monétaires et métriques ; conventions sanitaires, vétérinaires et contre le phylloxéra.

3. Conventions de succession, de cartel et d'assistance judiciaire mutuelle.

4. Conventions de démarcation, en tant qu'elles touchent aux questions purement techniques et non politiques.

ART. 11.—L'énumération des cas mentionnés dans l'article ci-dessus pourra être complétée par des accords subséquents entre les Puissances signataires du présent Acte.

En outre, chacune d'entre Elles pourra entrer en accord particulier avec une autre Puissance, afin de rendre l'arbitrage obligatoire pour les cas susdits avant la ratification générale, ainsi que pour étendre sa compétence à tous les cas qu'Elle jugera possible de lui soumettre.

ART. 12.—Pour tous les autres cas de conflits internationaux, non mentionnés dans les articles ci-dessus, l'arbitrage, tout en étant certainement très désirable et recommandé par le présent Acte, n'est cependant que purement facultatif, c'est-à-dire ne peut

être appliqué que sur l'initiative spontanée de l'une des Parties en litige et avec le consentement exprès et de plein gré de l'autre ou des autres Parties.

ART. 13.—En vue de faciliter le recours à l'arbitrage et son application, les Puissances signataires ont consenti à préciser, d'un commun accord, pour les cas d'arbitrage international, les principes fondamentaux à observer pour l'établissement et les règles de procédure à suivre pendant l'instruction du litige, et le prononcé de la sentence arbitrale.

L'application de ces principes fondamentaux, ainsi que de la procédure arbitrale, indiquée dans l'appendice au présent article, pourrait être modifiée en vertu d'un accord spécial entre les Etats qui auraient recours à l'arbitrage.

COMMISSIONS INTERNATIONALES D'ENQUÊTE.

ART. 14.—Dans les cas où se produiraient entre les Etats signataires des divergences d'appréciation par rapport aux circonstances locales ayant donné lieu à un litige d'ordre international qui ne pourrait pas être résolu par les voies diplomatiques ordinaires, mais dans lequel ni l'honneur, ni les intérêts vitaux de ces Etats ne seraient engagés, les Gouvernements intéressés conviennent d'instituer une Commission internationale d'enquête, afin de constater les circonstances ayant donné matière au dissentiment et d'éclaircir sur les lieux par un examen impartial et consciencieux toutes les questions de fait.

ART. 15.—Ces Commissions internationales sont constituées comme suit : chaque Gouvernement intéressé nomme deux membres et les quatre membres réunis choisissent le cinquième membre, qui est en même temps le Président de la Commission. S'il y a partage de voix pour l'élection d'un Président, les deux Gouvernements intéressés s'adressent d'un commun accord, soit à un Gouvernement tiers, soit à une personne tierce qui nommera le Président de la Commission.

ART. 16.—Les Gouvernements entre lesquels s'est produit un

dissentiment grave ou un conflit dans les conditions indiquées plus haut, s'engagent à fournir à la Commission d'enquête tous les moyens et toutes les facilités nécessaires pour une étude approfondie et consciencieuse des faits qui y ont donné matière.

ART. 17.—La Commission d'enquête internationale, après avoir constaté les circonstances dans lesquelles le dissentiment ou le conflit s'est produit, présente aux Gouvernements intéressés son rapport signé par tous les membres de la Commission.

ART. 18.—La rapport de la Commission d'enquête n'a nullement le caractère d'une sentence arbitrale ; il laisse aux Gouvernements en conflit entière faculté, soit de conclure un arrangement à l'amiable sur la base du rapport susmentionné, soit de recourir à l'arbitrage en concluant un accord *ad hoc*, soit enfin de recourir aux voies de fait admises dans les rapports mutuels entre les nations.

II.—PROJET DE CODE D'ARBITRAGE PROPOSÉ PAR LA DÉLÉGATION RUSSE.

ARTICLE PREMIER.—Les Puissances signataires ont approuvé les principes et règles ci-dessous pour la procédure d'arbitrage entre nations, sauf les modifications qui pourraient y être introduites dans chaque cas spécial d'un commun accord par les Gouvernements en litige.

ART. 2.—Les Etats intéressés, ayant accepté l'arbitrage, signent un acte spécial (compromis), dans lequel sont nettement précisées les questions soumises à la décision de l'arbitre, l'ensemble des faits et des points de droit qui s'y rattachent et, enfin, se trouve confirmé formellement l'engagement des deux Parties contractantes de se soumettre, de bonne foi et sans appel, à la sentence arbitrale qui sera prononcée.

ART. 3.—Les compromis ainsi conclus de plein gré par les Etats, peuvent établir l'arbitrage soit pour toutes contestations survenant entre eux, soit pour les contestations d'une catégorie déterminée.

ART. 4.—Les Gouvernements intéressés peuvent confier les fonctions d'arbitre au Souverain ou au Chef d'Etat d'une Puissance tierce avec l'assentiment de ce dernier. Ils peuvent également confier ces fonctions soit à une personne seule, choisie par eux, soit à un tribunal d'arbitrage constitué à cet effet

Dans le dernier cas et en vue de l'importance du litige, le Tribunal d'arbitrage pourrait être constitué de la manière suivante : chaque Partie contractante choisit deux arbitres et tous les arbitres réunis choisissent le sur-arbitre qui est *de jure* le président du Tribunal d'arbitrage.

En cas de partage des voix, les Gouvernements en litige s'adresseront d'un commun accord à un Gouvernement tiers ou à une personne tierce qui nommera le sur-arbitre.

ART. 5.—Si les Parties en litige n'arrivent pas à un accord sur le choix du Gouvernement tiers ou d'une personne tierce mentionnés dans l'article précédent, chacune de ces Parties nommera une Puissance non impliquée dans le conflit, afin que les Puissances ainsi choisies par les Parties en litige, désignent, d'un commun accord, un sur-arbitre.

ART. 6.—L'incapacité ou la récusation valable, fût-ce d'un seul des arbitres susindiqués, ainsi que le refus d'accepter l'office arbitral après l'acceptation ou la mort d'un arbitre choisi, infirme le compromis entier, sauf les cas où ces faits sont prévus et réglés d'avance d'un commun accord des Parties contractantes.

ART. 7.—Le siège du Tribunal d'arbitrage est désigné, soit par les Etats contractants, soit par les membres du tribunal eux-mêmes. Le changement de ce siège du Tribunal n'est loisible qu'en vertu d'un nouvel accord entre les Gouvernements intéressés ou, en cas de force majeure, sur l'initiative du Tribunal même.

ART. 8.—Les Etats en litige ont le droit de nommer des délégués ou agents spéciaux, attachés au Tribunal d'arbitrage avec la charge de servir d'intermédiaires entre le Tribunal et les Gouvernements intéressés.

Outre ces agents, les susdits Gouvernements sont autorisés à

charger de la défense de leurs droits et intérêts devant le Tribunal d'arbitrage des conseils ou avocats nommés à cet effet.

ART. 9.—Le Tribunal d'arbitrage décide dans quelles langues devront avoir lieu ses délibérations et les débats des parties.

ART. 10.—La procédure arbitrale doit généralement parcourir deux phases : préliminaire et définitive.

La première consiste dans la communication aux membres du Tribunal d'arbitrage, par les agents des Etats contractants, de tous les actes, documents et arguments imprimés ou écrits relatifs aux questions en litige.

La seconde—définitive ou orale—consiste dans les débats devant le Tribunal d'arbitrage.

ART. 11.—Après la clôture de la procédure préliminaire commencent les débats devant le Tribunal d'arbitrage qui sont dirigés par le Président.

De toutes les délibérations sont tenus des procès-verbaux, rédigés par des secrétaires, nommés par le Président du Tribunal. Ces procès-verbaux seuls ont force légale.

ART. 12.—La procédure préliminaire étant close, le Tribunal d'arbitrage a le droit de refuser tous les nouveaux actes ou documents que les représentants des Parties voudraient lui soumettre.

ART. 13.—Toutefois, le Tribunal d'arbitrage reste souverainement libre de prendre en considération les nouveaux documents ou actes dont les délégués ou conseils des deux Gouvernements en litige ont profité dans leurs explications devant le Tribunal.

Ce dernier a le droit de requérir la représentation de ces actes ou documents et d'en donner connaissance à la Partie adverse.

ART. 14.—Le Tribunal d'arbitrage, outre cela, a le droit de requérir des agents des Parties la présentation de tous les actes ou explications dont il aura besoin.

ART. 15.—Les agents et conseils des Gouvernements en litige

sont autorisés à présenter au Tribunal d'arbitrage oralement toutes les explications ou preuves au profit de la cause à défendre.

ART. 16.—Ces mêmes agents et conseils ont également le droit de s'adresser au Tribunal avec des motions sur les matières à discuter.

Les décisions du Tribunal concernant ces motions sont définitives et ne peuvent donner lieu à aucune discussion.

ART. 17.—Les membres du Tribunal d'arbitrage ont le droit de poser aux agents ou conseils des Parties contractantes des questions ou de demander des éclaircissements sur des points douteux.

Ni les questions posées, ni les observations faites par les membres du Tribunal pendant le cours des délibérations ne sauraient être regardées comme énonciations des opinions du Tribunal en général, ou de ses membres en particulier.

ART. 18.—Le Tribunal d'arbitrage est seul autorisé à déterminer sa compétence par l'interprétation des clauses du compromis, et selon les principes du droit international ainsi que les stipulations des traités particuliers qui peuvent être invoqués dans la matière.

ART. 19.—Le Tribunal d'arbitrage a le droit de rendre des ordonnances de procédure sur la direction du procès, de déterminer les formes et délais dans lesquels chaque Partie devra présenter ses conclusions et de statuer sur l'interprétation des documents produits et communiqués aux deux Parties.

ART. 20.—Les agents et conseils des Gouvernements en litige ayant présenté tous les éclaircissements et preuves pour la défense de leurs causes, le Président du Tribunal d'arbitrage prononcera la clôture de la discussion.

ART. 21. — Les délibérations des membres du Tribunal d'arbitrage sur le fond du litige ont lieu à huis clos.

Toute décision définitive ou provisoire est prise à la majorité des membres présents.

Le refus d'un membre du Tribunal de prendre part au vote doit être constaté dans le procès-verbal.

ART. 22.—La sentence arbitrale, votée à la majorité des voix doit être rédigée par écrit et doit être signée par chacun des membres du Tribunal d'arbitrage.

Ceux des membres du Tribunal qui sont restés dans la minorité constatent, en signant, leur dissentiment.

ART. 23.—La sentence arbitrale est lue solennellement en séance publique du Tribunal et en présence des agents et conseils des Gouvernements en litige.

ART. 24.—La sentence arbitrale, dûment prononcée et notifiée aux agents des Gouvernements en litige, décide définitivement et sans appel la contestation entre les Parties et clôt toute la procédure arbitrale instituée par le compromis.

ART. 25.—Chaque Partie supportera ses propres frais et la moitié des frais du Tribunal d'arbitrage, sans préjudice de la décision du Tribunal touchant l'indemnité que l'une ou l'autre des Parties pourra être condamnée à payer.

ART. 26.—La sentence arbitrale est nulle en cas de compromis nul, ou d'excès de pouvoir ou de corruption prouvée d'un des arbitres.

La procédure indiquée ci-dessus concernant le Tribunal d'arbitrage s'applique également à partir du § 7 commençant par les mots : " Le siège du Tribunal d'arbitrage," dans le cas où l'arbitrage est confié à une personne seule au choix des Gouvernements intéressés.

Dans le cas où le Souverain ou le Chef d'Etat se réserverait de prononcer personnellement comme arbitre, la procédure à suivre serait fixée par le Souverain ou le Chef d'Etat lui-même.

III.—PROPOSITIONS RUSSES CONCERNANT LE TRIBUNAL D'ARBITRAGE.

a) ARTICLES QUI POURRAIENT REMPLACER L'ARTICLE I., 13.

ARTICLE PREMIER.—En vue de consolider, en tant que possible, la pratique de l'arbitrage international, les Puissances contractantes sont convenues d'instituer, pour la durée de

ans, un Tribunal d'arbitrage, auquel seraient soumis les cas d'arbitrage obligatoire énumérés dans l'article 10, à moins que les Puissances intéressées ne tombent d'accord sur l'établissement d'un Tribunal d'arbitrage spécial pour la solution du conflit survenu entre Elles.

Les Puissances en litige pourront également avoir recours au Tribunal ci-dessus indiqué dans tous les cas d'arbitrage facultatif, si un accord spécial à ce sujet s'établit entre Elles.

Il est bien entendu que toutes les Puissances, sans en excepter celles non contractantes ou celles qui auraient fait des réserves, pourront soumettre leurs différends à ce Tribunal en s'adressant au Bureau permanent prévu par l'article . . . de l'appendice A.

ART. 2.—L'organisation du Tribunal d'arbitrage est indiquée dans l'appendice A au présent article.

L'organisation des tribunaux d'arbitrage institués par des accords spéciaux entre les Puissances en litige, ainsi que les règles de procédure à suivre pendant l'instruction du litige et le prononcé de la sentence arbitrale sont déterminées dans l'appendice B (Code d'arbitrage).

Les dispositions contenues dans ce dernier appendice pourront être modifiées en vertu d'un accord spécial entre les Etats qui auront recours à l'arbitrage.

δ) ANNEXE AUX PROPOSITIONS RUSSES.

En cas d'acceptation des articles 1 et 2, il y aurait lieu :

- 1.—De rédiger l'appendice A mentionné dans l'article ;
- 2.—D'introduire dans le projet du Code d'arbitrage des modifications correspondantes.

ε) APPENDICE A,

mentionné dans l'article additionnel 2 des Propositions russes.

A défaut d'un compromis spécial, le Tribunal d'arbitrage prévu par l'article 13 sera constitué sur les bases suivantes :

§ 1.—Les Parties contractantes instituent un Tribunal per-

manent pour la solution des conflits internationaux qui lui seront déférés par les Puissances en litige, en vertu de l'article 13 de la présente Convention.

§ 2.—La Conférence désignera, pour le terme qui s'écoulera jusqu'à la réunion d'une nouvelle Conférence, cinq Puissances, afin que chacune d'elles, en cas de demande d'arbitrage, nomme un juge, soit du nombre de ses ressortissants, soit en dehors d'eux.

Les juges ainsi nommés constituent le Tribunal arbitral compétent pour le cas survenu.

§ 3.—Si parmi les Puissances en litige se trouvaient une ou plusieurs Puissances non représentées dans le Tribunal arbitral, en vertu de l'article précédent, chacune des deux Parties en litige aura le droit de s'y faire représenter par une personne de son choix en qualité de juge ayant les mêmes droits que les autres membres dudit Tribunal.

§ 4.—Le Tribunal choisit parmi ses membres son Président qui, en cas de partage de voix en nombre égal, aura la voix prépondérante.

§ 5.—Un Bureau permanent d'arbitrage sera institué par les cinq Puissances qui seront désignées en vertu du présent Acte pour constituer le Tribunal arbitral. Elles élaboreront le règlement de ce Bureau, en nommeront les employés, pourvoiront à leur remplacement le cas échéant et fixeront leurs émoluments. Ce Bureau, dont le siège sera à La Haye, comprendra un Secrétaire général, un Secrétaire adjoint, un Secrétaire-archiviste ainsi que le reste du personnel, lequel sera nommé par le Secrétaire général.

§ 6.—Les frais d'entretien de ce Bureau seront répartis entre les Etats dans la proportion établie pour le Bureau international postal.

§ 7.—Le Bureau rend annuellement compte de son activité aux cinq Puissances qui l'ont nommé et celles-ci communiquent le compte rendu aux autres Puissances.

§ 8.—Les Puissances entre lesquelles auraient surgi un litige

s'adresseront au Bureau et lui fourniront les documents nécessaires. Le Bureau avisera les cinq Puissances ci-dessus mentionnées qui auront à constituer sans retard le Tribunal. Ce Tribunal se réunira d'ordinaire à La Haye ; il pourra se réunir également dans une autre ville, si un accord s'établit à cet effet entre les Etats intéressés.

§ 9.—Pendant le fonctionnement du Tribunal, le Bureau lui servira de Secrétariat. Il suivra le Tribunal en cas de déplacement. Les archives de l'arbitrage international seront déposées au Bureau.

§ 10.—La procédure du Tribunal susdit sera régie par les prescriptions du Code d'arbitrage.

TRANSLATION OF THE RUSSIAN PROPOSALS.

I.—ELEMENTS FOR THE ELABORATION OF A CONVENTION TO BE CONCLUDED BY THE POWERS PARTICIPATING IN THE HAGUE CONFERENCE.

GOOD OFFICES AND MEDIATION.

ART. 1.—In order to prevent, as far as possible, recourse to force in international relations, the Signatory Powers are agreed to employ every effort to bring about by pacific means the solution of conflicts which may arise among them.

ART. 2.—In consequence the Signatory Powers are decided, in the event of serious disagreement or conflict, before appealing to arms, to have recourse, so far as circumstances will permit, to the good offices or mediation of one or more friendly Powers.

ART. 3.—In the event of mediation being spontaneously accepted by States in conflict, the aim of the mediatory Government consists in endeavouring to bring about a conciliation between the States.

ART. 4.—The *rôle* of the mediatory Government ceases from the moment when the compromise proposed by it, or the bases

of a friendly agreement which it may have suggested, shall not have been accepted by the States in conflict.

ART. 5.—Should the Powers consider it advisable, in the event of a serious disagreement or conflict between civilised States regarding questions of political interest, the Powers not implicated in the conflict shall offer of their own initiative, so far as circumstances are favourable, their good offices or their mediation to the disputing States in order to remove the difference that has arisen by proposing an amicable solution which, without affecting the interests of other States, shall be of a conciliatory nature in the best interests of the parties in dispute.

ART. 6.—It remains well understood that mediation and the employment of good offices, either at the instance of the parties in dispute or of neutral Powers, shall bear strictly the character of friendly counsel and in no way of compulsory force.

INTERNATIONAL ARBITRATION.

ART. 7.—In so far as regards a dispute relating to questions of right, and primarily to those affecting the interpretation or application of treaties in force, Arbitration is recognised by the Signatory Powers as being the most efficacious and most equitable means of settling these disputes in a friendly manner.

ART. 8.—The Contracting Powers therefore undertake to have recourse to Arbitration in cases relating to questions of the above-mentioned order, so far as these affect neither the vital interests nor the national honour of the parties in dispute.

ART. 9.—Each State remains the sole judge of the question whether this or that case shall be submitted to Arbitration, excepting the cases enumerated in the following article, where the Signatory Powers consider Arbitration as obligatory.

ART. 10.—After the ratification of the present Act by all the Signatory Powers, Arbitration is obligatory in the following cases, so far as they affect neither the vital interests nor the national honour of the contracting States.

I. In the event of differences or disputes relating to pecuniary

damages sustained by a State or its subjects, arising from illegal actions or negligence of another State or its subjects.

II. In the event of disagreements relating to the interpretation or application of treaties and conventions hereinafter mentioned:

1. Postal, telegraph, and railway treaties and conventions, and those relating to the protection of submarine cables; regulations as to the means of preventing the collision of ships at sea; conventions relating to the navigation of international rivers and inter-oceanic canals.

2. Conventions regarding the protection of literary and artistic property, industrial property, (patents, &c.), monetary and metrical conventions, sanitary conventions, &c.

3. Conventions relating to legal proceedings.

4. Conventions relating to purely technical and non-political questions of delimitation.

ART. 11.—The above list may be completed by subsequent arrangements among the Signatory Powers. Moreover, each Power shall be able to enter into a special arrangement with another Power for the purpose of rendering Arbitration obligatory in the above-mentioned cases before the general ratification, and also to extend the scope of Arbitration to all cases which it is considered possible to submit to it.

ART. 12.—In all other cases of international conflicts not mentioned in the above articles, Arbitration, while certainly being very desirable and recommended by the present Act, is nevertheless purely facultative—that is to say, it can only be applied on the spontaneous initiative of one of the parties in dispute and with the express consent of the other parties.

ART. 13.—With the view of facilitating recourse to Arbitration and its application, the Signatory Powers are agreed to formulate a common arrangement for the employment of International Arbitration and for the fundamental principles to be observed in the drawing up of the rules of procedure to be followed pending the inquiry into the dispute and the pronouncement of the decision of the Arbitrators. The application of these funda

mental principles, as also of the Arbitration procedure indicated in the Appendix to the present article, may be modified by virtue of a special arrangement between States which may have recourse to Arbitration.

INTERNATIONAL COMMISSIONS OF INQUIRY.

ART. 14.—In cases in which divergences of views occur between the Signatory States in connection with local circumstances giving rise to litigation of an international character which cannot be settled by the ordinary diplomatic means, but in which neither the honour nor the vital interests of these States are engaged, the Governments interested agree to institute an International Commission of Inquiry in order to arrive at the causes of the disagreement and to clear up on the spot, by an impartial and conscientious examination, all questions of fact.

ART. 15.—These international Commissions shall be constituted as follows:—Each Government interested shall appoint two members, and the four members united shall choose a fifth member who shall at the same time be president of the Commission. If the votes shall be divided for the choice of a president the two Governments interested shall appeal either to another Government or to a third party, who shall appoint the president of the Commission.

ART. 16.—Governments between which a grave disagreement or conflict shall arise in the circumstances indicated above, shall engage to furnish the Commission of Inquiry with all means and facilities necessary for a thorough and conscientious study of the facts.

ART. 17.—The International Commission of Inquiry, after having acquainted itself with the circumstances out of which the disagreement or conflict arose, shall submit to the Governments interested a report signed by all the members of the Commission.

ART. 18.—The report of the Commission of Inquiry shall in no wise have the character of an arbitration judgment. It leaves the Governments in conflict at full liberty, either to conclude a friendly arrangement on the basis of the said report, or to have recourse

to Arbitration by concluding an agreement *ad hoc*, or else by resorting to the active measures allowable in the mutual relations between nations.

II.—A DRAFT CODE OF ARBITRATION, PROPOSED BY THE RUSSIAN DELEGATION.

ART. 1.—The Signatory Powers have approved the principles and rules below mentioned for the procedure of Arbitration among nations, save for the modifications which may be introduced in each particular case by mutual agreement by the Governments in dispute.

ART. 2.—The States interested, having accepted Arbitration, shall sign a special Act (*compromis*), in which are clearly set forth the questions submitted to the decision of the Arbitrator, and the full facts and the considerations of law connected with them, and a formal undertaking shall be given by the contracting parties to submit, in good faith and without subsequent appeal, to the Arbitral award which shall be pronounced.

ART. 3.—The Arbitration Conventions thus concluded by the States concerned with their full consent may provide for Arbitration either for all disputes arising between them, or for disputes of a certain fixed category.

ART. 4.—The Governments interested may entrust the functions of Arbitrator to the Sovereign or chief of the State of a third Power, with the consent of this last. They may also entrust these functions either to a single person selected by them or to an Arbitration Tribunal appointed for the purpose. In the latter event, and in view of the importance of the dispute, the Arbitration Tribunal may be constituted in the following manner:—Each contracting party shall choose two Arbitrators. These Arbitrators having met, shall agree upon the umpire, who will be *de jure* the president of the Tribunal. In the event of a division of votes the disputing Governments will appeal by a common accord to a third Government or a third person, who will appoint the umpire.

ART. 5.—If the disputing parties do not agree on the choice of the third Government or third person, mentioned in the preceding article, each of these parties shall appoint a Power not implicated in the dispute, in order that the Power thus chosen by the disputing parties may appoint an umpire by common agreement.

ART. 6.—The incompetence or inadmissibility of one only of the above-mentioned Arbitrators, or his refusal to accept the office of Arbitrator, once his consent has been given, or the death of an Arbitrator, invalidates the entire Agreement (*compromis*), except in the case where these circumstances are foreseen and provided for by common agreement between the contracting parties.

ART. 7.—The Arbitration Tribunal shall meet at a place designated either by the Contracting States or by the members of the Tribunal. The meeting place can only be changed by a fresh agreement between the interested Governments, or, in case of *force majeure*, on the initiative of the Tribunal itself.

ART. 8.—Disputing States have the right to appoint delegates or special agents attached to the Tribunal of Arbitration, and empowered to act as intermediaries between the Tribunal and the Governments interested. Besides these agents the above-mentioned Governments are authorised to nominate councillors or advocates to defend their rights and interests before the Tribunal of Arbitration.

ART. 9.—The Tribunal of Arbitration shall decide in what language the deliberations and discussions of the parties shall be held.

ART. 10. — The procedure of Arbitration shall generally be divided into two parts—namely, preliminary and definitive, the first consisting in the communication to the members of the Tribunal by the agents of the Contracting States, of all the documents and arguments printed or written regarding the questions in dispute ; and the second, definitive or oral, in discussions before the Tribunal of Arbitration.

ART. 11.—On the conclusion of the preliminary procedure the discussions before the Arbitration Tribunal will begin and will be directed by the President. Records of the whole proceedings will be made by secretaries appointed by the President of the Tribunal. These Records will alone have legal force.

ART. 12.—The preliminary procedure having been ended, the Arbitration Tribunal shall have the right to reject all new documents which the representatives of the parties may desire to submit to it.

ART. 13.—The Arbitration Tribunal, nevertheless, always remains absolutely free to take into consideration new documents or records of which the delegates or councillors of the Governments in dispute have taken advantage in their explanations before the Tribunal.

The latter has the right to demand the production of these documents, and to notify them to the opposing party.

ART. 14.—The Arbitration Tribunal has, besides, the right to call upon the agents of the Parties to submit all the documents or explanations which it requires.

ART. 15.—The agents and councillors of the Governments in dispute shall be authorised to lay before the Tribunal orally all the explanations and proofs in support of the cause they have to defend.

ART. 16.—The same agents and councillors also have the right to lay before the Tribunal motions on the subjects under discussion. The decisions of the Tribunal concerning these motions are definitive, and cannot give rise to any discussion.

ART. 17.—The members of the Arbitration Tribunal have the right to put questions to the agents or councillors of the Contracting Parties, or to ask for enlightenment on doubtful points. Neither questions submitted nor observations made by members of the Tribunal in the course of the deliberations shall be regarded as an expression of opinion by the Tribunal as a whole or by the individual members composing it.

ART. 18.—The Arbitration Tribunal is alone authorised to determine its competence by the interpretation of the clauses of the Agreement (*compromis*) and in accordance with the principles of international law, with due consideration for any special treaties which may be involved.

ART. 19.—The Arbitration Tribunal has the right to establish rules of procedure, and to determine the manner and periods of time in which each party is to present its documents, and to decide on the interpretation of the documents produced and communicated to the two Parties.

ART. 20.—On the agents and councillors of the litigant Governments having presented all the explanations and proofs in defence of their respective pleas, the President of the Arbitration Tribunal will close the debates.

ART. 21.—The deliberations of the members of the Tribunal on the ground of litigation are to be held with closed doors. Every decision, whether definitive or provisional, is taken by the majority of the members present. The refusal of a single member of the Tribunal to take part in the voting must be stated in the records.

ART. 22.—The Arbitral Award, arrived at by a majority of votes, must be drawn up in writing and signed by each of the members of the Arbitration Tribunal. Those members of the Tribunal who are in the minority shall, when signing, state their disagreement with the Award.

ART. 23.—The Award shall be solemnly read at a public sitting of the Tribunal and in the presence of the agents and councillors of the Governments in dispute.

ART. 24.—The Award, duly made and notified to the agents of the Governments in dispute, shall decide, definitively and without appeal, the dispute between the Parties, and close the arbitration proceedings instituted by the Agreement (*compromis*).

ART. 25.—Each Party to a dispute will defray its own expenses and half the expenses of the Arbitration Tribunal, without

prejudice to the decision of the Tribunal regarding any indemnity which one or other of the Parties may be ordered to pay.

ART. 26.—The Arbitral Award is null and void in case of the Reference (*compromis*) being invalid, or if the Tribunal has exceeded its powers, or when corruption is proved on the part of one of the Arbitrators.

The above regulations regarding the Arbitration Tribunal, from Section 7, beginning with the words “The Arbitration Tribunal shall meet,” apply equally to cases in which Arbitration is entrusted to a single individual chosen by the Governments interested. In a case in which the Sovereign or chief of a State gives his Award personally as Arbitrator, the procedure would be determined by the Sovereign or the chief of the State himself.

III.—RUSSIAN PROPOSALS CONCERNING AN ARBITRATION TRIBUNAL.

(a.) Articles which might replace Article I., 13.

1. With a view to consolidate, as far as possible, the practice of International Arbitration, the Contracting Powers have agreed to form, for a period of . . . years, an Arbitration Tribunal, to which should be referred the cases of obligatory Arbitration enumerated in Article I., 10, unless the interested Powers agree on the establishment of a special Arbitration Tribunal for the solution of the dispute that has arisen between them.

The Powers in dispute may also have recourse to the Tribunal referred to above in all cases of optional Arbitration, if a special agreement on this subject be arrived at between them.

It is understood that all the Powers, without excepting the non-contracting Powers, or those which have made reservations, may submit their differences to this Tribunal by addressing the Permanent Bureau, provided for by Article . . . of Appendix A.

2. The organisation of the Arbitration Tribunal is shown in Appendix A. of the present Article.

The organisation of the Arbitration Tribunals instituted by special agreements between the Powers in dispute, and also the

rules of procedure to be followed during the examination of the case, and the delivery of the Arbitral Award, are determined in Appendix B (Code of Arbitration).

The arrangements contained in this latter Appendix may be modified by a special agreement between the States which have recourse to Arbitration.

(b.) ANNEX TO THE RUSSIAN PROPOSALS.

In case of the acceptance of Articles 1 and 2, it would be expedient :

1. To draw up Appendix A, mentioned in the Article.
2. To introduce corresponding modifications into the Draft of the Arbitration Code.

(c.) APPENDIX A.

Mentioned in Additional Article a) 2, of the Russian Proposals.

In default of a Special Convention (*compromis*), the Arbitration Tribunal provided for by Article 13 shall be constituted on the following bases:—

1. The Contracting Parties establish a Permanent Tribunal for the settlement of international disputes, which shall be referred to it by the contending Powers, by virtue of Article 13 of the present Convention.

2. The Conference shall designate, for the period which shall elapse before the meeting of a new Conference, five Powers, in order that each of them, in case of a request for Arbitration, may appoint a Judge, either from the number of their subjects, or outside that number.

The Judges thus appointed constitute the Arbitration Tribunal competent for the case that has arisen.

3. If amongst the Powers in dispute were one or more Powers not represented in the Arbitration Tribunal, in virtue of the preceding Article, each of the two Parties in dispute shall have the

right to have itself represented in it by a person of its choice as Judge, having the same rights as the other members of the said Tribunal.

4. The Tribunal shall from amongst its members choose its President, who, in case of an equal division of votes, shall have the casting vote.

5. A Permanent Bureau of Arbitration shall be appointed by the five Powers who shall be designated in virtue of the present Act to constitute the Arbitration Tribunal. They shall draw up the Regulations of this Bureau, appoint its employés, provide for replacing them when need arises, and fix their emoluments. This Bureau, which shall be located at the Hague, shall consist of a General Secretary, an Assistant Secretary, a Recorder, and an adequate staff, which shall be appointed by the General Secretary.

6. The expenses of maintenance of this Bureau shall be divided amongst the States in the proportion fixed for the International Postal Bureau.

7. The Bureau shall annually render an account of its work to the five Powers who have appointed it, and these shall communicate the Report to the other Powers.

8. The Powers between whom a dispute has arisen shall apply to the Bureau, and furnish to it the necessary documents. The Bureau shall advise the five Powers above mentioned, who shall without delay form the Tribunal. This Tribunal shall, as a rule, meet at the Hague; or it may meet in some other town, if an agreement to that effect be arrived at amongst the interested States.

9. During the time that the Tribunal is at work, the Bureau shall serve as its Secretariat. It shall follow the Tribunal in case of removal. The archives of the International Arbitration shall be deposited at the Bureau.

10. The procedure of the above Tribunal shall be governed by the rules of the Code of Arbitration.

THE BRITISH ARBITRATION PROPOSALS.

PERMANENT ARBITRATION TRIBUNAL.

L.—SIR JULIAN PAUNCEFOTE'S FIRST PROPOSAL :—

ART. 1.—With the view of facilitating an immediate recourse to Arbitration on the part of those States who may not succeed in settling their differences by diplomatic means, the Signatory Powers have undertaken to organise in the following manner a permanent Tribunal of Arbitration, accessible at all times, and governed by the code of Arbitration prescribed in this Convention, so far as it may be applicable, and in conformity with stipulations made in arrangements decided upon between the parties in litigation.

ART. 2.—To this effect a central office will be established permanently at X, where the archives of the Tribunal will be preserved, and which will be entrusted with the conduct of its official business. A permanent Secretary, an Archivist, and sufficient staff will be appointed who will reside on the spot. The office will be the intermediary for communications relative to the meeting of the Tribunal at the instance of the parties in litigation.

ART. 3.—Each Signatory Power will transmit to the others the names of two persons of its nationality, recognised in their country as jurists or publicists of merit, enjoying the highest reputation for integrity, disposed to accept the functions of Arbitrators, and possessing all the necessary qualities. Persons thus designated will be Members of the Tribunal, and will be inscribed as such in the central office. In case of the death or retirement of a Member of the Tribunal, provision will be made for his being replaced in the same manner as for his nomination.

ART. 4.—The Signatory Powers, desiring to apply to the Tribunal for the pacific settlement of differences which may arise amongst them, will notify this desire to the Secretary of the central office, which will then furnish them immediately with a

list of the Members of the Tribunal. The Powers in question will thereupon select from this list the number of Arbitrators agreed upon in the arrangements. They will have, moreover, the power of adding Arbitrators other than those whose names are inscribed in the list. The Arbitrators thus chosen will form the Tribunal for the Arbitration, and will meet on the date fixed by the parties in litigation. The Tribunal will sit generally at X, but will have the power of sitting elsewhere, and of changing its place from time to time, according to circumstances, as may suit its convenience, or that of the parties in litigation.

ART. 5.—Any State, although not a Signatory Power, will be able to have recourse to the Tribunal under the conditions prescribed by the regulations.

ART. 6.—The Government X . . . is directed to install at X . . . in the name of the Signatory Powers, as soon as possible after the ratification of this Convention, a permanent Council of Administration, composed of five Members and one Secretary. It will be the duty of the Council to establish and organise a central office, which will be under its direction and control. It will issue from time to time the necessary regulations for the proper working of the central office, and will also settle all questions which may arise concerning the working of the Tribunal, or which may be submitted to it by the central bureau. The Council will have absolute power as regards the nomination, the suspension, or the dismissal of all functionaries or employees. It will fix salaries and control general expenses. The Council will elect its president, who will have a preponderating voice. The presence of three Members will suffice to constitute a quorum, and decisions will be taken by a majority of votes. The fees of the Members of the Council will be fixed by agreement between the Signatory Powers.

ART. 7.—The Signatory Powers agree to contribute in equal shares the expenses of the Administrative Council and the central office. The expenses of each arbitration will be chargeable in equal parts to the States in litigation.

A PERMANENT COUNCIL.

II.—SIR JULIAN PAUNCEFOTE'S NEW PROPOSAL :—

To replace Article 6.

There shall be constituted at the Hague a Permanent Council, composed of the Representatives of the Signatory Powers residing in that city, and the Minister for Foreign Affairs of the Netherlands, as soon as possible after the ratification of the present Convention. This Council shall be commissioned to establish and organise a Central Bureau, which shall remain under its direction and control. It shall take steps to establish the Tribunal; it shall issue from time to time the regulations necessary for the proper conduct of the Central Bureau. Similarly it shall decide all questions which may arise relating to the working of the Tribunal, or refer them to the Signatory Powers. It shall have absolute power as to the appointment, suspension or dismissal of the officers and employés of the Central Bureau. It shall fix their salaries and emoluments, and have control of the general expenditure. The presence of five members at a meeting duly summoned shall constitute a quorum, and the decisions shall be taken by a majority of votes.

[*Translation.*]

DOCUMENTS ÉMANÉS DE LA DÉLÉGATION
ANGLAISE.

TRIBUNAL PERMANENT D'ARBITRAGE.

a) *Proposition de S. EXC. SIR JULIAN PAUNCEFOTE.*

1.—Dans le but de faciliter le recours immédiat à l'arbitrage pour les Etats qui n'auraient pas réussi à régler leurs différends par la voie diplomatique, les Puissances signataires s'engagent à organiser de la manière suivante un "Tribunal permanent d'arbitrage" accessible en tous temps, et qui sera régi par le Code d'arbitrage prescrit dans cette Convention en tant qu'il serait applicable et conforme aux dispositions arrêtées dans le compromis entre les Parties litigantes.

2.—A cet effet, un Bureau central sera établi en permanence à (X), dans lequel les archives du Tribunal seront conservées, et qui sera chargé de la gestion de ses affaires officielles. Un Secrétaire permanent, un Archiviste et un personnel suffisant seront nommés, qui habiteront sur les lieux.

Le Bureau sera l'intermédiaire des communications relatives à la réunion du Tribunal à la requête des Parties litigantes.

3.—Chaque Puissance signataire transmettra aux autres les noms de deux personnes de sa nationalité reconnues dans leur pays comme juristes ou publicistes de mérite et jouissant de la plus haute considération quant à leur intégrité, qui seraient disposées à accepter les fonctions d'arbitre et posséderaient toutes les qualités requises. Les personnes ainsi désignées seront membres du Tribunal et seront inscrites comme tels au Bureau central.

En cas de décès ou de retraite d'un membre du Tribunal, il sera pourvu à son remplacement de la même manière que pour sa nomination.

4.—Les Puissances signataires désirant avoir recours au Tribunal pour le règlement pacifique des différends qui pourraient surgir entre Elles, notifieront ce désir au Secrétaire du Bureau central qui leur fournira sur-le-champ la liste des membres du Tribunal. Elles choisiront dans cette liste le nombre d'arbitres convenu dans le compromis.

Elles auront en outre la faculté de leur adjoindre des arbitres autres que ceux dont les noms seront inscrits dans la liste. Les arbitres ainsi choisis formeront le Tribunal pour cet arbitrage.

Ils se réuniront à la date fixée par les Parties en litige.

Le Tribunal siègera d'ordinaire à (X), mais il aura la faculté de siéger ailleurs et de changer son siège de temps en temps selon les circonstances et sa convenance ou celle des Parties en litige.

5.—Tout Etat, quoique n'étant pas une des Puissances signataires, pourra avoir recours au Tribunal dans les conditions prescrites par les Règlements.

6.—Le Gouvernement de (X) est chargé d'installer à (X), au nom des Puissances signataires le plus tôt possible après la ratification de cette Convention, un "Conseil d'administration" permanent qui sera composé de cinq membres et d'un Secrétaire. Ce conseil aura pour devoir d'établir et d'organiser le Bureau central qui sera sous sa direction et son contrôle.

Il émettra de temps en temps les Règlements nécessaires au bon fonctionnement du Bureau central. Il réglera de même toutes les questions qui pourraient surgir touchant le fonctionnement du Tribunal, ou qui lui seraient référées par le Bureau central. Il aura des pouvoirs absolus quant à la nomination, la suspension ou la démission de tous les fonctionnaires et employés, il fixera leurs salaires et il contrôlera la dépense générale. Le Conseil élira son Président, qui aura voix prépondérante. La présence de trois membres suffira pour constituer les séances, et les décisions seront prises à la majorité des voix. Les honoraires des membres du Conseil seront fixés par un accord entre les Puissances signataires.

7.—Les Puissances signataires s'engagent à supporter par parties égales les frais du Conseil d'administration et du Bureau central. Les frais se rattachant à chaque arbitrage incomberont aux Etats en litige en partie égale.

b) PROPOSITION NOUVELLE DE SIR JULIAN PAUNCEFOTE
CONCERNANT LE CONSEIL PERMANENT.

Article 6 nouveau.

Un Conseil permanent composé des représentants des Puissances signataires résidant à La Haye et du Ministre des affaires étrangères des Pays-Bas sera constitué dans cette ville le plus tôt possible après la ratification de la présente Convention. Ce Conseil aura pour mission d'établir et d'organiser le Bureau central, lequel demeurera sous sa direction et sous son contrôle. Il procédera à l'installation du Tribunal ; il émettra, de temps en temps, les règlements nécessaires au bon fonctionnement du Bureau central. De même, il réglera toutes les questions qui

pourraient surgir touchant le fonctionnement du Tribunal, ou il en réfèrera aux Puissances signataires. Il aura des pouvoirs absolus quant à la nomination, la suspension ou la révocation des fonctionnaires et employés du Bureau central. Il fixera leurs traitements et salaires, il contrôlera la dépense générale. La présence de cinq membres dans la réunion, dûment convoquée, suffira pour délibérer valablement et les décisions seront prises à la majorité des voix.

AMERICAN SCHEME.

I.—SPECIAL MEDIATION.

Proposal by Mr. HOLLS, United States Delegate.

The Signatory Powers are agreed to recommend the application, in circumstances which will allow of it, of a Special Mediation, under the following form :

In case of a grave disagreement menacing Peace, the States in dispute shall choose respectively a neutral Power, with the mission of entering into direct relations with the aim of preventing the rupture of peaceful relations.

For the space of twenty days, if no other period of time is stated, the question in dispute is considered as referred exclusively to those Powers. They must apply all their efforts to settle the difference and to re-establish as far as possible the *status quo ante*.

In case of a rupture of pacific relations, these Powers remain charged with the common mission of taking advantage of every opportunity of re-establishing Peace.

II.—PROPOSAL FOR AN INTERNATIONAL TRIBUNAL.

RESOLVED —That in order to aid in the prevention of armed conflicts by pacific means, the representatives of the Sovereign Powers assembled together in this Conference be and they hereby are requested to propose to their respective Governments a series of negotiations for the adoption of a general Treaty, having for its

object the following plan, with such modifications as may be essential to secure the adhesion of at least nine Sovereign Powers, four of whom at least shall have been signatories of the Declaration of Paris, the German Empire being for this purpose the successor of Prussia, and the Kingdom of Italy the successor of Sardinia :—

ART. 1.—The Tribunal shall be composed of persons nominated on account of their personal integrity and learning in international law by a majority of the members of the highest Court at the time existing in each of the adhering States, one from each Sovereign State participating in the Treaty, and shall hold office until their successors are nominated by the same body and duly appointed.

ART. 2.—The Tribunal shall meet for organisation at a time and place to be agreed upon by the several Governments, but not later than six months after the general Treaty shall be ratified by nine Powers as hereinbefore proposed, and shall organise itself by the appointment of a permanent clerk, and such other officers as may be found necessary, but without conferring any distinction upon its own members. The Tribunal shall be empowered to fix its place of session and to change the same from time to time as the interests of justice or the convenience of the litigants may seem to require, and to fix its own rules of procedure.

ART. 3.—The Tribunal shall be of a permanent character, and shall be always open for the filing of new cases, subject to its own rules of procedure, either by the contracting nations or by others that may choose to submit them, and all cases and counter-cases, with the testimony and arguments by which they are to be supported or answered, are to be in writing or in print. All cases, counter cases, evidence, arguments, or opinions, expressing judgment, are to be accessible after the award has been given to all who will pay the necessary charges of transcription.

ART. 4.—Any and all questions of disagreement between

Signatory Powers may, by mutual consent, be submitted by the nations concerned to this International Tribunal for decision, but every such submission shall be accompanied by an undertaking to accept the award.

ART. 5.—The bench of Judges for each particular case shall consist, as may be agreed upon by the litigating nations, either of the entire bench or of any smaller uneven number, not less than three to be chosen from the whole Court. In the event of a bench of three Judges only, no one of those shall be either a native subject or a citizen of the States whose interests are in litigation in the case.

ART. 6.—The general expenses of the Tribunal are to be equally divided, or upon some equitable basis, between the adherent Powers, but those arising from each particular case shall be provided for as may be directed by the Tribunal. The presentation of a case wherein one or both of the parties may be a non-adherent State shall be admitted only upon condition of a mutual agreement that the States so litigating shall pay respectively a sum to be fixed by the Tribunal for the expenses of the adjudication. The salaries of the Judges may be so adjusted as to be paid only when actually engaged in the duties of the Court. Where one or both of the parties are non-adherent States, they shall only be admitted on condition that the litigating States come to a common agreement to pay respectively such sum as the Tribunal shall fix to cover the expenses of the proceedings.

ART. 7.—Every litigant before the International Tribunal shall have a right to a rehearing of the case before the same Judges within three months after the notification of the decision, on alleging newly-discovered evidence or submitting questions of law not heard and decided at the former hearing.

ART. 8.—This Treaty shall become operative when nine Sovereign States such as are indicated in the resolution shall have ratified its provisions.

[*Translation.*]

DOCUMENTS ÉMANÉS DE LA DÉLÉGATION
AMÉRICAINNE.

I.—MÉDIATION SPÉCIALE.

Proposition de M. HOLLS, délégué des Etats-Unis d'Amérique.

Les Puissances signataires sont tombées d'accord de recommander l'application, dans les circonstances qui peuvent le permettre, d'une Médiation spéciale, sous la forme suivante :

En cas de différend grave menaçant la Paix, les Etats en litige choisissent respectivement une Puissance neutre, avec la mission d'entrer en rapport direct à l'effet de prévenir la rupture des relations pacifiques.

Pendant une durée de vingt jours, sauf stipulation d'un autre délai, la question en litige est considérée comme déferée exclusivement à ces Puissances. Elles doivent appliquer tous leurs efforts à régler le différend et à rétablir autant que possible le *statu quo ante*.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la Paix.

II.—PROJET DE TRIBUNAL INTERNATIONAL.

Il est décidé que, en vue d'aider à prévenir les conflits armés par des moyens pacifiques, les représentants des Puissances souveraines assemblés à cette Conférence sont invités par la présente résolution à proposer à leurs Gouvernements respectifs d'entrer en négociations aux fins de conclure un traité général qui aura pour objet le plan ci-dessous, avec telles modifications qui seraient indispensables pour assurer l'adhésion d'au moins neuf Puissances souveraines, desquelles huit au moins devront être des Puissances européennes ou américaines, et quatre au moins devront avoir été au nombre des signataires de la Convention de Paris, l'Empire d'Allemagne étant considéré comme succédant à la Prusse et le Royaume d'Italie à la Sardaigne.

(1) Le Tribunal sera composé de personnes se recommandant par leur haute intégrité et leur compétence dans le droit international, qui seront nommées par la majorité des membres de la plus haute Cour de justice existant dans chacun des Etats adhérents. Chaque Etat signataire du traité aura un représentant au Tribunal. Les membres de celui-ci siégeront jusqu'à ce que des successeurs leur aient été donnés en due forme par le même mode d'élection.

(2) Le Tribunal s'assemblera, en vue de s'organiser, à une époque et à un endroit dont conviendront les différents Gouvernements. Toutefois il ne faudra pas que ce soit plus de six mois après la ratification du traité général par les neuf Puissances mentionnées ci-dessus. Le Tribunal désignera un Greffier permanent et tels autres employés qui seront jugés nécessaires. Le Tribunal aura le pouvoir de désigner le lieu où il se réunira et pourra en changer de temps en temps, selon que les intérêts de la justice ou les convenances des litigants sembleront l'exiger. Il fixera les règles de la procédure qu'il suivra.

(3) Le Tribunal aura un caractère permanent et sera toujours prêt à accueillir, dans les limites de ses règles propres de procédure, les cas nouveaux et les cas contraires, soit que ces cas lui soient soumis par les Nations signataires, soit qu'ils le soient par toutes autres Nations qui désireraient recourir à lui ; tous les cas et cas contraires, ainsi que les témoignages et les arguments pour les appuyer ou les combattre, devront être écrits ou imprimés. Tous cas, cas contraires, dépositions, arguments et considérants de jugements devront, après que la sentence aura été prononcée, être à la disposition de tous ceux qui seraient disposés à payer les frais de leur transcription.

(4) Tout différend quel qu'il soit entre Puissances signataires peut, de commun accord, être soumis par les Nations intéressées au jugement de ce Tribunal international, mais, dans tous les cas où le Tribunal sera saisi, les intéressés devront s'engager, en s'adressant à lui, à accepter sa sentence.

(5) Dans chaque cas particulier, la Cour sera composée

d'après les Conventions intervenues entre les Nations litigantes, soit que le Tribunal tout entier siège, soit que les Nations litigantes désignent quelques-uns seulement de ses membres en nombre impair et non inférieur à trois. Dans le cas où la Cour ne comprendrait que trois juges, aucun d'eux ne pourra être originaire, sujet ou citoyen des Etats dont les intérêts sont en cause.

(6) Les frais généraux du Tribunal seront répartis également ou en proportion équitable entre les Puissances adhérentes, mais les frais occasionnés par chaque cas particulier seront à la charge de ceux que le Tribunal indiquera. Les traitements des juges pourront être fixés de telle façon qu'ils ne soient payables que lorsque lesdits juges rempliront effectivement leurs fonctions au Tribunal. Les cas dans lesquels l'une des parties ou toutes les deux seraient un Etat non-adhérent ne seront admis qu'à la condition que les Etats litigants prennent de commun accord l'engagement de payer respectivement telle somme que le Tribunal fixera pour couvrir les frais de la procédure.

(7) Tout litigant qui aura soumis un cas au Tribunal international aura droit à une seconde audition de sa cause devant les mêmes juges, endéans les trois mois après que la sentence aura été notifiée, s'il déclare pouvoir invoquer des témoignages nouveaux ou des questions de droit non soulevées et non tranchées la première fois.

(8) Le Traité proposé ici entrera en force quand neuf Etats souverains dans les conditions indiquées dans la résolution, auront ratifié ses stipulations.

DOCUMENT ÉMANÉ DE LA DÉLÉGATION ITALIENNE.

Dans le but de prévenir ou de faire cesser les conflits internationaux, la Conférence de la Paix, réunie à La Haye, a résolu de soumettre aux Gouvernements qui y sont représentés les articles suivants, destinés à être convertis en stipulations internationales.

[*Translation.*]

THE ITALIAN PROPOSALS.

With the object of preventing or putting a stop to international conflicts, the Peace Conference assembled at the Hague has resolved to submit to the Governments represented the following Articles, which are to be converted into international stipulations :

ART. 1.—In the event of the imminence of a conflict between two or more Powers, and after the failure of all attempts at conciliation by means of indirect negotiations, the contending Parties will be obliged to have recourse to mediation or Arbitration in the cases indicated by the present Act.

ART. 2.—In all other cases mediation or Arbitration will be recommended by the signatory Powers, but will remain optional.

ART. 3.—Each of the signatory Powers not involved in the conflict has, in all cases, even during hostilities, the right to offer to the contending Parties its good offices or its mediation, or to propose to them to have recourse to the mediation of another Power equally neutral, or to Arbitration. This offer or proposal cannot be considered by one or the other of the contending Parties as an unfriendly act, even in cases where mediation and Arbitration, not being obligatory, would be rejected.

ART. 4.—A demand for, or an offer of, mediation has priority over a proposal of Arbitration ; but Arbitration may, or must be proposed, according to the circumstances of the case, not only when there is no demand for or offer of mediation, but also when mediation would have been rejected or would not have led to conciliation.

ART. 5.—A proposal of mediation or Arbitration, so long as it has not been formally accepted by all the contending Parties, cannot have the effect, unless there be a Convention to the

contrary, of interrupting, delaying, or impeding mobilisation and other preparatory measures, or military operations in progress.

ART. 6.—Recourse to mediation or Arbitration in conformity with Article 1 is obligatory in case:—

- | | | | | | | | | | | |
|------|---|---|---|---|---|---|---|---|---|---|
| 1st, | . | . | . | . | . | . | . | . | . | . |
| 2nd, | . | . | . | . | . | . | . | . | . | . |

The Arbitration Committee met for the first time, to consider the proposals of the Drafting Committee, on June 5th; on July 7th the complete scheme drawn up by that Committee was presented for its consideration; the Committee adjourned till the 17th, in order that the scheme might be referred by the delegates to their respective Governments: and on July 25th the report of its labours was considered and adopted, and its deliberations brought to an end.

FINAL PROCEEDINGS OF THE CONFERENCE.

A plenary meeting of the Conference, which lasted only twenty minutes, was held on June 20th, when the Articles, elaborated by the second Committee, for the application of the principles of the Geneva Convention to naval warfare, were adopted; and a Committee was appointed to draw up the "Final Act," or complete statement of the decisions of the Conference. This Committee consisted of Count Nigra (president), MM. Seth Low, Asser, Martens, Renault, Descamps, and Baron Stengel, with M. Raffalovich as secretary. On July 5th the Conference met and adopted the rules of war, and the supplementary resolutions passed by the second section of the Second Committee. On July 21st the Conference held a plenary session, in order to discuss and adopt the resolutions of the First Committees, and on July 25th the Conference adopted the Arbitration project, with the last amendments, subject to the following declaration, in regard to Article 27, by the American delegates:—

“Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions or internal administration of any foreign State. Nor shall anything contained in the said Convention be construed to require a relinquishment by the United States of America of its traditional attitude towards purely American questions.”

THE “FINAL ACT.”

The Final Protocol was then considered and adopted. The preamble to the Arbitration Convention states that the order in which the signatures should be appended to it was adopted by the Conference at its plenary session of the 28th July, 1899.

After detailing the names and qualifications of the delegates, this Final Act stated the results of the Conference in the following terms:—

In the series of meetings, in which the above-mentioned delegates have been throughout inspired by the desire to realise in the largest possible measure the generous views of its august initiator and the intentions of their Governments, the Conference has drawn up, for the signature of the plenipotentiaries, the text of the Conventions and Declarations hereafter enumerated and appended to the present Act.

I. A Convention for the pacific settlement of international conflicts.

The text of this is given herein.

II. A Convention concerning the laws and customs of war on land.

The Signatory Powers bind themselves to issue instructions to all their land forces in conformity with the Articles of this Convention.

III. A Convention for the adaptation to naval warfare of the principles of the Geneva Convention of 1864.

Appended to this Convention, as it appears in the Final Act, are three additional Articles in the form of a final disposition.

IV. Three declarations—

I. "The undersigned, as plenipotentiary delegates at the International Peace Conference, duly authorised by their Governments to this effect, inspired by the sentiments which found expression in the declaration of St. Petersburg of December 11th (November 29th, O.S.), 1868, and taking into consideration the final clause of that declaration, hereby declare that the contracting parties prohibit, for a period of five years, the throwing of projectiles or explosives from balloons or by other new analogous means.

II. "The undersigned, as plenipotentiary delegates, etc., hereby declare that the contracting parties prohibit the use of projectiles which have for the sole object the diffusion of asphyxiating or deleterious gases.

III. "The undersigned, as plenipotentiary delegates, etc., hereby declare that the contracting parties prohibit the use of bullets which expand or flatten easily in the human body, as, for instance, bullets with a hard case which case does not cover the whole of the enclosed mass, or contains incisions."

Obedient to the same inspiration, the Conference also unanimously adopted the following resolution:—

"The Conference considers that the limitation of military charges at the present time weighing upon the world is greatly to be desired for the increase of the material and moral welfare of humanity."

It also expressed the following opinions (*vœux*) dealing mainly with the suggestions in the Russian programme which it was found impossible to embody in definite Conventions:—

I. The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, expresses the wish that a special Conference be shortly convened for the purpose of revising this Convention

II. The Conference expresses the opinion that the question of the rights and duties of neutrals should be inscribed on the programme of a Conference to be held at an early date.

III. The Conference expresses the opinion that questions relative to the type and the calibre of rifles and naval artillery, such as have been examined by it, should be the subject of study by the different Governments, with a view to arriving eventually at a uniform solution by means of a further Conference.

IV. The Conference is of opinion that the Governments, taking into account the proposals made in the Conference, should make a study of the possibility of an agreement concerning the limitation of armed forces on land and sea, and of naval budgets.

V. The Conference is of opinion that the proposal tending to declare the inviolability of private property in war at sea should be remitted to the consideration of a future Conference.

VI. The Conference is of opinion that the proposal regulating the question of the bombardment of ports, towns, and villages by a naval force should be remitted to the consideration of a future Conference.

The following is the text of the additional protocol appended to the Final Act, and fixing December 31st, 1899, as the latest date by which the Governments represented at the Conference are to give in their adhesion.

ADDITIONAL PROTOCOL TO THE FINAL ACT.

Considering that a certain number of the Governments represented at the Peace Conference have not yet found themselves able to sign the Conventions and declarations, the text of which has been fixed by the Conference, the undersigned, as plenipotentiary delegates, at the moment of proceeding to sign the Final Act, have agreed as follows:—The Conventions and declarations, the text of which is annexed to the Final Act, can be signed by the Governments represented at the Conference, either at once or at a future date, but at the latest by December 31st, 1899. After

December 31st, 1899, adhesion to the Conventions can be made in conformity with the final dispositions of the aforesaid Conventions. Adhesion to the declarations can be made by means of a notification addressed to the Government of the Netherlands and communicated by it to all the Governments who have signed the declaration.

This "Final Act" was signed by the delegates of all the Powers on the morning of the 29th July, 1899.

THE FINAL SITTING.

The last session took place in the afternoon of the same day, July 29th, and lasted about half-an-hour. The President delivered his closing address, in which he expressed the thanks of the Conference to the Queen of the Netherlands and the Dutch Government, to the Chairmen and reporters of the various Committees and sub-Committees, and other officers, and also in appropriate terms his appreciation of the work of the Conference. A letter, dated May 29th, was read, from the Pope to the Queen of the Netherlands, giving assurance of his "warm sympathy" with the Conference. Count von Münster expressed the thanks of the Conference to M. de Staal and M. van Karnebeek; and Baron D'Estournelles made a final speech, in which he anticipated "future meetings of the Parliament of Man."

It was also announced that sixteen States had already signed the Arbitration Convention (including France, Russia, and the United States—Great Britain signed a few days later), fifteen the other two Conventions, seventeen the first declaration (projectiles from balloons), sixteen the second (asphyxiating shells), and fifteen the third (expanding bullets).

M. de Staal closed the Conference by tapping on his desk with his hammer, and uttering the words "Messieurs, la séance est levée."

ESTIMATE OF THE PEACE CONFERENCE AT THE HAGUE.

That the Peace Conference held at The Hague in the spring of 1899 was successful beyond all anticipation does not admit of question. It was in fact the opening of a new era for mankind. The adoption of the Arbitration Scheme was in itself an epoch-making event. But that was not its only, though it may be considered its main, result.

If that crowning success had not been achieved, and the Conference were to be judged alone by what may be termed its minor, or auxiliary, work, it would still have proved itself fruitful and useful, and worthy the effort of the Russian Emperor.

The meeting of this diplomatic body marks a stage and is a distinct step forward, in the historical development of the world. It is mainly significant because of its place in history, and for what it renders possible and, according to human probability, certain, rather than for what it actually accomplished. The *Edinburgh Review* very truly observes that "justice is not done to the labours of the Peace Conference, their significance is not understood until we recognise that they continue a process of development which has long been going on, and that they are one of the many steps taken of late towards extending systematising, and organising Arbitrations in disputes between nations," and so of preparing and originating the new and better order of International Society.

It may be true, as has been affirmed, that after The Hague gathering every nation will go on exactly as it did before it, making just what provision it thinks needful for war, aggressive or defensive. But the world will not be in the same condition as if The Hague Conference had never met.

For the nations have, with a surprising accord, resolved to make use, for the common benefit, of all the experience obtained by several of them in the series of efforts previously made towards the settlement of disputes by pacific methods. And the agree-

ment to which their expert representatives have come for the establishment of a permanent machinery, to be always available for that object, puts the whole of civilised mankind, in a very real sense, on a level of potential advantage with those who have led the way in this great forward movement of humanity. No one supposes that war is abolished. But the Hague Conference has at least succeeded in interposing new obstacles in the way of its commencement, and in "extending, systematising, and organising" the influences for making peace.

It thus "marks," as Ambassador White said of it, "the first stage of the abolition of the scourge of war." It justifies the statement of M. Bourgeois in his great speech in the Conference itself. "There are certain persons," said he, "ignorant of the power of the idea, who pretend that what the Conference has done is very little." He, however, avowed his conviction that it was only when the Conference was dissolved, and they were able to contemplate its work from a distance, they would understand the immense value of the progress which had been achieved.

THE IMPERIAL RESCRIPT.

The publication of the remarkable document in which the Emperor issued his invitation, was alone an event of immense significance.

1.—It begins by recognising an imperative ideal of Government, and declaring that it consists in the maintenance of general Peace and the reduction of armaments.

2.—It makes not only a distinct admission but a formal confession of the absolute failure of the policy adopted by Europe for at least a century, upon which the fabric of modern society is built, viz., that which is expressed in the maxim so loudly acclaimed, and still so confidently asserted, *Si vis pacem, para bellum*.

3.—It contains a scathing and startling impeachment of the military system, and an accurate description of its terrible results

and its threatening dangers, which has not been contradicted by any one, because the facts do not admit of question.

4.—It has had the effect of reopening discussion, in all quarters, on the first principles of national armament and defence. The justification of conditions, which have gradually grown up under the pressure of practical requirements, is called in question; and the instinct of nations, whether for self-protection or aggrandisement, which is a larger factor in history than abstract reason, is summoned to render an account of its promptings before the bar of inexorable logic.

5.—The response evoked was remarkable, and carried with it evidence of a genuine public dissatisfaction, in all parts of Europe, with the heavy, futile, unending burdens of the Armed Peace, and of immense relief and satisfaction at the proposal to deal with the oppressive evil, and to seek the benefits of a real and durable Peace.

6.—The terms of the Imperial Rescript have been unreservedly endorsed by popular opinion. The reasons given for the invitation were sound and strong; the peoples of the world have discussed them and have unanimously accepted them; and they, too, have reached the conclusion that war is not only barbarous, but that the burdens of preparation for it are deterrents of civilisation, injurious both to the State and to the individual, and a standing menace to the very existence of society. Such an admission by the united judgment and voice of the civilised world cannot leave matters as they were. To make it is the first condition of reform and the first step towards better things.

7.—It gives the highest official and authoritative sanction to the dreams and schemes, the efforts and contentions of the Peacemakers—those who, prior to its issue, were considered as mere visionaries and faddists, but whose labours and teachings have been proved to be the soberest wisdom and the truest patriotism.

8.—Taken altogether, the Emperor's Rescript has issued in

what amounts to an actual change of front—to a reconsideration, if not an actual reversal, of the mistaken policy of the civilised world, which has resulted in so much mischief. That has long been advocated as the necessary first step.

And lastly,

9.—The Emperor, by launching his indictment against the rising and overflowing tide of military expenditure, and making his audacious but earnest and true-hearted appeal, emancipated Europe, so to say, from a sort of intoxication which was preventing it from stopping in the mad outlay on armaments. It is noteworthy that since the Conference was mooted there has been less talk of increased outlay on improved armaments, fewer outbursts of military bravado and gratuitous provocation. The second Muravieff note, which explicitly stipulated that the Conference should not discuss any territorial changes, showed, moreover, that the problems would have to be discussed in a pacific and conciliatory spirit, excluding all hankerings for a settlement of pre-existing international difficulties. And, if there was no conviction how to reach a solution of the question of Peace or war, there was a feeling that any Power would incur suspicion or odium if, on the plea of reviving or strengthening pacific tendencies, it attempted to leave behind it the germ of a conflict to arise out of latent dissensions. This peaceful feeling pervading the assembled nations has been the first great benefit resulting from the Conference, and this alone would be enough to render it an important event in the annals of the time.

THE PEACE CONFERENCE.

1.—The Conference itself is an historical fact of such vast importance that only the future can declare its full significance. The assembly represented twenty - six Governments, whose dominions and dependencies comprise nine-tenths of the planet, whose populations, according to careful computation, consist of 1,400 millions out of the total 1,600 millions of its inhabitants.

It was an assembly—no longer Amphictyonic but world-wide—including nearly all the civilised Governments of the globe met to seek by international discussion the solution of questions affecting their common relations and mutual interests. Two months were spent in the friendly discussion of difficult and even dangerous topics, and at length, without dissension and even with practical unanimity, important decisions were arrived at, which have been given forth for the further education of the nations, or embodied in Treaties for their united action.

2.—The Conference was a fact altogether unique in history. It was a new thing in the earth. For the first and only time have the nations of the world come together to promote international Peace. It has thus been proved that they can meet together in peaceful conference and discuss matters of common interest, notwithstanding their essential and natural differences. Russia, for instance, may be a despotism, but it meets other countries in a common Parliament. The value of the Conference is not confined to its splendid achievements. It will exercise a great moral influence as a witness to the essential solidarity of civilisation. It is a beginning which must have important consequences.

3.—The Conference has been especially declared to be, and accepted as, the first of a series, and, therefore, the beginning of a new political order. It used every means in its power to make this idea accepted, and so to propagate itself. Whatever defects therefore may have attended its discussions and decisions, there will be ample opportunity for remedying them in the future. It is a precedent in history, that will surely be followed. This may be confidently expected as one of the fruits of the meeting at the Hague.

4.—The meeting of the Peace Conference has furnished a new illustration of the power of public opinion. The evidence of the force and influence of public sentiment was clear to any one who was at the Hague during the week or ten days that preceded the assembling of the Conference on the 18th of May. The atmo-

sphere of the Hague was at first most unpromising. The Roman Catholics were angered because, in deference to Italy, the Pope was not invited. The Dutch of the capital were annoyed, and therefore distrustful, because President Kruger was left out, the Transvaal being considered a vassal State. The Members of the Conference were diplomats who had been trained to believe that the natural relations of States are distrust, suspicion, rivalry, and enmity, and that the main dependence of domestic prosperity is armed preparation against the encroachments of other States. As it was thought certain that the Powers would not consent to Disarmament, it seemed to be agreed that the Conference itself would be a failure. But before it actually met, a change came over the spirit of those diplomats residing at the Hague who were to be its members. The people at home had been heard from so unmistakably, that the men of politics and diplomacy were first silenced, and then transformed into active agents for the accomplishment, to use the words of one of them, of "some little thing."

Even after the change in the sentiment of the Conference began to be observable, it was thought the plans of Arbitration were impossible. But the people at home thought otherwise, and their opinions and moods found expression not only in newspapers, but in letters and petitions.

The principal outcomes of the Conference make it possibly one of the greatest of human agents that have ever existed for the advancement of civilisation. But its main importance is that it expresses the will of the people who, in our modern times, have the last word. Their ideal is Peace, and the Conference discovered this and obeyed it. In view of this, it matters little whether the Tsar's hope was a dream or the cunning devices of disingenuous statesmen. The Conference was not controlled by the Tsar, or Muravieff, or the Kaiser, but by the people, and especially by the people of the United States, Great Britain, France, and Germany, before whose concentrated purpose even rulers must bow.

5.—The value of the Conference is exhibited less in the details of its transactions than in the spirit which animated its

proceedings. "Looking back over the whole period of the Conference," said Mr. Holls, "its most beautiful feature on the whole was the admirable spirit manifested by practically all the delegates." This spirit must have its reflex action upon the nations represented. It is impossible that these prolonged Conferences, carried on between men of such importance, should not leave a trace behind to impel them to a common effort to prevent bloodshed. It is impossible that the spirit of deliberations carried on in their name should not react upon those represented, and, therefore, that the breath of humanity which has blown through these deliberations, should not leave its mark on all brows—impossible that it should disappear altogether without leaving its trace on all minds. To have promoted the sense of goodwill and mutual confidence among the diplomatists of the world is thus a great step towards the maintenance of general and permanent Peace. And as regards the work of the Conference, the substantial Conventions and Resolutions are not so much calculated to impress the Conscience of Humanity as the Expressions of opinion which are embodied in the Final Act.

THE WORK OF THE CONFERENCE.

The Conference met to shake off the yoke of militarism from the nations, to humanise war, and to diminish the chances of war. The mere fact of its meeting was a recognition of the truth that justice and righteousness are ideas transcending the divisions between States; and throughout its deliberations it sought, with greater or less success, to graft this principle on the stock of present-day politics. No international gathering has ever attempted half so much, for absolute and complete success would have meant the foundation of a new political world. The Conference has not made a new world; but, where the aims are so vast and so revolutionary as those proposed, it is bare justice to estimate its work rather by what it has done than by what it has

not, and with our eyes fixed on the future, not turned back on the past.

The formal results of the work of the Conference are contained in a series of Conventions, Declarations, and Resolutions, which constitute the Final Act, and it is a source of great satisfaction that in agreeing to all these there was a majority of the nations represented, and that in most there was absolute unanimity.

The Imperial Rescript, and the more detailed Circular which followed it, made mention of a series of topics which naturally grouped themselves under three main heads—ARMAMENTS—LAWS AND USAGES OF WARFARE—MEDIATION AND ARBITRATION. The performances of the Conference are not, it is true, of equal value in each of these sections. But it is noteworthy and satisfactory that in no section have its deliberations proved entirely barren, even at the moment, and that the results in each would alone justify its meeting, and be sufficient reward for its labours.

THE ARREST OF ARMAMENTS.

On the question of armaments, agreement between the Powers was, as had been anticipated, plainly out of the question; the difficulties were insurmountable, and national distrust too deep. Recognising this fact, there was absolute agreement among the members of the Conference, and they have given to the world, and to succeeding Conferences, some important Resolutions, which were adopted without a dissentient voice.

The Conference declares, for instance, that the limitation of military burdens is greatly to be desired for the increase of the material and moral well-being of humanity; and it resolves that the Governments, taking into consideration the proposals made at the Conference, should study the possibility of an agreement concerning the limitation of military and naval forces and of war budgets. This indeed is a sufficiently strong endorsement of the Tsar's Rescript, and an ample justification for his appeal.

It must not, however, be assumed too readily that the Con-

ference has failed to provide the means of escape for the nations in connection with the checking of armaments. It has referred the question back to the respective Governments; but it has not given it up as insoluble. It has, in effect, passed a Resolution that the question of military and naval armaments should be made a department of foreign affairs in each country; and this will effect a serious and salutary change in the character of the debates on the Estimates, and admit of the raising of questions and pleas which could not have been raised, in the British House of Commons for instance, before the meeting of the Peace Conference. They will be quite regular in the future; and the debates ought in consequence to gain in definiteness, point and efficiency.

The Reform of the law of Maritime Capture is yet another means of combating the growth of naval expenditure indicated at the Conference. It was indeed decided, largely out of deference to England, that the question lay outside the scope of the present Conference, but it is something that the reform has been recommended for discussion at a future Conference. It rests with the advocates of the reform to see that this recommendation does not become a dead letter.

Indirectly the end may prove to have been attained, though directly it was not. To declare a reduction of armaments desirable for the raising of the material and moral well-being of mankind, as the Conference has done, is to sharpen wits, not to acquiesce in dull failure. Such a declaration is a condemnation of the system which will render it impossible to continue it on the same scale as heretofore. On this question, however, legislation was impracticable. That was anticipated from the outset. But by referring the problem to the Governments for further study, the Conference declared its belief that it was capable of solution. The causes of the present terror—the distrust, rivalry and mutual suspicion which have accumulated armaments—operate too strongly to admit of their removal by direct agreement. The indirect method of removal, by the substitution of new means of settling difficulties and by ren-

dering their adoption easy and their results certain, which will gradually supersede them, will be far more effective. This is how the arrest of armaments will be eventually secured. Formulas and Treaties for their limitation are impossible; provide the substitute, and gradually, as the new juridical order develops and is established, the older system will die a natural and necessary death. It will doubtless be found that, even as regards the limitation and lessening of armaments, the delegates at the Conference builded better than they knew. Sir Julian Pauncefote declared his belief that the decision of the Conference will make it difficult to continue arming on the same scale as before.

OTHER DECLARATIONS ABOUT ARMAMENTS.

Three Declarations follow, forbidding the throwing of projectiles from balloons, the use of those only intended to diffuse asphyxiating gases, and the employment of expansive bullets. Something has thus been done in the way of mitigating the horrors of war in future, but the regulations, however admirable, appear somewhat inconsistent. It seems inconsistent to object to the Dum-dum bullet while allowing the dynamite gun or death-dealing lyddite shell; to prohibit the dropping of explosives from balloons, but to raise no objection to the blowing-up of an iron-clad by a torpedo. War is at the best a horrible thing, and these Resolutions will do little directly to mitigate its cruelties. And yet, indirectly, much. The declaration that, in the estimation of the Conference, such a mode of destroying besieged cities, filled with defenceless women and children, would not be in accordance with the civilised methods of war, and that the "great and beautiful civilising mission" of a Christian nation should not be advanced by instruments which the rest of the world condemns, cannot fail to have effects that will be incalculable. It is an appeal to the moral sense, whose operation may be safely left to time; it is a judgment, which will surely extend itself to the whole procedure of war as essentially opposed to civilisation. Since the world is governed by ideas, it does not

require much imagination to perceive how beneficent the work of the Conference may prove in this direction. Nations which refuse to regard the public opinion and the moral sense of the world, put themselves in the wrong and come to be regarded as the common enemies of mankind. The effect of the judgment of the Conference in regard to expansive bullets is even now apparent.

THE LAWS OF WAR.

As regards the second group of topics proposed to the Conference, the result of its labours was the production of two detailed Conventions. By one of these, the rules of the Geneva Convention of August 22nd, 1864, relating to the succour of the sick and wounded during an engagement or a campaign, have been extended to warfare at sea. By the other, which consists of sixty articles, divided into four sections, dealing with the status of belligerents, the treatment of prisoners of war, hostilities, armistice, and the like, has been secured the acceptance of a complete code of military law, a task which many international lawyers, in the light of the Brussels Conference of 1874, have declared to be a sheer impossibility. Concerning these, which belong to the minor work of the Conference, the semi-official *Norddeutsche Allgemeine Zeitung* gives its verdict thus:—"Any one examining the full results of the Conference as a whole must admit that the very extension of the Geneva Convention, to naval warfare, and the detailed definition of the laws and usages of war, constitute in themselves a weighty advance of civilisation, which secures to the Conference an honourable place in history. . . . The decisions of the Hague Conference for restricting and humanising war are a valuable legacy of the expiring to the coming century, a legacy which will bring lasting glory to the noble originator of the Conference idea, the Emperor Nicholas."

THE CHIEF WORK OF THE CONFERENCE.

But the great work of the Conference was the Convention for

the Pacific Settlement of International Conflicts, which lays the foundations broad and deep for an international system of judicature.

The starting point of this new International Charter is the formal declaration by all the Powers that henceforth they will use all their efforts to prevent war and to maintain Peace. The Instrument then proceeds to define the methods by which they will attempt to attain this end :—

1.—They agree, when two of them quarrel, to appeal for the good offices and mediation of the other Powers.

2.—They agree that if the disputants forget this obligation, any of the Powers not concerned in the dispute shall themselves take the initiative, and tender their good offices and mediation.

3.—They agree to recommend that, when Powers are on the point of going to war, they should each place their case, for a period not exceeding thirty days, in the hands of a friendly neutral Power, which would thus become a special mediator for preventing war, or for bringing it to a close if it should break out.

4.—They deem it useful when Powers cannot settle a dispute diplomatically, and when they are not willing to accept Arbitration, that International Commissions of Investigation should be appointed to clear up difficulties by an impartial examination of the facts.

5.—They have provided for the establishment of a Permanent Court of Arbitration :

1. When nine Powers have ratified the Convention, the representatives of the Signatory Powers at the Hague meet under the Dutch Minister of Foreign Affairs, as a permanent Administrative Council to establish and direct a permanent Bureau on which the Court rests.
2. In the course of three months after ratification, each Power nominates competent Arbitrators (not more than four each) whose names, inscribed on a list of Arbitral Judges, form the Court.

3. Any two disputing Powers, who decide to appeal to the Court, select two Arbitrators each from the list of members of the Court ; the four so nominated then select an Umpire, and the Tribunal, thus constituted, hears the case.

6.—They have devised and agreed upon a complete code of Arbitration procedure.

7.—In order to make the Arbitration provisions as binding as possible, the Powers declare it to be a duty, whenever any dispute reaches an acute stage, to call the attention of the disputants to the provisions of the present Convention and invite them to apply to the Court.

8.—The Powers reserve to themselves the right, even before ratification, to conclude separate Treaties with each other, making a recourse to Arbitration obligatory in all cases they please.

9.—They also provide for the adhesion of non-signatory or non-represented Powers to the present Convention.

REMARKS THEREON.

“The main point of the whole thing,” says Mr. Seth Low, “is that Arbitration has been made easy ; it was only possible before. There is a great deal of public opinion in the air in favour of Arbitration, and so there is of electricity, and that electricity is useless until there is a motor. The Peace Conference has furnished the standing parts of the machinery, which will admit of the practical working of Arbitration ; it has furnished the motor.”

“In the history of International Law,” says Mr. Holls, “the Conference undoubtedly marks an important epoch. Several new principles have been introduced by the common consent of all the nations there assembled, notably those of Special Mediation, the useful auxiliary of International Commissions of Enquiry, and the Code of Procedure which distinctly resembles English and American equity practice more than anything else.

The great merit of the Arbitration Scheme, said the *Leeds Mercury*, is that it is the first recognition by Europe—indeed by the world—of the truth that each State has a vital interest in preventing warfare between other States, quite independently of any particular relations. The signatories to the Hague legislation make themselves directly responsible for using every effort to prevent war ; and they do so for no other purpose than to declare that war, as such, is an outrage on the common instincts of the civilised world, and with no reference to particular quarrels out of which they might or might not derive some advantage.

This means a great step forward. It is true that there are symptoms of danger all round to the great ideal of national development on the lines of an ordered freedom, and that all the smaller nations, from Ireland downwards, have a hard struggle for their own independence. But it is none the less important to secure the common consciousness of a common standard of civilisation, for the general allegiance to such a standard will prove a breakwater against the hundred forces which threaten the Peace of Europe and the Freedom of the weaker States.

The weakness of the Arbitration Scheme, many have urged, is that it does not make Arbitration obligatory. We are also told that a Court which cannot enforce its decisions is quite powerless to prevent war, and thus useless. But such reasoning leaves out of court human nature, the power of public opinion, and the facts of actual experience. The existence of a permanent and responsible Arbitration Court will be a constant invitation to argument and discussion ; and soon the popular pressure upon Governments not to fight until they have at least tried what can be done by Arbitration will be irresistible.

Within recent years a greater willingness has been shown generally to resort to Arbitration in the case of disputes which threaten to break the Peace. The formation of a properly-constituted Tribunal gives this idea definite shape. No Power will be compelled to submit a dispute to the Court, but there will be a moral coercion which will have great weight with intending combatants.

There is nothing compulsory in the provisions of the Pacific Convention, but its moral effects will be incalculable. It opens a way of escape for nations that desire to avoid war; and one of the facts brought out very clearly by recent events is that all nations have this desire. It will, in the future, be harder to begin a war; it will be easier to keep the peace.

Though the enlistment of soldiers, the invention of murderous weapons, and the perfecting of war organisation will not stop, and perhaps will not be slackened, the work of the Conference has interposed new difficulties in the way of making war. The means for carrying on war will remain as plentiful as before, but steps have been taken for putting off the occasion when these means may be used. There will be a longer pause before fighting begins between civilised nations; the facts will be more fully investigated; the combatants will have an opportunity of considering their position and the consequences of an appeal to the sword; tempers will have time to cool; an appeal on the part of the onlookers will be acknowledged as a necessary duty, and second thoughts suggested by friendly mediators may be the means of averting a conflict.

The Conference has not succeeded in making war impossible, but it *has* succeeded in focussing the humanitarian sentiments of the age, and as Mr. Arthur Mee, writing in the *Morning Herald*, has well said, "there will be no more rushing heedlessly on to war."

"War there may be, but it will be war after calm reflection, war after the people have counted the cost, war after the soldier has realised its horrors. In the gravest crisis, there will be a pause at the Hague between the passions of the people and the rattle of the sword. It is a wonderful thing that the Governments of the world have set up a Universal Parliament of Peace. It is not quite, perhaps, the Brotherhood of man, but that great consummation seems nearer since the delegates left the Hague."

Though not the recognition of that brotherhood, it has been rightly argued, and the fact is patent, that it is the first direct, definite step towards the Federation of mankind. It is more. It is, within certain well defined limits, and for a distinct object,

the highest and most important of any, an actual Federation, by formal instrument, of nine-tenths of the human race. It is the first step that counts; and this one, arising as it does out of the natural trend and development of things, must lead to others.

A PHILOSOPHICAL ESTIMATE.

This is finely and forcibly reasoned by Mr. Raymond L. Bridgman, who argues in the *New England Magazine* that if the Conference at the Hague had failed to accomplish any direct purpose whatever, it would nevertheless have been a success, because the inspiration of the Conference, both in regard to the giving of the invitation by the Tzar of Russia and its acceptance on the part of the participating nations, was a progressive step in the self-consciousness of mankind to a higher realm of truth, to a better idea of humanity, to a closer bond of sympathy and to a more imperative form of duty. This self-consciousness, too, is on a higher plane to-day than it was before the Conference at the Hague was held.

1.—In consequence of that Conference, the practice of settling national disputes by reason rather than by force has been greatly promoted. The participating nations have come to a more definite conception of the rights of nations, whether great or small, in their people and territory, and they have tried to recognise those rights, regardless of the degree of military force by which they are defended, and to formulate practicable ways of maintaining them by reason rather than by arms. That is, in the minds of the nations to-day there is a clearer perception than ever before that might must be subordinated to right, that though a nation may be technically sovereign, as a man is technically free, yet upon both nation and man there rests the imperative of doing right.

2.—The results of the Hague Conference are one more step toward the attainment of the Constitution of the Republic of Nations—the republic in which all mankind shall be members;

in other words, of the Federation of the World. This constitution is inherent in the laws which control the development of humanity.

3.—The Conference at the Hague opens the door to further action by the participating nations; and their action will involve an increase in the number of participants, until, in the rapid extension of the new International system, and in the conquest of all outlying parts of the world by quick communication, no community of men shall be excluded.

4.—Nations being sovereign only in respect to other nations, and not in respect to the body of Law above them, and all nations being subject to one and the same body of supreme law, it follows that the peace, progress, and unity, of mankind will be greatly hastened if there be specific statement of this law and formal submission to it on the part of the so-called sovereign nations. International Law is the beginning of this statement and submission. It testifies not only to the common recognition by civilized nations of the supreme law which is equally over them all, but also to the growth of the new force, which makes for the elevation of the man and of the nation, viz.—the power of public opinion. It necessitates, first of all, on the part of nations good faith. That is, nations must be absolutely honest with each other. The only power to enforce a principle of international law is public opinion, plus the moral sense in each nation itself, apart from its recognition of moral worth in others. Thus far there is a body of international law without other than this moral sanction. It is growing constantly, it is being elaborated with increasing nicety. It is being more largely recognised as the judgment and conscience of mankind, which no nation can persistently defy and maintain its standing in the family of nations.

5.—What the nations have already done, or are contemplating, is a mere beginning of the expression of the political constitution of the body politic of mankind. The nations are just beginning to get together. Reason now stands at the door, demanding, on

the basis of its inherent rightness, that it be given the throne of authority which is now held by force—that Arbitration should be substituted for the sword.

6.—When the present stage of progress shall have been completed, there will follow a development in prosperity such as would occur in a community whose people had been devoting much of their strength to mutual destruction, but should suddenly make peace and work with equal energy for mutual benefit.

7.—But this new development of mankind necessitates a means of apprehending and of expressing the principles in the political constitution of mankind : that is, there must be a Court, a Congress, of Nations.

8.—The self-consciousness of mankind has already recognised honesty, mercy, and worth. It stands almost ready to recognise reason as higher than brute force.

9.—A higher force is operating in history. It is comparatively modern. It is gaining in strength rapidly. It is already recognised by the foremost nations. More than this, it is inevitable in the nature of things that the higher force will win. Either man is wholly brute, or that in him which is higher than brute will dominate the brute. The common consciousness of man affirms that it is higher than the brute.

10.—It is possible that the united will of mankind, in our lifetime may rise to the height of its own nature, and lift the development of the nations from the domain of material force into the bright realm of reason and sympathetic helpfulness.

11.—Obstacles to the unification of the nations are less mountainous than formerly, and are steadily diminishing.

12.—The ages in human history before the participation of mankind in the Congress of nations are necessarily the imperfect ages in political relations. Mankind has not found its true unity. Its parts are often mutually hostile ; there is no realisation of a combined whole, and no enthusiasm in race spirit. Hints of this unity, however, point the way to it ; and the local pride and

national patriotism of the present, illustrate feebly the tremendous enthusiasm of mankind which will fill the earth when local communities shall have been absorbed into nations (a process which is visibly reaching completion) and when national boundaries shall have faded into insignificance in the all-embracing unity of the body politic of mankind. Then will the entire human race first realise its race-consciousness, and then will the real history of mankind begin.

IN THE LIGHT OF HISTORY.

This account of the development of humanity, with its optimistic outlook towards the future, corresponds with the actual facts of history. It has been truly pointed out, especially by philosophic students of history, that in order to appreciate the labours of the Conference at their true value, it is necessary to recognise the fact that this development is very gradual, and therefore, that the decline of warfare and the growth of the Peace sentiment have been, and probably will continue to be slow—discouragingly slow perhaps—to men of extremely sanguine temperament. Those, it is said, who confine their attention to their own time and their immediate surroundings may be inclined to the pessimistic conclusion that human nature will be in the future very much the same as it has been in the past, and that war is an incurable evil. If, however, the conditions of life during past ages be examined and comparisons made, a steady development of human sympathy and the gradual sapping of the military spirit will be discernible.

At a comparatively recent time in the history of mankind, a battle was regarded by men of our own race as a religious rite, wherein the priests of warring clans sacrificed the foemen in honour of their tribal gods. The student may read how our Teutonic ancestors hacked off the arms of their captives and cast the severed members into the blazing fires of their altars. Wherever they marched their route was marked by wanton massacre, in which neither age nor sex was spared. Occasion-

ally the monotony of putting a whole nation to the sword was relieved by a variation in cruelty, as when the Franks, during the invasion of Gaul, rolled their waggons over 200 maidens and cast their mangled bodies to the dogs.

When conditions had become more settled, tribal raids gave place to the vendetta and to private war, and the average man could not enjoy even a precarious lease of life unless he became a liegeman to a strong lord in his vicinity. The development of the power of the kings in turn curbed the warlike spirit of the feudatory barons, and led to the establishment of the king's peace, and the enactment of laws to compel the kinsmen of one slain in a quarrel to accept a fine in compensation, and to desist from private vengeance. But it was long indeed before the established Courts of Justice took the place of the ordeal and the judicial combat, and the present order of society was evolved out of the old condition of chaos and misrule.

In the course of the Middle Ages the manners of men by slow degrees became milder; a city might be sacked and its inhabitants slaughtered for having too stubbornly resisted a siege, but the practice was no longer universal. Enough of ferocity remained, however, and the undertaking of the Church to establish the "Truce of God" was considered quite as chimerical as would be a proposal for universal disarmament in our own times. Nevertheless the "Truce of God" was established. The Church at first secured the exemption of her holidays from bloodshed; then Sundays were made equally free, and, finally, an oath was enacted from every male communicant upon obtaining the age of twelve that fighting should cease on Wednesday evening of each week and not be resumed until Monday morning. Although not universally adopted, the "Truce of God" brought peace to vast regions which had theretofore been the scene of endless rapine and murder.

It would be possible to trace the amelioration of social life through successive stages up to the present time, each stage showing a distinct advance in humanity and a decline in brutality. The most successful nations, from a material point of view, are no

longer those which are the most incessant fighters, but those which have developed to the highest degree the arts of peace and the pursuits of commerce. The essentially martial Turks, for instance, occupy a low place in the family of nations, while the commercial Englishmen are far in the van. In the light of past history the achievements of the Peace Conference must be regarded as marking a new epoch. Peace-makers may be obliged to look to a still distant future for the final consummation of their hopes ; but it cannot be denied that the establishment by universal consent of a permanent International Court to which all nations may appeal for a judgment of their differences must mark a point of departure quite as significant as was the proclamation in a more brutal age of the "Truce of God."

ITS PLACE IN HISTORY.

But the working of this higher law of human development, and the place of the Peace Conference as an illustration of it, may be determined with even greater precision. Four stages have been noted by students of history, not distinct in time, but, like the stages of geologic development, overlapping, blending, shading off into each other. In the first and lowest, every man has to protect himself, the injured party depends for redress entirely upon his own resources, and there are no restraints on the exercise of the foulest passions ; in the second stage the customs of the community, and the laws promulgated by its rulers, impose limitations upon the right of private vengeance and the practice of private war, at first the restrictions are few and rudimentary, but in time they grow into an elaborate code. The third stage is reached when, side by side with the old method, there exists, in full operation, an alternative method of justice before impartial tribunals, who decide each case on its merits as administrators of a passionless law ; and the fourth stage is marked by the universal establishment of the judicial system and the entire abolition of the old brute method of private warfare. This is the history of Christendom. Public, or international warfare, has obeyed the

same law, and followed the same course of development. The third stage had already been reached, and now the Conference furnishes the first step of the fourth. Indeed, its labours belong to, and illustrate, all four stages. The legislation affecting uncivilised and inhuman means and methods of warfare refer to the first, the brute stage; the Conventions regulating the practice of war between so-called civilised nations belong to the second, the semi-barbarous stage; but the Arbitration Scheme, while it assumes, and is based upon, the practice of Arbitration in the third stage, really initiates the fourth, in which the permanent institution of Arbitration, as an international system of settlement, will entirely supersede that of the sword, which has become intolerable, and was therefore faithfully and fearlessly exposed and condemned in the Tzar's Rescript.

BY NO MEANS A FINALITY.

This transitional character of the Conference was fully apprehended by it, and is faithfully represented in its proceedings. It was, consciously and avowedly, initial and preparatory; the inauguration of a new régime, the first of a series belonging to the new age. In no sense can the Conference be said to close any page of history; and on no single question does it profess to utter a final word, or even to admit final failure. It is emphatically a beginning. And so, a point needing emphasis, there is another sense in which the work of the Conference has yet to be completed. A Conference can only legislate: it is for others to act in the spirit of that legislation. Even the crowning work of the Conference—the Arbitration Project and the International Court established under it—a work which carries with it possibilities of greater benefit to the human race, than any diplomatic document ever drafted, will fail to realise its destiny unless the friends of Peace are unwearied in their efforts. It is all important that the work just begun should not be allowed to rest for a moment. And it has further to be remembered that the whole fabric of Peace rests on international righteousness.

The institution of a Permanent International Court of Arbitration will not render the work of resisting wrong by the ordinary means unnecessary. On the contrary it will make it all the more necessary ; for the Court, however high the principles or intentions of its founders, must be largely affected by the existing condition of political morality. In the Permanent Court the friends of Peace have a most potent ally, but not a champion to do their work.

Meanwhile a great impetus has been given to the Peace movement by the recent Conference. It is true that not all was accomplished that was at first designed, and that was strongly and almost universally hoped. But there has been a distinct admission of the rightness and practicability of our aims, an admission that we are on right lines ; the way has been made easy for future progress ; the actual work of the Conference is beyond anything hitherto attained, and in itself of inestimable practical value, and it may be confidently expected that future Peace conferences will follow that of the Hague. Quite apart from the Conventions that were or were not signed, and the Resolutions adopted, the success of the Conference must be sought in the sentiment aroused in favour of Peace, the friendly relations established between the Powers, the better understanding that prevails as to what each wants, the proved practicability of holding such Conferences, which was declared to be impracticable, and the familiarity gained with diplomatic gatherings having disarmament and the establishment of general Peace as their end and aim.

THE HAGUE COURT OF ARBITRATION.

Instituted 19th September, 1900.

BYE-LAWS OF THE ADMINISTRATIVE COUNCIL.

In accordance with Article 28 of the Convention for the pacific settlement of international disputes, the diplomatic representatives of the signatory Powers accredited to The Hague have formed themselves into an Administrative Council under the presidency of the Minister for Foreign Affairs of the Netherlands.

The Council, in meeting assembled, has formulated its Bye-laws ("Rules of Order") in the following terms:—

ART. I.—Every proposal connected with the Court of Arbitration shall be communicated by the President to the members of the Council.

ART. II.—The convening of the members of the Council shall be made by the President, with at least forty-eight hours' notice.

Each member of the Council may, however, if he thinks it necessary, procure a meeting of the Council through the medium of the President.

ART. III.—In the absence of the President, the Council shall be presided over by that one of the members who is at the head of the list of the diplomatic corps, by order of seniority.

ART. IV.—As was agreed in the sitting of the third commission of the Peace Conference, on the 15th July, 1899, the heads of delegation not having their customary residence at The Hague shall be considered as domiciled there, so that every communication and summons affecting them can be addressed to them.

ART. V.—The notice of meetings shall contain the Agenda. No decision can be taken on matters not mentioned in the agenda.

ART. VI.—Voting shall be taken by calling the roll of names. In whatever concerns the nomination, suspension, or dismissal of officers and employes, the Council shall vote by ballot.

Decisions shall be reached by a majority of votes. If the voting is equal the proposition shall be considered as not carried.

COUR PERMANENTE D'ARBITRAGE.

Instituée le 19 septembre 1900.

RÈGLEMENT D'ORDRE DU CONSEIL ADMINISTRATIF.

En conformité de l'art. 28 de la Convention pour le Règlement pacifique des conflits internationaux, les représentants diplomatiques des Puissances signataires accrédités à La Haye se sont constitués en Conseil administratif sous la présidence du Ministre des Affaires Etrangères des Pays-Bas.

Le Conseil, réuni en séance, a arrêté son règlement d'ordre dans les conditions suivantes :

ART. I.—Toute proposition se rattachant à la Cour d'arbitrage est communiquée par le Président aux membres du Conseil.

ART. II.—La convocation des membres du Conseil est faite par le Président et au moins 48 heures d'avance.

Toutefois chaque membre du Conseil peut, s'il le croit nécessaire, provoquer la réunion du Conseil par l'intermédiaire du Président.

ART. III.—En l'absence du Président, le Conseil est présidé par celui de ses membres qui se trouve en tête de la liste du corps diplomatique, par rang d'ancienneté.

ART. IV.—Ainsi qu'il a été convenu dans la séance du 15 juillet 1899 de la troisième commission de la Conférence de la Paix, les chefs de mission n'ayant pas leur résidence habituelle à La Haye sont tenus d'y élire domicile, de façon à ce que toute communication ou convocation les concernant puisse leur être adressée.

ART. V.—La lettre de convocation doit contenir l'ordre du jour. Sur les matières non mentionnées dans l'ordre du jour, aucune décision ne peut être prise.

ART. VI.—Le vote a lieu par appel nominal. En ce qui concerne les nominations, suspensions et révocations des fonctionnaires et employés, le Conseil procède par bulletin de vote.

Les décisions sont prises à la majorité des voix.

En cas de partage des voix, la proposition est considérée comme non acceptée.

ART. VII.—The order of voting shall follow the alphabetical list of the Powers signatory to the Convention. The President shall vote last of all.

ART. VIII.—The International Bureau, under the control and the direction of the Council, is established as a permanent institution.

It shall serve as a medium of communication between the Powers and as the office of the Court, under the conditions provided for by the Convention, and it shall attend to the business of the Council.

The General Secretary installed at its head shall be appointed by the Council for a period of five years.

ART. IX.—The General Secretary shall receive his instructions from the President in the name of the Administrative Council.

He shall have the custody of the record and the management of the office staff (*personnel*).

He shall have his residence fixed at The Hague.

ART. X.—The appointment and dismissal of the General Secretary shall take place at a meeting summoned under at least fifteen days' notice.

ART. XI.—The financial control of the International Bureau shall be entrusted to a Commission. This Commission shall be composed of three members of the Administrative Council, residing at The Hague. It shall be renewed on the first of January each year, by a change of one of its members, following the alphabetical order of the Powers.

It shall hold its meetings at the offices of the International Bureau. The President shall have the right to attend them.

The financial statement of the General Secretary and the (budget) estimates shall be examined by the Commission, which shall report on them annually to the Administrative Council.

ART. XII.—The budget estimates as well as the approval of the accounts of the General Secretary shall be voted at a meeting of the Council after they have been communicated to the members of the Council at least fifteen days before their meeting.

Done at *The Hague*, the 19th of September, 1900.

ART. VII.—L'ordre du vote est réglé d'après la liste alphabétique des Puissances signataires de la Convention. Le Président vote le dernier.

ART. VIII.—Le Bureau international, sous le contrôle et la direction du Conseil, est établi à titre permanent.

Il sert d'intermédiaire aux Puissances et de greffe à la Cour, dans les conditions prévues par la Convention, et il expédie les affaires du Conseil.

Le Secrétaire-Général placé à sa tête est nommé par le Conseil pour une période de cinq années.

ART. IX.—Le Secrétaire-Général reçoit ses instructions du Président, au nom du Conseil administratif.

Il a la garde des archives et la direction du personnel.

Il a sa résidence fixe à La Haye.

ART. X.—La nomination et la révocation du Secrétaire-Général se font dans une réunion convoquée au moins quinze jours à l'avance.

ART. XI.—Une commission est chargée du contrôle financier du Bureau international.

Cette commission est composée de trois membres du Conseil administratif, en résidence à La Haye. Elle se renouvelle le premier janvier de chaque année, par unité, en suivant l'ordre alphabétique des Puissances.

Elle tient ses séances au siège du Bureau international; le Président a le droit d'y assister.

La gestion financière du Secrétaire-Général et le budget sont examinés par la commission, qui en réfère annuellement au Conseil administratif.

ART. XII.—Le budget ainsi que l'approbation des comptes du Secrétaire-Général sont votés en séance du Conseil après avoir été communiqués aux membres du Conseil 15 jours au moins avant leur réunion.

Fait à *La Haye* le 19 septembre 1900.

THE HAGUE COURT OF ARBITRATION.

BYE-LAWS RELATING TO THE ORGANISATION AND THE
INTERNAL WORKING OF THE INTERNATIONAL BUREAU OF THE
PERMANENT COURT OF ARBITRATION.

ART. I.—The General Secretary of the Permanent Court of Arbitration shall exercise the functions of chief of the International Bureau and, by the same right, that of clerk of the Court.

He shall be entrusted with the correspondence of the Bureau.

He shall prepare annually the Budget of the receipts and expenses of the Bureau, which he shall submit for the examination and approval of the Administrative Council. He shall proceed in the same way for the annual settlement of the accounts of the Bureau, by following the order of the budget.

He shall have the management of the whole of the office staff (*personnel*) of the Bureau.

ART. II.—The office staff (*personnel*) of the International Bureau shall consist of:

- A first Secretary.
- A second Secretary.
- A Clerk.
- A Porter.
- An Usher.

ART. III.—The business of the Bureau shall be subject to the complete authority of the General Secretary.

ART. IV.—In the event of dismissal or the enforced absence of the General Secretary, his place shall be taken by the first secretary.

ART. V.—The office staff (*personnel*) of the International Bureau shall not be allowed to make any oral or written communications concerning the business entrusted to them to persons who are strangers to the Bureau, or to permit them to see any documents having reference to the business of the Bureau.

Done at *The Hague*, the 8th December, 1900.

COUR PERMANENTE D'ARBITRAGE.

RÈGLEMENT CONCERNANT L'ORGANISATION ET LE FONCTIONNEMENT INTÉRIEUR DU BUREAU INTERNATIONAL DE LA COUR PERMANENTE D'ARBITRAGE.

ART. I. — Le Secrétaire-Général de la Cour permanente d'Arbitrage exerce les fonctions de Chef du Bureau International et, au même titre, celles de greffier de la Cour.

Il est chargé de la correspondance du Bureau.

Il dresse annuellement le budget des recettes et des dépenses du Bureau, qu'il soumet à l'examen et à l'approbation du Conseil administratif. Il procède de même pour la liquidation annuelle des comptes du Bureau, en suivant l'ordre du budget.

Il a la direction de tout le personnel du Bureau.

ART. II.—Le personnel du Bureau International comprend :

un premier secrétaire ;

un second secrétaire ;

un commis ;

un concierge ;

un huissier.

ART. III.—Le service du Bureau est soumis à la complète autorité du Secrétaire-Général.

ART. IV.—En cas de congé ou d'empêchement le Secrétaire-Général est remplacé par le premier secrétaire.

ART. V.—Il est interdit au personnel du Bureau International de faire à des personnes étrangères à ce Bureau des communications orales ou écrites sur les affaires de service qui leur sont confiées, ou de leur permettre de prendre connaissance des documents ayant trait au service du Bureau.

Fait à *La Haye*, le 8 décembre 1900.

THE IBERO-AMERICAN UNION,

CONSISTING OF

ARGENTINA, BOLIVIA, BRAZIL, CHILI, COLOMBIA, COSTA-
RICA. CUBA. ECUADOR, SAN SALVADOR, SPAIN, GUATEMALA,
HAITI, HONDURAS, MEXICO, NICARAGUA, PARAGUAY,
PERU, PORTUGAL, PUERTO RICO, SANTO
DOMINGO, URUGUAY AND VENEZUELA.

ARBITRATION RESOLUTIONS ADOPTED IN THE IBERO-AMERICAN
CONGRESS OF MADRID, 18TH NOVEMBER, 1900.

I. In the cause of humanity and the general interests of civilisation, the Congress protests against the entire policy involved in the tendency to settle international conflicts by other means than those that are peaceful and legal.

And it declares that it ardently sympathises with all the efforts which, both in Europe and America, are made by publicists, professors, associations and governments to arrive at the definite establishment of Tribunals of Arbitration, to which may be submitted absolutely all questions which actually exist or which may arise in the future between nations.

II. For the same motives, and, besides, for reasons of race and family (which do not in any way interfere with the closer free and effective intercourse of all the peoples of the world), for well-known historical reasons, and from the peculiarity of the relations actually existing between Spain and Latin America, due chiefly to the constant immigration of Spaniards into the Ibero-American Republics, the Congress proclaims the urgency of establishing, by the action of the governments, a Spanish-American Tribunal of Arbitration to which shall be submitted all questions which may arise between the States which

UNIÓN IBERO-AMERICANA.

COMPRENDIENDO

ARGENTINA, BOLIVIA, BRASIL, CHILE, COLOMBIA, COSTA-
RICA, CUBA, ECUADOR, EL SALVADOR, ESPAÑA, GUATEMALA.
HAITI, HONDURAS, MÉXICO, NICARAGUA, PARAGUAY,
PERÚ, PORTUGAL, PUERTO RICO, SANTO DOMINGO,
URUGUAY Y VENEZUELA.

CONGRESO SOCIAL Y ECONÓMICO HISPANO-AMERICANO
CELEBRADO EN MADRID EN NOVIEMBRE DE 1900.

ARBITRAJES.—CONCLUSIONES APROBADAS.

I. Sirviendo la causa de la Humanidad y el interés general de la civilización, el Congreso protesta contra toda política y toda tendencia á resolver los conflictos internacionales por otros medios que los pacíficos y jurídicos.

Y declara que fervorosamente simpatiza con todos los esfuerzos que en Europa y América se hacen por publicistas, profesores, Asociaciones y Gobiernos, para llegar al establecimiento definitivo de Tribunales de arbitraje, á los cuales se sometan por completo todas las cuestiones que existan ó puedan existir entre las naciones.

II. Por los mismos motivos, y además por intereses de raza y familia (que no obstan á la superior, franca y eficaz comunicación de todos los pueblos del mundo), por razones históricas bien notorias, y por la especialidad de las actuales relaciones de España y la América latina, efecto principalmente de la inmigración constante de españoles en las Repúblicas ibero-americanas, el Congreso proclama la urgencia de constituir, por la acción de los Gobiernos, un Tribunal de arbitraje hispano-americano, al cual hayan de ser sometidas así, las cuestiones todas que surjan entre los Estados que tienen representación en

are represented in this Congress, as well as the right interpretation of all Treaties existing between them.

III. The Congress affirms that the said Tribunal should be *permanent* in character, *obligatory* and *without exceptions*. This does not, however, prevent the Congress, should such a Tribunal not be capable of immediate realisation, from recommending the establishment of Arbitration Tribunals for special occasions, or for each particular dispute.

IV. As the Congress desires that in this Arbitration Tribunal all the nations of Latin America and Spain shall be permanently represented for the decision of all conflicts that may arise, not only between Spain and Latin America but also between the Latin American Republics themselves, and as it foresees that the full realisation of this design will necessitate delay, it recommends, in that case, that an attempt be made to procure the immediate establishment of Arbitration, in the form before-mentioned, for the questions which exist or which may arise between those Hispano-American Republics and the Spanish nation.

V. The Congress deems it expedient to guarantee the efficacy of the awards of the permanent and obligatory Tribunal of Arbitration by means of a positive sanction, in addition to the engagement of honour entered into by all the nations which submit their differences to the Tribunal.

VI. The Congress protests against any tendency to give to the Arbitration Tribunal, or to the efforts made for its establishment, any mark of the political supremacy of any one of the nations interested in the Tribunal which is recommended.

VII. The Congress affirms that in order to induce the Governments to establish the Arbitration Tribunal, and also that it may be strengthened and widened, it is necessary that the executives of the Ibero-American Societies should make a strong and persistent effort to give greater prominence to the fundamental idea of Peace, which is what Arbitration presupposes, and to create a closer intimacy between the Spanish and the Hispano-American peoples.

For this purpose the Congress recommends :—

First, the establishment of free societies for the propagation

este Congreso, como la recta interpretación de los Tratados existentes entre los mismos.

III. El Congreso afirma que ese Tribunal ha de tener el carácter de *permanente, obligatorio y sin excepciones*; pero esto no obsta para que si aquello no fuere inmediatamente realizable, recomiende la constitución de Tribunales de arbitraje ocasionales ó para cada conflicto particular.

IV. Siendo la aspiración del Congreso que en el Tribunal de arbitraje estén representadas todas las naciones de la América latina y España, de modo permanente para la resolución de todos los conflictos que se den, no sólo entre España y la América latina, si que entre las Repúblicas latino-americanas, prevé que la cumplida realización de este pensamiento encuentra retardos, y para este caso recomienda que, por lo menos, se procure la constitución inmediata del arbitraje, en la forma antes dicha, para las cuestiones que existan ó surjan entre aquellas Repúblicas hispano-americanas y la Nación Española.

V. El Congreso estima que es conveniente garantizar la eficacia de los fallos del Tribunal permanente y obligatorio de arbitraje, por medio de una sanción positiva, además del compromiso de honor contraído por todas las naciones que al Tribunal sometan sus diferencias.

VI. El Congreso protesta contra toda tendencia á dar al Tribunal de arbitraje ó á las gestiones que se hagan para constituirlo, cualquier nota de supremacía política de alguna de las naciones interesadas en el Tribunal que se recomienda.

VII. El Congreso afirma que, tanto para determinar á los Gobiernos á establecer el Tribunal de arbitraje, como para que éste se robustezca y ensanche, es indispensable que las clases directoras de las Sociedades ibero-americanas, realicen un vigoroso y perseverante esfuerzo para dar gran viveza á la idea fundamental de la paz, que es el supuesto del arbitraje, y hacer más íntimo el trato de los pueblos hispano-americanos y el español.

Para esto el Congreso recomienda:—

Primero, la constitución de Sociedades libres, propagandistas

of Peace, similar to those at the present time existing in the rest of Europe and in North America.

Secondly, the creation in the different States of Latin America and in Spain, of scientific clubs devoted to the study of the international questions of our times, and to the diffusion and propagation of the principles and tendencies of modern International Law, in the manner recommended by the *Institute of International Law*, in Art. 9 of its Statutes of 1873, revised at Oxford in 1880.

Thirdly, the establishment of the *Society for General Culture and Popular Education* recommended by the Ibero-American Congress of Teachers of 1892, which should give special attention to the popularising of the history and geography of America, Portugal and Spain, and to the knowledge of the most prominent personalities and most important problems in those countries.

And fourthly, the stimulation of the Parliaments of the Spanish and Hispano-American States to carry out the common purpose of providing in their respective codes for the establishment of the Arbitration Tribunal, in the form and with the object expressed in these resolutions.

VIII. The Congress, finally, in presenting a vote of thanks to the Society *Union Ibero-Americana* of Madrid, for its efforts in initiating and carrying out the meetings of the present assembly, recommends to the executive of the said Society to undertake the duty of the preparing, organising and holding of a new congress, which shall have for its object the consideration, in view of these decisions of the subject, of existing international relations and the solution of those problems which have been recently set forth in order to bring Spain and Latin America into continually closer intimacy.

In order the better to secure this end, a mixed commission shall be formed, composed of Hispano-American Delegates specially from this congress, who shall be associated with the executive of the Society *Union Ibero-Americana*.

Madrid, 18th November, 1900.

de la paz, como las que hoy existen en el resto de Europa y en la América del Norte ;

Segundo, la creación en los diferentes Estados de la América latina y en España de Círculos científicos, dedicados al estudio de las cuestiones internacionales de nuestra época y á la difusión y propaganda de los principios y tendencias del Derecho internacional contemporáneo, al modo recomendado por el *Instituto de Derecho Internacional* en el art. 9.º de sus Estatutos de 1873, revisados en Oxford en 1880 ;

Tercero, la constitución de la *Sociedad de Cultura general y Educación popular*, recomendada por el Congreso pedagógico iberoamericano de Madrid de 1902, y que ha de dedicar especial atención á la popularización de la Historia y Geografía de América, Portugal y España, y el conocimiento de las personalidades más salientes y de los problemas más importantes de aquellos países ;

y Cuarto, la excitación á los Parlamentos de los Estados español é hispano-americanos para que realicen el propósito común de consignar en sus leyes respectivas el establecimiento del Tribunal de arbitraje en la forma y con el alcance expresados en estas conclusiones.

VIII. El Congreso, después de dar un voto de gracias á la Sociedad *Unión Ibero-Americana* de Madrid, por su iniciativa y sus esfuerzos para la reunión de la actual Asamblea, recomienda á la Directiva de esa misma Sociedad que tome á su cargo la preparación, propuesta y realización, lo antes posible, de un nuevo Congreso que tenga por fin el examen de lo hecho, en vista de los acuerdos de hoy sobre relaciones internacionales, y la solución de los problemas que nuevamente se planteen, para hacer cada vez más íntima la vida de España y de la América latina.

Para su mejor éxito se organizará una Comisión mixta, compuesta de Delegados especiales hispano-americanos y de este Congreso, asociados á la Directiva de la Sociedad *Unión Ibero Americana*.

Madrid 18 de Noviembre de 1900.

SECOND AMERICAN INTERNATIONAL
CONFERENCE.

MEETING IN MEXICO, 1901-1902.

*Treaties, Conventions, Declarations, Propositions, and
Recommendations.*

I.—PROTOCOL OF ADHESION TO THE HAGUE CONVENTIONS.

Considering that the delegates to the International Conference of the American Republics believe that public opinion in the nations they are now representing is constantly increasing in favour of the more extensive application of the principles of Arbitration ; that the American Republics, guided by the same principles and responsibilities of democratic government and united by increasing mutual interests, are able by themselves to preserve the Peace of the continent, and that permanent Peace among them will be the most powerful factor in their national development, as well as in the prosperity and commercial greatness of their peoples ;

They, therefore, have agreed to the following

PROJECT :—

ART. 1.—The American Republics represented in the International Conference of Mexico, though they were not signatories of the three Conventions signed at The Hague on the 29th of July, 1899, acknowledge the principles contained in them as part of the Public International Law of America.

ART. 2.—With regard to those Conventions which are open in character, adhesion thereto will be communicated through the usual diplomatic channels to the Netherlands, after they have been ratified by the respective governments, in order to carry them into effect.

SEGUNDA CONFERENCIA INTERNACIONAL
AMERICANA

REUNIDA EN MÉXICO 1901-1902.

*Tratados, Convenciones, Declaraciones, Proposiciones y
Recomendaciones.*

I.—PROTOCOLO DE ADHESION Á LAS CONVENCIONES DE LA
HAYA.

Considerando: que los Delegados á la Conferencia Internacional de las repúblicas americanas creen que la opinión pública en las naciones que aquí representan aumenta de una manera constante en el sentido de favorecer vivamente la aplicación más amplia de los principios de arbitramento; que las repúblicas americanas, dirigidas por los mismos principios y responsabilidades del gobierno democrático y ligadas por crecientes intereses mutuos, pueden por sí mismas conservar la paz del Continente, y que la paz estable entre ellas será el propulsor más eficaz de su desarrollo nacional, así como del bienestar y grandeza comercial de sus pueblos.

En consecuencia, convienen en el siguiente proyecto:

ART. 1.^o—Las repúblicas americanas representadas en la Conferencia Internacional de México, no signatarias de las tres Convenciones firmadas en La Haya el 29 de Julio de 1899, reconocen los principios consignados en ellas, como parte del derecho público internacional americano.

ART. 2.^o—La adhesión respecto de las Convenciones que tienen el carácter de abiertas, una vez ratificadas por los gobiernos respectivos, será comunicada por éstos y por la vía diplomática al de los Países Bajos para sus efectos.

ART. 3.—As it would evidently be for the general advantage that the differences whose solution it may be agreed to submit to Arbitration shall be entrusted to the jurisdiction of a tribunal of such importance as is that of the Court of Arbitration at The Hague; and also that the American nations which are not signatories of the Convention that created that beneficent institution might be able to have recourse to it, in the exercise of a recognised and accepted right; and, moreover, taking into consideration the offer [to that effect] of the governments of the United States of America and of the United States of Mexico; the Conference entrusts to the said governments the commission of negotiating with the other Powers, which are signatories of the “Convention for the Peaceful Regulation of International Conflicts,” the adherence of the American nations, that are no signatories of that Convention, which may so desire it.

Signed (see opposite page).*

The Venezuelan Delegate signs *ad referendum*, and in addition remarks that so far as his country is concerned, questions of navigation and those connected therewith, are not to be held as included in this treaty: that he would have to refer to his country.

ART. 4.—In order that the fullest and least restricted application of the principles of impartial arbitration may be promptly and satisfactorily arrived at; and with the object of ascertaining, with the utmost accuracy, the most advanced and mutually advantageous form in which the said principle can be expressed in

* The Delegates whose names are marked with an asterisk signed the protocol on the day it was sent to the Conference (15th January, 1902). See opposite page.

ART. 3.^o—Siendo de notoria conveniencia general que las diferencias cuya solución se convenga someter á arbitraje, se confieran á la jurisdicción de un tribunal de tan alta importancia como lo es la Corte de arbitramento de La Haya, así como también que las naciones americanas no signatarias de la Convención que creó esa benéfica institución puedan ocurrir á ella en uso de un derecho reconocido y aceptado, y tomando, además, en consideración el ofrecimiento de los gobiernos de los Estados Unidos de América y de los Estados Unidos de México, la Conferencia confiere á dichos gobiernos el encargo de negociar con las demás potencias signatarias de la Convención para el arreglo pacífico de los conflictos internacionales, la adhesión de las naciones americanas no signatarias de la misma Convención, que así lo solicitaren.

Por la Delegación de Guatemala : *Antonio Lazo Arriaga, Francisco Orla*. Delegados de México : *G. Raigosa,* E. Pardo (J), Joaquín D. Casasis,* Alfredo Chavero,* José López Portillo y Rojas,* Pablo Macedo,* Francisco L. de la Barra,* M. Sánchez Mármol,* Rosendo Pineda.** Por la Delegación Argentina : *Antonio Bermejo, Lorenzo Anadón*. Por la Delegación del Perú : *Isaac Alzamora, Manuel Alvarez Calderón, Alberto Elmore*. Por la Delegación del Uruguay : *Juan Cuestas*. El Delegado por Venezuela firma *ad referendum* ; y además advierte que no quedan comprendidas en este tratado, por lo que á su país se refiere, las cuestiones de navegación ni las que con ellas se relacionan. Por la Delegación de Venezuela : *M. M. Galavis*, Delegado de Costa Rica. *J. B. Calvo,** Delegado de Haití, *J. N. Léger*. Delegados de la República Dominicana : *Fed. Henríquez Carvajal,* Quintín Gutiérrez. Cecilio Báez*, Delgado del Paraguay. *Fernando E. Guachalla*, Delegado de Bolivia. *Baltasar Estupinián*, Delegado de El Salvador. *Rafael Reyes,** Delegado de Colombia. Por la Delegación de Honduras y como Delegado de Nicaragua, *F. Dávila.* William I. Buchanan,* Charles M. Pepper,* Volney W. Foster,** Delegados de los Estados Unidos de América.

ART. 4.^o—Para que se pueda llegar del modo más satisfactorio y rápido á la aplicación más amplia y menos restringida de los principios de justo arbitramento, y con el fin de que se pueda conocer con toda exactitud la forma más adelantada y mutuamente

* Los Excmos. Sres. Delegados, cuyos nombres van señalados con asterisco, firmaron el protocolo el día de su envío á la Conferencia (15 de Enero de 1902).

a Convention to be signed by the American Republics, the President of Mexico is hereby respectfully requested to ascertain, by careful inquiry, the views of the different governments represented at this Conference with regard to the most advanced form in which a general Convention of Arbitration could be drawn that would secure the approval of, and its final ratification by, the nations represented in the Conference; and, on the termination of such inquiry, to prepare a scheme for such a general Convention, as shall meet the wishes of all the Republics, and, if possible, to arrange for a series of protocols in order to put the said scheme into practice, or should this prove to be impracticable, to place before the next Conference the correspondence on the subject, together with all information relating thereto.

MEXICO, 15 January, 1902.

Signed (see opposite page).

II.—TREATY OF OBLIGATORY ARBITRATION.

Mexico, 29th January, 1902.

The undersigned, Delegates to the second American International Conference from the Argentine Republic, Bolivia, Dominican Republic, Guatemala, El Salvador, Mexico, Paraguay, Peru, and Uruguay, assembled in the City of Mexico, who are duly authorised by their respective governments, have agreed to the following articles :—

ART. 1.—The High Contracting Parties bind themselves to submit to the decision of arbitrators all disputes that exist or may arise between them, which they may not be able to settle by diplomatic means, whenever, in the exclusive judgment of any of the interested nations, such disputes do not affect the national independence or the national honour.

ART. 2.—Neither the national independence nor the national honour shall be considered as imperilled by any dispute about

ventajosa en la cual dicho principio pueda ser expresado en una Convención que habrá de firmarse entre las repúblicas americanas, se suplica respetuosamente al Presidente de México se sirva hacer constar, por una cuidadosa investigación, los propósitos de los distintos gobiernos representados en esta Conferencia, respecto de la forma más adelantada por medio de la cual pudiera concertarse una Convención general de arbitramento, capaz de reunir el voto aprobatorio y la ratificación final de las naciones representadas en la Conferencia, y que al terminar dicha investigación prepare un proyecto para dicha Convención general, que llene las aspiraciones de todas las repúblicas, y que, si es posible, forme protocolos parciales á fin de poner en práctica dicho proyecto, ó bien, si esto no fuere practicable, presente á la próxima Conferencia esa correspondencia con el informe respectivo.

México, Enero 15 de 1902.

(Firmado por las Delegaciones de Guatemala, Haití, Perú, los Estados Unidos de América, Argentina, Costa Rica, Honduras y Nicaragua, Paraguay, Bolivia, la República Dominicana, Colombia, y El Salvador.)

II.—TRATADO DE ARBITRAJE OBLIGATORIO.

México, Enero 29 de 1902.

Los infrascritos, delegados á la segunda Conferencia Internacional Americana por la República Argentina, Bolivia, República Dominicana, Guatemala, El Salvador, México, Paraguay, Perú y Uruguay, reunidos en la ciudad de México, y debidamente autorizados por sus respectivos Gobiernos, han convenido en los siguientes artículos :

ART. 1.^o—Las altas partes contratantes se obligan á someter á la decisión de árbitros todas las controversias que existen ó lleguen á existir entre ellas, y que no puedan resolverse por la vía diplomática, siempre que á juicio exclusivo de alguna de las naciones interesadas, dichas controversias no afecten ni la independencia ni el honor nacionales.

ART. 2.^o—No se considerarán comprometidos ni la indepen-

diplomatic privileges, boundaries, rights of navigation, or the validity, interpretation, and fulfilment of treaties.

ART. 3.—By virtue of the right recognised by Article 26 of the “Convention for the Pacific Settlement of International Conflicts,” signed at The Hague on the 29th of July, 1899, the High Contracting Parties agree to submit to the decision of the Permanent Court of Arbitration, established by the said Convention, all the disputes, to which reference is made in this Treaty, unless any of the parties should prefer that a special tribunal should be organised.

In the event of their submission to the Permanent Court of Arbitration at The Hague, the High Contracting Parties shall comply with the provisions of the said Convention in so far as it relates to the organisation of the Arbitral Tribunal, as well as in respect to the procedure to which the latter shall be subject.

ART. 4.—Whenever it may be necessary, from any cause whatever, to organise a Special Tribunal, either because any one of the parties may desire it or by reason of the Permanent Court of Arbitration at The Hague not being open to them, the procedure to be followed shall be established on the signing of the Arbitration Agreement. The Tribunal shall determine the date and place of its meetings and the language to be used, and shall in every case be invested with the power to determine all questions relating to its own jurisdiction, and even those referring to procedure on matters not provided for in the Arbitration Agreement.

ART. 5.—If the High Contracting Parties, on the organisation of the Special Tribunal, should not have agreed as to the appointment of an arbitrator, the Tribunal shall consist of three judges. Each State shall appoint an Arbitrator, and these shall designate an Umpire. Should they be unable to agree with reference to this designation, it shall be made by the Chief of a third State, who shall be nominated by the Arbitrators appointed by the Parties. Should they be unable to agree as to the last-mentioned appointment, each of the Parties shall designate a different Power, and the election of the Umpire shall then be made by the two Powers so designated.

dencia ni el honor nacionales en las controversias sobre privilegios diplomáticos, límites, derechos de navegación, y validez, inteligencia y cumplimiento de tratados.

ART. 3.^o—En virtud de la facultad que reconoce el artículo 26 de la Convención para el arreglo pacífico de los conflictos internacionales, firmada en La Haya, en 29 de Julio de 1899, las altas partes contratantes convienen en someter á la decisión de la Corte permanente de arbitraje que dicha Convención establece, todas las controversias á que se refiere el presente Tratado, á menos que alguna de las partes prefiera que se organice una jurisdicción especial.

En caso de someterse á la Corte permanente de La Haya, las altas partes contratantes aceptan los preceptos de la referida Convención, tanto en lo relativo á la organización del tribunal arbitral, como respecto á los procedimientos á que éste haya de sujetarse.

ART. 4.^o—Siempre que por cualquier motivo deba organizarse una jurisdicción especial, ya sea porque así lo quiera alguna de las partes, ya porque no llegue á abrirse á ellas la Corte permanente de arbitraje de La Haya, se establecerá, al firmarse el compromiso, el procedimiento que se haya de seguir. El tribunal determinará la fecha y lugar de sus sesiones, el idioma de que haya de hacerse uso, y estará en todo evento investido de la facultad de resolver todas las cuestiones relativas á su propia jurisdicción, y aun las que se refieren al procedimiento en los puntos no previstos en el compromiso.

Art. 5.^o—Si al organizarse la jurisdicción especial no hubiere conformidad de las altas partes contratantes para designar el árbitro, el tribunal se compondrá de tres jueces. Cada Estado nombrará un árbitro y éstos designarán el tercero. Si no pueden ponerse de acuerdo sobre esta designación, la hará el jefe de un tercer Estado, que indicarán los árbitros nombrados por las partes. No poniéndose de acuerdo para este último nombramiento, cada una de las partes designará una potencia diferente, y la elección del tercero será hecha por las dos potencias así designadas.

ART. 6.^o—Las altas partes contratantes estipulan que, en caso

ART. 6.—The High Contracting Parties stipulate that, in case of grave disagreement or conflict between two or more of them, such as to render war imminent, recourse shall be had, so far as circumstances permit, to the good offices or mediation of one or more of the friendly Powers.

ART. 7.—Independently of this recourse, the High Contracting Parties consider it useful that one or more Powers that are not concerned in the conflict, should spontaneously offer, so far as opportunity is presented, their good offices or their mediation to the States at variance.

The Powers not concerned in the conflict have the right of offering their Good Offices or Mediation, even during the course of hostilities.

The exercise of this right can never be considered by either of the Contending Parties as an unfriendly act.

ART. 8.—The office of Mediator consists in reconciling the opposing claims, and appeasing the resentments which may have arisen between the Nations in conflict.

ART. 9.—The functions of the Mediator cease from the moment when it is announced, either by one of the Contending Parties, or by the Mediator himself, that the means of conciliation proposed by the latter are not accepted.

ART. 10.—Good Offices and Mediation, whether at the request of the Parties in conflict or on the initiative of Powers who have no part in it, are only in the nature of advice, and never of obligatory force.

ART. 11.—The acceptance of mediation cannot have the effect, in the absence of an agreement to the contrary, of interrupting, retarding, or hindering mobilisation or other measures preparatory to war. If mediation should take place after the opening of hostilities, it shall not, in the absence of an agreement to the contrary, interrupt the course of the military operations.

ART. 12.—In the case of grave differences which threaten to disturb the Peace, and whenever the interested Powers are unable to agree as to the election or acceptance of one of the friendly Powers as mediator, the disputing States are recom-

de disentimiento grave ó de conflicto entre dos ó más de ellas, que haga inminente la guerra, se recurra, en tanto que las circunstancias lo permitan, á los buenos oficios ó á la mediación de una ó más de las potencias amigas.

ART. 7.^o—Independientemente de este recurso, las altas partes contratantes juzgan útil que una ó más potencias, extrañas al conflicto, ofrezcan, espontáneamente, en tanto que las circunstancias se presten á ello, sus buenos oficios ó su mediación á los Estados en conflicto.

El derecho de ofrecer los buenos oficios ó la mediación pertenece á las potencias extrañas al conflicto, aun durante el curso de las hostilidades.

El ejercicio de este derecho no podrá considerarse jamás por una ó por otra de las partes contendientes como un acto poco amistoso.

ART. 8.^o—El oficio de mediador consiste en conciliar las pretensiones opuestas, y en apaciguar los resentimientos que puedan haberse producido entre las naciones en conflicto.

ART. 9.^o—Las funciones del mediador cesan desde el momento en que se ha comprobado, ya por una de las partes contendientes, ya por el mediador mismo, que los medios de conciliación propuestos por éste no son aceptados.

ART. 10.—Los buenos oficios y la mediación, ya que á ellos se recurra por las partes en conflicto ó por iniciativa de las potencias extrañas á él, no tienen otro carácter que el de consejo, y nunca el de fuerza obligatoria.

ART. 11.—La aceptación de la mediación no puede producir el efecto, salvo convenio en contrario, de interrumpir, retardar ó embarazar la movilización ú otras medidas preparatorias de la guerra. Si la mediación tuviere lugar, rotas ya las hostilidades, no se interrumpe por ello, salvo pacto en contrario, el curso de las operaciones militares.

ART. 12.—En los casos de diferencias graves que amenacen comprometer la paz, y siempre que las potencias interesadas no puedan ponerse de acuerdo para escoger ó aceptar como mediadora á una potencia amiga, se recomienda á los Estados en conflicto

mended to select a Power, which shall be specially entrusted with the mission of entering into direct relations with a Power chosen by the other interested nation, with the object of preventing the rupture of pacific relations.

During the continuance of this mandate, the duration of which, unless the contrary is stipulated, cannot exceed thirty days, the contending States shall cease all direct negotiation with reference to the dispute, which is to be considered as referred, exclusively, to the mediating Powers.

Should these friendly Powers be unable to come to an agreement as to the proposal of a solution acceptable to those who are in conflict, they shall designate a third, to which the mediation shall be entrusted.

In case of actual rupture of pacific relations, this third Power shall remain charged with the mission of profiting by every opportunity to re-establish Peace.

ART. 13.—In disputes of an international character, arising from a difference in their estimate of matters of fact, the Signatory Republics consider it useful that the parties which have not been able to agree by diplomatic means should institute, as far as circumstances will permit, an International Commission of Inquiry, entrusted with the duty of facilitating the settlement of these disputes, by clearing up the questions of fact, by means of an impartial and conscientious investigation.

ART. 14. — International Commissions of Inquiry are constituted by Special Convention between the parties in litigation. The Agreement shall specify the facts that are to be the subject matter of examination, as well as the extent of the powers of the Commissioners, and shall regulate the procedure to which they must adhere. The inquiry shall proceed by hearing both parties in turn, and the procedure and time allowed for the investigation, if not fixed by the agreement, shall be determined by the Commission itself.

ART. 15. — International Commissions of Inquiry shall be constituted, unless it is stipulated to the contrary, in the same manner as the Arbitration Tribunal.

la elección de una potencia, á la cual confien, respectivamente, el encargo de entrar en relación directa con la potencia, escogida por la otra nación interesada, con el objeto de evitar la ruptura de las relaciones pacíficas.

Mientras dura este mandato, cuyo término, salvo estipulación en contrario, no puede exceder de treinta días, los Estados contendientes cesarán toda relación directa con motivo del conflicto, el cual se considerará como exclusivamente deferido á las potencias mediadoras.

Si esas potencias amigas no logren proponer, de común acuerdo, una solución que fuere aceptable por las que se hallen en conflicto, designarán á una tercera, á la cual quedará confiada la mediación.

Esta tercera potencia, caso de ruptura efectiva de las relaciones pacíficas, tendrá en todo tiempo el encargo de aprovechar cualquiera ocasión para procurar el restablecimiento de la paz.

ART. 13.—En las controversias de carácter internacional, provenientes de divergencia de apreciación de hechos, las repúblicas signatarias juzgan útil que las partes que no hayan podido ponerse de acuerdo por la vía diplomática, instituyan, en tanto que las circunstancias lo permitan, una comisión internacional de investigación, encargada de facilitar la solución de esos litigios, esclareciendo, por medio de un examen imparcial y concienzudo, las cuestiones de hecho.

ART. 14.—Las comisiones internacionales de investigación se constituyen por convenio especial de las partes en litigio. El convenio precisará los hechos que han de ser materia de examen, así como la extensión de los poderes de los comisionados, y arreglará el procedimiento á que deben éstos sujetarse. La investigación se llevará á término contradictoriamente; y la forma y los plazos que deben en ella observarse, si no se fijaren en el convenio, serán determinados por la comisión misma.

ART. 15.—Las comisiones internacionales de investigación se constituirán, salvo estipulación en contrario, de la misma manera que el tribunal de arbitraje.

ART. 16.—It is obligatory on the part of the Powers in litigation to furnish the International Commission of Inquiry, to the fullest extent they may consider possible, all the means and facilities necessary for the complete knowledge and exact appreciation of the facts in question.

ART. 17.—The above mentioned Commissions shall be limited to the determination of matters of fact, and to the expression of opinion on those that are merely technical.

ART. 18.—The International Commission of Inquiry shall present its report to the Powers that appointed it, signed by all the members of the Commission. This report, being limited to the investigation of matters of fact, shall by no means have the character of an arbitral award, and shall leave the contending Powers in entire freedom as to the value they shall attach to it.

ART. 19.—The constitution of Commissions of Inquiry may be included in the Agreements (*compromis*) of Arbitration, as a preliminary procedure, in order to determine the facts that are to form the subject of adjudication.

ART. 20.—The present Treaty does not annul any previous ones existing between two or more of the Contracting Parties, in so far as they give greater extension to obligatory arbitration. Nor does it alter the stipulations on Arbitration relating to specific questions that have already arisen, nor the course of the Arbitration procedure that is being followed with respect to them.

ART. 21.—This Treaty shall become operative, without the necessity of the exchange of ratifications, as soon as three at least of the Signatory States shall notify their approval to the Government of the United States of Mexico, which will communicate it to the other Governments.

ART. 22.—Non-signatory Powers may, at any time, give their adhesion to the present treaty. If any one of the Signatory Powers shall desire to regain its liberty it must denounce the Treaty, but such denunciation can take effect solely in the case of the Power making it, and then only after the expiration of one year from the completion of the denunciation. Should the

ART. 16.—Es obligación de las potencias en litigio, ministrar, en la más amplia medida que juzguen posible, á la comisión internacional de investigación, todos los medios y facilidades necesarias para el conocimiento completo y la exacta apreciación de los hechos controvertidos.

ART. 17.—Las comisiones mencionadas se limitarán á averiguar la verdad de los hechos, sin emitir más apreciaciones que las meramente técnicas.

ART. 18.—La comisión internacional de investigación presentará á las potencias que la hayan constituido, su informe firmado por todos los miembros de la comisión. Este informe, limitado á la investigación de los hechos, no tiene en lo absoluto el carácter de sentencia arbitral, y deja á las partes contendientes en entera libertad de darle el valor que estimen justo.

ART. 19.—La constitución de comisiones de investigación podrá incluirse en los compromisos de arbitraje, como procedimiento previo, á fin de fijar los hechos que han de ser materia del juicio.

ART. 20.—El presente Tratado no deroga los anteriores existentes entre dos ó más de las partes contratantes, en cuanto den mayor extensión al arbitraje obligatorio. Tampoco altera las estipulaciones sobre arbitraje, relativas á cuestiones determinadas que han surgido ya, ni el curso de los juicios arbitrales que se siguen con motivo de éstas.

ART. 21.—Sin necesidad de canje de ratificaciones, este Tratado estará en vigor desde que tres Estados, por lo menos, de los que lo suscriben, manifiesten su aprobación al Gobierno de los Estados Unidos mexicanos, el que la comunicará á los demás Gobiernos.

ART. 22.—Las naciones que no suscriban el presente Tratado podrán adherirse á él en cualquier tiempo. Si alguna de las signatarias quisiere recobrar su libertad, denunciará el tratado; mas la denuncia no producirá efecto sino únicamente respecto de la nación que la efectuare, y sólo después de un año de formalizada la denuncia. Cuando la nación denunciante tuviere pendientes

denouncing Power have any questions of arbitration pending at the expiration of the year, the denunciation shall not take effect in regard to the case still to be decided.

GENERAL DISPOSITIONS.

I. The present Treaty shall be ratified as soon as possible.

II. The ratifications shall be forwarded to the Ministry for Foreign Affairs of Mexico, where they shall be deposited.

III. The Mexican Government shall send a certified copy of each ratification to the other Contracting Governments.

In witness hereof, they (the Delegates) have signed the present Treaty, and have respectively affixed their seals thereto.

Done at the City of Mexico, the 29th of January, 1902, in a single original, which shall remain deposited at the Ministry for Foreign Affairs of the United States of Mexico, certified copies of which shall be sent through diplomatic channels to the contracting Governments.

(Signed by the Delegates for the Argentine, Bolivian, Dominican, Guatemalan, Salvadorian, Mexican, Paraguayan, Peruvian, and Uruguayan Republics.)

algunas negociaciones de arbitraje á la expiración del año, la denuncia no surtirá sus efectos con relación al caso aun no resuelto.

DISPOSICIONES GENERALES.

I —El presente Tratado será ratificado tan pronto como sea posible.

II. — Las ratificaciones se enviarán al Ministerio de Relaciones Exteriores de México, donde quedarán depositadas.

III —El Gobierno mexicano remitirá copia certificada de cada una de ellas á los demás gobiernos contratantes.

En fe de lo cual han firmado el presente Tratado y le han puesto sus respectivos sellos.

Hecho en la ciudad de México, el día veintinueve de Enero del año de mil novecientos dos, en un solo ejemplar que quedará depositado en el Ministerio de Relaciones Exteriores de los Estados Unidos mexicanos, del cual se remitirá, por la vía diplomática, copia certificada á los gobiernos contratantes.

(Firmado por las Delegaciones de las Repúblicas Argentina, Bolivia, Dominicana, Guatemala, El Salvador, México, Paraguay, Perú y Uruguay).

FRENCH VERSION OF PRECEDING.

TRAITÉ D'ARBITRAGE OBLIGATOIRE.

Signé à Mexico, le 20 janvier 1902.

ENTRE LA RÉPUBLIQUE ARGENTINE, LA BOLIVIE, LA RÉPUBLIQUE
DOMINICAINE, LE GUATÉMALA, LE SALVADOR, LE MEXIQUE,
LE PARAGUAY, LE PÉROU ET L'URUGUAY.

(D'après le *Mémorial Diplomatique*.)

Secrétariat d'Etat des Affaires Etrangères
Section d'Amérique, d'Asie et d'Océanie.

MEXICO, le 22 avril 1903.

M. le Président de la République a bien voulu me transmettre le décret suivant :

Porfirio Diaz, Président des Etats-Unis Mexicains, fait savoir à leurs habitants :

Que, le vingt-neuvième jour de l'an mil neuf cent deux a été conclu et signé dans cette capitale, par l'intermédiaire de Plénipotentiaires dûment autorisés, un Traité d'Arbitrage obligatoire entre les Républiques Argentine, de Bolivie, Dominicaine, du Salvador, de Guatémala, du Mexique, du Paraguay, du Pérou et de l'Uruguay, dans la forme et de la teneur suivantes :

Les soussignés, Délégués à la deuxième Conférence Internationale Américaine, par la République Argentine, la Bolivie, la République Dominicaine, le Guatémala, le Salvador, le Mexique, le Paraguay, le Pérou et l'Uruguay, réunis dans la ville de Mexico, et dûment autorisés par leurs Gouvernements respectifs, ont convenu des articles suivants :

ARTICLE PREMIER.—Le Hautes Parties contractantes s'obligent

à soumettre à la décision d'arbitres toutes les controverses qui existent ou arriveront à exister entre elles et qui ne pourront être résolues par la voie diplomatique, pourvu que, au jugement exclusif d'une quelconque des nations intéressées, lesdites controverses n'affectent ni l'indépendance ni l'honneur national.

ART. 2.—Ni l'indépendance nationale, ni l'honneur national ne seront considérés comme compromis, dans les controverses sur les privilèges diplomatiques, les frontières, les droits de navigation, et la validité, l'interprétation et l'exécution des traités.

ART. 3.—En vertu de la faculté que reconnaît l'article 26 de la Convention pour le Règlement Pacifique des Conflits Internationaux, signée à La Haye le 29 juillet mil huit cent quatre-vingt-dix-neuf, les Hautes Parties contractantes conviennent de soumettre à la décision de la Cour Permanente d'Arbitrage que ladite Convention a établie, toutes les controverses visées par le présent Traité, à moins qu'une quelconque des Parties ne préfère organiser une juridiction spéciale.

Au cas où les différends seraient soumis à la Cour Permanente de La Haye, les Hautes Parties contractantes acceptent les prescriptions de la Convention sus-mentionnée, tant en ce qui est relatif à l'organisation du Tribunal Arbitral, que par rapport à la procédure à laquelle il aura à se soumettre.

ART. 4.—Toutes les fois que, pour un motif quelconque, devra être organisée une juridiction spéciale, soit parce qu'une quelconque des Parties l'aura demandé ainsi, soit parce que la Cour Permanente d'Arbitrage de la Haye ne pourra s'ouvrir pour elles, on établira, lors de la signature du compromis, la procédure qui devra être suivie. Le Tribunal déterminera la date et le lieu de ses séances, la langue dont il devra être fait usage et sera, dans tous les cas, investi de la faculté de résoudre toutes les questions relatives à sa propre juridiction, ainsi que celles qui se réfèrent à la procédure sur les points non prévus par le compromis.

ART. 5.—Si, lors de l'organisation de la juridiction spéciale, il n'y a pas accord entre les Hautes Parties contractantes le Tribunal se composera de trois juges. Chaque Etat nommera un arbitre, et ceux-ci désigneront le troisième. S'ils ne peuvent

se mettre d'accord sur cette désignation, elle sera faite par le chef d'un troisième Etat qu'indiqueront les arbitres nommés par les Parties. S'ils ne peuvent se mettre d'accord sur cette dernière nomination, chacune des Parties désignera une Puissance différente et l'élection du tiers arbitre sera faite par les deux Puissances ainsi désignées.

ART. 6.—Les Hautes Parties contractantes stipulent qu'en cas de dissentiment grave, ou de conflit entre deux ou plusieurs d'entre elles, qui rendra la guerre imminente, on aura recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs des Puissances amies.

ART. 7.—Indépendamment de ce recours, les Hautes Parties contractantes jugent utile qu'une ou plusieurs Puissances étrangères au conflit offrent spontanément, en tant que les circonstances s'y prêteront, leurs bons offices ou leur médiation aux Etats en conflit.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même durant le cours des hostilités.

L'exercice de ce droit ne pourra jamais être considéré, par l'une ou par l'autre des Parties en lutte, comme un acte peu amical.

ART. 8.—L'office de médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui pourront s'être produits entre les Nations en conflit.

ART. 9.—Les fonctions du médiateur cessent dès qu'il est démontré, soit pour l'une des Parties en lutte, soit pour le médiateur lui-même, que les moyens de conciliation proposés par ce dernier ne sont pas acceptés.

ART. 10.—Les bons offices et la médiation, soit que les Parties en conflit y aient recours, soit qu'ils résultent de l'initiative des Puissances à elles étrangères, n'auront d'autre caractère que celui de conseil, et n'auront jamais celui de force obligatoire.

ART. 11.—L'acceptation de la médiation ne peut, sauf convention contraire, produire l'effet d'interrompre, de retarder ou de gêner la mobilisation ou les autres mesures préparatoires de la

guerre. Si la médiation a lieu les hostilités étant déjà ouvertes, le cours des opérations militaires, sauf convention contraire, n'en sera pas interrompu.

ART. 12.—Dans les cas de différends graves, qui menacent de compromettre la paix, et lorsque les Puissances intéressées ne peuvent se mettre d'accord pour désigner ou accepter comme médiatrice une Puissance amie, il est recommandé aux Etats en conflit l'élection d'une Puissance, à laquelle ils confieront, respectivement, le soin d'entrer en relation directe avec la Puissance désignée par l'autre Nation intéressée dans le but d'éviter la rupture des relations pacifiques.

Tant que durera ce mandat, dont le terme, sauf stipulation contraire, ne pourra excéder trente jours, les Etats en lutte cesseront toute relation directe au sujet du conflit, qui sera considéré comme déferé exclusivement aux Puissance médiatrices.

Si ces Puissances amies ne parviennent pas à proposer, d'un commun accord, une solution qui soit acceptable pour celles qui se trouvent en conflit, elles en désigneront une troisième, à laquelle sera confiée la médiation.

Cette troisième Puissance, en cas de rupture effective des relations pacifiques, aura en tout temps le devoir de profiter de toute occasion pour amener le rétablissement de la paix.

ART. 13.—Dans les controverses de caractère international provenant de différences d'appréciation de faits, les Républiques signataires jugent utile que les Parties qui n'auront pu se mettre d'accord par la voie diplomatique, instituent, autant que les circonstances le permettront, une Commission Internationale d'Investigation, chargée de faciliter la solution de ces litiges, en éclaircissant les questions de fait par un examen impartial et consciencieux.

ART. 14.—Les Commissions Internationales d'Investigation seront constituées par convention spéciale des Parties en litige. La convention précisera les faits qui devront être matière de l'examen, ainsi que l'étendue des pouvoirs des Commissaires et règlera la procédure à laquelle ceux-ci devront se soumettre. L'investigation sera conduite, jusqu'au bout, contradictoirement ;

et la forme et les délais qui devront y être observés, seront déterminés par la Commission elle-même, si la convention ne les a pas fixés.

ART. 15.—Les Commissions Internationales d'Investigation seront constituées, sauf stipulation contraire, de la même manière que le Tribunal d'Arbitrage.

ART. 16.—Les Puissances en litige ont l'obligation de fournir à la Commission Internationale d'Investigation, dans la mesure la plus large qu'elles jugeront possible, les moyens et facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits controversés.

ART. 17.—Les commissions mentionnées se limiteront à vérifier l'exactitude des faits, sans émettre d'autres appréciations que celles d'un ordre purement technique.

ART. 18.—La Commission Internationale d'Investigation présentera aux Puissances qui l'auront constituée son avis, signé par tous les membres de la Commission. Ces avis, limité à l'investigation des faits, n'a absolument pas le caractère d'une sentence arbitrale, et les Parties en lutte conserveront liberté entière de lui attribuer la valeur qu'elles estimeront juste.

ART. 19.—La constitution de Commissions d'Investigation pourra être comprise dans les compromis d'arbitrage comme procédure préalable, afin de fixer les faits qui auront à devenir la matière du jugement.

ART. 20.—Le présent Traité ne déroge pas à ceux existant antérieurement entre deux ou plusieurs des Parties contractantes, en tant qu'ils donnent une plus grande étendue à l'Arbitrage obligatoire. Il ne modifie pas non plus les stipulations sur l'arbitrage relatives à des questions déterminées qui ont déjà surgi, ni le cours des jugements arbitraux qui se poursuivent en raison de ces dernières.

ART. 21.—Sans qu'il soit nécessaire d'échanger des ratifications, le présent Traité entrera en vigueur aussitôt que trois Etats au moins, d'entre ceux qui l'ont signé, feront connaître leur approbation au Gouvernement des Etats-Unis Mexicains qui en donnera communication aux autres Gouvernements.

ART. 22.—Les Nations qui n'ont pas signé le présent Traité pourront y adhérer en n'importe quel temps. Si l'une quelconque des signataires désire recouvrer sa liberté, elle dénoncera le Traité ; mais la dénonciation ne produira d'effet que par rapport à la seule nation qui l'aura effectuée et seulement dans le délai d'une année après qu'elle aura formulé la dénonciation. Lorsque la Nation dénonçante, à l'expiration de l'année, trouvera pendantes des négociations d'arbitrage quelconques, la dénonciation ne produira pas ses effets par rapport à l'affaire non encore résolue.

DISPOSITIONS GÉNÉRALES.

I. Le présent Traité sera ratifié aussi rapidement que possible.

II. Les ratifications seront envoyées au Ministère des Affaires Etrangères du Mexique, où elles resteront déposées.

III. Le Gouvernement Mexicain remettra copie certifiée de chacune d'elles aux autres Gouvernements contractants.

En foi de quoi ils ont signé le présent Traité et y ont apposé leurs sceaux respectifs.

Fait dans la Ville de Mexico, le vingt-neuvième jour de Janvier de l'an mil neuf cent deux, en un exemplaire unique, qui restera déposé au Ministère des Affaires Etrangères des Etats-Unis Mexicains et dont copie certifiée sera remise, par la voie diplomatique, aux Gouvernements contractants.

Pour la République Argentine : (L. S.) Signé : *Antonio Bermejo, Lorenzo Anadon*. Pour la Bolivie : (L. S.) Signé : *Fernando E. Guachalla*. Pour la République Dominicaine : (L. S.) Signé : *Fed. Enriquez i Carvajal*. Pour le Guatémala : (L. S.) Signé : *Francisco Orla*. Pour le Salvador : (L. S.) Signé : *Francisco A. Rayes, Baltasar Estupinian*. Pour le Mexique : (L. S.) Signé : *G. Raigosa, Joaquin D. Casasus, Pablo Macedo, E. Pardo (jr.), Alfredo Chavero, José Lopez Portillo y Rojas, F. L. de la Barra, Rosendo Pineda, M. Sanchez Marmol*. Pour le Paraguay : (L. S.) Signé : *Cecilio Baez*. Pour le Pérou : (L. S.) Signé : *Manuel Alvarez Calderon, Alberto Elmoro*. Pour l'Uruguay : (L. S.) Signé : *Juan Cuestas*.

Que le précédent Traité a été approuvé par la Chambre des Sénateurs des Etats-Unis Mexicains le vingt et un Avril de la

même année mil neuf cent deux, et ratifié par moi le dix-septième jour du mois actuel ;

Qu'il a été également ratifié par les Gouvernements : du Salvador, le 28 Mai 1902 ; du Guatémala, le 25 Août de la même année, et de la République Orientale de l'Uruguay, le 31 Janvier de l'année présente ; la notification correspondante ayant été faite, par la Chancellerie Mexicaine, aux autres Gouvernements signataires ;

Et que, l'article 21 du présent Traité est conçu comme suit : Sans qu'il soit nécessaire d'échanger des ratifications, le présent Traité entrera en vigueur aussitôt que trois Etats au moins, d'entre ceux qui l'ont signé, feront connaître leur approbation au Gouvernement des Etats-Unis Mexicains, qui en donnera communication aux autres Gouvernements.

En vertu de quoi j'ordonne qu'il soit imprimé, publié, mis en circulation et qu'il lui soit donné une exécution.

Palais National de Mexico, le vingt-deux Avril mil neuf cent trois.

“ Porfirio Dias. ”

“ A. M. le Licencié D. Ignacio Mariscal, Secrétaire d'Etat et du Département des Affaires Etrangères. ”

Et je vous le communique aux effets correspondants, en vous renouvelant ma considération empressée.

Mariscal.

A. M.....

OBLIGATORY ARBITRATION.

The weakness of the Arbitration Scheme adopted by The Hague Conference was declared to be, "that it did not make arbitration obligatory." This was considered a weakness, which was little short of a calamity, by some who summoned their colleagues to a strenuous agitation to prevent its occurring. It was a marked outside feature of the gathering at The Hague.

It is still declared to be a weakness which must be remedied as soon as possible. Hence one of the primary reasons for the agitation in favour of concluding Supplemental Treaties, in harmony with Article 19 of The Hague Convention, with the object of extending Obligatory Arbitration to all cases judged capable of submission to it. It is felt that in some way the cause of Arbitration would be served, or become more certain, if it were made obligatory; that neither the good sense nor good feeling, nor even the self-interest, of States would secure the adoption of this way of reason, unless the spur of coercion be applied in some form.

So this question assumes a factitious importance, as will be seen on examination.

It must here be premised, however, that there are two senses in which the term "obligatory" (*obligatoire*) is used as applied to International Arbitration.

1. The one contains the idea of compulsion applied from without—an obligation imposed by the will and power of another. Those who adopt that use of the word have urged the formation of some kind of league, or federation, or authority, by which States might be compelled to submit their differences to arbitration. Societies have even been formed to promote the idea of "*Compulsory* Arbitration."

In reply it should be pointed out that this idea of compulsion, by extraneous force, is no part, etymologically, of the term. Secondly, that in practice such a provision for Arbitration would not only be useless as a promoter of Peace, but would be

another provocative of War ; it would be the reorganisation of the worst feature of the war system, that of coercion by force, in a new form ; and, thirdly, that it would lack that which is the soul and inspiration of true reform, the peaceable spirit, without which little can be achieved for the juridical status, the pacific procedure, the moral order, of the world.

If "obligatory" meant anything of this kind no government would for a moment listen to the proposal, for it would mean the sacrifice of freedom, and the incurring of fresh danger; and, further, international jurists, and advocates of Peace generally, could not support such a proposal ; for, as has just been said, that would be to restore the old system under a new guise, only labelled " Law " and " Peace." This would soon result in the evils and conflicts of the old system ; in a very little while armies would be necessary to *compel* the submission of the recalcitrant ; they are even now advocated by some as international police ; the sacred cause of Peace and international order would be perverted into the occasion of new wars, of which, in time, it would become the fruitful mother ; and the last state of International Society would be worse than the first.

2. It is clear, then, that that is *not* the sense in which the word "obligatory" is employed in treaties and other instruments. The word is really used in its natural and etymological sense, as referring to " that which morally binds, or obliges—the binding power of a promise," for instance, " or a contract or a law ; that which constitutes legal or moral duty " ; or, still further, to " an external act or duty imposed by the relations of society." These are the primary meanings of the term, and in these senses its application is clear. It refers *solely* to the *obligation* in regard to International Arbitration which States *create for themselves* by the agreements they voluntarily enter into. There is no compulsion ; coercion is altogether outside the conception. Obligatory Arbitration, then, is that to which rulers and peoples *obligate themselves* by the engagement they make with each other, and to which they are morally bound and obliged by their own act and deed, and voluntary consent.

“Obligatory,” as used in this connection, simply means that the Powers may by treaty pledge themselves beforehand to submit all cases of difference, except such as may be specifically designated, to a Court, as they arise, thus creating for themselves a new moral and legal obligation—and, hence, making arbitration “obligatory” in each case.

It is important to apprehend this clearly, in order to perceive how the idea of compulsion is absolutely excluded.

In the last sense, of course, Obligatory Arbitration means that act or duty imposed upon States by the relations of the international society of which they form part, and by whose prevailing sentiment they are governed. In this use of the term “Obligatory Arbitration” is the absolute substitute for public or international war, which occupies that position to-day.

There is a real sense in which that which is alleged, or assumed to be, the weakness of The Hague Convention—its “*facultative*” or “optional” character—becomes its strength. This term “*facultative*,” which is employed as the correlative of obligatory, means only that it is left “optional” whether the signatory States will refer or not to the Court, which they have created, the particular differences between them as they arise—each being determined on its own merits. But the obligation honourably to fulfil their solemn engagements is not affected at all—that remains intact.

It does not mean that under The Hague Convention, which provides only for facultative or optional Arbitration, there is no obligation—that would be absurd. The Hague Convention itself is obligatory to the extent of its terms. Both the moral and legal duty to carry out The Hague Convention, as far as it extends, already exists—nothing could make it stronger; and it is not in the slightest degree affected by the question as to whether the appeal to the Court is, in *each* case of difference, “*facultative*” or “obligatory.”

This is the real strength of The Hague Convention. For,

1. The great objection to Obligatory Treaties is, as has been pointed out by Chief Justice Nott (of the American Court of

Claims), that they will not be ratified. "Men in authority will not confer power upon the unknown. There must be something established; they must see it working; they must concur in what it will probably do, and then they will willingly use it as their instrument." Let The Hague Court prove its efficiency and its adaptation to the work required of it, as it has done already, and no compulsion—which would in any case be absolutely futile—would be necessary; it would commend itself.

2. The *self-interest* of nations would alone secure this result. War is a clumsy and inefficient means of national defence; the present system of organised preparation for it has been aptly termed "armed fear"; if then, some real, effective, and certain means of defence, by the actual settlement and removal of the causes of war, be provided, the inevitable result will be that the Fear, which now punishes itself by its military preparations, will rush to adopt it.

It is, however, futile to expect any extensive adoption of Disarmament until some protection, some real substitute for an appeal to arms, has been provided; not that war has hitherto proved either a protection, or a provision of settlement for international differences, or that war preparations have proved anything but provocatives. But governments will not trust to abstract theories, or political doctrines; they are ever clamorous for facts and material forces. They believe that war is a defence, and the only sure arbitrament; and, while that belief lasts, they will not even listen to proposals of disarmament. Provide your system of Arbitration, then, and prove its efficiency, and its adoption will follow as a matter of course. This does not mean that disarmament should not be sought, even as a means and method of Peace. It is the multiplication of armaments that often makes Peace so precarious. If nations had not the means of fighting they would not be so ready to appeal to arms. These are mere truisms; but so, also, are the counter considerations that the provocatives must be removed, that the substitute must be found and proved, and then, even from mere counsels of policy and prudence, its adoption must come sooner or later.

3. But there is a higher reason. "Mankind is not belligerent; there is in every nation combustible material; but the great, peaceful mass, the '*unknown millions*,' the men who work for their families without ambition, and lay up money to bring their children up decently"—the tradesmen, farmers, mechanics and well-to-do labourers, the industrial and middle classes of the country, want no war; they need no converting; and it is they, in the long run, that control public opinion. Mankind is not irrational, notwithstanding Carlyle's "mostly fools." It is only when the passions are roused and panic fear is rampant that the folly prevails.

"I have no hesitation," said Justice Nott again—referring to his unique experience as a judge in, practically, an Arbitration court, and bringing it to bear on the issue of arbitration—"in deducing from it, as my own conclusion, that if you can ever establish an International Tribunal in the nature of a Court, and if that International Tribunal shall have its doors open at all times, the nations of the earth, for the most part, will gladly go into it with their international differences." When these disputes come in the sober form of lawsuits, little is said about them; the machinery works as the machinery which adjusts the other differences of men has worked. Once let the tide turn in that direction, and the current will flow ceaselessly. So it has proved in international justice, and so will it, in the necessity of things, in international

4. When this has come to pass, the system of judicial arbitration will have established its position among "the relations" of international society, and will, just as the judicial system among the relations of national society, which has wholly put an end to private war, necessitate "the external act or duty" of settling difficulties by its means. In this way, by a natural evolution, Arbitration will become "obligatory"; and the pathway of efficiency on the part of the Court, and of habit on the part of voluntary applicants, may prove a straighter and a surer road to the desired result than even that of Treaty Obligation.

THE QUESTION OF SANCTIONS.

“The complaint commonly made that The Hague Court has no power to enforce its awards really indicates an advantage not a defect.” Yes, every way, notwithstanding the common opinion. Closely allied with the idea of compulsion in *submitting* international differences to *arbitration*, but much more common, is that of *its necessity* for *securing obedience* to the award, when that has been rendered, or of imposing penalties upon the recalcitrant. This is a frequent and favourite subject of discussion even among Peace advocates, in spite of the facts, that acceptance of the award is implied in the *compromis*; that the history of arbitration, from the earliest times, shows that coercion is not necessary to secure obedience; and that both reason and experience declare that physical force sanctions may be altogether dispensed with.

A weighty utterance on the subject, which occurs in a “*Memorial addressed to the Powers, at the Request of the Inter-parliamentary Conference*,” by Le Chevalier Descamps, Belgian Senator, printed at Brussels in 1896, runs:—

Then comes the more serious objection, that arbitral decisions possess no “sanction” or authority giving effect to them, so that, left to their own inherent force, they will not prevail, so long at least as human nature remains what it is. An organised power of compulsion, it is said, must be created for the service of the Tribunal. Therefore this dilemma presents itself, either the decision remains without effective authority, and, in that case, the Tribunal will have no prestige, or the decision would be carried out by force, and the remedy would perhaps be worse than the disease.

Our reply is, that international engagements and treaties are respected and observed, although accompanied by no organised enforcement. Resort to the proposed Tribunal is optional; and it is not likely that States will arbitrarily reject the decision of the jurisdiction to which they have themselves appealed.

In point of fact, the history of Arbitrations shows that States do not ignore the decisions; and M. Calvo, in his work on International Law, says that there is no instance in which there has been an attempt to

escape from such decisions. The sentiment of duty and honour would exercise a commanding influence with the nations concerned. There are cases where States, although subjected to a decision which they considered unjust, have nevertheless submitted, as in the case of the *Alabama* decision. In the case of an arbitration, there is a legal obligation founded upon a contract, and failure to observe it is as inadmissible as the violation of a treaty. The Conference of London, in 1871, declared it to be a principle of International Law that no Power can release itself from or modify the terms of a treaty.

Several questions arise out of the delivery of an arbitral judgment which must be clearly distinguished from one another. The first is as to the rights of the several parties to the case. This is settled authoritatively by the decision. That decision is the law, accepted before Heaven by the parties. The characteristic trait of Arbitration is precisely common submission to a judge who has been freely chosen, with a formal engagement to conform loyally to the decision. As Sir Robert Phillimore says: "The sentence is binding upon the parties whose own act has created the jurisdiction over them."

The next question is, "How shall the decision be carried into execution?" This must be effected (see Merignhac) by competent authority, acting on the part of the non-suited nation, which shall provide the ways and means of meeting the liability incurred—such as placing at the disposal of the Government the funds required to pay the indemnity adjudged.

It may also be asked whether it is desirable to prepare means of coercion, in view of a possible refusal of the losing party to give effect to the judgment. This would be neither safe nor practicable: there are recognised methods of sanction which are sufficient, and there are secondary methods whereby nations can, if necessary, secure, as between themselves, the execution of the treaties.

Moreover, the parties can, in the agreement, authorise the arbitrators to specify the mode in which sanction shall be given to their decision.

Further discussions of the question from the special standpoint of the Peace Society will be found in the following substance of an Address delivered by the Author at the Universal Peace Congress, Paris, October 4th, 1900:—

It is unfortunate that the discussion of this question comes somewhat late in the proceedings of the Congress, when time is the more precious, and at the close of a long and exhausting sitting, when it is impossible to render it due justice. For there is scarcely any subject on our programme so important as this—a fact which is evidenced by the frequency of its introduction before

our Congresses and the fierceness of the debates to which it has usually given rise, while its technical character prevents it from winning that deep interest which would otherwise attend it, and carrying that clear understanding which is necessary for intelligent discussion and wise decision.

I propose, therefore, to offer some remarks from the point of view of a layman, not in opposition to the report of the Commission, which is now before us, but as supplemental to it, and with the desire of expressing what ought to be said by some one if the Congress is to have a complete presentation of the subject before it, and will not merely content itself with passing resolutions, without perceiving their scope and bearing.

The report, you will observe, is that of the Legal Commission; it is the work of the jurists among us, who have done our cause such excellent service, and to whose labours, especially those of M. de Montluc, we are greatly indebted; and it belongs more especially to the juridical aspect of our labours.

The resolution with which it concludes would, at first sight, seem to strengthen an impression growing in some of our minds, and expressed yesterday by my friend, Dr. Trueblood, that our discussions were in danger of lingering too much over mere details. In reality it is not so. This resolution takes note of the fact that there is already, thanks to the project of M. de Montluc, a system of sanctions, suitable for securing, in the majority of cases, the execution of arbitral decisions; and then it goes on to request the Juridical Commission to elaborate a new code of the ways of execution, and to frame a new model treaty of Permanent Arbitration containing stipulations guaranteeing the execution of Awards.

Why all this anxiety to perfect details? it may be asked. If there be a suitable system of sanctions already in existence, what more is necessary? The answer to this is twofold.

(1.) It springs partly from the natural desire to complete the formulation of a technical scheme, which is especially incidental to a precise system like that of jurisprudence and the practice of law.

(2.) But that is not the whole. It arises also, and mainly, from the fact that "sanctions" form an essential part of the theory and definition of law and therefore, from its standpoint, are absolutely indispensable.

With the first I have profound sympathy. I believe in that supreme necessity of our nature which urges men to seek perfection, which forbids them to be satisfied with the incomplete, and, in its highest form, rests only in the Absolute. All the progress of humanity, in every sphere of thought and action, springs from that necessity. And, in a system which consists especially of rule and precedent, and where everything must be precise and sharply defined, it is easy to perceive the imperative need of forms and formulas. Moreover, I can quite see the advantage of presenting our case in all its aspects, so as to meet enquirers or opponents at all points, and be able to give satisfactory replies to all objections.

There is, however, one caution to be specially observed, viz., that we must not mistake the means for the end, the path for the goal, and imagine that when we have formulated our schemes we have completed our task, whereas we are then only beginning it. The "Code," the Model Treaty, the whole scheme, may be wrought out to its last point of punctuation; but what if it prove true of it as was once said of the French Constitution, that "it would not march." What if rulers do not accept it? What if the wayward passions of the peoples themselves intervene? Where there is a will to quarrel, there will be always a way. Then the new motor of pacific progress lies idle in the shed, or hidden in a Congress Report. It is not enough to fabricate a splendid piece of machinery, we must provide the driving force. If the constitution is to march, it must have a soul. Besides, when we have elaborated our schemes, it is necessary to enquire what right use can be made of them, what ground they cover, and what limitations and cautions, if any, are to be observed.

It is, therefore, the second point that is of prime importance, viz., that the essential conception of law carries with it the necessity of sanctions, and that in this conception "sanction"

means "force," "compulsion." It is this point I wish to discuss, in its application to our aims. "Law," says jurisprudence, "is needed to regulate the affairs of men; to make the law effective it must be backed up by organised physical force; organised physical force is, therefore, a necessity." *This is really the position we are asked to sanction in voting for a system of sanctions.*

First, as to the fact. It will become at once apparent, if you recall the definition of law which is universally accepted, and which, therefore, not only tinctures, but controls all legal systems. I state it in the words of Austin: "A law, in the literal and proper sense of the word is a rule laid down for the guidance of an intelligent being *by an intelligent being having power over him.*" Or, in its wider form, "Every law, simply and strictly so-called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society, wherein that person or body is sovereign or supreme."

*Every law, therefore, implies four things:—

- (1.) The sovereign authority which imposes the rule.
- (2.) The person, or persons, in a state of subjection to that authority.
- (3.) The rule which is set by the sovereign authority having the right and the ability to do so.
- (4.) The "*sanction*," or the power to compel obedience, and to punish disobedience.

If either element be absent, there is, technically, and even practically, no law; and of the four elements the last is, manifestly, the most important, seeing that the others are dependent upon it for the proof of their own validity.

For this reason it is often affirmed by statesmen and other students of jurisprudence that there is, and strictly speaking, can be, no such thing as International Law; that what is so called is not law at all, because it is lacking in the essentials of law—it is not set by a universal sovereign authority to its subjects and it is not, and, without such a universal ruler, cannot be, enforced by sanctions.

* See the reference to this question by James Mill. *Supra*, pp. 169, 170.

This objection, if it were valid, would apply equally to International Arbitration as to international law; it would make the very idea of sanctions, except as a mere expedient agreed upon by the Contracting Powers, having no more force than the Agreement (*compromis*) embodying it, wholly inadmissible, and so would render our discussion of sanctions in connection with International Arbitration wholly supererogatory, for if there be no International Sovereign there can be no International Sanctions.

It is, however, necessary to emphasise the point that "law" and "sanctions" are inseparable. The final appeal of law, we are constantly reminded—and it is urged as if it were one of the strongest objections to our system—is to *force*, which is, therefore, since law cannot be dispensed with, wholly and for ever indispensable in the order of society. Behind the magistrate is the policeman, and behind the policeman is the soldier—so that armies will always be necessary. It is forgotten to add, that behind all—magistrate, policeman, and soldier—is public opinion, which is all-powerful, and without which nothing beyond mere savagery or social chaos, on the one hand, or absolute, that is military, domination, on the other, were possible. "Law"—so runs the argument—is indispensable to social order; the *ultima ratio* of law is force; therefore, whatever your ideals may be, the only practical juridical status for which you can work, because the only practical *régime* of civilised society, is that which is based on force.

Now, it is the admission of this which seems to be implied by the resolution before us, and by the recurrent introduction of the question of sanctions as a necessary part of our arbitral scheme. We want to guard against any such admission. For the result of the acceptance of that conclusion would be the complete militarisation of society, towards which the civilised world has been for some time tending, as it is the ground of that hesitating attitude towards War and the Military System, sustained by multitudes who look upon it as a gigantic evil, but still necessary, and so bless and ban it at the same time. It is on this legal principle of the

introduction of force that I believe the real battleground of the Peace propaganda will lie, and it is this which constitutes the importance of the question now before us.

The danger is evident, from the fact that already our legal friends insist upon some kind of compulsion as essential to that juridical status between nations which is the goal of our efforts. The idea of sanctions—that is, of force of some kind, some form of compulsion as an essential and, therefore, inseparable part of juridical action—is already transferred from the execution of Awards to the very adoption of Arbitration. That was the case at The Hague Conference, you will remember. The debate was for a time waged over the point whether the adoption of Arbitration itself should not be made obligatory, and there are many who deplore the exclusion of the compulsory element as the weakness of that great measure, and as something which must be included in any complete scheme. I should not be at all surprised if, even before this Congress closes, you are asked to declare by formal vote the necessity, or the desirability, of some form of compulsory arbitration, and if so, I quite expect it will be voted unanimously, as a matter of course. That shows the danger.

I hold that all this is inseparable from the technical and professional idea of law. It is easy to understand that the absorbing study and constant practice of law, as the main factor and dominating principle in men's everyday life and action, should, insensibly if you like, create the habit of looking at all things in its single light, and of considering it as the one necessary and indispensable thing, and that, in the course of time, the highest, indeed the only sensible, ideal of society should, to those who are thus absorbed, appear to be the juridical. Nor is it to be wondered at that, to such persons, the goal before us in our International Peace work should appear to be the establishment of a juridical status, protected by sanctions, in which Arbitration, or its equivalent juridical procedure, must be obligatory. It is inevitable that it should be so.

But when those who are not so "cribbed, cabined and confined" by professional studies and practice are asked to accept

this view of the matter, it is equally inevitable that they should receive the request as a friendly challenge to investigate and to enquire how far, as an ideal, it presents a complete *régime* of social order, and whether it carries with it, as it claims to do, the final word of our Peace advocacy. I, for one, do not think that it does, for reasons that I will now adduce.

It is hardly necessary to observe, at this point, that I am not speaking against law, or with any purpose of lessening its authority or application. I cheerfully and readily bow to its authority. In the present condition of society and for certain of its members—a large but still a limited number—law, enforced by sanctions, is indispensable. It is not law, but “sanctions” that is under discussion.

That the principle of law cannot alone create the highest ideal of society will be apparent from the following considerations. Its sphere of operation in human life is limited. It applies to certain individuals, and only potentially to the rest. “The law is not made for the righteous man.” Law applies only to conduct, that is, to external actions, and only to a section of these, viz., such as are forbidden or commanded by the ruler. In any sense to which mere law applies, individuals are governed only from the outside, and that is a form of control which leaves the inner, the true self, where alone any real and effective government can be exercised, untouched. Law is negative and restrictive in its character. It constructs nothing, it incites no progress, it carries no inspiration, it is not even necessarily reformative. It is a terror to evil-doers; it takes no cognisance of the well-doing of society, which, happily, is infinitely beyond comparison with its evil-doing. It inflicts punishments and imposes checks. Its symbols are the policeman or *gendarme*, the tribunal, the prison, the gallows or guillotine. What can these do for society, except by way of protection, and, if you will, keeping open the paths of its progress? To the actual progress, it makes no positive contribution.

For neither individuals nor communities can be coerced into progress or beaten into goodness. The symbol of reform is not

the whip. It is reform we seek. Therefore, except perhaps as a final answer to objectors, it would be well to drop our threat of sanctions. The history of the last hundred years shows at least 200 cases of pacific settlement by the way of Arbitration, without sanctions. Let us endeavour to keep the movement up to that ideal. Depend upon it, the moment the cloven foot of coercion is admitted, that movement is doomed. The introduction of coercion, either as sanctions or obligatory Arbitration, may prove to be the first step backward to the old system. As a wiser expedient in the promotion of our cause, let us reach the peoples by persuasion, and the presentation of high considerations, rather than by threats and provisions for coercion. The nations will be reformed by assuming their acceptance and observance of their obligations, and by treating them as civilised and moral entities, rather than as criminals who are expected to need compulsion.

What has compulsion done, it must be asked, as a principle of social order ?

It has created the Military System, which is earnestly preached by its servants and supporters as the necessary and indispensable social *régime*, and by many of them as the true social ideal. The Sovereign Authority has used the forces it possessed, not only to compel the obedience, or punish the disobedience, of its own subjects, but to impose its will upon its neighbour sovereign or to punish his independence. There you have the principle of all war, which has been the curse of human society from its earliest origin. Out of that has sprung the organisation of these forces, and it is the logical and necessary development of this organisation that has created the "armed Peace" of the so-called civilised and Christian nations, which the celebrated Rescript of the Emperor Nicolas II. so eloquently described, and so forcibly and warningly denounced. Let us recognise this fact, and also that it is in the nature of that organisation to develop itself still further on the same lines, and we shall see how inevitable are the prophesied results if the evil be not checked, and how impossible it will be to eradicate the evil totally by any method which provides for the continuance of its germs. even though it be in other forms.

But there are higher social *régimes* than the military. The next higher is the juridical, which I have already discussed. I do not speak of its necessity, of its many excellencies, or in how many ways its benefits are extended to society, of which it is the bulwark, and often the saviour. But surely no one will contend that a convict settlement is the ideal State. And, considered as an ideal, and as a final and complete solution of the problem of society, it is inadequate, and, being founded on mere force, must prove a failure.

There is something higher. In order to express it, let me fall back upon the definition of law: it is imposed by a sovereign authority; it is enforced by sanctions. Well, then, the individual society, like the individual person, may become the sovereign authority to itself. It may impose its own laws; may set to itself its own rules of action. This is not theory, but fact; it is everywhere exemplified in human action. What then? Here another kind of sanctions comes into operation, here is another kind of force compelling obedience; and they are infinitely higher, infinitely more effective, than those of law, because they move men from within, and secure their voluntary and complete obedience, instead of their reluctant submission. Who does not know, to takè one extreme illustration, that the debts of a gambler are considered by him the most inviolable of all his obligations? His sense of honour compels him to pay them, when the authority of law weighs not a jot with him. He has set the law to himself, and the sanction by which it is enforced is infallible, though it has no material force behind it. The illustration is common, but the principle universal.

It is this kind of sanction which at present governs the practice of Arbitration, and it has proved, so far, effective. By the very Act of Agreement, and often by its terms, the Contracting Powers *bind themselves* to accept and obey the Award of the Arbitrator. The contract is deemed inviolable. These Powers set the law to themselves; their agreement invests the judge with his authority; and their own sense of honour is sufficient sanction. Experience proves this. Now what our resolution does is to

assume that Contracting Powers are not going to continue this honourable practice, and to take for granted that they are going to be defaulters, to suggest it to them in fact, and to make provision for it. Why, it is the very way to bring it about, so far as our action can accomplish it.

There is still a higher *régime*. It is when men recognise and submit to the rules set by the Supreme Being whose sovereign authority they acknowledge. The whole of human history testifies to the absoluteness of moral law, and the natural, but inevitable, operation of moral sanctions. Where the restraints of religion and morality prevail, no other sanctions are necessary. The mischief is that our modern politics and diplomacies are conducted as if they were outside the moral or ethical sphere, notwithstanding the testimonies which are written in fire and flame upon the record of the past. Concerning this it is only necessary to urge that the moral precepts, or ethical injunctions, or personal commands, which are binding upon individuals in their relations with each other, are equally binding upon States, and that the Divine Sanctions are none the less sure because they are sometimes slow and always self-acting. Here, then, is another *régime*, another authority, another kind of sanction more effective than any; and if international morality has no place in our scheme it will be lamentably and fatally defective. For, according to the testimony of history and experience, it is Righteousness alone that exalteth nations; and the most effective sanction is that of an enlightened and active national conscience.

But, lastly, there is yet a highest. It is that condition of being and social intercourse in which individuals, and nations, are lifted above all the restraints and coercions of law, by the spirit that is in them. There is a tone and temper of mind to which nations, like individuals, may be subject, which supersedes law, and renders it wholly unnecessary. Without that temper, as current events abundantly testify, all other expedients are powerless. What is in a nation's heart regulates its action, and makes it amenable to reason, and no nation will rise higher than that. Goodwill prevents quarrels; whereas Law and Arbitration only

settle them. Solidarity, wherever it is operative, promotes harmony and the recognition of common interests, and these make war impossible. Brotherhood establishes yet a closer tie, which it makes instinct with warm affections. The soul is more than the organised body. Comradeship is more than organisation ; without it organisation may become a mere despotism, and, in fact, the most terrible of all tyrannies. Emerson, the American philosopher, once said, that " Love as the basis of a State had never yet been tried." That is no reason why it should not be. It is the highest social ideal. It is the true goal of our Peace Movement, and any halting-place short of that ought to be considered impossible, even to thought. The attainment of that would mean the realisation of all lower and narrower ideals. Nor is it so far away as it may seem. It is more actual in the world to-day than ever before. There is more neighbourliness, more toleration, more real friendliness, more recognition of all that is implied in brotherhood, than there was even half a century ago. We are on the way towards Love as the basis of international relationship. Love is higher than Righteousness, of which it is inclusive ; Love is the fulfilment, and so the practical annulment, of all law ; and its rule for human guidance is, " Whatsoever ye would that men should do to you, do ye even so to them." This is already recognised in some high quarters as the true principle of a nation's foreign policy. Let it be universally acknowledged, and it will be no longer necessary to discuss " sanctions." Substitute for Love, as a finality, in your working programme, even the least objectionable scheme of coercion, and there will yet be a possible danger of missing the great mark.

While, therefore, I heartily join in thanking our legal friends for their earnest labours and the noble services they have rendered to our cause, I would as earnestly exhort them, and all other workers, to keep ever in view—through all study and effort—the more excellent way of the Brotherhood of the Nations, and the attainment of that international righteousness whose work is Peace, and whose effect is mutual confidence and quietness for ever. Thus only will mankind achieve its destiny, and bring into

profitable and effective co-operation all its resources and faculties, reaching at length that grandeur and happiness the prophecy of which is written upon the very constitution of our being, and implied in the very ambitions which give rise to action, as well as in the circumstances and conditions of our daily experience on this earth.

CONCLUSION.

Nothing has been said in this address about Christianity as a force making for Peace, or as a presentation of the highest social ideal, for it appears not to be so understood by the Churches which represent it, of nearly all confessions ; and if the Churches do not believe, and do not show by their action, that the religion they profess to embody means Peace on earth and Goodwill, how is it possible to make outsiders understand that it can mean nothing else? The most ardent of its followers will be the first to admit that, in this matter, they, as Churches, do not come into account, or have to be reckoned with as hostile factors. Only the Society of Friends, and probably the Moravians, have a clear and consistent record as regards the Christian doctrine of Peace, which they rightly hold to be fundamental and essential. Beyond these there are noble exceptions — of individuals. But the Churches, as such, are in the position just referred to—hesitating in their allegiance to, and varying in their support of, the two systems, which a casual consideration alone would show are mutually antagonistic and destructive. Their ministers are, individually, all for Peace, in a way, for it is Christian to be so ; but many of them are careful to explain they are “not for Peace-at-any-price,” which simply means that they reserve to themselves the liberty to go in for the next war favoured by their political party or personal predilection, and to support it blindly, at all hazards and at any cost.

It is only when one turns to true Christianity, as illustrated by the person, words, life, and claims of its Founder, that its actual bearing on the questions here discussed becomes apparent. One adherent of that real Christianity thus states his case against war,

and his attitude towards the use of physical sanctions. He "believes that there is a higher force than that of spear, or sword, or cannon; a force which eternally wins even in this imperfect world; a force which Jesus Christ first fully interpreted and completely illustrated in His own life. Until such a force was revealed men had to use the best means they knew of winning their rights. War was as 'natural' as owning property was." He "knows that by the might of this new force Christ overcame the world; he believes that supreme victories are yet to be won through this same might"; and he "does not see how the world is ever to learn the invincibility of Love, the might of Brotherhood, the power of goodness, and the sovereignty of reason, unless those who believe in such things are faithful unto the death in exhibiting them and illustrating them." To such a Christian there can be no place for the approval of any war, for to him war is Anti-Christ.

Another maintains that "whether men agree with Jesus Christ or not, if they have once fairly considered His teaching on the use of force, they can never have a moment's hesitation as to what was the nature of that teaching." He affirms that "the most convincing exposition of the relation of true Christianity to the State is to be found in the Sermon on the Mount": and adds, "It never appears to have struck so-called Christian lawyers that this, the Sermon on the Mount, is an intelligent and complete answer to their systems of jurisprudence, their science of law."

It does not appear either to have struck the officials of Christianity that the Sermon on the Mount is anything but the teaching of an unpractical dreamer; for one Archbishop enjoins that an effort is to be made to obey its injunctions only so long as British interests do not suffer; and another, has affirmed that if a State were to attempt to conduct its affairs on its basis, it could not continue in existence for a week. It does not seem to have occurred to the good man that probably his Lord would not wish it to continue as it was, even for a single week. Still more recently, the popular Dean Farrar, evidently carried away by the

British lust for colonial acquisition and military glory, has, in the *North American Review*, endeavoured to make out a case for militarism, and to justify war by the Bible, mainly, of course, from the Old Testament. It is such "views," which miss the clear meaning of Christianity and caricature the Christ, that make war possible in a Christian age. The question is too large to admit of adequate discussion here: it is so clear, with the Christian Scriptures in one's hands, and the incomparable image of the Christ before one's eyes, as not to require any.

The Christian theory it may, however, be said, presents:—(1) A SOVEREIGN, Who is emphatically "the Prince of Peace," Whose evangel is "goodwill and Peace" for all people, and Whose Kingdom is Righteousness, Peace, Joy; (2) SUBJECTS, who not only render Him glad obedience, but do so with whole-hearted love and loyalty, and whose description is, in all respects, the antithesis of the martial character; (3) A RULE, "the Law of Christ," which is distinct and definite, set not in positive command merely, but illustrated by His own spirit and life, character and example; (4) SANCTIONS, which spring from personal love and loyalty—as stated by the King Himself: "If ye love Me, ye will keep My commandments." It is incredible to the mere jurist, accustomed to a special view of things, that moral sanctions should be sufficient, and that Love should be deemed effective, as a force compelling obedience and punishing disobedience. He will not hear of it. Yet those who have experienced that force know that it is so;

His naked love is terrible, so great
That they who've been forgiven, fear more to sin
Than others do to die;

that the greatest impulse to obedience and the greatest sorrow for disobedience spring from Love—which is therefore the only effective factor in government, for it becomes the spring and law of all volition, and moves men from within, while law, as already shown, only touches them from without.

Christianity, therefore, rises into that highest region which is superior to formal command and physical sanctions, and becomes

the absolute social ideal to which all other ideals must conform, or fail.

Alas ! what is the practice ? If the truth be told, it is the opposite of all this. The chief characteristic of Christendom is militarism ; its predominant note is martial ; its populations are organised into standing armies, and massed in rival camps ; and its chief occupation is fighting, or preparing to fight ; while the Churches, with scarcely more than one or two honourable exceptions, approve, aid, and abet.

No ! whatever theoretical Christianity may be, actual Christianity must be left out of account. Yet assuredly, the Christian Church, "*de toutes confessions*," ought to be a Peace society—opposed to ALL WAR as incompatible with its testimony, its character, and its very existence.

It is interesting to note in this connection what one of the greatest warriors in history thought in regard to these themes. Napoleon I. was certainly a man whom vast experience had taught what kind of forces can really produce a lasting effect upon mankind, and under what conditions they may be expected to do so. More than any of the world's warriors—owing to the devotion he inspired, which is not yet wholly extinct—he had experience of the value of organised military forces, and of what the spirit of modern militarism, then in its infancy, could accomplish. On the rock of St. Helena the conqueror of civilised Europe had leisure to gather up the results of his unparalleled life, and to ascertain with an accuracy not often attainable by monarchs or conquerors, both the value of military supremacy and his own true place in history.

"When conversing, as was his habit, about the great men of the ancient world, and comparing himself with them, he turned, it is said, to Count Montholon with the enquiry, 'Can you tell me who Jesus Christ was ?' The question was declined, and Napoleon proceeded, 'Well, then, I will tell you. Alexander, Cæsar, Charlemagne, and I myself have founded great empires ; but upon what did these creations of our genius depend ? Upon force. Jesus alone founded His empire upon love, and to this

very day millions would die for Him. . . . I think I understand something of human nature, and I tell you, all these were men, and I am a man ; none else is like Him ; Jesus Christ was more than man. I have inspired multitudes with such an enthusiastic devotion that they would die for me . . . but to do this it was necessary that I should be *visibly* present with the electric influence of my looks, of my words, of my voice. When I saw men and spoke to them, I lighted up the flame of self-devotion, in their hearts. . . . Christ alone has succeeded in so raising the mind of man towards the Unseen, that it becomes insensible to the barriers of time and space. Across a chasm of eighteen hundred years, Jesus Christ makes a demand which is beyond all others difficult to satisfy. He asks for that which a philosopher may often seek in vain at the hands of his friends, or a father of his children, or a bride of her spouse, or a man of his brother. He asks for the human heart ; He will have it entirely to Himself ; He demands it unconditionally ; and forthwith His demand is granted. Wonderful ! In defiance of time and space, the soul of man, with all its powers and faculties, becomes an annexation to the Empire of Christ. All who sincerely believe in Him experience that remarkable supernatural love towards Him. This phenomenon is unaccountable ; it is altogether beyond the scope of man's creative powers. Time, the great destroyer, is powerless to extinguish this sacred flame ; time can neither exhaust its strength, nor put a limit to its range. This it is which strikes me most ; I have often thought of it. This it is which proves to me quite convincingly the divinity of Jesus Christ."

"Here, surely," adds Canon H. P. Liddon, "is the common-sense of humanity." And this, I add, explains the position of the Christian worker for Peace, and his faith in its ultimate and universal triumph, when as the Hebrew poets foretold, nations shall beat their swords into ploughshares and their spears into pruning-hooks, and shall not learn war any more.

INSTANCES OF INTERNATIONAL SETTLEMENTS

INVOLVING THE APPLICATION OF THE PRINCIPLE OF

INTERNATIONAL ARBITRATION.

ABBREVIATIONS.

- R.—Recueil des principaux Traités, etc., by G. F. De Martens.
- N.R.—Nouveau Recueil, by G. F. De Martens and his Continuators.
- N.R.G.—Nouveau Recueil Général, etc., by G. F. De Martens and his Continuators.
- N.R.G., 2me Série.—Nouveau Recueil Général, deuxième Série, by G. F. De Martens and his Continuators.
- R.M.P.—Recueil manuel et pratique de Traités, Conventions et autres Actes Diplomatiques, par Ch. De Martens et F. de Cursy.
- P.I.—Pasirisie Internationale : Histoire Documentaire des Arbitrages Internationaux, par H. La Fontaine.
- S.P.—Senate Paper, 54th Congress, 2nd Session, Document No. 116.
- H. of P.—*Herald of Peace*, Organ of the Peace Society.
- Moore.—History and Digest of the International Arbitrations to which the United States has been a Party, by John Bassett Moore, Washington, 1898.
- Hertslet's Treaties.—A Complete Collection of the Treaties and Conventions, etc., by Edward Hertslet, London.
- Hertslet, Map of Europe, etc.—The Map of Europe by Treaty, by Edward Hertslet, C.B., London, 1875, 4 vols.
- Hertslet, Map of Africa, etc.—The Map of Africa by Treaty, by Sir Edward Hertslet, K.C.B., Second and Revised Edition, London, 1896, 3 vols.
- Holland.—The European Concert in the Eastern Question, etc., by Thomas Erskine Holland, D.C.L., Oxford, 1885.

INSTANCES OF INTERNATIONAL SETTLEMENTS

INVOLVING THE APPLICATION OF THE PRINCIPLE OF

INTERNATIONAL ARBITRATION.



The modern era of Arbitration may be conveniently considered as commencing with the Jay Treaty of 1794.

Disputes can be amicably settled either by Direct Agreement between the parties, by Agreement under the Mediation of another Power, or by reference to Arbitration.

“The difference between a Mediator and an Arbitrator consists in this: that the Arbitrator pronounces a real judgment, which is obligatory, and that the Mediator can only give his counsel and advice.”

EIGHTEENTH CENTURY.

Art. 2 of the Treaty of Recognition, signed at Paris September 3rd. 1783. between **GREAT BRITAIN** and the newly-formed **UNITED STATES OF AMERICA**, began with the words:—“And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are, and shall be, their boundaries, viz. :”

Out of this Article sprang three Cases of Arbitration:—

1. **GREAT BRITAIN** and **UNITED STATES OF AMERICA**, in 1794. *St. Croix River Boundary* The object of this reference was to determine the River St. Croix, mentioned in the above Article of the Treaty of Peace, September 3rd, 1783, as forming the boundary line between Canada and the United States. This was referred, by Art. 5 of the *Jay Treaty*, signed at London, November 19th, 1794, to a COMMISSION of three, who were to meet first at Halifax, N.S., “and then as they should arrange.” The Commissioners were Mr. Thomas Barclay, of Nova Scotia, chosen by Great Britain, and Mr. David Howell, of Rhode Island, by the United States. After some delay and difficulty these agreed upon Judge Égbert Benson of the City of New York, as third Commissioner. Their first official meeting was held at Halifax on August 22nd, 1796. Their *Award* was given on October 25th, 1798, at Providence, Rhode Island, in favour of the United States, which had contended that the Schoodiac River was intended under the name of the St. Croix. It was signed by each of the Commissioners.

References: Moore, I. 1-43, V. 4720-4726; P.L., pp. 1, 2; Revue de Droit Int., 1874, VI. 117, 118; Calvo, II. 549; Schoell, I. 458, 459, II. 49; Chalmers, II. 528-533; De Garden, IV. 332-334; R.M.P. I. 312; R., II. 497, III. 555; N.R., III. 519, V. 640; Hertslet, Complete Collection, etc., IX. 761; *Id.*, North American Boundary, etc., 1838, Appendix p. 2; Treaties and Conventions between the United States and Other Powers 1776-1887, p. 382; Jenkinson, Recueil des Traités, III. 410, etc.; S.P., p. 1; Dreyfus, p. 155, 156; Mérignhac, p. 47; Carnazza-Amari, II. 566.

2. **GREAT BRITAIN** and **UNITED STATES**, in 1794. *Recovery of Debts*. Impediments to the Recovery of certain sums due to British subjects were caused by various State Acts passed during the late war which continued to bar recovery after its conclusion. By Art. 6 of the *Jay Treaty*, November 19th,

1794, the question of the Compensation of Creditors was referred to five COMMISSIONERS, two appointed by each Government and a fifth "by the unanimous voice of the other four." The Commissioners so appointed were Thomas Macdonald and Henry Pye Rich, for Great Britain, and Thomas Fitzsimmons, of Pennsylvania, and James Innes, of Virginia, for the United States. On the death of the last named, Samuel Sitgreaves, of Pennsylvania, was appointed to succeed him. The first meeting of the Commissioners was held in Philadelphia on May 18th, 1797, when Mr. John Guillemard, of London, was chosen the fifth Commissioner. The Commissioners proceeded to the examination of Claims. For a time the proceedings were harmonious, but, on February 5th, 1799, a rupture occurred between them, the American Commissioners withdrew, and on July 20th their final meeting and rupture took place. Further negotiations between the two Governments followed, and, by a Convention, signed January 8th, 1802, Art. 6 of the Jay Treaty was annulled, and the sum of £600,000 was accepted by Great Britain in settlement, which sum was duly appropriated and paid by the United States Government.

References: Moore, I. 271-298, V. 4720-4728; P.L., pp. 3, 4; Schoell, II. 49, 50; Hertlet, Complete Collection, etc., IX. 761; R., suppl., III. 202; Treaties and Conventions, etc., 1776-1787, pp. 382, 398; Am. State Papers, For. Rel., I. 51, 190-238, 472-503, II. 62, 67, 383-427; J. Adams's Works, III. 300, 301; Revue de Droit Int., 1874, VI. 118; Calvo, II. 549; S.P., p. 1; etc.

3. **GREAT BRITAIN and UNITED STATES, in 1794.** *Maritime Seizures and the Rights and Duties of Neutrals.* Various mutual claims, arising from losses and damages sustained "by reason of irregular or illegal captures or condemnations of their vessels and other property," during the war, were by Art. 7 of the *Jay Treaty, November 19th, 1794*, referred to five COMMISSIONERS, exactly as in the previous Article. The Commissioners were John Nicholl, LL.D. (afterwards Maurice Swaby, LL.D.) and John Anstey, for Great Britain, and Christopher Gore and William Pinkney, for America; Colonel Trumbull was chosen, finally, by lot, as the fifth. The Commissioners held their first meeting on August 16th, 1796, then they took an office in Gray's Inn, London, and issued notices of business; they continued to meet until July 20th, 1799, but difficulties having arisen in regard to the interpretation of Art. 6 of the Jay Treaty, their work was for a time interrupted. By the Convention of January 8th, 1802, the Powers of the Commissioners were confirmed, they resumed their work on January 15th, and continued until February 24th, 1804, when the proceedings of the Board were brought to a close, all the business before it having been completed. By this time *Awards* had been given to the amount of 11,650,000 dollars (*i.e.* £2,330,000) in favour of America, and 143,420-14 dollars (*i.e.* £28,685. 13s. 1d.) in favour of Great Britain, the claims presented numbering 478 and 58 respectively.

References: Moore, I. 299-349, V. 4720-4728; P.L., pp. 4-6; Schoell, II. 50; Treaties and Conventions, 1776-1887, pp. 384, 398; R., suppl., III. 202; Am. State Papers, For. Rel., I. 140-174, 184, 185, 239-244, 315, 401, 430-450, 472-488; MSS. Dept. of State; Stats. at L.; Calvo, II. 549; S.P., p. 1; Revue de Droit Int., 1874, VI. 118, etc.

4. **SPAIN and UNITED STATES, in 1795.** *Maritime Captures.* Claims were made against Spain for depredations committed upon American ships during the war between Spain and France. These Claims were, by Article 21 of the *Treaty of Friendship, Limits and Navigation, signed at San Lorenzo el Real, on October 27th, 1795*, referred to a COMMISSION of three members, one to be appointed by each Government and the third by these conjointly. The Commissioners were Joseph Ygnat Piazar for Spain, Matthew Clarkson for America, and Samuel Breck, chosen by them, as third Commissioner. The Commission met in Philadelphia in the summer of 1797; their sittings were then interrupted, but were afterwards resumed, and continued until December 31st, 1799, the date of the last of their *Awards*. These were 40 in number and reached a total of 325,440-075 dollars.

References: Moore, II. 991-1005, V. 4796-4798; P.L., pp. 79, 736; Am. State Papers, For. Rel., I. 45, 48, 141, 142, 277, 423-469, 533-546, II. 283, IV. 530; Annual Register XXXVIII. (1795) 297; Adams's Hist. of U.S., I. 348, 349; Treaties and Conventions, 1776-1887, pp. 1013, 1014; MS. Dom. Let., X. 38, 77, 257, etc.

5. **AUSTRIA, PRUSSIA, and RUSSIA, in 1797.** *Polish Debts.* By Art. 2 of the *Convention of St. Petersburg*, signed *January 26th, 1797*, between these Powers, on their partition of Poland, a JOINT COMMISSION was instituted for the purpose of dealing with the Debts of Poland, which the three Sovereigns had taken upon themselves. The Organisation of this Commission was regulated by Art. 5 of the Treaty.

References: R., VI. 707, 715; Schoell, IV. 313.

6. **AUSTRIA, PRUSSIA, and RUSSIA, in 1797.** *Liquidations.* By Arts. 9 and 10 of the same Treaty (*January 26th, 1797*), the SPECIAL COMMISSION which had been established by the Diet of Grodno, (which met on June 17th, 1793,) in order to wind up the estates of houses in bankruptcy, in Poland, was re-established.

References: Schoell, IV. 304, 313.

NINETEENTH CENTURY.

I.—FORMAL ARBITRATIONS.

Cases formally referred for Arbitral Judgment are included in this list :—

1. **SPAIN and UNITED STATES OF AMERICA, in 1802.** *Mutual claims*; arising out of excesses committed during the war, prior to 1802, by subjects of both nations. These were, by a *Convention dated August 11th, 1802*, referred to a MIXED ARBITRATION COMMISSION, composed of five Members, appointed two by each Government and the fifth by common consent, or by lot. Owing to various complications, this Convention, though ratified by the United States in 1804, was not ratified by Spain until July 9th, 1818. The Ratifications were exchanged on December 21st, and proclaimed at Washington December 22nd, 1818. Meanwhile fresh claims had arisen of a similar kind. This Treaty was, therefore, annulled by Art. 10 of the Treaty of Florida, which was concluded immediately after, on February 22nd, 1819—by Art. 9 of which the parties renounced their respective claims, and Florida was ceded to the United States. By the above Art. 10 of the Florida Treaty, the United States, exonerating Spain from all demands for the American claims that had been renounced, undertook to make satisfaction for the same, which arrangement was carried out by a Domestic (National) Commission duly organised June 9th, 1821.

References: N.R., V. 328, and suppl. p. 400 (402); N.R.G., III. 410 (414); Jon. Elliot, *Diplomatic Code of U.S.*, Washington, 1827, p. 363; Adams's *History of U.S.*, II. 3; Am. State Paper For. Rel., II. 28, 410 667 (passim), III. 156, 293, IV. 422, 530, VI. 185; *Revue de Droit Int.*, 1874, VI. 119; Moore, V. 4487-4496, 4798-4801; P.L., pp. 6, 7.

2. **FRANCE and RUSSIA, in 1814.** *Mutual pecuniary claims*; relating to the Duchy of Warsaw, which was at the time under the administration of a Provisional Council, established by Russia. By an Additional Article of the *Treaty of Peace*, signed at *Paris* (First Peace of Paris) *May 30th, 1814*, A SPECIAL COMMISSION was appointed, composed on both sides of an equal number of Commissioners, which should be charged with the examination, liquidation, and all other arrangements relative to their reciprocal pretensions. By a separate Article of the Treaty of Paris, (Second Peace of Paris,) November 20th, 1815, in execution of the first Agreement, France undertook to send one or more Commissioners to take part in this Arbitration. This Article, however, was unexecuted, and was replaced by a Special Convention concluded at Paris, September 27th, 1816, which provided that the Commission should meet at Warsaw as soon as possible, and begin its labours immediately. The results of this liquidation are, says Schoell, "entirely unknown to the public."

References: Schoell, III. 367, 533; R.M.P., III. 20; De Clercq, III. 44; Hertlet, *Map of Europe*, etc., I. 26, 397; Brit. and For. State Papers, III. 341; P.L., pp. 112, 113.

3. **GREAT BRITAIN and UNITED STATES, in 1814.** *Question of Territory.* This Arbitration related to the ownership of certain Islands in Passamaquoddy Bay, and Grand Menan, in the Bay of Fundy, and followed from Art. 26 of the Jay Treaty, signed at Paris September 3rd, 1783. By Art. 4 of the *Treaty of Ghent*, signed on December 24th, 1814, it was referred to a JOINT COMMISSION of two Members, appointed respectively by each Government, their agreement to constitute a decisive Decision; but in the case of disagreement they were to make reports to their Governments, which should be referred to some friendly Sovereign or State, for final adjudication. The Commissioners appointed were Messrs. Thomas Barclay, by Great Britain, and John Holmes, by the United States. They held their first meeting at St. Andrews, New Brunswick, September 23rd, 1816, and at their last in New York, November 24th, 1817. tendered a final *Award*, which divided the ownership, with preponderance against the United States.

References: R., V. 397, X. 75, etc.; N.R., II. p. 76; N.R., suppl. IX. 397-400; R.M.P., III. 38 (40); R. XIII. (VI. of supp., or II. N.R.); Am. State Papers For. Rel., I. 93-96, II. 584-586, III. 695-748, IV. 171. 808-811; Rives's Corr. of Thomas Barclay, pp. 357, 370-399 (passim); Willis's Hist. of the Law, etc., of Maine, 275; MSS., Dept. of State, U.S.; Jon. Elliot. Diplomatic Code of U.S., Washington, 1827, p. 291; Moore, I. 45-64, V. 4728-4733; P.L., pp. 7, 8; S. P., p. 1; Brit. and For. State Papers, IV. 805, V. 198; Revue de Droit Int., 1874, VI. 121 note; Méridghac, p. 47; Schoell, Pieces Officielles, IX. 534.

4. **GREAT BRITAIN and UNITED STATES, in 1814.** *North-Eastern Boundary Question.* This also resulted from the *Recognition Treaty* of September 3rd, 1783, which defined the frontiers of the United States.

(a.) By Art. 5 of the *Treaty of Ghent*, December 24th, 1814, a similar Arbitration Commission, consisting of Mr. Thomas Barclay and Mr. C. P. Van Ness, was appointed to determine the North-Eastern Boundary of the United States from the source of the River St. Croix to the River St. Lawrence. This Commission held its first meeting September 23rd, 1816, at St. Andrews, New Brunswick. Next day it was adjourned till June 4th, 1817, when the Members met again in Boston. Their last meeting was held at New York, April 13th, 1822, when, failing to agree, the Commissioners made *separate reports* to their respective Governments, as provided in the terms of the Reference.

(b.) The failure of the Commissioners to render a decision, imposed upon the two Governments the duty of referring the "Reports of the said Commissioners to some friendly Sovereign or State to be then named for that purpose," according to Art. 4 of the Treaty of Reference (December 24th, 1814). The question was accordingly again referred to Arbitration, by *Treaty of September 29th*, 1827. The King of the Netherlands was appointed ARBITRATOR, on January 12th, 1829. His *Award*, which was given January 10th, 1831, was recommendatory, not decisive. It was at once accepted by Great Britain, but not by the United States, as being beyond competency, and, after much controversy, the matter was ultimately settled by a compromise, in the *Treaty of October 9th*, 1842, which is known as the Webster-Ashburton Treaty.

References: N.R., VII. 491, X. 306; R.M.P., III. 38 (41), V. 200, X. 306; Hertslet, Complete Collection, etc., XVIII. 1219; Am. State Papers For. Rel., II. 584-587, III. 162-165, 695-748, IV. 647-649, 808-811, V. 50, VI. 138, 626-1015; Calvo, II. 575; Brit. and For. State Papers, XV. 469-494, 507, 565, XXII. 772-1187, XXIII. 404-426, XXIV. 1179, XXV. 903-913, XXVII. 821-935; Adams's Writings of Gallatin I. 646, II. 308-549; Rives's Corr. of Thomas Barclay, 368-402; Moore, I. 65-161, V. 4728-4733, 4740-4742; P.L., pp. 8-15; S.P., pp. 1, 2; Dreyfus, 159, 160; Revon, p. 301; Jon. Elliot, Diplomatic Code, p. 315; Kamarowsky, pp. 202, 203; Revue de Droit Int., 1874, VI. 121 note; Méridghac, pp. 47, 48; Sir Travers Twiss, Le Droit des Gens en Temps de Guerre, p. 8; Pandectes Françaises, No. 50.

5. **GREAT BRITAIN and UNITED STATES, in 1814.** *Northern Boundary of the United States.*

(a.) *River and Lake Boundary:*—This Arbitration was to determine the Boundary along the Middle of the Great Lakes, etc., to the water communication between Lakes Huron and Superior. By Art. 6 of the *Treaty of Ghent*, signed December 24th, 1814, this was referred to a JOINT COMMISSION similar to those under Arts.

4 and 5. Mr. John Ogilvy was appointed by Great Britain, and Mr. Peter B. Porter by the United States. The Commissioners held their first Meeting at Albany, on November 18th, 1816. On September 28th, 1819, Mr. Ogilvy died, and was succeeded by Mr. Anthony Barclay, a son of Mr. Thomas Barclay, Commissioner under Arts. 4 and 5. On June 18th, 1822, their *Award* was given at Utica, New York, fixing the Boundary with slight advantage to the United States, and their last Meeting under Art. 6 was held on June 22nd.

(b.) "*Lake and Land Line*": By Art. 7 of the *Treaty of Ghent*, the further determination of the line of boundary to the Lake of the Woods was also referred to the COMMISSION under Art. 6. By the Treaty, by the Commissions and appointments under it, and by the legislation to carry it into effect, the proceedings under Arts. 6 and 7 were treated as one connected transaction. Accordingly the Commissioners began the work of the second reference immediately after issuing their *Award* in the first. Several Meetings were held, and various points were discussed and settled; but difficulties arose, the Commissioners were unable to agree, and on December 24th, 1827, they adjourned *sine die*, after exchanging their *Reports*. Fresh negotiations resulted in the Webster-Ashburton Treaty of August 9th, 1842, in the 6 and 7 Arts. of which were comprised the provisions relating to the boundary in question.

(a.) References: R.M.P., III. 38 (42), 546, V. 200 (202); N.R., IV., 571 (573); VI. 45; Am. State Papers For. Rel. III. 695-748, and IV. 808-811; MS. Journal of the Comm., in Dept. of State; Rives's Corr. of Thomas Barclay, 357, 385; Senate Papers, No. 116 (1897); Moore, I. 70, 162-170, V. 4728-4733; P.I., pp. 15-17.

(b.) References: As above, and also: Brit. and For. State Papers LVII. 803, 810, 811, 822, 823; H. Ex. Doc., 451, 25 Cong. 2 Sess.; Webster's Works, VI. 281, 284; Webster's Priv. Corre., II. 140; Moore, I. 171-195; S. P., p. 1; Revue de Droit Int., 1874, VI. p. 121 note.

6. **ALLIED POWERS and FRANCE, in 1814.** *Pecuniary Claims.* By Art. 20 of the *Treaty of May 30th*, 1814, a JOINT COMMISSION was appointed for "the examination of the Claims of foreigners against the French Authorities, the liquidation of the Sums claimed, and the consideration of the manner in which the French Government may propose to pay them." The Commissioners were appointed, the British Members of the Commission being the Hon Charles Bagot, Mr. Colin A. Mackenzie, and Mr. A. E. Impey. But the terms of the reference were found to be so vague, that at the commencement of the month of March, 1815, they separated without having satisfied a single claim. "There was a general cry of discontent," says Schoell, "in all countries interested in these important proceedings."

References: Schoell, III. 361, 362; Hertslet, Map of Europe, etc., I. 13, 14; De Clercq, II. 635; Brit. and For. State Papers, I. 151, 1233, 1234.

7. **PRUSSIA, etc., and SAXONY, in 1815.** *Territorial Arrangements.* These included the settlement of Debts, Taxes, etc.; the separation of Archives, Titles, Maps, Plans, etc., of Ceded Territories—Renunciation of Feudal Rights—the Funded Debts, Saxon Paper Money ("Cassenbillets") Finances of the Circle of Cottbus, Navigation of Rivers, Supplies of Salt to Saxony, etc. By a *Treaty* between Saxony and each of the Allied Powers, Prussia, Austria, and Russia, signed at *Vienna, May 18th*, 1815, to which Great Britain acceded on September 18th, in the same year, a MIXED COMMISSION was provided for, consisting of Members nominated by each of the two Powers, and one (Art. 15) by the Emperor of Austria, as Mediator, "to determine, in an exact and detailed manner the points which form the subject of this Act from Arts. 6 to 13, and from 16 to 20." The Prussian Commissioners were MM. De Gaudi, Friese, and Sietze; those of Saxony, MM. De Globig, Günther, and De Walzdorf, while the Baron F. C. De Gaertner represented the Emperor of Austria. They assembled immediately at Dresden, as fixed by the Treaty, but did not finish their labours before July 23rd, 1817, when they concluded a *Convention* consisting of 40 Articles.

References: Voss. Zeiten. LII. 349; Hertslet, Map of Europe, etc., I. 134-144, 145, 146; Schoell, III. 394-397; Brit. and For. State Papers, II. 84.

8. **ALLIED POWERS and the NETHERLANDS, in 1815.** *Personal Claims.* A dispute had arisen respecting the inheritance of the Duchy of Bouillon.

the ancient patrimony of Godfrey, first King of Jerusalem, between Philippe D'Auvergne, a Vice-Admiral in the British Navy, and Prince de Rohan, the reigning Duke of Bouillon. By Art. 4 of the Treaty between Great Britain, Austria, Prussia, and Russia and the Netherlands, signed at Vienna, May 31st, 1815, embodied in the Vienna Congress Treaty, *i.e.*, *Final Act* of the Congress of Vienna (Art. 69), June 9th, 1815, it was referred to an ARBITRATION TRIBUNAL of five Members, one chosen by each of the Competitors, and one each by the Governments of Austria, Prussia, and Sardinia. The Arbitrators were to meet at Aix-la-Chapelle, but they met at Leipzig, at the beginning of June, 1816, and gave their Award July 1st, 1816, in favour of Prince de Rohan. This was the second instance of Arbitration in regard to the inheritance of the Duchy—the former having occurred in the Seventeenth Century, when it was referred to Arbitrators by Art. 28 of the Treaty of Nimeguen, February 23rd, 1678.

References : Schoell, III. 489, 490; Congrès de Vienne, Recueil de Pièces Officielles, IV. 18; Protokolle der deutschen Bundes-Versamml., I. 163; Dreyfus, pp. 157, 158; De Clercq, II. 557, and III. 41; N.R., II. 413, 490; Hertslet, Map of Europe, etc., I. 179-181, 252; Brit. and For. State Papers, II. 137; Moore, V. 4855, 4856; P.I., pp. 111, 112.

9. **NASSAU** and **PRUSSIA**, in 1815. *Cession of Territory.* The object of this Arbitration was to determine what parts of Siegen, &c., should be ceded by Prussia to Nassau. By Art. 3 of the *Convention* between Prussia and the Duke and Prince of Nassau, signed at Vienna, May 31st, 1815 (forming Annex 8 to the Vienna Congress Treaty of June 9th, 1815), this was referred to COMMISSIONERS to be appointed by the two High Contracting Parties, within four weeks from the ratification of the Treaty. The Commissioners were to conform to certain expressed principles, and, in the event of their not agreeing upon one or other of the points, they were authorised to refer to an ARBITRATOR of their own appointment, whose decision should be final.

References : Hertslet, Map of Europe, etc., I. 185; Brit. and For. State Papers, II. p. 102; Schoell, III. 416; Recueil de Pièces Officielles, VIII. 242.

10. **FRANCE** and **GREAT BRITAIN**, in 1815. *Private Pecuniary Claims.* These were various claims on behalf of British Subjects arising out of confiscation made by the French authorities during the War, in contravention of Art. 2 of the Treaty of Commerce of 1786, especially since January 1st, 1793. In conformity with Art. 9 of the Definitive Treaty of Peace signed at Paris, November 20th, 1815, a separate *Convention* was signed between the two Powers, on the same date, providing for the settlement by COMMISSIONS, each composed of two French and two English Commissioners, nominated and appointed by their respective Governments; *e.g.*, a Commission of Liquidation, for the examination of Claims, a Commission of Arbitration, to decide cases on which the former Commission should fail to agree, and a Commission of Deposit. For Great Britain the Commissioners of Liquidation were Mr. Colin Alexander Mackenzie and Mr. George Lewis Newnham; the Commissioners of Arbitration, Mr. George Hammond and Mr. David Richard Morier; and the Commissioners of Deposit, Mr. David Richard Morier and Mr. James Drummond; their appointments were dated December 27th, 1815. The Commissions began their labours immediately after the exchange of the ratifications, which took place in February, 1816; but their sittings proved abortive, and ultimately the two Governments, by a *Convention* signed at Paris, April 25th, 1818, agreed to put an end to the dispute by the payment, on the part of France, of a round sum of 130,450,000 francs, which became part of the Public Debt of France. Claims on behalf of English Merchandise imported in Bordeaux were settled by a *Convention*, signed July 4th, 1818, and the payment of 450,000 francs.

References : Hertslet, Complete Collection, etc., I. 276, 286-294, 296, 328-336; Schoell, III. 534-536, 563-570; P.I., pp. 101-104; Hertslet, Map of Europe, etc., I. 398-410, 550-555; State Papers, III. 342, V. 192; Moore, V. 4862, n.

11. **ALLIED POWERS** and **FRANCE**, in 1815. *Pecuniary Claims.* In conformity with Art. 9 of the *Treaty of Paris*, November 20th, 1815, a second separate *Convention* was signed between France and the Great Powers (Austria,

Great Britain, Prussia, and Russia) on the same date, for a similar procedure to be applied to the liquidation of debts of every kind due by France in foreign countries. The Commissioners appointed by Great Britain were the same as in the former case. The ARBITRATION COMMISSION, in both instances, was a regularly constituted Court with President and other officers. The Commissioners in this instance, also, began their labours immediately after the exchange of ratifications in February, 1816, and with like result. This reference, too, proved barren of result, and by another Convention, signed on April 25th, 1818, the sum total of these debts was fixed at 240,800,000 francs, which was made part of the Public Debt of France, and its payment provided for accordingly. Claims of the Bank of Hamburg included in the above were settled by a Convention signed at Paris, October 27th, 1816.

References: Schoell, III. 536-546, 563-569; Hertslet, Complete Collection, etc., I. 298, 304-310, 320-322, 324-326, 336-352, III. 103; State Papers, III. 315, 341, 559, V. 179; Hertslet, Map of Europe, etc., 348, 378-397, 541-549; P.I., pp. 104-110; Moore, V. 4862; Dreyfus, p. 156; De Clercq, II. 665.

12. FRANCE and the NETHERLANDS, in 1815. *Arrears of Interest.* This Arbitration arose out of the claim of the Netherlands against France "relative to the payment of the Interest of the Debt of Holland, which may not have been paid for the half years of March and September, 1813." By Art. 8 of the *Convention* between France and the Powers, signed at *Paris* on *November 20th*, 1815, and annexed to the *Definitive Treaty of Peace* of the same date "the decision of the principle of the question" was referred to a COMMISSION OF ARBITRATION, to be composed of seven Members, two of them to be named by France, two by the Netherlands, and the three others to be chosen from "States decidedly neuter," and having "no interest in the question"; one to be chosen by France, another by the Netherlands, and the third by the two neutral Commissioners. The Commission was to meet at Paris on February 1st, 1816. Its members were the Prince of Castelcicala, General de Waltersdorff, Baron Pasquier, the Chevalier de Bye, Baron Brierre de Surgy, and General de Fagel, with the Marquis of Marialva as Umpire. At a final sitting of the Commission on October 16th, 1816, an *Award* was given in favour of France, and the Commission was dissolved.

References: Schoell, III. 542, 543; Hertslet, Map of Europe, etc., I. 387, 388; State Papers, III. 315; Hertslet, Complete Collection, etc., I. 312; De Clercq, II. 662, III. 45; Dreyfus, pp. 156, 157; Moore, V. 4866-4869; F.I., pp. 105, 111.

13. GREAT BRITAIN and UNITED STATES, in 1818. *Obligation as to Slaves.* The object of this Arbitration was to ascertain the true intent and meaning of Art. 1 of the Treaty of Ghent, of December 24th, 1814, and whether, according to the terms of this Article, the United States were entitled to the restitution of, or full compensation for, slaves who were in territory, in the possession of the British at the time of the ratification of that Treaty, which was to be restored to the United States. The question of the true construction of that Article was referred to the ARBITRATION of the Emperor of Russia, by a *Convention* concluded *October 20th*, 1818, at *London*. His *Award* was given April 22nd, 1822, in favour of America, and was at once accepted.

References: R.M.P., III. 393 (395); Jon. Elliot, Diplomatic Code, 262; Niles's Register, VI. 242; Am. State Papers For. Rel., III. 735, 742, IV. 106, 120-126, 379-385, 407, 645, V. 214, 220; Dreyfus, pp. 158, 159; Revue de Droit Int., 1874, VI. 120, 121; N.R. Suppl., X. 67; Wheaton, Int. Law, p. 495, n.; Moore, I. 350-363, V. 4733, 4734; P.I., pp. 17, 619, 620.

14. GREAT BRITAIN and UNITED STATES, in 1822. *Amount of Indemnity.* The *Award* of the Emperor of Russia in the last instance (No. 13) was confined to the single point referred to him, viz., the Interpretation of Art. 1 of the Treaty of Ghent, while the amount to be paid by Great Britain under that *Award* was still unsettled. That question, however, was, by a *Convention* concluded under the Emperor's mediation, *July 12th*, 1822, referred to a MIXED COMMISSION, consisting of one "Commissioner" and one "Arbitrator," chosen by each party, who should "meet and hold their sittings as a Board in the City of

Washington." The Commissioner, on the part of the United States, was Langdon Cheves, the Arbitrator, Henry Seawell, and, on the part of Great Britain, George Jackson and John McTavish, who met on August 25th, 1823, and succeeded by September 11th, 1824, in reaching an agreement by which "the functions of the Board, under Art. 2 of the Convention, were completely discharged." The Commissioners then constituted themselves a Board for the examination of claims under Art. 3 of the Convention. Here they were less successful; disagreements followed; and they continued their discussions without reaching a conclusion till December 13th, 1826, when they learnt that their functions had been terminated by the Convention of London, concluded November 13th, 1826, under which Great Britain agreed to pay 1,204,960 dollars in full settlement of all the claims. They held their last session March 26th, 1827.

References: R.M.P., III. 550, IV. 45; Am. State Papers For. Rel., V. 214, 800, VI. 339-352, 746-751, 821, 855, 858, 882-892, 950, 962; 3 Stats. at L. 763; 4 Stats. at L. 16, 91, 146, 214, 219, 269; MSS. Dep. of State; Dreyfus, p. 159; Revon, pp. 299, 300; Jon. Elliot, Diplomatic Code, I. 280, etc.; Kamarowsky, Historic Survey of Int. Arb., p. 190; Revue de Droit Int., 1874, VI. 121; Moore, I. 363-382, V. 4734-4739; P.I., pp. 17-20.

15. **GREAT BRITAIN** and **SPAIN**, in 1823. *Mutual Claims.* These claims arose from seizures of ships and injuries to property during the Napoleonic Wars, dating from July 4th, 1808. For the amicable adjustment of these, on March 12th, 1823, a *Convention* was concluded at Madrid which provided for a MIXED COMMISSION, consisting of four members, two from each nation, to sit in London "for the purpose of taking into consideration and deciding in a summary manner, according to equity, upon all cases that shall be brought before it." etc. (Art. 1). Any difference on which they were equally divided was to be referred to the Spanish Envoy in London and a law officer of the Crown, and if they could not agree, to an Umpire determined by lot. "Great and almost insuperable difficulties presented themselves in respect to carrying this Convention into effect." These arose in the course of the discussions before the Commissioners, so that, although they had already awarded definite sums to the claimants, a new *Convention* was signed on October 28th, 1828, by which Spain agreed to make good the sum of £900,000 in specie, in full settlement of the English claims registered by the Mixed Commission, and Great Britain agreed to make good the sum of £200,000 for the Spanish claims, similarly registered. The payments by Spain were to be made in redeemable inscriptions.

References: Hertslet, Complete Collection, etc., III., 381, IV. 416; Brit. and For. State Papers, IX. 897, XI. 44, XV. 900; Moore V. 4534; P.I., 88-91.

16. **BRAZIL** and **GREAT BRITAIN**, in 1829. *Maritime Captures.* This was a question of the indemnity to be paid by Brazil for the capture of British ships in 1826-1827. By a *Convention*, signed at Rio de Janeiro, May 5th, 1829, it was referred to a MIXED COMMISSION of four members, to be named by the respective Governments, or Ministers, with the stipulation that "if the majority do not agree, it shall be further referred to the Brazilian Secretary of State and the British Minister at Rio de Janeiro." They were to give precedence to the claims for vessels and cargoes condemned by the Decree of May 21st, 1828, which had disposed of twenty-five ships. The result of their deliberations has not been published, so far as we have been able to ascertain.

References: State Papers, XVIII. 689; Hertslet, Complete Collection, etc., IV. 60; P.I., pp. 91, 92.

17. **BUENOS AYRES** (now Argentine Republic) and **GREAT BRITAIN**, in 1830. *Acts of War.* This was a claim for indemnification for illegal acts and violences committed by Privateers on British ships, and on the property of an English citizen, in the late war with Brazil. By *Treaty* signed at Buenos Ayres, July 19th, 1830, it was referred to a MIXED COMMISSION (consisting of Michael Bruce and Manuel Moreno), which met in London, and, after issuing due notices, November 17th, 1831, liquidated the claims, amounting to £21,030. 15s. 5d.

References: State Papers, XVIII. 685; Hertslet, Complete Collection, etc., IV. 69-72; P.I., 92, 93.

18. **BELGIUM and HOLLAND, in 1830.** *Dissolution of Union.* This case "alternately assumed the character of a mediation, of a forcible Arbitration, or of an armed interference, according to the varying events of the struggle, and the fluctuating views of the Powers who were interested in terminating it." The arbitrary union of Belgium and Holland effected by the Treaty of London, of June 28th, 1814, and the provisions of the Congress of Vienna Treaty, of June 7th, 1815, had never answered, and Belgium was bent on its being dissolved. "Jurisdiction over the controversy of the two States was assumed," after the Belgic revolution of 1830, by the CONFERENCE OF LONDON, which was held, in the first instance, in consequence of the application of the King of the Netherlands to the British Government, requesting that the five Great European Powers would appoint plenipotentiaries to assemble in Congress, "for the purpose of effecting a conciliatory mediation between the two great divisions of the Kingdom." The plenipotentiaries of the five Courts accordingly assembled in Conference in London on *November 4th*, 1830. It was strenuously maintained that "The Congress of London is a *mediation*." It was, however, never strictly confined to that character, but assumed, and exercised, arbitral functions. "The Treaty of the intervening Powers," which constituted the Kingdom of Belgium an independent State, was concluded by it, and signed at London on November 15th, 1831. This Treaty was not finally recognised by the King of Holland till March 14th, 1838, when he assented unconditionally to the basis of separation, "thus withdrawing his protest made previously against the authority of the Conference to determine the separation of Belgium from the Kingdom of the Netherlands." "During the struggle the disputes between Holland and Belgium, sometimes suspended for a term, were renewed with great vehemence, from the King of Holland having cut some wood in the territory of Luxembourg—the possession of which was now the main cause of dispute. In 1832 Belgium agreed to the terms proposed by ARBITRATORS, but Holland stood out. Now, in 1838, Holland was willing to agree, but Belgium refused. . . ." Here we have at least one distinct case of Arbitration.

References: Martineau, *History of the Peace*, pp. 427, 547; Wheaton, *History of the Law of Nations*, pp. 538-555; N.R., I. 76, 85, 124, 142, 144, 164-170, 181, 182, 195, 226; Nothomb, *Histoire de la Revolution Belge*, p. 72; Martens, *Contiène par Murkhard*, I. 197-202, 229-235, 243. II. 410; Hertslet, *Map of Europe*, etc., II. 858-871, 909-912, 994-998; State Papers, XVIII. 646, XIX. 258, XXVII. 1000, 1320.

19. **PERSIA, in 1835.** *Question of Inheritance.* This was a question of succession to the throne, and so belongs to the internal affairs of Persia. It was referred to the Emperor Nicholas, of Russia, as ARBITRATOR, and "though the decision was in this case made prematurely by death, the intended heir, 'Abbas,' having died before his father," Fath Ali Shah, the incident formed the introduction of Russia into Persian politics.

References: Martineau, *History of the Peace*, London, 1858, p. 545; Enc. Brit., XVIII. p. 649.

20. **AFGHANISTAN and LAHORE, in 1838.** *Rights of Sovereignty.* This involved the claim of Shah Shoojah-ool-Moolk upon Shikarpoor and the territories of Sindh generally. By a *Treaty of Alliance and Friendship*, which was executed *June 26th*, 1838, between Maharajah Runjeet Singh, of Lahore, and the exiled ruler of Afghanistan, Shah Shoojah-ool-Moolk, "with the approbation of, and in concert with, the British Government," it was agreed that Shah Shoojah's rights "should be ARBITRATED and adjusted by the British Government." Whether this engagement was carried out or not is unknown. The British supported Shah Shoojah in the invasion of Afghanistan, to the throne of which he was restored by their aid, and there followed the bloody and disastrous Afghan War, which added a crimson chapter to the history of British conquest in the East Indies.

References: Parl. Papers, East India (Cabul and Afghanistan) June 8th, 1859, p. 294; *Annals of Our Time* (Irving), 1837-1871, p. 21.

21. **FRANCE and MEXICO, in 1839.** *Acts of War.* This was a question of mutual claims for personal injuries and capture of ships arising out of the recent war between the two countries, which terminated after the blockade for a year and the taking of the fortress of San Juan de Ulúa, and of the legitimacy of

certain acts committed on both sides. By the terms of Art. 2 of the *Treaty of Peace*, and of Art. 2 of a Convention of indemnity, signed at *Vera Cruz, March 9th, 1839*, the questions in dispute were submitted to the ARBITRATION of a third Power. The case was referred to the English Sovereign, Queen Victoria, who gave her *Award* on August 1st, 1844, to the effect that the claims on both sides were invalid, the acts of both countries being justified by the state of hostilities between them.

References: Calvo, II. 550, 551; Du Clercq, IV. 446, 448, V. 193 (195); R.M.P., IV. 564, 566; N.R., XVI. 607; Brit. and For. State Papers, XXIX. 222; Tratados de Méjico, I. 415-425; Gaspar Toro, Notas, etc., pp. 114, 115; Reclamaciones Internacionales de Mexico, etc. (Boletín Oficial), I. 1-10; Drcyfus, pp. 160, 161; Revon, pp. 304, 305; Kamarowsky p. 193; Moore, V. 4865, 4866; P.I., pp. 20, 21.

22. MEXICO and UNITED STATES, in 1839. *Personal Indemnities.* This was a question of claims by citizens of the United States against the Government of Mexico for injuries suffered during numerous revolutions.

(a)—These were referred by the *Treaty* signed at *Washington, April 11th, 1839*, to four COMMISSIONERS, two from each country, and failing their agreement, to the King of Prussia, who appointed Baron Roenne, his Minister at Washington, as ARBITRATOR. Under his presidency the Commission met at Washington, and adjudicated on 54 of the claims, which were decided in favour of the United States, Mexico paying 671,798.08 dollars.

(b)—The remaining claims were referred, in 1843, to another COMMISSION by a *Convention* signed at *Mexico, January 13th*. The American Senate ratified this Convention, with an amendment which was never accepted by Mexico. In 1846 matters had become further complicated by certain payments of interest due from Mexico having fallen into arrears, and by other differences having arisen between the two states. War, therefore, resulted, at the close of which, by the *Treaty of Guadalupe Hidalgo, February 2nd, 1848*, payment of the money was provided for, and the affair settled as between the two Powers. The claims were then dealt with by a Domestic Commission, appointed under Art. 15 on March 3rd, 1849 (which see).

This case of Arbitration was followed by war; but the war was succeeded by a Permanent Arbitration Treaty, which is the first of the kind recorded between independent nations. Article 21 of the *Treaty of Guadalupe Hidalgo* contained an Agreement to arbitrate future difficulties between the two countries, and to this general obligation, says Prof. Moore, "all subsequent arbitral arrangements between the two countries may, in a measure, be referable."

References: N.R., XVI. 624; Revue de Droit Int., etc., 1874, p. 123; R.M., V. 273 (274); VI. 199 (206); See Brit. and For. State Papers, VIII.-X., XII., XIII., XV., XVII., XIX., XX., XXI.-XXVII., XXIX., XLI.; Tratados y Convenciones vigentes, Mexico, 1904, pp. 1-25; Calvo, II. 553, 554; H. of P., 1856, p. 122; Reclamaciones Internacionales de Mexico, etc. (Boletín Oficial), I. 11-180; S.P., p. 2; Martens-Sumwer, I. 32; U.S. Stats. at Large, VIII. 526, IX. 922, Sen. Doc. 1841-1842, Doc. 320; Reports of Committees, 1841-1842, Doc. 1696; U.S. Govt. Papers, April 30th, 1840; House Reports, No. 505, 26 Cong. 1 Sess., II.; Mérignhac, pp. 52, 53; Lawrence, p. 123; Pandectes françaises, No. 52; Tratados y Convenciones Vigentes Mexico, 1904, pp. 1-25; Moore, II. 1269-1249, V. 4771-4773; P.I., 21-24.

23. ARGENTINE and FRANCE, in 1840. *Personal Indemnities.* This had reference to claims made by French subjects for losses and injury in the Argentine Republic, the total of which alone had to be determined. The submission to arbitration was effected by a *Convention* signed at *Buenos Ayres, October 28th, 1840*, and was made to a COMMISSION composed of six members, three appointed by each party, together with their two Ambassadors, with liberty, in case of disagreement, to refer it to the Arbitration of a third Power, to be chosen by the French Government. By an *Agreement* concluded between the Commissioners, signed at Buenos Ayres, April 26th, 1841, the total of the indemnities was fixed at 173,725 piastres.

References: De Clercq, Recueil des Traités de France, IV. 591, 594; P.I., pp. 587, 588.

24. GREAT BRITAIN and PORTUGAL, in 1840. *Military Service.* This case of Arbitration was undertaken for the settlement of Claims of

British subjects for services in the army and navy of Portugal during the late war of liberation. A public notice dated November 6th, 1840, states that a MIXED COMMISSION had been appointed by the British and Portuguese Governments to sit in London, consisting of two Commissioners, co-equal in power, "their decisions to be final when they were agreed in opinion," and an Umpire, if necessary, "who shall be the Minister of some third Power, resident in London." Instructions to this Commission were agreed upon November 13th, 1840. *Awards*, amounting to £162,500 were made by them, August 26th, 1842, which sum was being paid by Portugal March 28th, 1844.

References: Brit. and For. State Papers, XVIII. 43; Hertslet, Complete Collection, etc. VI. 726-732, 745-747; P.L., pp. 93-97, 636-640.

25. **GREAT BRITAIN** and the **TWO SICILIES**, in 1840. *Sulphur Monopoly*. Through the establishment of a monopoly for the extraction and sale of sulphur by a Decree of the King of Naples, dated July 9th, 1838, certain English houses suffered considerable loss. A notice from the British Foreign Office, dated November 17th, 1840, declared that a JOINT COMMISSION, consisting of five members, two selected by each Government and one by France, had been appointed, which should meet at Naples, to liquidate the claims of British subjects against the Neapolitan Government, the British members of which were Sir Woodbine Parish, K.C.B., and Mr. Stephen H. Sullivan. The Commission was installed at Naples, March 23rd, 1841, and closed its work on December 24th, 1841, by an *Award*, signed by all the members, including the "Umpire Commissioner," adjudging a sum of £21,307. 14s. to the claimants, as against a total of £65,610. 5s. 5d. claimed.

References; Hertslet, Complete Collection, etc., VI. 796-804; P.L., pp. 97-100.

26. **BRAZIL** and **UNITED STATES**, in 1842. *Maritime Capture*. This was the case of the Schooner "John S. Bryan," which was seized in the province of Para, in June, 1836. On *October 15th*, 1842, COMMISSIONERS were appointed by the Governments of Brazil and the United States Legation at Rio de Janeiro, respectively, to determine the amount of loss and damage suffered in consequence of the seizure and detention of the schooner. On June 12th, 1843, the Commissioners *awarded* the sum of 26 contos of reis to be paid by Brazil as indemnification. The payment of this sum was withheld till May 20th, 1846, when it was paid to the Minister of the United States at Rio, without interest. A claim for interest, and for the expenses incurred in the original claim, came before the Domestic Commission appointed under the Convention of January 24th, 1849.

References: Mr. Fisher to Mr. Matteson, August 7th, 1851; MSS., Dept. of State; Moore, V. 4613, 4614; P.L., p. 617.

27. **FRANCE** and **GREAT BRITAIN**, in 1842. *Portendic Claims*. These were claims for injuries sustained by British merchants engaged in the gum trade, in consequence of the absence of any notification of the blockade of the Portendic coast of Morocco by France, in the war of 1834 and 1835, against the Trarza Moors.

(a)—It was ultimately agreed, by a *Declaration*, done in duplicate at *Paris*, on *November 14th*, 1842, to refer the differences, which had arisen, to the King of Prussia, as ARBITRATOR, who gave his *Award* November 30th, 1843, in favour of Great Britain.

(b)—In this *Award*, His Majesty decided that with respect to the application of that *Award* "to individual claims, as also with respect to the determination of the amount of each of these to which an Indemnification ought to be allowed, these must be performed in conformity with the Declaration of November 14th, 1842, by Commissioners of Liquidation, the one English the other French, subject to the Arbitration between them, in case of need, of an Umpire, whom we shall have to appoint." Accordingly a MIXED COMMISSION of two Members, with power to appeal to an Umpire, in case of need, was appointed in 1844, to fix the amount of the indemnity, etc. The Decisions of the Umpire were dated Berlin, June 20th and October 3rd, 1844. France was adjudged to pay 41,770.89 francs, as against over 2,000,000 francs claimed. This sum was

voted by the French Chamber in its legislative session of 1845, the Resolution being carried on June 20th.

References: State Papers, XXXIV. 1102, XLII. 1377; De Clercq, IV. 658, V. 131 (133); Hertset, Complete Collection, etc., VIII. 992; Hertset, Map of Africa, etc., II. 541-543; Calvo, II. 550, Sec. 1730; Dreyfus, p. 161; Revon, pp. 303, 304; Kamarowsky, p. 200; P.L., pp. 24-26; Moore, V. 4936-4938; Mérignac, p. 51; Elliot, p. 30; Bellaire, p. 412; Lawrence, p. 122; Pandectes, No. 51; Laveleye, p. 189; De Card, p. 57; Bonfils, p. 527; Despagnet, p. 706; Pradier-Fodéré, p. 347.

28. **GREAT BRITAIN** and **HANOVER**, in 1843. *Ownership of Crown Jewels*. This case is interesting, the more so that while being strictly international, it partakes largely of a family and personal character. The question at issue was the ownership of part of the Crown Jewels of Great Britain, which was claimed as property of the Crown of Hanover—that Kingdom being separated from Great Britain on the accession of Queen Victoria in 1837. The dispute began shortly after her accession, that is in the year 1839. The two Sovereigns eventually agreed to submit the matter to the ARBITRATION of three English Jurists, who were nominated in 1843. Before an Award could be given death made changes in the personnel of the Tribunal, which in consequence became defunct. The matter remained in abeyance for a number of years, and then another Commission of the same character (three English Judges of the highest eminence) was appointed. The *Award* of this Tribunal, which was given in the middle of December, 1857, was wholly in favour of the King of Hanover, and the Jewels were given up and exhibited in Hanover on the anniversary of the wedding day of the King and Queen, February 18th, 1858.

References: The Official Journal of Hanover, January, 1858; London Times, December 3rd, 1857, January 8th and 9th, February 25th and 26th, 1858; Certified by British Foreign Office.

29. **AUSTRIA** and **SARDINIA**, in 1845. *Salt Trade*. In this year a dispute arose between these two Powers as to the interpretation of Art. 2 of the Convention of 1751, which regulated the Sardinian salt trade. The Emperor Nicholas of Russia was chosen as ARBITRATOR. He proposed to accept instead the rôle of MEDIATOR, and in that capacity gave a *Judgment* to the effect that Sardinia was right according to the spirit of the Convention, but Austria according to the letter. This was accepted by both parties as settling the matter.

References: Dreyfus, L'Arbitrage Int., pp. 161, 162; Martens, III. 149.

30. **PERSIA** and **TURKEY**, in 1847. *Frontier Questions*. The disorganised state of the border districts of Persia and Turkey had long been productive of dissensions between the two States.

(a)—Therefore, on May 31st, 1847, *Articles of Agreement* were concluded and signed between these Powers, at Erzeroum, by which a MIXED COMMISSION of four, representing the Contracting Parties together with Great Britain and Russia as mediating Powers, was appointed (Arts. 1 to 4) to determine the frontier, to settle all losses mutually sustained subsequent to the acceptance of the propositions of the Mediating Powers in June, 1845, and to arrange equitably arrears of pasturage fees, etc. The Commissioners under these stipulations were appointed in 1849, and completed their work to the extent of preparing a map of the border districts. The actual demarcation, however, was not effected, and remained in abeyance.

(b)—In 1859 a Protocol was signed on behalf of Persia and Turkey on the simultaneous presentation by the Representatives of England and Russia at Constantinople and Teheran of a map, which had been drawn up by the English and Russian Commissioners, showing a band of territory, twenty-five to forty miles wide, within which the Mediatory Powers declared they considered the frontier line ought to be found. Under this Protocol (Art. 2) the *status quo* of the lands in dispute was to be maintained until the boundary line should be settled.

(c)—In 1871 the border disputes were revived; and it was then agreed that a Perso-Turkish COMMISSION should meet at Constantinople for the purpose of carrying these provisions into effect, and at which delegates of England and Russia should take part. Owing to the dilatoriness of the Porte this Commission never met and, therefore, the *status quo* continued.

References: C. U. Aitchison, Collection of Treaties, Engagements and Sanads, India, Calcutta, 1892, X. 23 and Appendices 17, 18.

31. GREAT BRITAIN and GREECE, in 1850. *Loss of Documents.* Other claims against Greece were settled independently. The Arbitration related to a claim by M. Pacifico, a British subject, who resided at Athens from 1828 to 1834, for loss of certain documents relating to claims against the Portuguese Government. The loss took place in the sack of his house at Athens. By means of the good offices of the French Government, it was agreed to submit the dispute to Arbitration. This was done by a *Convention* signed at *Athens July 18th, 1850*; ratified December 9th, 1850, which referred the case to two ARBITRATORS with an Empire to decide in the event of difference. These were Messrs. Patrick F. C. Johnstone (appointed by Great Britain) and G. T. O'Neil (by Greece), and M. Leon Bécлар, Convener and Umpire (appointed by France). The Commission met at Lisbon, in February, 1851; they discovered that copies of the lost documents existed in several archives, and by an *Award* given at Lisbon, May 5th, 1851, they adjudged M. Pacifico £150, instead of the £21,295 which he had claimed.

References: Hertset, Complete Collection, etc., IX. 499-503; Brit. and For. State Papers, XXXVIII. 16. XXXIX. 332. XL. 617; P.I., pp. 113-115.

32. FRANCE and SPAIN, in 1851. *Maritime Seizures.*—This was a question of indemnities arising from seizures by the fleets of both countries, prior to the year 1823, and especially relating to the Spanish ships, the "Veloce Mariana" and the "Vittoria," and the French frigate, "La Vigie." The Treaty of January 5th, 1824, disposed of these captures, but serious difficulties had arisen respecting the interpretation and execution of this Treaty. By a preliminary *Declaration* exchanged at *Madrid, February 15th, 1851*, the King of the Netherlands was chosen as ARBITRATOR. His *Award* was given April 13th, 1852, partly in favour of both, but the indemnity under the Award was not settled before the Convention of February 26th, 1862, by which the two Governments made themselves responsible for payment, thus dispensing with the provisions previously made by the Declaration of February, 1851, for a Mixed Commission to apply the decision to the facts of the case.

References: N.R., VI. 386; De Clercq, III. 304. VI. 81, 170, VIII. 388-390; Brit. and For. State Papers, XI. 20; Dreyfus, pp. 162, 163; Revon, p. 305; Calvo, II. 551, 552; Mérignac, pp. 61, 62; Kamarowsky, p. 194; Pandectes françaises, No. 55; Moore, V. 4873-4877; P.I., pp. 26-30.

33. PORTUGAL and UNITED STATES, in 1851. *Duty of Neutrals.*—This case arose from the non-fulfilment of neutral duty in permitting the destruction of the American ship, "General Armstrong," by a British fleet in the port of Fayal, in the Azores, belonging to Portugal, September 26th, 1814. After long years of diplomatic correspondence, it was agreed between the two Governments, in a *Treaty of February 26th, 1851*, to refer the question to the ARBITRAMENT of a friendly Sovereign or State. The President of the French Republic, Louis Napoleon, was chosen Arbitrator under this Convention, and he, by his *Award*, given November 30th, 1852, against the United States, declared that the privateer was the aggressor, and that the Portuguese Government was not responsible for what had taken place. This instance of Arbitration is important as averting a serious conflict, which threatened, between the two countries; and because the Award entailed a curious legal process between the United States Government and the owners of the privateer for whom it was acting.

References: Brit. and For. State Papers, XLII. 1378. XLV. 465-552; De Clercq, VI. 237; Dreyfus, pp. 163-165; Adams's Hist. of U.S., II. 202, etc.; Treaty Volume (U.S.), 897, etc.; Stats. at Large, X. 912; Wheaton Int. Law, 720 n.; Calvo, II. 552; Treaties and Conventions, etc., 1776-1887. p. 896; S.P., p. 2; Mérignac, pp. 50, 51; De Martens, Traité de Droit Int., p. 140; Bonfils, Manuel de Droit Int., publ., p. 528; Kamarowsky, p. 198; Phillimore, Commentaries on Int. Law, III. 590; Caleb Cushing, Le Traité de Washington, p. 267; Elliot, pp. 23-25; Pandectes Françaises, No. 54; Laveleye, p. 188; De Card, No. 58; Despagnet, p. 706; Pradier-Fodéré, p. 347; Revon, 306, 308; Moore, II. 1071-1132, V. 4791; P.I., pp. 30, 31.

34. CANADA and NEW BRUNSWICK, in 1851. *An Inter-provincial Arbitration.* (a)—A Boundary Question between these two States had, in the year 1846, been referred to three Commissioners, Captains Pipon and Henderson, of the Royal Engineers, and Mr. Johnstone, Attorney-General of Nova Scotia, to

report on a line which would satisfy "the strict legal claims of both provinces." Their report, which was given on July 20th, 1848, was accepted by the Executive Council of New Brunswick, but not by that of Canada. (b)—The British Government thereupon suggested Arbitration. This suggestion was accepted, and it was agreed that the Arbitration should be held in London. Dr. Travers Twiss and Thomas Falconer, Esq., were appointed ARBITRATORS. They chose Judge Stephen Lushington, of the Admiralty Court, as UMPIRE. On April 17th, 1851, they made an *Award* (Mr. Falconer dissenting), which was duly carried into effect.

References: Parl. Blue Book, Canada, etc., July 11th, 1851, pp. 81, 86; Brit. and For. State Papers, XL. 850, XLIV. 685, XLVII. 523; Moore, I. 157-161.

35. **GREAT BRITAIN and UNITED STATES, in 1853.** *Reciprocal Claims.* This was a question of various claims, including that for value of slaves who captured the ship "Creole," and sailed to a British port, where they were liberated, in 1841. These claims numbered 115, and consisted of all those which had been presented to the Governments of both countries since the Treaty of Ghent, December 24th, 1814, "on the part of corporations, companies, or private individuals" on both sides. They were, by a *Convention* signed *February 8th, 1853*, referred to a MIXED COMMISSION, consisting of Messrs. Nathaniel G. Upham (U.S.), and Edmund Hornby (Eng.), with Mr. Joshua Bates, of London, as Umpire, whose powers were prolonged by the Treaty of Washington, July 17th, 1854. Of the 40 American claims, 12 were allowed, with damages amounting to £68,131; and of the 75 British, 19, with damages £57,252. 13s. 4d. "No case of Arbitration," said a writer in the *North American Review*, "has ever been more successful than this. Damages were awarded in some thirty claims, and many important decisions were pronounced by this Commission." Mr. Seward once remarked that it "had the prestige of complete and even felicitous success."

References: Calvo, II. 269, 270; Revon, p. 308; Dreyfus, p. 166; Kamarowsky, p. 191; Charles Samwer, N.R.G., XVI., Pt. I., 491-496; MSS., Dept. of State; S. Ex. Doc., 103, 34 Cong., 1 Sess., 14, 19, 20, 44-48, 80, 81. 165-169. 456. 457; Treaties and Conventions, 1776-1887, pp. 446-453; Wheaton's Hist. of Law of Nations, 720-737; *Id.*, Int. Law, 204 n.; S.P., p. 2; Mérynhac, pp. 56, 57; Pandectes françaises, No. 56; Moore, I. 391-425, IV. 4349-4378; P.I., pp. 31-33.

36. **ECUADOR and PERU, in 1853.** *Maritime Seizure.* During an armed expedition made against Ecuador by Don Juan José Flores, one of its Generals and ex-Presidents, the ships belonging to the expedition took refuge in the Port of Paita, belonging to Peru. This led to strained relations between the two countries. Ultimately, after repeated Conferences, by the *Treaty of Peace, Amity, and Arbitration*, signed at *Lima on March 16th, 1853*, the question of the ownership of the vessels and their armaments was (Art. 5) submitted to the ARBITRAL AWARD of Chili, to which both Contracting Powers pledged themselves to submit. We are unable to say what further was done in the matter.

References: Tratados del Peru, V. 132; Gaspar Toro, Notas, etc., p. 129; P.I., p. 588.

37. **GREAT BRITAIN and UNITED STATES, in 1854.** *Reserved Fisheries Question.* This case of Arbitration arose out of Art. 1 of the Convention between the two countries, signed at London, October 20th, 1818, and had as its object the exact determination of the parts of the coasts reserved exclusively for the fishermen of each nationality. By the *Reciprocity Treaty* signed *June 5th, 1854* (ratifications exchanged at Washington, September 9th, 1854), the dispute was referred to a MIXED COMMISSION, one from each side, the two thus appointed to select an Umpire; Mr. G. G. Cushman, of Maine, being appointed by the United States, and Mr. M. H. Perley, of New Brunswick, by Great Britain. The Commission was organised in 1855, and met at Halifax, August 25th of that year. Its labours were suspended in October, 1856, and the Commission did not meet again until July 17th, 1857, when the Hon. John Hamilton Gray, of New Brunswick, was chosen by lot as Umpire. His *Awards*, referring to 26 localities were made at St. Johns on the 8th, and were received by the Commissioners on April 17th, 1858. They were not final however, and changes followed in the Membership of the Commission, whose labours terminated in 1866, its last *Award* being made on February 13th, in that year, when

"all the delimitation had been completed except on a small section of the southern coast of Newfoundland and a section of the coast of Virginia." In the Treaty of May 8th, 1871, it was stipulated by Art. 20 that the *Awards* of the Commission should be final.

References: MSS. Dept. of State; Parl. Papers, 1854; Treaties and Conventions, 1889, p. 444; Moore, I. 426-493, V. 4747-4749; P.I., pp. 437-449.

38. **GREAT BRITAIN and PORTUGAL, in 1855.** *Personal Claim.* This was a claim against the Portuguese Government by Mr. and Mrs. Croft, arising out of a denial by the Portuguese administrative authorities of a patent of registration in reference to the payment of a marriage portion from the Barcellinhos family, the rights to which had been accorded to them by judicial decisions. By a *Memorandum* dated July 9th, 1855, the Senate of Hamburg was chosen ARBITRATOR. Its *Award* was given February 7th, 1856, in favour of the Portuguese Government.

References: Brit. and For. State Papers, L. 1288-1294; Dreyfus, p. 166; Borges de Castro, *Collecção dos Tratados*, VIII. Suppl., 34-60; Moore, V. 4979-4983; P.I., pp. 371-377.

39. **FRANCE and GREAT BRITAIN, and URUGUAY, in 1857.** *Acts of War.* This case of Arbitration was instituted to estimate the amount of the damages inflicted upon French and English subjects during the war which came to an end in 1851. These claims had been partly dealt with in the Law of July 14th, 1853, but by a *Convention*, concluded at Monte Video, on June 23rd, 1857, they were referred for definite settlement to "a MIXED COMMISSION having the character of a JUDGE-ARBITRATOR." This Commission was composed of four Members—two appointed by the Republic of Uruguay and one each by the others; for the duty of Umpire, if necessary, a fifth was to be drawn by lot from a list of eight to be chosen in advance in the same way as the Arbitrators themselves. Art. 7 provided that the *Indemnities agreed upon* by this Mixed Commission should be treated as a National Debt, the liquidation of which should be dealt with by a special Convention. Accordingly a Convention was signed at Monte Video, June 28th, 1857, making such arrangements (see Preamble) for indemnities amounting to 4,000 000 piastres, at which total they were fixed.

References: De Clercq, VII. 290; Hertslet, Complete Collection, etc., X. 1049, XIII. 1007; Brit. and For. State Papers, XLVIII. 959, 960; P.I., pp. 115-117.

40. **HOLLAND and VENEZUELA, in 1857.** *Territorial Dispute.* This involved the question of sovereignty over the Island of Aves in the province of Barcelona, Venezuela, which is rich in guano, and which the Government of Holland maintained formed part of the Dutch Antilles. It was submitted by a *Convention* of August 5th, 1857, concluded at Caracas, to the ARBITRATION of the Queen of Spain. Her *Award*, which was given at Madrid in June, 1865, declared the Island the property of the Venezuelan Republic, but imposed the payment of an indemnity to Holland for the loss of the fishery rights of her subjects.

References: *Tratados de Venezuela*, p. 86; Seijas, *El Derecho*, etc., IV. 210; Lagemans, *Recueil des Traités*, etc., IV. 322; Gaspar Toro, *Notas*, etc., pp. 115, 116; *Memoria de Relaciones Exteriores de Venezuela*, 1867; Moore, V. 5037-5041; P.I., pp. 151-153.

41. **NEW GRANADA and UNITED STATES, in 1857.** *Personal Claims.* This was a question of claims arising out of rights acquired by the United States on the Isthmus of Panama, under Treaty with New Granada, of 1846, and, especially, damages caused by a riot at Panama, April 15th, 1856. It was referred, under *Convention* concluded September 10th, 1857 (but ratified and proclaimed at Washington, November 5th and 8th, 1861), to a MIXED COMMISSION, composed of two Commissioners, Messrs. Elias W. Leavenworth (U.S.), and José Marcelino Hurtado (N.G.), and an Umpire, Mr. N. G. Upham, of New Hampshire. The Commissioners met in Washington, June 10th, 1861, and continued their labours until March 5th, 1862, when they adjourned *sine die*, having *adjudicated* on part of the claims only. The total of their *Awards* in the 73 cases decided by them

was 496,235.49 dollars, which was paid by New Granada. With regard to the others, the Commissioners were unable to agree. The unsettled claims, numbering about 125, formed the subject of a new Adjudication.

References: Brit. and For. State Papers, XLVII. 353-355; MS. Consular Letters from Panama, etc.; Treaties and Conventions, etc., 1776-1887, pp. 210, 213; Moore, II. 1361-1396, V. 4694-4696; P.I., pp. 33-35, 620.

42. **BRAZIL and GREAT BRITAIN, in 1858.** *Mutual Claims.* This case of Arbitration sought the settlement of a number of outstanding private claims against the Governments of both countries. By a *Convention* signed at *Rio de Janeiro, June 2nd, 1858*, and ratified at London, September 9th, 1858, these were referred to a MIXED COMMISSION of two Members, with Umpire to be chosen by lot if necessary. The Arbitrators held their first meeting at Rio de Janeiro, on March 10th, 1859. Fifty-one English claims and 108 Brazilian were presented to the Commission. The whole of the latter referred to the slave trade, and when the Commission had pronounced on five English and four Brazilian claims, the British Government interposed with the objection that, by the Treaty of November 23rd, 1826, confirmatory of the Convention signed between Great Britain and Portugal on July 28th, 1817, these were beyond the competence of the Commission. The suspension of diplomatic relations between the two countries put an end to the powers of the Commissioners, and these seem never to have been renewed.

References: Brit. and For. State Papers, XLVIII. 18-28; Hertslet, Complete Collection, etc., X. 724-729; P.I., pp. 117-119.

43. **MOLDAVIA and WALLACHIA, in 1858.** "*Dedicated Convents.*" In 1827 a Firman of the Porte reinstated the Church in possession of properties in Wallachia and Moldavia. In 1831, by the Organic Regulation of these two countries, the question was submitted to a Mixed Commission, which could not settle it. By *Protocol 13 of the Paris Conference, July 30th, 1858*, the Parties were invited to settle the Question amicably; and it was provided that if this could not be done it should be referred to ARBITRATORS with an UMPIRE chosen by them, or, in default, by the Sublime Porte in concert with the Guaranteeing Powers. The Protocol of the sitting of September 6th, 1859, declared that a period of a year, provided for the appointment of the Arbitrator, should commence one month after the day on which Col. Couza should receive his investiture as Hospodar of Moldavia and Wallachia. The Arbitrators, were appointed, but an Agreement regarding the Umpire was not come to, and the period of delay was in vain extended for six months, while the Law of Secularisation was voted December 15th, 1863, and the ecclesiastics were expelled. Turkey and the Patriarchs protested, and by the Protocols of May 9th, 14th, 18th, 1864, the Conference of Brussels instituted a Commission of Inquiry, and also created a Special Treasury into which the revenues of the disputed properties should be paid. The Conference of Berlin in its Protocol 15 referred the matter to its various Governments, for examination with a view to settlement. On August 19th and 21st, 1881, the Ottoman Chancellerie instructed its representatives to request from the Powers the execution of this Protocol. There the matter was left.

References: State Papers, XLVIII. 103, LXIX. 862; Two Vols. published at Constantinople in 1880; Hertslet, Map of Europe, etc., II. 1328, 1378, 1379, IV. 2751; Mérygnac, pp. 58, 59.

44. **ARGENTINE and FRANCE, GREAT BRITAIN, and SARDINIA, in 1858.** *Results of Civil War.* This was an adjudication of the claims of subjects of the last three countries for losses sustained during the disorders of the Civil War in the Argentine Republic. The liability was not disputed, and by three separate *Conventions*, concluded with the three Powers, at *Paraná* on the same date, *August 21st, 1858*, completed by three additional Articles of August 18th, 1859, the question of the amounts of the indemnities to be paid was referred for settlement to a TRIBUNAL consisting of three Commissioners appointed by the Argentine Government, together with the Minister Plenipotentiary of each of the three Powers or his representative, and the amounts to be settled by them

were recognised as a National Debt by the Government of the Argentine Confederation. No report, so far as we are aware, has appeared of the labours of this Commission.

References: Brit. and For. State Papers, XLVIII. 28-47, XLXIX. 1340, 1341; De Clercq, VII. 492-495; Hertslet, Complete Collection, etc. XI. 50-55; Coleccion de Tratados celebrados por la Republica Argentina, I. 580-630; P.I., pp. 119-121.

45. **CHILI and UNITED STATES, in 1858.** *The "Macedonian" Case.* This was a claim for compensation for silver bars and coin taken in the valley of Sitana, on May 9th, 1821, by the Chilian admiral, Lord Cochrane, from the Captain of a brig, the "Macedonian," belonging to an American citizen, and sold by him for 70,400 piastres. The dispute must have ended in war. After considerable correspondence, it was announced, on September 2nd, 1852, that both parties were willing to accept the King of the Belgians as Arbitrator. More than six years, however, elapsed before the conclusion of the terms of submission to arbitration. This was done by a *Treaty* concluded *November 10th*, 1858, by which it was referred to His Majesty, whose acceptance of the post of ARBITRATOR was announced on July 9th, 1860. His *Award*, given at Laeken May 15th, 1863, sustained the American claims, and condemned Chili to refund three-fifths of the sum appropriated, together with interest. The sum paid by Chili was 42,000 dollars.

References: Calvo, II. 553; Revon, p. 311; Dreyfus, p. 167; Tratados de Chili, I. 293; Memoria de R. E. de Chile, Santiago, 1863, p. 65; Pièces principales de la Correspondence, etc., Bruxelles, 1861; Gaspar Toro, Notas, etc., pp. 116, 117; N.R.G., XVII. 243; Treaties and Conventions between U.S. and other Powers, 1776 to 1887, p. 142; Mérignhac, pp. 57, 58; Bonfils, p. 528; Despagnet, p. 707; Kamarowsky, p. 196; Lawrence, Revue de Droit Int., 1874, VI. 118; Pandectes No. 60; Laveleye, Causes, etc., p. 189; Bancroft Davis, Treaties and Conventions, 1873, p. 129; De Card, p. 59; S.P., p. 2; State Papers, XLIX. 492; Moore, II. 1449-1468, V. 4689-4691; P.I., pp. 35-37.

46. **PARAGUAY and UNITED STATES, in 1859.** *Commercial Claims.* These were claims against Paraguay by the "United States and Paraguay Navigation Company," and on account of other matters not connected with the Company. Following a naval demonstration by the United States, the question was referred by formal *Convention*, signed *February 4th*, 1859, to "a special and respectable COMMISSION" of two members, one chosen by each country, with provision for choosing an Umpire. The American Commissioner, appointed by President Buchanan as the result of an Act of Congress, May 16th, 1860, was Mr. Cave Johnson; the Commissioner on the part of Paraguay was Don José Berges. The Commissioners held their first meeting in Washington on June 22nd, 1860, and their last session was held on August 13th, 1860, when they filed a unanimous *Award*, which was adverse to the claims of the Company. The text of the *Award* has been published by J. B. Moore, who says that, notwithstanding this, "on the ground that the Convention admitted liability, and that the Commissioners, by going into the merits of the case, had exceeded their competency, the United States repudiated the *Award*, and has since endeavoured to settle the claim by negotiation." This, because of the action of the Commissioners involving matters of International Law, and of the results which followed their *Award*, is an interesting and important case.

References: W. B. Lawrence, Revue de Droit Int., 1874, p. 127; Calvo, 4th Ed., § 1268; Wharton's Int. Law, Dig. III. 115; Congress Papers; U.S. Stats. at L.; Curtis's Life of Buchanan, II. 225; History of Paraguay, II. 379; Dreyfus, p. 167; N.R.G., XVII. 255; Treaties and Conventions between U.S. and other Powers, 1776-1887, p. 828; MSS. Dept. of State, U.S.; Brit. and For. State Papers, XLIX. 485; Moore, II. 1485-1549; V. 4781, 4782; S.P., p. 2; P.I., pp. 37, 38, 620, 636.

47. **GREAT BRITAIN and GUATEMALA, in 1859.** *Boundary Questions.* The object of this Reference was to settle the boundary between the British territories in the Bay of Honduras and those of the Republic of Guatemala. By a *Convention* signed at *Guatemala* on *April 30th*, 1859, a JOINT COMMISSION was appointed, with instructions to "name some third person to act as Arbitrator or Umpire, in any case or cases in which they may themselves differ in opinion,"

or failing their agreement, to choose two persons, from whom the Umpire in each case must be chosen by lot. We have been unable to trace the result of this Arbitral Reference.

References: *Tratados de Guatemala*, p. 261; *Tratados de Méjico*, I. 433; Gaspar Toro, *Notas*, pp. 141, 142; Hertslet, *Complete Collection*, etc., XI. 345; P.I., pp. 588, 589.

48. **GREAT BRITAIN and HONDURAS, in 1859.** *Claims and Concessions.* This had reference to the Bay Islands, the Mosquito Indians, and the Rights and Claims of British subjects. By the Convention of *November 28th, 1859*, signed in English and Spanish, at *Comayagua*, these were referred to a MIXED COMMISSION, consisting of two Members, together with an Umpire, chosen by them. These were Mr. James Macdonald and Mr. Leon Alvarado, with Mr. E. O. Crosby, Minister of the United States to Guatemala, as Umpire. The claims were declared to be void; the *Report* of the Umpire bore date November 21st, 1862.

References: Brit. and For. State Papers, XLIX. 13; MSS. Dept. of State; Hertslet, *Complete Collection*, etc., XI. 369; Moore, II. 2106, 2107; P.I., pp. 121, 122.

49. **GREAT BRITAIN and NICARAGUA, in 1860.** *Claims and Concessions.* These were the claims of British subjects in connection with concessions of lands in the territory of the Mosquito Indians. By the *Treaty* concluded at *Managua* on *January 28th, 1860*, a MIXED COMMISSION was appointed, consisting of one representative of each Power, whose first duty would be, after being duly sworn, to "name some third person to act as Arbitrator or Umpire," or failing to agree, to name two persons from whom one should be chosen by lot to act as such in any particular case. This Arbitration Commission sat at Grey Town from November 1st, 1861. They published an *Arrangement* relative to the settlement of land claims at Grey Town, or "San Juan del Norte," September 27th, 1862, and on April 15th, 1865, concluded their labours by issuing a notice calling on all parties to come forward within six months and receive their grants, as confirmed by the Commission.

References: Hertslet, *Complete Collection*, etc., XI. and XIII. 667, 668; Brit. and For. State Papers, L. 96; MSS. Dept. of State; Moore, II. 2106; P.I., pp. 54-56.

50. **COSTA RICA and UNITED STATES, in 1860.** *Pecuniary Claims.* These were made on behalf of citizens of the United States, arising from injuries to their persons or damages to their property "through the action of the authorities of Costa Rica." They were referred to a MIXED COMMISSION by *Treaty*, concluded at *San José, July 2nd, 1860*, ratified at Washington, November 9th, 1861, which provided that the Umpire should be chosen by the other two members, or by the Belgian Minister to the United States. The Commissioners chosen were, Benj. F. Rexford, by the United States and D. Luis Molina, by Costa Rica; the Umpire chosen was Chevalier Joseph Bertinatti, the Italian Minister at Washington. The Commissioners met in Washington on February 8th, 1862. They rejected thirteen claims amounting to 544,233 dollars, and sent twenty-one, with a total of 1,222,870.86 dollars, to the Umpire, who by his Award, given on December 31st, 1862, allowed twelve of these, and awarded 25,704.14 dollars to the claimants.

References: State Papers, L. 499; MSS. Dept. of State; *Treaties and Conventions between United States and other Powers, 1776 to 1887*, p. 227; S.P., p. 2; Moore, II. 1551-1568; V. 4701-4704; P.I., pp. 38-40.

51. **MUSCAT and ZANZIBAR, in 1861.** *Rival Claims.* This was a dispute as to the succession to the dominions of Zanzibar, involving its independence, which arose between Syud Thowaynee, of Muscat, uncle of the late Sultan of Zanzibar and Syud Majeed, of Zanzibar, both being sons of Syud Saeed. It was referred to the ARBITRATION of Lord Canning, then Governor-General of India, by what instrument is not known. We have been unable to trace the method or date of reference. His *Award*, which is contained in identical letters addressed to the two claimants, on April 2nd, 1861, declared the independence of Zanzibar and the African dominions of the late Sultan under Syud Majeed, subject to an annuity.

with payment of two years' arrears by him to the Sultan of Muscat. This Award was accepted by the Sultan of Muscat on May 15th, and by the Sultan of Zanzibar on June 25th, 1861.

References: Hertslet, *Map of Africa*, etc., II. 961, 962; *State Papers*, LVI. 1397, 1398; *Statesman's Year Book (Annual)*; *Arts. on Zanzibar and Oman*.

52. **GREAT BRITAIN and PORTUGAL, in 1861.** *Personal Claims.* Messrs. Yuille, Shortridge & Co., British subjects, having obtained a favourable judgment in the Courts, the Portuguese Higher Courts, contrary to the stipulations of Treaties in force from 1654 to 1810, refused to consider it final and valid. Hence their claim against the Portuguese Government for losses incurred through breach of treaty. By a *Memorandum*, dated *March 8th*, 1861, the dispute was referred to the Senate of Hamburg as ARBITRATOR. The *Award*, which was given at Hamburg, on October 21st, 1861, was in favour of Great Britain, and granted the amount of £20,296. 0s. 2d. to the claimants.

References: Dreyfus, p. 166; *State Papers*, LXI. 841; *Brit. Parl. Papers*, 1854 (404), XVI. 465; 1859, XXVII. 119, 120; Moore, V. 4984; P.I., pp. 377-385 (in which the Agreement and the Award are, for the first time, by favour of the Portuguese Government, published in full).

53. **ECUADOR and UNITED STATES, in 1862.** *Mutual Claims.* The object of this reference was to adjust the claims of the citizens of each country against the other. By a *Treaty*, signed at *Guayaquil, November 25th*, 1862, ratified at Quito, July 27th, 1864, and proclaimed September 8th, 1864, these were referred to a MIXED COMMISSION of two, consisting of a citizen of each State, who, with an Umpire or Arbitrator, should undertake "the mutual adjustment of claims." The Commissioners were Messrs. Frederick Hassaurek (United States), and J. J. Flores (Ecuador), afterwards F. U. Tamariz; and the Umpire, Dr. A. Destruge. They met at Guayaquil, on August 22nd, 1864. The Commission expired by limitation, August 17th, 1865, all the business before it having been disposed of. The *Award*, dated August 18th, 1865, fixed 94,799.56 dollars as the amount to be paid by Ecuador.

References: *State Papers*, LIV. 1121; *Treaties and Conventions*, etc., 1776-1887, p. 265; MSS. Dept. of State; S.P., p. 2; Moore, II. 1569-1577, V. 4711, 4712; P.I., pp. 40, 41.

54. **PERU and UNITED STATES, in 1862.** *Maritime Captures.* This arose from the alleged illegal capture and confiscation of two American ships, "Lizzie Thompson" and "Georgiana," at Pabellon de Pica and Punta de Lobos, on January 24th, 1858. After considerable correspondence and discussion, it was referred to the King of the Belgians, as "ARBITER, UMPIRE, AND FRIENDLY ARBITRATOR," by an *Agreement*, signed at *Lima, December 20th*, 1862, of which the ratifications were exchanged at Lima, April 21st, 1863. The King of the Belgians, perceiving after an examination of what had been published on the controversy, that the Arbitration would be "of a very delicate nature by reason of the special circumstances," by a communication of January 14th, 1864, declined to act, and in view of the declaration of the Arbitrator, and especially of the reasons which he gave for it, the Government of the United States decided to accept his adverse opinion, and to treat the claims as finally disposed of.

References: Markham, *Hist. of Peru*, 349; MSS. Dept. of State, U.S.; Wheaton, *Int. Law*, p. 575 n.; Dreyfus, p. 168; Revon, p. 310; *Revue de Droit Int.*, 1874, VI. 126; Kamarowsky, p. 195; *Treaties and Conventions*, etc., 1776-1887, p. 868; *State Papers*, XXXI. 1097, LIV. 1123; S.P., p. 3; Gaspar Toro, *Notas*, etc., pp. 118, 119; Moore, II. 1593-1614; V. 4785, 4786; P.I., pp. 41, 42.

55. **BRAZIL and GREAT BRITAIN, in 1863.** *Arbitrary Arrest.* This arose from the alleged illegal imprisonment of three British naval officers from the ship "La Forte," at Rio de Janeiro on June 17th, 1862. By a simple *exchange of notes*, which took place at *Rio de Janeiro on January 5th*, 1863, it was referred to the King of the Belgians, Leopold I., as ARBITRATOR, who decided, June 18th, 1863, that "in the mode in which the laws of Brazil had been applied

towards the English officers there was neither premeditation of offence nor offence to the British navy." After this decision was rendered, Mr. (afterwards Sir) Edward Thornton was sent on a special mission to express to the Brazilian Government the regret of the British, and diplomatic relations were cordially resumed.

References: N.R.G., XX. 486; Hertslet, Complete Collection, etc., XI. 907; Brit. and For. State Papers, LIII. 150; LIV. 579; A. P. Pinto, *Tratados delo Brasil*, IV. 378, 379; *Annals of Our Time*, 1863, p. 652; *Revue de Droit Int.*, 1874, VI. 126; *Repertoire Général du Droit Français*, V° Arb. Int., No. 100; *Pandectes Françaises*, p. 62; St. Georges d'Armstrong, p. xci.; Revon, pp. 309, 310; Kamarowsky, p. 187; Calvo, II. 556; Mérignac, p. 45; De Card, p. 59; Laveleye, *Des Causes de Guerres*, etc., p. 189; Despagnet, p. 274; Dreyfus, 167; Gaspar Toro, *Notas*, etc., p. 118; Moore, V., 4925-4928; P.I., pp. 42, 43.

56. **PERU and UNITED STATES, in 1863.** *Mutual Claims.* Various claims, by citizens of each country against the Government of the other, were, by a *Convention* signed at Lima, January 12th, ratified April 18th, and proclaimed May 19th, 1863, referred to a MIXED COMMISSION of four members (two chosen by each) and an Umpire. The Commissioners chosen were Messrs. E. George Squier and James S. Mackie, United States, and F. B. Alvarez and S. Tarara, Peru. The Commissioners held their first formal meeting at Lima on July 17th, 1863, and elected as Umpire Gen. Pedro A. Herran, a citizen of Colombia, who was then in Lima. On November 27th, 1863, all the claims having been finally disposed of, the presiding officer declared the Commission to be dissolved. The *Awards*, which reached a total of 1,152,401.19 dollars, were in favour of the United States by a preponderance of 63,500 Peruvian Soles.

References: S.P., p. 3; State Papers, LIV. 1124; *Treaties and Conventions*, U.S., 1776-1887, p. 870; MSS. Dept. of State; Gaspar Toro, *Notas*, etc., p. 119; Revon, p. 310; Moore, II. 1615-1638, V. 4786-4788; P.I., pp. 43, 44.

57. **GREAT BRITAIN and UNITED STATES, in 1863.** *Companies' Claims.* These were claims for compensation made by the Hudson's Bay and Puget's Sound Agricultural Companies, for the appropriation of lands possessed by them in the Territories of Oregon and Washington, the rights of which were secured to them by Arts. 2, 3, and 4 of the Treaty of June 15th, 1846. By a *Treaty*, concluded July 1st, 1863, the question of the indemnities due to these Companies was referred to two ARBITRATORS, Hon. John Rose, of Canada, and ex-Judge Alexander Johnson, of New York, and an Umpire, chosen by them, on April 21st, 1865. The Umpire was Benjamin R. Curtis. The Commissioners held their first meeting in the City of Washington on January 7th, 1865, and on September 10th, 1869, they filed their opinions, and rendered an *Award*, in which they gave 450,000 dollars to the Hudson's Bay Company, and 200,000 dollars to the Puget's Sound Company, the Umpire refusing to sign. In accordance with the Award, transfers were executed to the United States by the two Companies, and the money was duly paid by the United States in two instalments of 325,000 dollars each.

References: S.P., p. 3; *Revue de Droit Int.*, 1874, VI. 126; *Gesta Christi*, p. 351; Dreyfus, p. 168; De Card, 62; Revon, 312; U.S. Govt. Paper No. 482; MS. Journal of the Commission; 16 *Stats.* at L. 386-419; *For. Rel.*, 1871, pp. 532-540; *Treaties and Conventions*, U.S., 1776-1887, pp. 467-469; Moore, I. 237-270, V. 4749-4751; P.I., pp. 44-46.

58. **GREAT BRITAIN and PERU, in 1863.** *Arbitrary Arrest.* This case involved claims for compensation, on account of the alleged false imprisonment, and banishment from Peru, of a British subject, Captain Thomas Melville White, who had been arrested at Callao (March 23rd, 1861), kept in prison at Lima (until January 9th, 1862), and then expelled the country. An indemnity of £4,500 sterling was claimed on his behalf by the British Government. By a note *verbale*, signed at London, in July, 1863, by the representatives of the two Governments, it was agreed to refer to the ARBITRATION of the Senate of Hamburg. The *Award*, which was given on April 12th, 1864, decided that the claim was based upon a partial and exaggerated statement, and was entirely inadmissible,

inasmuch as the procedure adopted by the Peruvian law courts had been quite regular and according to the laws of the country. The parties, however, had to pay their own costs, those of the Commission to be equally divided between them.

References: Parl. Papers, 1864, No. 482; Pandectes Françaises, No. 63; Dreyfus, p. 168; Calvo, II., 556, 557; F. de Martens, *Traité de Droit Int.*, III. 141; Revon, p. 312; Mérignhae, p. 46; Kamarowsky, p. 188; De Card, p. 59; Despagnet, p. 707; Le Mougins-Roquefort, p. 178; Gaspar Toro, *Notas, etc.*, p. 119; Moore, V., 4967-4978; P.L., pp. 46-54.

59. **COLOMBIA** and **UNITED STATES**, in 1864. *Panama Riot and other Claims, i.e.*, claims against Colombia, as representing the late Republic of New Granada, arising out of Treaty rights on the Isthmus of Panama. These were the claims left undetermined by the former Commission (q.v.). They were referred by a *Treaty*, concluded *February 10th*, 1864, and ratified August 19th, 1865, to a MIXED COMMISSION, consisting of two members, one appointed by each country, and an *Um/ve*. The Commissioners under the new Convention were Mr. Thomas Biddle, for the United States, and Gen. Eustorjís Salgar, for Colombia. They met at Washington, August 24th, 1865, and Sir Frederick Bruce, British Minister at Washington, was chosen *Umpire*. "Questions that would have been causes of war were thus settled quietly and equitably." The date of the last *Award* was May 18th, 1866. The Awards given in favour of the United States, including those of the former Commission, under the Treaty of September 10th, 1857, amounted to 345,307.31 dollars.

References: Journal of the Commission; MSS. Dept. of State, U.S.; MS. Notes to Colombia; State Papers, XLVII. 353; LIV. 1132; S.P., p. 3; *Anales Diplomaticos y Consulares de Colombia*, 1901, II. 116; *Treaties and Conventions between the U.S. and other Powers*, 1776-1887, p. 213; Moore, II. 1396-1420, V. 4696, 4697; P.L., pp. 35, 620.

60. **SALVADOR** and **UNITED STATES**, in 1864. *Government Monopoly*, A claim was made on behalf of Mr. Henry Savage, a citizen of the United States, who had imported into Salvador, in September, 1857, a certain quantity of gunpowder, with the cognisance of the authorities, who in 1852 issued a decree making the sale of gunpowder a Government monopoly. On *May 4th*, 1864, an *Agreement* was made with the Government of Salvador, which was signed in triplicate at *San Salvador*, to submit the claim to ARBITRATION in Guatemala on June 1st, 1864. The Arbitrators appointed were Messrs. M. J. Dardon, A. Andreu, and Fermín Armas, who on February 21st, 1865, "finally adjudicated" the claim "in favour of Mr. Savage," awarding him 4,497.50 dollars, with interest.

References: MSS. Dept. of State; Moore, II. 1855-1857; P.L., p. 617.

61. **ARGENTINE REPUBLIC** and **GREAT BRITAIN**, in 1864. *Results of Blockade*. Losses arose to English subjects out of a decree issued by the Argentine Government, on February 13th, 1845, prohibiting vessels from Monte Video from entering Argentine ports. It was decided by a *Protocol*, signed at Buenos Ayres *July 15th*, 1864, to submit the matter to ARBITRATION, and by a further Protocol of January 18th, 1865, also signed at Buenos Ayres, it was referred to Don José Joaquín Pérez, the President of Chili, who gave his *Award* August 1st, 1870, in favour of the Argentine Republic.

References: State Papers, XLVIII. 38; LXIII. 1027, 1173; Hertslet, *Complete Collection, etc.*, XIII. 69, 211; *Tratados de la Repub. Argentina Memoria de R.E.*, 1871, p. 68; Gaspar Toro, *Notas, etc.*, pp. 119, 120; Moore, V. 4916-4925; P.L., pp. 61-67.

62. **EGYPT** and **SUEZ CANAL COMPANY**, in 1864. *Concession Claims*. Various disputes arose connected with the Suez Canal undertaking. On the death of Saïd Pasha, his successor determined to abolish forced labour, and at the same time disputed the justice of the concession granted by his predecessor to the Canal Company. By an *Agreement* dated *April 21st*, 1864, the whole question—canal, land, and the employment of fellahs, was referred, at the request of the Viceroy, to the Emperor of the French, Napoleon III., as ARBITRATOR, by whom it was decided against the Viceroy, who was adjudged to pay a sum of three

millions and a half sterling to the Company in consideration of the privileges withdrawn by him. The *Award* was given July 6th, 1864, and was followed by a Firman of March 19th, 1868, determining afresh the concession to the Canal Company on the newly prescribed bases.

References: Nat. Encyc., "Suez Canal"; De Clercq, IX. 108; Brit. and For. State Papers, LV. 1004; Dreyfus, p. 169; Moore, V., p. 4862; P.L., pp. 122-130.

63. **FRANCE** and **VENEZUELA**, in 1864. *Personal Claims*. By a *Convention* between these Powers in 1864, provision was made for the decision, by a MIXED COMMISSION of the "claims of French subjects for expropriations, damages, and injuries of the nature of those for which, according to the law of nations, the Government of the Republic [of Venezuela] is responsible.

References: United States and Venezuelan Commission, *Convention* of December 5th, 1885; *Opinions*, pp. 308, 309; Moore, V. 4877.

64. **UNITED STATES** and **VENEZUELA**, in 1866. *Claims by citizens of the United States against the Government of Venezuela*. Many of these were of long standing, and large in amount, and some of them involved important principles of International Law.

(a)—These were in the first instance, after protracted and difficult negotiations, referred to a MIXED COMMISSION consisting of three members, one appointed by each of the Parties, and a third chosen by these two, or in default, as especially provided. This was done by a Treaty signed April 25th, 1866, and ratified at Caracas, April 17th, 1867, where the Commission met August 30th, 1867. The American Commissioner was David M. Talmage, of New York; the first Venezuelan Commissioner was Gen. A. Guzman Blanco, and his successor Mr. J. G. Vallifañe. The Umpire designated by the Russian Minister, as provided, was Mr. Juan N. Machado. The Commission decided forty-nine claims, the nominal amount of which was 4,823,273.31 dollars; it made *Awards* upon twenty-four claims, the total of *Awards* amounting to 1,253,310.30 dollars; twenty-five claims were rejected. Its last session was held August 3rd, 1868, all the claims submitted to it having been disposed of. But on February 12th, 1869, the proceedings were impeached by the Government of Venezuela for alleged fraud on the part of the Tribunal, mainly on the American side.

(b)—The protest was not at first favourably received by the American Congress, where it gave rise to much discussion, with varying results. Ultimately, on March 3rd, 1883, a Joint Resolution was adopted by the American Congress in favour of a new Mixed Commission, and by a Treaty concluded at Washington, December 5th, 1885, it was agreed to have the claims re-heard by a new COMMISSION. This Commission, composed of an American, Mr. John Little, a Venezuelan, Mr. José Andrade, and a third Commissioner, Mr. John V. L. Findlay, chosen by the other two, who was also an American, sat at Washington from September 3rd, 1889, to September 2nd, 1890. "Its proceedings were characterised by a conscientious and impartial discharge of duty." The Commission finished its labours, September 2nd, 1890. Its report bears date September 10th, 1890, and was deemed by the authorities to be a satisfactory conclusion of a delicate and difficult task.

References: Proceedings of the Commission, Washington, 1889; MSS. Dept. of State, U.S.; S.P., p. 3; 17 Stats. at L. 477; Moore, II. 4659-1692, V. 4898-4818; Treaties and Conventions, U.S., 1776-1887, p. 1140; P.L., pp. 56-61.

65. **GREAT BRITAIN** and **MEXICO**, in 1866. *Personal Claims*. These were claims against the Government of Mexico arising out of damages caused during the Civil Wars in that country. By a *Convention*, signed at Mexico June 26th, 1866, and ratified November 19th of the same year, it was agreed to refer these to a MIXED COMMISSION of four members, two appointed by each Government, with an Umpire. The result of this reference has not transpired; probably the events of 1867, and the fall of the empire of Mexico, interrupted and put an end to the proceedings.

References: Hertslet, Complete Collection, etc., XII. 655; Brit. and For. State Papers, LVI. 7; Moore, V. 4948; P.L., pp. 68, 69.

66. **BAVARIA** and **PRUSSIA**, in 1866. *Claim to Art Treasures.* This proposal to arbitrate is unique, both as to its object and as to the terms of reference. Article 13 of the *Treaty of Peace* between Bavaria and Prussia, signed at *Berlin, August 22nd, 1866*, provided that, "As claims have been made on the part of Prussia to the right of Property in the Gallery of Paintings formerly at Düsseldorf, and afterwards taken to Munich, the High Contracting Powers," agree to submit those claims to ARBITRATION. "For this purpose, Bavaria will name three German Courts of Appeal, of which Prussia will specify the one that has to make the Award." The ratifications of this Treaty were exchanged at Berlin, September 3rd, 1866, but through the courtesy of Reginald T. Tower, Esq., Resident British Minister at Munich, we have ascertained that no effect was given to this article. "Before the matter was actually referred to Arbitration, an arrangement was made between the Two Contracting Parties, by which, on November 23rd, 1870, Prussia gave up all claim to the possession of the Gallery of Paintings formerly at Düsseldorf."

References: Hertslet, Map of Europe, etc. III. 1715-1716; British Legation, Munich.

67. **GREAT BRITAIN** and **SPAIN**, in 1868. *The "Mermaid" Difficulty.* A claim was made for compensation for the loss of the schooner "Mermaid," of Dartmouth, laden with coals for Ancona, which in passing the forts of Ceuta on October 16th, 1864, was fired at and sunk. By an *Agreement* between Great Britain and Spain, signed at *Madrid, March 4th, 1868*, the claim was referred to a MIXED COMMISSION consisting of four Commissioners, two to be named by each Government from persons belonging to the Diplomatic and Naval Services, with an Umpire to be named at their first meeting, and, in case of disagreement, the person to be chosen by lot out of the two named by them. The *Decision* was given within three months from the first meeting of the Commissioners, but the result has not been announced.

References: Parl. Papers, 1868 [C. 3899], [C. 3997]; Brit. and For. State Papers, LV. 40, LVIII. 2, 1258, LXXIII. 785, LXXV. 55; Moore, V. 5016, 5017; P.I., pp. 69, 70.

68. **MEXICO** and **UNITED STATES**, in 1868. *Mutual Claims.* These were various claims and counter-claims which had arisen since the Peace of Guadalupe Hidalgo, in 1848. By a *Convention*, dated *July 4th, 1868*, these were referred to a MIXED COMMISSION, consisting of two Commissioners, an American and a Mexican, W. H. Wadsworth and F. G. Palacio, together with an Umpire, Dr. Francis Lieber, who died October 2nd, 1872. This Commission was appointed for a term of three and a half years, but in 1871, by a new Convention, concluded April 19th, it was prolonged to January 31st, 1873. In the interval, a new Convention, dated November 27th, 1872, prolonged for two years further the action of the Treaty of 1868; but inasmuch as this Convention was not ratified by the Mexican Congress before January 31st, 1873, it was mutually agreed to modify its terms, so as not merely to prolong but to renew the Convention of 1868. Accordingly, the revised treaty of November 27th, 1872, was ratified by both Congresses—by the U.S. Congress on March 8th, and the Mexican on April 29th, 1873. This Treaty revived the old Commission, which had ceased to act, and new Commissioners were appointed, Sir Edward Thornton, the British Minister at Washington, being chosen Umpire in succession to Dr. Lieber, the Commissioners now being Mr. M. M. de Zamacona, Mexico, and Mr. W. H. Wadsworth, who served as Commissioner for the U.S. from the first meeting to the last. On April 16th, 1874, the Umpire, Sir Edward Thornton, gave an *Award* on a typical claim out of the 366 made by Mexico for losses and injuries inflicted by the depredations of Indians, in favour of the United States. Thereupon the Commissioners filed a dismissal in each of the other 365 of these claims. The functions of the Commission were extended by a new Convention, concluded November 20th, 1874; and, as a fourth prolongation, those of the Umpire were extended still further, until November 20th, 1876, by a Convention signed April 29th, 1876. The Commissioners held their last meeting January 31st, 1876. They had then disposed of all the claims which had been submitted to them. The total number of these was 2,015, of which 1,017 were against Mexico and 998 against the United

States. Of the former, 831 were dismissed or disallowed, while Awards were made in favour of the claimants in 186 cases. Of the latter, 831 were dismissed or disallowed, while 167 were in favour of the claimants. The Umpire gave an *Award* on November 11th, 1875, in regard to the "Pious Fund of the Californias," which has since gained historical notoriety as the first to come before a Tribunal of The Hague Court. He closed his labours November 20th, 1876. Some doubt still remains in regard to two of the principal awards in favour of the United States. In reference to these, however, the Mexican Chargé d'Affaires in London writes to us, August 2nd, 1900:—"The United States Government has returned to Mexico, by decision of the Supreme Court, the money paid by Mexico on the cases known as *La Abra* and *Weil*." The Umpire in the case of *La Abra*, on December 27th, 1875, had awarded the sum of 358,791.06 dollars, with interest at 6 per cent. to the date of the final Award, which he fixed at July 31st, 1876.

References: Treaties and Conventions, U.S., 1776-1887, pp. 700, 705, 706, 707, 709; *Revue de Droit Int.*, 1875, pp. 57, 65-69; *Brit. and For. State Papers*, XLI. 738-751; see also XLVII.-LIV. *passim*; *Reclamaciones Internacionales de Mexico*, etc., I. 180-376, and whole of II.; J. I. Rodriguez, *La Comision Mixta*, etc., Mexico, 1873; *Opiniones del Comisionados*, etc., Washington, 1875; *Comision de Reclamaciones*, etc., Alegato por la Defensa ante el Hon. Arbitro; *Claim of La Abra Mining Co. v. Mexico*, Mexico, 1877; *Sinopsis Historica de la Comision Mixta*, Mexico, 1877; *Calvo*, II. 570, 571; Mérygnac, pp. 53-56; Dreyfus, pp. 169, 170, 174; *Congress Papers*, U.S.; S.P., p. 3; Moore, II. 1287-1359, V. 4773-4781; P.I., pp. 70-78.

69. **GREAT BRITAIN and VENEZUELA, in 1868.** *Particular Claims*—of British subjects against Venezuelan Government, of which there were 79.

(a)—By a *Convention*, signed at *Caracas* September 21st, 1868, these were referred to two COMMISSIONERS, Dr. Juan de Dios Mendez and Lewis Joel, Esq., British Chargé d'Affaires, who were to choose an Umpire by lot, if necessary. Their *Report* was given at *Caracas*, November 15th, 1869. The total amount awarded was 312,587 dollars.

(b)—In December, 1902, President Roosevelt appointed Mr. Frank Plumley as Umpire on the Commissions to examine the claims made by Great Britain and Holland respectively against Venezuela, his Award to be final. His most interesting Decision, given in May, 1904, was on the British claim for 5 per cent. interest on the Awards of the Mixed Commission of 1869. Mr. Plumley decided that interest at the rate of 3 per cent. must be paid from the time the Venezuela Congress ratified the Convention, accepted the findings of the Commission, and made the first payment.

References: Hertlet, *Complete Collection*, etc., XIII. 1009, 1010; *Brit. and For. State Papers*, LIX. 168, LXIII. 1065; U.S. and Venezuela Commission, *Convention of December 5th, 1865*, *Opinions*, p. 311; *London Times* and other Daily Papers, May 30th and 31st, 1904; Moore, V. 5017; P.I., p. 78, 79.

70. **PERU and UNITED STATES, in 1868.** *Mutual Claims*. After the termination of the Mixed Commission, which met in Lima in 1863, as narrated above, claims against Peru continued to arise, growing out of the unsettled condition of affairs in that country, aggravated by the war with Spain. These were, by a *Convention*, concluded at *Lima* December 4th, 1868 (ratified June 4th, 1869, and proclaimed July 6th, 1869), submitted to an ARBITRAL COMMISSION of two members and an Umpire, the latter to be chosen by agreement or lot. This Commission met at Lima, September 4th, 1869, and made Awards on twenty-three claims. The Commissioners were Mr. Michel Vidal and L. B. Cisneros; and, later, Dr. Manuel Pino was appointed a special Commissioner to act in certain cases. By a singular coincidence two Umpires were appointed, Mr. F. A. Elmore and Mr. T. Valenzuela. The Commission finally adjourned, and its *Report of Awards* was dated, February 26th, 1870, all the business before it having been disposed of. The Awards were in favour of the United States by a preponderance of 150,000 dollars, Peru receiving only 570,000 dollars.

References: Treaties and Conventions, U.S., 1776-1887, p. 872; MSS. Dept. of State, U.S.; The Records of the Commission were deposited in Lima, MS. Dom. Let. LXXXIV. 277, 345; *State Papers*, LIX. 268; S.P., p. 3; Moore, II. 1639-1657, V. 4788-4791; P.I., pp. 79-81.

71. **GREAT BRITAIN and PORTUGAL, in 1869.** *Disputed Territory*. The object of this Arbitration was to settle rival claims to sovereignty over the

island of Bulama, one of the Bisagos Islands at the mouth of the Rio Grande River, Senegambia, on the West Coast of Africa, and to a certain portion of territory opposite to that island, on the mainland. It was referred under *Protocol*, signed at *Lisbon, January 13th, 1869*, to the ARBITRATION of General Ulysses S. Grant, the President of the United States, whose *Award*, given April 21st, 1870, was in favour of Portugal.

References: Hertslet, Complete Collection, etc., XIII. 688-690; State Papers, LXI, 1103, 1163; Gesta Christi, p. 351; Revon, p. 313; Kamarowsky, p. 204; Calvo, II. 557; Bellaire, Rapport sur les Arbitrages, etc.; MSS. Dept. of State; De Card, p. 62; Revue de Droit Int., 1874, VI. 127; Dreyfus, p. 170; Moore, II. 1909-1922, V. 4793-4795; P.L. pp. 81-84.

72. GREAT BRITAIN and ORANGE FREE STATE, in 1869. *Claims and Compensation.* The former were mutual claims for thefts and other damages; the compensation was for the abandonment of lands in dispute. It was agreed by Arts. 12 and 13 of a *Convention*, concluded *February 12th, 1869*, to submit both these to Arbitration. But in regard to the latter, on July 13th, 1876, another Agreement was entered into, the Memorandum of which stated that the Earl of Carnarvon, Secretary of State for the Colonies, and President Brand, having met and fully communicated with each other, had arrived at an understanding with regard to the frontier line (Arts. 1-3), and had agreed that Great Britain should pay the sum of £90 000 sterling to the Orange Free State "in full settlement of all claims with respect to the Diamond Fields and the question of sovereignty over the lands hitherto in dispute."

References: State Papers, LXX. 322, 330; Hertslet, Map of Africa, etc., II. 814-817-819.

73. ORANGE FREE STATE and TRANSVAAL, in 1869. *Frontier Dispute.* The object sought was the exact determination of the source of the River Vaal, which, according to the terms of the Convention of January 16th, 1852, between Great Britain and the Transvaal, should form the southern limit of the South African Republic. By an *Arbitral Agreement*, signed on *October 30th, 1869*, the determination of the frontier was referred to Gen. R. W. Keate, Lieutenant Governor of Natal. His *Award*, fixing the frontier, was given at Pietermaritzburg, on February 19th, 1870.

References: P.L. pp. 589-592.

74. BRAZIL and UNITED STATES, in 1870. *Loss of Ship.* A claim was advanced against Brazil, for the loss on the Garças Reef, of the whale-ship "Canada" and her cargo, on November 27th, 1856, through the illegal interference of the Brazilian officials. It was submitted for ARBITRATION under a *Protocol*, signed at *Rio de Janeiro, March 14th, 1870*, to the British Minister at Washington, Sir Edward Thornton, whose *Award*, July 11th, 1870, was favourable to the United States. The amount awarded by him was 100,740.04 dollars.

De Clercq, IX. 108; Congress Papers, U.S.; Relatorio da Reparticao dos Negocios Estrangeiros 1870, Annexe L, No. 180, p. 249; S.P., p. 3; Moore, II. 1733-1747, V. 4687-4688; P.L. pp. 129-134.

75. SPAIN and UNITED STATES, in 1870. *Detention of Ship.* The steamer "Colonel Lloyd Aspinwall," was seized and detained by the Spanish authorities in January, 1870. On *May 25th, 1870*, Mr. H. Fish, Secretary of State, proposed to Mr. Lopez Roberts, Spanish Minister at Washington, that the claim be referred to two COMMISSIONERS, one selected by each Government, with power to name an Umpire, if necessary, and on June 16th, 1870, Mr. Roberts informed Mr. Fish of the acceptance by the Spanish Government of his proposition for an Arbitration. The Mixed Commission consisted of Mr. Juan M. Ceballos and Mr. John P. Williams, who selected Mr. Johannes Rösing as Umpire. The *Decision* of the Umpire, which awarded 19,702 dollars in gold, was made November 15th of the same year.

References: Congress. Papers, U.S.; Moore, II. 1007-1018; P.L. pp. 154, 155.

76. AFGHANISTAN and PERSIA, in 1870. *Scistan Boundary.* This was a dispute respecting the boundaries of the Persian and Afghan territories, on the N.W. frontier of India, which had for years been the source of constant bickerings between the Shah and the Amir. The treaty of March 4th, 1857, between Great

Britain and Persia, provided that: "In case of differences arising between the Government of Persia and the countries of Herat and Afghanistan, the Persian Government engages to refer them for adjustment to the friendly offices of the British Government, and not to take up arms unless these friendly offices fail of effect." This question was so referred, and two British officers were appointed ARBITRATORS on behalf of the British Government, viz., General Goldsmid and General Pollock. The date of the Agreement is not known to us, but Major-Gen. Goldsmid left England in August, 1870, and reached Teheran on October 3rd. Difficulties had meanwhile arisen, and it was not until the following year that they proceeded to Seistan where they were joined by the other part of the Mission from India under Major-Gen. Pollock, accompanied by the Afghan Commissioner. Complications then ensued by the determined refusal of the two native Officials to meet in conference. The Arbitrator (Gen. Goldsmid) therefore withdrew to Teheran where he delivered his *Decision*, August 19th, 1872. The decision was eventually accepted on both sides. Thus was brought to a successful conclusion, "one of the most important boundary questions which our Government has had to decide."

References: *Herald of Peace* 1874, p. 25; Encyc. Brit., XVIII. 653; A. C. Yate, Afghan Boundary Commission of 1884, p. 77; Moore, V. 5012; C. N. Aitchison, A Collection of Treaties, Engagements, and Sanads, India, Calcutta, 1892, X. 16, 17.

77. **KELAT and PERSIA, in 1870.** *Boundary Dispute.* The proceedings of the Persian Authorities on the frontier of Beluchistan were long a source of anxiety to the Khan of Kelat. A proposal was made in 1870 by the Shah of Persia, that as the boundaries between Persia and Kelat had not been clearly defined Commissioners should be sent to the frontier by England, Persia, and Kelat, for the purpose of settling the Boundaries. This proposal was accepted by H.M.'s Government, and in January, 1871, the Commission met on the frontiers under Major-Gen. Goldsmid, who was in the neighbourhood for the purposes of the last Arbitration. After collecting all the available information Major-Gen. Goldsmid proceeded to Teheran for the adjustment of the question. The Persian frontier as defined in a *Memorandum* by him was accepted by the Shah on September 4th, 1871. It was afterwards accepted by the other litigants and has since been generally accepted.

References: See above, particularly C. N. Aitchison; A Collection of Treaties, Engagements, and Sanads, India, Calcutta, 1892, X. 16, 17.

78. **SPAIN and UNITED STATES, in 1871.** *Results of Cuban Insurrection.* This Arbitration was instituted to determine claims which had arisen out of the last insurrection in Cuba, in 1868, on account of the alleged wrongs and injuries to American citizens committed by the Spanish authorities in that island. It was submitted by diplomatic *Agreement*, concluded at the United States Legation, *Madrid, February 12th*, 1871, to a MIXED COMMISSION composed of two Arbitrators, an American and a Spaniard, and an Umpire, a citizen of a third Power. This Commission met for the first time at Washington on May 31st, 1871; it adopted special rules of procedure, June 10th, 1871, and its labours were prolonged for several years. But it underwent a number of changes and vicissitudes owing to the death of its members, from which cause it had as many as four Umpires. By a *Protocol*, signed at Washington *May 6th*, 1882, its labours were extended to January 1st, 1883, but they were actually concluded December 27th, 1882, the last *Decision* of the Umpire bearing date February 22nd, 1883. By an *Agreement* of June 2nd, 1883, concluded between the Acting Secretary of State and the Spanish Minister, provision was made for the winding-up of the Commission and the disposition of its records. The number of claims submitted to it was 140, with a total of 30,313,581.32 dollars, of which thirty-five were allowed, and a sum of 1,293,450.55 dollars awarded.

References: N.R.G., 2me Série, I. 19; Congress Papers, U.S.; For. Rel., 1871; Stats. at L.; Treaties and Conventions, U.S., 1776-1887, pp. 1025, 1033, 1035; Archives de Droit Int., 1874, p. 118; Dreyfus, p. 170; MSS. Dept. of State; S.P., p. 3; Moore, II. 1019-1053, and V. 4802-4808; P.L., pp. 134-138, 640, 641.

79. **GREAT BRITAIN and UNITED STATES, in 1871.** "*Alabama*" *Claims.* Differences arose out of the acts committed by certain vessels, prominent among them the "*Alabama*," privateer, which had been fitted

out, or armed, or equipped, in Great Britain, or in her Colonies, during the American Civil War. By the *Treaty of Washington, May 8th, 1871* (Arts. 1-11), the dispute was referred to a HIGH COMMISSION, consisting of five members, nominated by America, Great Britain, Italy, Switzerland, and Brazil, viz., Mr. Chas. Francis Adams, Sir Alex. Cockburn, Count Ed. Sclopis, Mr. Jacob Staempfli, and Viscount d'Itajuba. This Commission met December 5th, 1871, at Geneva, and on September 14th, 1872, gave its *Decision*, which awarded 15,500,000 dollars (£3,100,000) to the United States. This amount was paid to Mr. Hamilton Fish, as Secretary of State, on September 9th, 1873, and by him passed over to the Secretary of the Treasury on the same date. *This is one of the most important instances of Arbitration, and forms a distinct historical landmark.*

References: N.R.G., XX., p. 767; Cushing's *Treaty of Washington*, 1 vol., New York, 1873; Papers relating to the *Treaty of Washington*, Dept. of State, 5 vols., Washington, 1872; Dip. Cor., 1865-1868; Stats. at L. U.S.; MSS. Dept. of State, U.S.; Sumner's Works, XIII.; For. Rel., 1871-1873; *Treaties and Conventions, U.S. 1776-1887*, pp. 479-483; *Parl. Papers, 1871*; Supplement to the *London Gazette*, Oct. 4th, 1872; Hansard, 3rd Series; De Marten's *Causes Célèbres*, Ed. 1861, V.; *The Official Correspondence respecting the "Alabama,"* 1 vol., London, 1867; Revon, p. 313, 327-337; S.P., p. 3; Méryghac, pp. 64-91; Moore, I. 495-682; P.I., pp. 138-144.

80. **GREAT BRITAIN and UNITED STATES, in 1871.** *Civil War Claims.* Sundry claims by the subjects of both countries arising out of the Civil War. These were referred, by the *Treaty of Washington* (Arts. 12-17), *May 8th, 1871*, to a MIXED COMMISSION of three members, respectively appointed by Great Britain, the United States, and by the two conjointly. The Commissioners were, the Right Hon. Russell Gurney, M.P., appointed by Great Britain, Mr. Robt. Snufford Hale, by the United States, and Count Louis Corti, Italian Ambassador at Washington, conjointly. The first meeting of the Commission was held in Washington, September 26th, 1871, and they sat at Washington and Newport until September 25th, 1873, when, by a *Final Award*, signed by all the Commissioners, they adjudged the United States to pay £386,000 (1,929,819 dollars) to Great Britain. The Commission had before them 478 English claims, and 19 American. They awarded indemnities only to 187 English claimants.

References: *Treaties and Conventions, U.S. 1776-1887*, pp. 484-486; N.R.G., 2me Série, I. (1876), p. 37; Hertslet, *Complete Collection, etc.*, XIV. 1180; For. Rel., 1871, 1873 (part 3), 1874 and 1875; Howard's Report; Hale's Report; Dreyfus, pp. 176, 171; Kamarowsky, 171; S.P., p. 4; Méryghac, pp. 91-98; Moore, I. 683-702, III. 2201-2211; P.I., pp. 144-148.

81. **GREAT BRITAIN and UNITED STATES, in 1871.** *Fishery Rights.* This Commission is known as the "Halifax Fisheries Commission." It was appointed to consider the amount of pecuniary compensation which should be paid to British subjects in consideration of the fact that the privileges accorded to the citizens of the United States in regard to the coast fisheries under Arts. 18 to 21 of the *Treaty of Washington* were of greater value than those accorded to British subjects. By *Arts. 22-25 of that Treaty, May 8th, 1871*, the question was referred to three Commissioners, one chosen by each Government and the third by the two conjointly, or as provided. The Commissioners appointed were Sir Alexander Galt, Mr. Ensign H. Kellogg, and Mr. Maurice Delfosse appointed by the Austrian ambassador. They met at Halifax, June 15th, 1877, and on the 23rd of the following November awarded 5,500,000 dollars (£1,100,000) to Great Britain, the American Commissioner dissenting and withdrawing from the Arbitration. The Award, however, was accepted, the amount voted by Congress, and on November 21st, 1878, Mr. Welsh, under instructions from the President of the United States, delivered to the British Government a draft for the amount of the Award.

References: *Treaties and Conventions, U.S. 1776-1887*, pp. 487, 488, 498, 499; Hertslet, *Complete Collection, etc.*, XIV. 1185; Wharton's *Dip. Cor. Am. Rev.*, VI.; *Am. State Papers, For. Rel.*, III. and IV.; 1870, 1871, 1872, 1873, 1874, 1875, and 1878; *Senate Papers*; Sabine's *Fisheries*; *Papers Relating to the Treaty of Washington*, VI. 287, 283; *Doc. and Proc. of the Halifax Commission*, I, II.; *Parl. Papers, North America, No. I. 1878*; *Halifax Fisheries Commission*; S.P., p. 14; Méryghac, pp. 98-100; Moore, I. 703-753, V. 4751-1755; P.I., pp. 148, 149.

82. **GREAT BRITAIN** and **UNITED STATES**, in 1871. *San Juan Water Boundary*. This was a question of the frontier between Canada and the United States, which had involved long diplomatic correspondence, dating back prior to 1803. By the Convention signed at London, October 20th, 1818, it had been decided that the line of boundary from the point of the 49th parallel of latitude, up to which it had been already ascertained, should be continued westward along the said parallel "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca Straits, to the Pacific Ocean." The dispute arose respecting this latter portion of the boundary. In 1845 the British Government proposed Arbitration, which was declined on January 3rd, 1846. After this the "Oregon Question," as it was then called, assumed a very serious aspect, threatening an actual rupture between the two countries, which was only allayed by the Treaty concluded at Washington on June 15th, 1846, and ratified in the Senate by a vote of 41 to 14. (a)—For a period of nearly ten years after the conclusion of the Treaty no effective steps were taken by the contracting parties towards ascertaining the boundary. But on August 11th, 1856, the President approved an Act providing for the appointment of a Commissioner, etc., to cooperate with similar officers to be appointed by the British Government. Thus the question was referred to a JOINT COMMISSION, the members of which, Archibald Campbell and Lieut. John G. Parke, for the United States, and Captains James C. Prevost and Henry Richards, R.N., for Great Britain, were appointed early in 1857. The Commissioners met on June 27th, 1857, and held six formal meetings, the last of which was on December 3rd, 1857, when they finally disagreed and dissolved. (b)—Nothing more was done until 1871, when by Articles 34-37 of the *Treaty of Washington*, on May 8th of that year, the question was referred to the Emperor of Germany as ARBITRATOR, whose *Award*, given at Berlin, October 21st, 1872, sustained the American claim.

References: Bancroft's History of Oregon, and History of the N.W. Coast; Benton's Thirty Years' View; Greenhow's History of Oregon and California; Twiss's Oregon Territory; Gallatin's Oregon Question; Cartis's Life of James Buchanan; Maine's Int. Law; Northend's Life of Elihu Burritt, pp. 25-27; Webster's Works, etc.; Brit. and For. State Papers, L. 609, 796, LV. 743, 1211, 1284, LVI. 1406-1410, LIX. 21, LXII. 188, etc.; Parl. Papers. North America 1873; Am. State Papers For. Rel., I. 852-856, II. 584, III. 90-97, 163, 185. IV. 377, etc.; Papers Relating to Treaty of Washington, V. 19, 27-38, 255-263, 268-271, etc.; Calvo II. 558; Dreyfus, p. 171, 172; N.R.G., XX. 775; Treaties and Conventions, U.S., 1776-1887, pp. 491-493; S.P., p. 4; Méryghac, pp. 100-102; De Card, pp. 86-90; Moore, I. 196-236. V. 4756; P.I., pp. 149-151.

83. **BAROLONG**, **BATLAPINS**, **GRIQUAS** and **TRANSVAAL**, in 1871. *Boundary Rights*. This was a question as to the ownership of a small district between the Modder and Vaal rivers (where the town of Kimberley now stands) in which diamonds had been discovered, and also of "a territory of immense extent claimed by the Baralong of Montsiwa and other clans on the West." (a)—In 1871, Mr. M. W. Pretorius, President of the Transvaal, and the British High Commissioner for South Africa, arranged that it should be settled by Arbitration. An ARBITRATION COURT, to which each party appointed a representative, was formed with Lieut. General Keate, Governor of Natal, as final Umpire. The proceedings of the Court were opened at the little village of Bloemhof, on the northern bank of the Vaal. The Free State, however, was not represented in the Court. As the Arbitrators could not agree on their *Award*, the Umpire, Governor Keate, gave judgment against the Transvaal, October 17th, 1871, and also "gave to the tribes their independence and the territory they claimed, and even took from the Government at Pretoria a large district that had been occupied by white people ever since the great emigration." He awarded the tract in dispute to the Griqua Claimant, Waterboer, including in his *Award* the part claimed by the Orange Free State, which had refused Arbitration. (b)—The Free State, whose Case had not been stated, much less argued, before the Arbitrator, protested, and was after a time able to appeal to a judgment delivered by a British Court, which found that Waterboer had never enjoyed any right to the territory. Meanwhile, before the *Award*, Waterboer had offered his territory to

the British, and the country was forthwith erected into a Crown colony under the name of "Griqualand West." The British Government, therefore, without either admitting or denying the Free State title, declared that a district in which it was difficult to keep order amid a turbulent and shifting population ought to be under the control of a strong Power, and offered the Free State a sum of £90,000 in settlement of whatever claim it might possess. The acceptance by the Free State, in 1876, of this sum closed the controversy. (See No. 72.)

References: Hertslet, *Map of Africa*, etc., II., 840-845; J. Bryce, *Impressions of South Africa*, 3rd Ed., 1899, pp. 144, 145, 153; F. W. Reitz, *A Century of Wrong*, p. 26; G. McCall Theal, *South Africa. Story of the Nations*, pp. 324-339.

84. **BRAZIL** and **NORWAY** and **SWEDEN**, in 1871. *Damage to Ship*. On April 5th, 1870, the Brazilian Monitor *Para*, had run foul of the Norwegian barque *Queen*, in the port of Assumption; and an indemnity was claimed of £530. 10s. By an *Exchange of Letters* dated August 12th, 1871, it was agreed to submit the case to the ARBITRATION of the Spanish Minister to Brazil. By an *Award* given on March 26th, 1872, the Arbitrator pronounced in favour of Brazil, and declared the claim to be without foundation.

References: *Relatorio da Reparticao dos Negocios Estrangeiros*, 1872, pp. 669-685; P.I., pp. 155, 156.

85. **CHILI** and **PERU**, in 1871. *Common Expenses*. When the War of Independence took place against Spain in 1865, Peru and Chili combined their naval forces, and by a Treaty of offensive and defensive alliance, signed at Lima, on December 5th, 1865, they agreed (Art. 4) that at the termination of the war both Republics should nominate two Commissions, one on each side, to make the necessary financial settlement. In the course of this settlement differences arose which the two Governments decided to submit to Arbitration. This was done by a *Protocol*, signed at Lima, September 27th, 1871, by which it was agreed to appoint Senor D. Felix Frias, the Argentine Minister to Chili, as ARBITRATOR. He, however, declined to act, as did also the German Minister. Whereupon, by a *Protocol*, signed at Lima, March 2nd, 1874, the United States Minister, Mr. C. A. Logan, was invited to act as Arbitrator, and accepted the invitation. His *Award*, rendered at Santiago April 7th, 1875, condemned Peru to pay to Chili the sum of 1,130,000 dollars.

References: Peru, *Collecion de los Tratados*, IV. 110, 114; Am. State Papers For. Rel. 1875-6, I. 188-199; MSS. Dept. of State; Dreyfus, p. 177; Revon, p. 315; *Annuaire de l'Inst. de Droit Int.*, 1877, p. 245; Gaspar Toro, *Notas*, etc., pp. 129, 130; Moore, II. 2085-2105; P.I., pp. 156-167.

86. **BRAZIL** and **PARAGUAY**, in 1872. *Damages during War*. On the conclusion of Peace between Brazil and Paraguay, it was agreed that claims against the latter, for private losses and destruction of public property during the late war, should be submitted to a MIXED COMMISSION, consisting of two judges and two Arbitrators. The terms of the reference were settled by Arts. 3 to 6 of the *Definitive Treaty of Peace*, signed at Ciudad de la Asuncion, January 9th, 1872, and completed by an additional protocol of January 24th, 1874. The Commission met on December 16th, 1872, and sat until July 30th, 1881. It passed judgment on 805 claims, awarding 17,919,702 Reis 185, instead of 27,831,346 Reis 303.

References: *Relatorio da Reparticao dos Negocios Estrangeiros*, 1872, p. 236; 1874, p. 488; 1882, p. 152; P.I., pp. 167-170.

87. **GREAT BRITAIN** and **PORTUGAL**, in 1872. *Disputed Territory*. This was a dispute, which had lasted since 1823, about various territories and islands situated on Delagoa Bay, including those formerly belonging to the Kings of Tempe and Mapoota, and the islands of Inyack and Elephant. It was referred, by a *Protocol*, signed at Lisbon, September 25th, 1872, to M. Thiers, the President of the French Republic. His successor, Marshal MacMahon, by his *Award*, on July 24th, 1875, decided that the Portuguese title was established to all the territories in question. The decision was mitigated by a

provision, contained in the Agreement for Arbitration, that the Power against whom the decision might go, should have thereafter from the successful Power a right of pre-emption as against any other State desiring to purchase the territory.

References: Parl. Papers, 1875. Delagoa Bay; N.R.G., 2me Série, III. 517; Annuaire de l'Inst. de Droit Int., II. (1878) 270 Kamarowsky, *Le Trib. Int.*, p. 205; De Card, pp. 100-104; Calvo, II. 557, 558; Mérignhac, pp. 103, 104; Revon, pp. 316, 317; De Clercq, XI. 40, 360; Dreyfus, p. 172; *Revue de Droit Int.*, 1878, p. 169; *Pandectes Françaises*, No. 80; Moore, V. 4984, 4985; P.I., pp. 170-173.

88. BOLIVIA and CHILI, in 1872. *Mining Operations.* By the terms of a Treaty, concluded August 10th, 1866, the boundaries of the two States were fixed at the 24th degree of south latitude. Notwithstanding this, the ores of the districts between 23 and 25 degrees South were worked for the common benefit, and this gave rise to legal disputes. Two Conventions were signed at *La Paz*, on *December 5th*, 1872, and at *Sacre*, on *August 6th*, 1874, creating an Arbitration Commission to deal with such questions. This Commission was to consist of two members, with final recourse, if necessary, to a third Arbitrator, who should be nominated by them, or, in default of that, by the Emperor of Brazil. Unfortunately, the war which broke out between Bolivia and Chili, 1879-1884, interfered with the carrying out of both agreements. After the war the districts in question were ceded to Chili.

References: Gaspar Toro, *Notas*, etc., p. 93; Memoria de relaciones exteriores (Chili), 1873, p. 346; Veanse: Memoria de R. E., Santiago, 1879; *Recopilacion de Tratados y Convenciones*, 1894, II. 102; *Tratados de Chili*, II. 101, 104; *Tratados del Peru*, IV. 131-301; P.I., pp. 220, 221.

89. COLOMBIA and GREAT BRITAIN, in 1872. *Pecuniary Claims.* These were advanced by a British firm of merchants (Cotesworth & Powell, of London) against Colombia, arising out of alleged maladministration of justice between the years 1858 and 1860. By a *Convention*, signed at *Bogota*, *December 14th*, 1872, they were referred to a MIXED COMMISSION, consisting of two Members, one named by each party, with power to choose an Umpire. This Commission was organised at Bogota in the early spring of 1873, and consisted of Dr. Schumacher, German Resident, and Dr. Ancizar, both of Bogota. A new Commission, owing to removal and resignation, was rendered necessary, and appointed, consisting of Mr. Scruggs, the Minister of the United States at Bogota, and Ex-President General Salgar with the Hon. Casimir Troplong (Fr.), as Umpire. The case involved important principles. The Arbitrators agreed in an *Award* of 50,000 dollars against Colombia; the Commission closed its labours on November 5th, 1875, and its decision and Award, which was published in the *Diario Oficial* of Bogota, December 18th and 21st, 1875, was signed by both Commissioners.

References: Dreyfus, p. 176; De Card, p. 164; Cuaderno, III., VI.-XII.; *Codigo de Comercio*, 1853; *For. Rel.*, U.S., 1875; MSS. Dept. of State; *Annuaire de l'Inst. de Droit Int.*, 1877, p. 227; Moore, II. 2050-2085; V. 4697, 4698; P.I., pp. 173-189.

90. BRAZIL and GREAT BRITAIN, in 1873. *Naval Services.* This Arbitration arose out of a Claim advanced by the Earl of Dundonald against the Brazilian Government, for services which his father, Admiral Lord Cochrane, had rendered to Brazil during her War of Independence. The two Governments being unable to agree, the British Minister proposed Arbitration on January 11th and 30th, 1873. The Brazilian Government, by a note to the British Legation, *April 22nd*, 1873, accepted the proposal, and suggested the United States and Italian Ministers at Rio de Janeiro, Mr. James R. Partridge and Baron Cavalchini, with power to name an Umpire in case of difference, as an ARBITRAL COMMISSION. On October 6th, 1873, at Rio de Janeiro, the Arbitrators gave their *Decision*, and awarded the Earl of Dundonald £38,675.

References: *Relatorio da Reparticao dos Negocios Estrangeiros*, 1874, pp. 436, 456-470; MSS. Dept. of State; *For. Rel.*, 1874, pp. 70-73; Dreyfus, p. 173; *Archives de Droit Int.*, 1874, p. 118; Gaspar Toro, pp. 120, 121; Revon, p. 314; Moore, II. 2107, 2108; P.I., pp. 189-197.

91. JAPAN and PERU, in 1873. *Detention of Ship.* This was the seizure, on July 10th, 1872, of the Peruvian barque, "Maria Luz," engaged in

the Coolie trade, in the Japanese port of Kanagawa, and the liberation as slaves of those on board. The dispute was getting embittered when it was referred, by two *Protocols*, drawn up by common consent in quadruplicate, at Tokio (Yedo), on *June 19th and 25th, 1873*, to Alexander II., the Emperor of Russia, whose *Decision*, given at Ems on May 17th, 1875, was in favour of Japan.

References: For. Rel. U.S., 1873, I. 524-553; 1874, 617; 1875; Dreyfus, p. 173; N.R.G. 2me Série, III. 516; Memoria de R. E., Lima, 1874, p. 55; De Card, pp. 109-112; De Martens, *Traité de Droit Int.*, II, p. 339; Archives Diplomatiques, 1874, p. 117; Kamarowsky, *Le Trib. Int.*, p. 192; Annuaire de l'Inst. de Droit Int., 1877, p. 353; Gaspar Toro, *Notas, etc.*, pp. 122, 123; Revon, p. 316; Merignac, pp. 110, 111; Pandectes françaises, No. 84; Moore, V. 5034-5036; P.I., pp. 197-199.

92. FRANCE and GREAT BRITAIN, in 1873. *Customs Duties.* Certain questions arose concerning duties levied in France on British Mineral Oils, imposed by a Treaty of Commerce, signed at Versailles, *July 23rd, 1873*. By Art. 4 of the same Treaty, the amount of indemnity to be paid in consequence of its provisions was referred to a JOINT COMMISSION (Messrs. C. M. Kennedy and J. Ozenne), with power to name an Umpire. The *Award* of the Commission, without reference to the Umpire, was given in Paris, January 5th, 1874, and adjudged to British claimants 314,393.33 francs.

References: De Clercq, XI. 77; Parl. Papers [C. 913]; Brit. and For. State Papers, LXIII. 207-213, LXXV. 426-434; Moore, V. 4938, 4959; P.I., pp. 199-201.

93. CHILI and the UNITED STATES, in 1873. *Detention of Ship.* On May 21st, 1832, the whaling ship "Good Return" put into Talcahuano in distress. Under a charge of smuggling tobacco she was detained till October 27th, 1832, a period of five months, when she was allowed to proceed on her voyage. On August 23rd, 1833, a claim was made by the United States Government against Chili. For many years the claims do not appear to have been pressed, but in 1854, a settlement of them was sought by the United States. Correspondence followed until 1873, when, on *December 6th*, a *Convention* was concluded at *Santiago* for the submission of the case to the ARBITRATION of Mr. Carl F. Levenhagen. He was compelled to resign on account of ill-health, and by an Additional Act signed at Santiago, May 4th, 1874, Mr. C. F. Sanminiatielli, Italian Chargé d'Affaires at Santiago, was substituted as Arbitrator. Authority was given by a Law of July 18th, 1874, to settle the claim at once by payment of a lump sum, and on December 18th, 1874, an Agreement was concluded at Santiago for the payment of 20,000 dollars in Chilean gold, and a draft for that sum was handed to the Minister of the United States.

References: Recopilacion de Tratados y Convenciones de Chili, 1874, II. 81-87; Memoria de R. E., 1875, p. 21; MSS. Dept. of State, U.S.; Vcânse, Boletín de las Leyes, 1859, XXVIII, 74; Gaspar Toro, *Notas, etc.*, pp. 121, 122; Moore, II. 1466-1468; P.I., pp. 221, 222.

94. ITALY and SWITZERLAND, in 1873. *Frontier Question.* This was a disputed boundary between the Swiss Canton of Ticino and Italy, which involved the ownership of the Alp of Cravairola. By a *Convention* signed at *Berne, December 31st, 1873*, it was referred to a MIXED COMMISSION of two members, with the Hon. George P. Marsh, the United States Minister at Rome, as Umpire, who, on September 23rd, 1874, by an *Award* given at Milan, decided in favour of Italy. The President of the Swiss Confederation and the Italian Minister at Berne, signed a Protocol to carry the Award into effect on May 17th, 1875.

References: N.R.G., 2me Série, VIII. 560, XX. 214; Dreyfus, pp. 172, 173; Recueil officiel des lois Suisses, XI. 516; Moore, II. 2027-2049; State Papers, LXVI. 630; Hertslet, *Map of Europe, etc.*, IV. 3236; MSS. Dept. of State, U.S. For. Rel., 1875, II. 749-754; P.I., pp. 201-209.

95. COLOMBIA and UNITED STATES, in 1874. *Seizure and Detention of Ship.* This involved claims for damages against Colombia for the capture and use, for revolutionary purposes, of the American steamer "Montijo," April 6th, 1871, in Colombian waters, by insurgents in the State of Panama. It was referred to a MIXED COMMISSION, which consisted of Mr. Bendix Koppel and Mr.

Mariano Tanco, appointed under an *Agreement of Arbitration of August 17th, 1874*. Mr. Robert Bunch, the English Minister at Bogota, was chosen Umpire, by whom, July 26th, 1875, the sum of 33,401 dollars was *awarded* to the United States, and paid, Mr. Scruggs, the Minister Resident of the United States at Bogota, being "congratulated by his Government on the results of the Arbitration."

References: For. Rel., U.S., 1875, 1876, p. 427; Dreyfus, p. 174; De Card., p. 163; Revon, p. 315; *Annuaire de l'Inst. de Droit Int.*, 1877, p. 212; Brit. and For. State Papers, LXIV. 402-422; MSS. Dept. of State, U.S.; S.P., p. 4; Moore, II. 1421-1447, V. 4698, 4699; P.I., pp. 209-220.

96. **CHINA and JAPAN, in 1874.** *Personal Indemnities.* This claim arose from the murder of Japanese citizens by Chinese, in the Island of Formosa. The two Governments were on the point of appealing to arms, when the Cabinets of London and Washington induced them to have recourse to ARBITRATION, and the dispute was referred to Sir Thomas F. Wade, the British Minister at Peking. On October 31st, 1874, Mr. Wade *awarded* an indemnity of 100,000 taels to be paid by China, as reparation for the outrage. This was accepted, and by a Treaty of the same date, for the evacuation of the Island, provision was made (Art. 2) for carrying out the Award.

References: *Herald of Peace*, 1875, pp. 232, 233; Revon, p. 315; Calvo, II. 557; Dreyfus, pp. 176, 177; *Annuaire de l'Inst. de Droit Int.*, 1877, pp. 318-320; Moore, V. 4857.

97. **CHILI and GREAT BRITAIN, in 1875.** *Loss of a Ship.* The loss of the ship "Tacna," due to improper deckloading, was attributed to the local authorities in Valparaiso. The matter came before a Naval Court, which was composed of H.B.M.'s Consul at Valparaiso and five other members, assembled at the British Consulate in that city, and continued every day afterwards (Sunday excepted) to March 21st, 1874, and both the Captain, John Hyde, and the shore authorities of the P. S. N. Co. were censured. Mr. Rumbold, British Minister in Chili, demanded the release of Captain Hyde, and an indemnity of £25,000 for wrongful imprisonment. He was afterwards permitted to leave the country and an indemnity was promised. On *June 3rd, 1875*, the British Government accepted the offer of the Chilean Government to submit the affair of the "Tacna" to ARBITRATION. The Emperor of Germany was chosen Arbitrator, but what further was done we do not know.

References: Parl. Paper, 278, July 10th, 1874; *Annals of Our Time*, 1874, p. 2; *Annuaire de l'Inst. de Droit Int.*, p. 257; U.S. For. Rel., 1875-1876, p. 199; P.I., p. 617.

98. **ARGENTINE REPUBLIC and PARAGUAY, in 1876.** *The El Chaco Boundary.* The object of this Arbitration was to settle the title to the Middle Chaco lying between the Rio Verde, on the North, and the Pilcomayo, on the South, and containing the historic town of Villa Occidental. The question was referred, by the *Treaty of Limits* between the two Republics, of *February 3rd, 1876*, to the President of the United States as ARBITRATOR. The *Decision* of President Hayes was given November 12th, 1878, in favour of Paraguay. On August 1st, 1879, Don José S. Decond, Paraguayan Minister for Foreign Affairs, addressed a note to Mr. Evart, United States Foreign Minister, stating that the Paraguayan Congress had, on the recommendation of the President, by formal vote, given the name of "Villa Hayes" to "Villa Accidental."

References: Calvo, 4th Edit., III. p. 440; De Card. pp. 90, 91; *Collecion de tratados celebrados por la Republica Argentina*, III. 18-88; Moore, II 1923-1944, V. 4783-4785; P.I., pp. 223-225; Brit. and For. State Papers, XLVI. 1305, LV. 83, LXIII. 322, 323; Véanse, *Memoria de R.E. (Buenos Ayres)*, 1874; *Relatorios Brasilenos de Negocios Estrangeros*; For. Rel., U.S., 1877, 1878; Appendix and Documents annexed to the Memoir filed by the Minister of Paraguay, etc., New York, 1878; Gaspar Toro, pp. 167-169.

99. **GREATER BRITAIN: CANADA and ONTARIO, in 1878.** *Boundary of the Province of Ontario.* Messrs. Robert A. Harrison, Edward Thornton, and F. Kincks "having been appointed by the Governments of Canada

and Ontario, as ARBITRATORS, to determine the Northerly and Westerly boundary of the Province of Ontario," they completed their work and gave their *Award* at Ottawa, in the province of Ontario, August 3rd, 1878, duly signed by the three Arbitrators, by which they 'do hereby determine and decide that the following are and shall be such boundaries, that is to say,' (description follows).

References: Brit. and For. State Papers, LXIX. 299, 300; Moore, V. 4966, 4967.

100. **GREAT BRITAIN** and **LIBERIA**, in 1878. *Boundary Question*. An effort, which began several years previously, for the ARBITRATION of a boundary dispute between Great Britain and Liberia, came to an unsuccessful end in 1879. As early as 1871 the United States was asked to appoint an Arbitrator in the matter. In 1878 (precise date unknown) Commodore Schufeldt was named. He arrived at Sierra Leone January 19th, 1879. The investigation began, but the Commissioners were unable to reach an agreement as to the submission of the matter to the Arbitrator, and Commodore Schufeldt, after a lengthened detention in the neighbourhood of Sierra Leone, was compelled to depart, leaving his mission unfulfilled. The boundary was determined by the Anglo-Liberian Agreement of November 11th, 1885, but the actual delimitation was not undertaken until 1902.

References: For. Rel., U.S., 1871, p. 487; 1879, p. 717; MSS. Dept. of State, U.S., 1871 and 1879; Statesman's Year Book, 1901, p. 829; Moore, V. 4948.

101. **GREAT BRITAIN** and **NICARAGUA**, in 1879. *Sovereignty over the Mosquito Indians*. The question in dispute was the interpretation of certain Articles of the Treaty of Managua, signed on January 28th, 1860. It was referred to the Emperor of Austria, as ARBITRATOR, who appointed Herr Ungar, an Ex-Minister, and two Presidents of the Court of Cassation (Herr Schmerling and Herr Mailath) to act as Assessors. The exact date of reference is unknown to us. The Emperor's *Award* was given at Vienna, July 2nd, 1881, in favour of Great Britain. This *Award*, however, and the accompanying opinion have become obsolete, because of the formal and voluntary incorporation of the Mosquito Indians in the Republic of Nicaragua.

References: State Papers, LXXII. 1212; Dreyfus, p. 178; For. Rel., U.S. 1894, App. L. 354-363; Gaspar Toro, pp. 123, 124; Staatsarchiv., XL. Nos. 7660-7663; Revue de Droit Int., 1884, XVI. 99; Moore, V. 4954-4966; P.L., pp. 385-393.

102. **FRANCE** and **NICARAGUA**, in 1879. *Case of the "Phare."* This arose from the alleged illegal seizure, in the Port of Corinto, November 22nd, 1874, from a French ship (the "Phare") of cases of arms presumed to be for the use of the revolutionary party in Nicaragua. The difference was, on the proposal of the Government of Nicaragua, referred, by an *Arbitration Convention* between France and Nicaragua, signed at Paris, October 15th, 1879, to the French Court of Cassation, which, on July 19th, 1880, adjudged that State to pay 40,320 francs, with interest at 12 per cent. per annum, from November 30th, 1874, the date of the last act of seizure.

References: De Card, pp. 112-123, 236-242; Calvo, II. 569; Dreyfus, 174; Revon, p. 318; Kamarowsky, p. 197; Revue de l'Inst. de Droit Int., 1879, p. 445; Annuaire, de l'Inst. de Droit Int., 1880, I. 415; De Clercq, XII. 489, 490, 585; Journal Le Droit, 6 Aout, 1880; Mérygnac, pp. 111-117; Pandectes Françaises, No. 89; Répertoire gen. du Droit Fr., No. 96; De Martens, p. 141; Gaspar Toro, Notas, etc., p. 123; Seijas, II. 517; Moore, V., 4870-4873; P.L., pp. 225-227.

103. **FRANCE** and **UNITED STATES**, in 1880. *Mutual Claims*. These were claims for compensation for injuries sustained by subjects of both Powers during the Mexican War of 1863, the American Civil War, and the Franco-German War of 1870-1871. By a *Treaty*, concluded January 15th and ratified June 23rd, 1880, these claims were referred to three COMMISSIONERS, one each appointed by the two Governments, viz., Mr. Asa O. Aldis and M. L. de Geofroy, who was succeeded, May 24th, 1883, by M. A. A. Lefavre, and the third, the Baron de Arinos, appointed by the Emperor of Brazil. The labours of this Commission (which sat in Washington from November 5th, 1880, to March 31st, 1884), not being terminated within the prescribed limit of two years, an extension of time (to

April 1st, 1884), was granted by successive Conventions of July 19th, 1882, and February 8th, 1883, and its labours were continued until the claims were adjusted. Its final *Award* was given, and its labours closed, March 31st, 1884. The Awards against the United States amounted to 625,566.35 dollars, and those against France to 13,659.14 francs.

References: Calvo II. 561, 562; N.R.G., 2me, Série VI. 493, IX. 700; Treaties and Conventions, U.S., p. 360; Congress Papers, U.S.; De Card, 164, 165, 213-248; Dreyfus, 177, 178; De Clercq, XII. 519, XIV. 42, 133; Annuaire de l'Inst. de Droit Int., 1883, p. 290; Revue de l'Inst. de Droit Int., pp. 229, 457; Stats. at L.; S.P., p. 3; Moore, II. 1133-1184, V. 4715-4720; P.I., pp. 227-231.

104. **GREECE and TURKEY, in 1880.** *Question of Territory.* The 13th Protocol of the Congress of Berlin, July 5th, 1878, recorded the opinion of the Powers on the rectification of the Turco-Greek frontier. Article 24 of the Treaty of Berlin, July 13th, 1878, provided that "in the event of the Sublime Porte and Greece being unable to agree upon this rectification" the six Great Powers "reserve to themselves to offer their mediation to the two Parties to facilitate negotiations." On June 11th, 1880, an *Identical Note* was addressed to the Porte, in which it was informed that the Representatives of the Powers accredited to the Emperor of Germany would meet at Berlin, on the 16th of the month, "in order to decide by a majority of votes, and with the assistance of officers possessed of the necessary technical knowledge, the line of frontier it will be best to adopt." The Technical Commission, on which Great Britain was represented by General Sir Lintorn Simmons and Major Ardagh, sat on June 19th, 21st, and 22nd, and reported on the 25th. The Conference met and gave its *Award* on July 1st, 1880. In a Collective Note of July 15th "the Decision of the Conference at Berlin as to the New Turco-Greek Boundary was announced to both Governments. On July 16th, 1880, the Greek Government replied accepting the Award. The Porte replied on July 26th, 1880, explaining the reasons why it was unable to accept the frontier line of the Award, and it was not adopted. The line as ultimately agreed upon was described in the Treaty of May 24th, 1881. The decision of the Powers, however, was virtually given effect to in a Treaty between Turkey and Greece, executed "under pressure of the Great Powers," June 14th, 1881, by which the territory detached from Turkey, consisting of Thessaly and a part of Epirus, was ceded to Greece. This was really a case of compulsory Arbitration, involving, as it did, an actual decision, and not merely one of Mediation, as contemplated by Art. 24 of the Treaty of Berlin.

References: Prot. No. 13, Parl. Papers 1878; 1878, Turkey No. 44; 1879, Greece No. 1, pp. 176-178; 1880 Turkey No. 9; 1881, Greece Nos. 6 and 7; State Papers, LXIX. 1015, LXXI. 661-699, LXXII. 405, 526, 527; N.R.G., 2me Série, III. 449, VI. 1-95, 753; Moore, V. 5042, 5043; T. E. Holland, 25-27, 277; Statesman's Year Book, 1898, p. 646; Hertslet, Map of Europe, etc., IV. 2726, 2749, 2750, 2852, 2853, 2941-2943, 2958, 2959, 2961, 2962, 2963-2965, 2967-2973, 3035-3052.

105. **HONDURAS and SALVADOR, in 1880.** *Boundary Question.* This Arbitration had for its object the settlement of the frontier between Opatoro and Coloros, Santa Elena or Cúguara and Arambala, and Perquin and San Fernando. By a *Convention*, signed December 18th, 1880, it was agreed to refer the question for settlement to an ARBITRATOR chosen by both parties. The Arbitrator thus chosen was Don Joaquim Zavala, President of the Republic of Nicaragua. The necessary documents, however, were not submitted to him until after the period fixed in the Agreement, and the Arbitrator expressed an opinion that his powers should be extended. This apparently was not done.

References: Algunos datos sobre Tratados de Arbitraje, p. 28; P.I., p. 647.

106. **COLOMBIA and COSTA RICA, in 1880.** *Boundary Question.* This dispute dated back to the Treaty of Confederation between Colombia and the Central American Republic, signed March 15th, 1825, of which the ratifications were exchanged at Guatemala, June 17th, 1826. Subsequent Treaties on the subject between Colombia and Costa Rica, of which there were nearly a dozen, were not ratified.

(a)—By a *Convention*, signed at San José, December 25th, 1880, and ratified at Panama, December 9th, 1881, the question was referred to the King of the

Belgians, as ARBITRATOR, or, failing him, to the King of Spain or the President of the Argentine Republic. The Convention has this clause: "It is hereby agreed, and formally stipulated, that the question of limits, &c., shall never be decided by other means than those of Arbitration, as civilisation and humanity require." The King of the Belgians declined to act; the King of Spain, Alphonso XII., consented. His Majesty dying in 1885, an additional Treaty on the subject was concluded at *Paris, January 20th, 1886*, and the office of Arbitrator was accepted by the Queen-Regent of Spain on behalf of His Majesty Alfonso XIII. The Arbitration lapsed, however, owing to a dispute between the contracting parties as to the time within which their cases were to be presented.

(b)—Negotiations were afterwards undertaken for a new Treaty of Arbitration, which was signed at *Bogota, November 4th, 1896*. Under this Treaty it was decided to refer the matter to the ARBITRATION of the President of the French Republic. President Faure signified his acceptance of the office of Arbitrator on June 17th, 1897. A Commission, consisting of Messrs. Roustan (Ex-Ambassador at Madrid), President Delavard, Fouques-Dupart (Secretaries of Embassy), and Gabriel Marcel et de Lachapelle (Secretary), was appointed by the President to examine all documents relative to the litigation, and held its first meeting October 2nd, 1897, at the Quai d'Orsay. On the report of this Commission, M. Emile Loubet, the President of the Republic, gave his *Award* at Paris, September 11th, 1900, fixing the frontier.

References: *Anales Diplomaticos y Consulares de Colombia*, 1901, I. 269, 463-489, II. 113; *Memoria de Relaciones exteriores, Costa Rica*, 1885, 1886, 1897, p. 43; *Journal Officiel de la République Française*, 1900, p. 6184; *For. Rel., U.S.*, 1881, 71, 711, 870, 1057; 1893, 202, 266, 270, 273-275; 1894, 180, 185; *Les deux Amériques* Sep. 1, 1900; P. I. Cadena, *Coleccion de Tratados Publicos, etc., Bogota*, 1883, I. 9; *Tratados de Costa Rica*, I. 371, II. 291; Don M. M. de Peralta, *Costa Rica y Colombia de 1573 á 1881*, Madrid, 1889; Romero Giron, *Complemento, Apéndice V.*, 1897, p. 519; *Memoria de R. E. de Costa Rica*, 1898, p. xx.; M. R. Poincaré, *Cuestion de Límites entre Colombia y Costa Rica*, Sevilla, September 8th, 1899; *Le Matin et Le Journal*, September 15th, 1900; Gaspar Toro, *Notas, etc.*, pp. 149-153; *Brit. and For. State Papers*, XCII. 1034-1040; Moore, V. 4857; P.I., pp. 393-397.

107. **HOLLAND** and **ST. DOMINGO**, in 1881. *Confiscation of Ship and Imprisonment*. This case arose from the alleged illegal seizure and confiscation of a Dutch brig, "Havana Packet," in September, 1877, and the imprisonment of some of the crew by the Dominican authorities at Monte Christo, on the charge of having on board illegally arms and munitions of war. By an *Agreement* signed at *The Hague, March 26th, 1881*, it was referred to the ARBITRATION of M. Grévy, the President of the French Republic, who, by his *Award* given at Paris, March 16th, 1883, condemned the Dominican Government to pay an indemnity of 140,000 francs.

References: Calvo, II. 560; Dreyfus, 179; De Card. 123, 124; Revon, p. 317; Kamarowsky, p. 198; Carlos Testa, *Le Droit Public Int. Maritime*; *Annuaire de l'Inst. de Droit Int.*, 1883, p. 290; Gaspar Toro, *Notas, etc.*, p. 123; Moore, V. 5036, 5081; P.I., pp. 240-242.

108. **GREAT BRITAIN** and the **SOUTH AFRICAN REPUBLIC**, in 1881. *Mutual Claims*—for losses sustained in the late war. By Articles 6 to 9 of the *Convention* concluded at *Pretoria, August 3rd, 1881*, these were referred to a JOINT COMMISSION consisting of the Hon. George Hudson, the Hon. Jacobus Petrus de Wet, and the Hon. John Gilbert Kotze; the decision of the said Commissioners, or of a majority of them, to be final; the Rules of Procedure to be followed are set forth in regard to the claims; provisions are also made for their payment and that of the interest on them; and the proportionate share of the costs is to be paid by the two Governments according to the amount awarded against them. The Commission met in the month of December, 1881, and finished its work in the following April. Its proceedings have not been published, but, from a Report made by the British Resident at Pretoria, it transpires that its *Awards* against the Transvaal amounted to £140,839. 10s. 11d.

References: *State Papers*, LXXII. 900; Hertslet, *Complete Collection, etc.*, XV. 401-413; N.R.G., 2me Série, VIII., 1883, 212; *Parl. Papers* [C. 3381], pp. 104, 106 [C. 3419], p. 18; J. Bryce, *Impressions of South Africa*, pp. 480-487; Reitz, *A Century of Wrong*, pp. 132, 133; Hertslet, *Map of Africa, etc.*, II. 841; P.I., pp. 231-233.

109. **BASUTOLAND and CAPE COLONY, in 1881.** *Tribal Revolt.* A revolt of the Basutos, or Mountain Bechuanas, against Cape Colony, to which their country had been annexed August 11th, 1871, took place, under the Chief Moirosi, in 1879, mainly owing to a Disarmament Act, although the Cape Government also proposed to confiscate the territory of offenders. Almost the whole tribe of Basutos rose in arms, and the Cape forces were unable to reduce them. But in 1881 they made overtures, and submitted to the ARBITRATION of the High Commissioner. Eventually the obnoxious Act was repealed, and confiscations and fines were not enforced, but the Basutos objected to be ruled by Cape Colony; they were separated by the Disannexation Act of 1883, and on February 2nd, 1884, by an Order in Council, Basutoland was made a Crown Colony, which it has since remained.

References: Hazell's Annual, 1888, p. 41; Hertset, Complete Collection, etc., XVII. 11; Id., Map of Africa, etc., I. 331-332.

110. **COLOMBIA and VENEZUELA, in 1881.** *Boundary Question.* This was a very delicate question of limits, which had been unsettled for more than fifty years. It was referred to the King of Spain as ARBITRATOR by a Treaty signed at Caracas, September 14th, 1881, ratified June 9th, 1882, and proclaimed July 6th, 1882. King Alphonso XII. accepted the duties, and by a Royal Decree of November 19th, 1883, appointed a TECHNICAL COMMISSION to study and prepare the question for himself. He died in 1885, before giving his award. The question then arose whether the mandate given to him extended to his successor. This was settled by the Ministers of the two countries in the affirmative, and embodied in an Act-Declaration signed by them in Paris on February 15th, 1886. The Queen Regent Christina, who then undertook the Arbitration on behalf of King Alphonso XIII., gave her Award March 16th, 1891, which was very favourable to Colombia. It was published in the Gazette of Madrid.

References: Anales Diplomaticos y Consulares de Colombia, I. 78-120, II. 118; De Card, pp. 97-99; State Papers, LXXIII. 1107; N.R.G., 2me Série, XXIV. 110; Moore, V. 4858-4862; P.L., pp. 512-515; Gaceta de Madrid, April 17th. 1891; Gaspar Toro, Notas, etc., pp. 153, 154; Tratados Publicos de Colombia, Coleccion de 1883, I. 83; Tratados de Venezuela, p. 134; Véase Seijas, V. 534; Libro Amarillo de Venezuela presentado al Congreso Nacional de 1895, pp. 242-292; Dreyfus, 181; Merignhac, p. 104; Revue de Droit, Int, 1887, 198.

111. **CHILI and FRANCE, in 1882.** *Damages in War.* This was the first of a series of Arbitrations in which Chili engaged in order to settle damages incurred by subjects of various Powers, in the war between Chili, Peru, and Bolivia, called the Pacific War, through the operations of the Chilian forces from February 14th, 1879, the date on which hostilities began. This case referred to French subjects only. It was referred by a Convention, of November 2nd, 1882, signed at Santiago, to a MIXED INTERNATIONAL COMMISSION, consisting of three members, one to be nominated by the Emperor of Brazil, who appointed his Excellency F. Lopez Netto, Brazilian Minister to the United States, for all three Commissions (this and two following). On May 20th, 1885, the Emperor of Brazil appointed Lafayette R. Pereira instead of L. Netto, who retired on the ground of ill health. He adopted a point of view diametrically opposite to that of his predecessor, which, says Calvo, "was regrettable from the standpoint of the authority of Arbitration." This Commission began its work immediately, but did not complete its functions, the question being settled by a Special Treaty between the two Governments, November 26th, 1887, Chili settling the claims by payment of a sum of 300,000 piastres. The number of claims presented to it was eighty-nine, the total amount claimed being 7,164,276.91 piastres.

References: Moore, V. 4862; Calvo, 4th Ed., III. 455-466; De Clercq, XIV. 61, etc.; N.R.G., 2me Série, IX. 704, etc.; For. Rel., U.S., 1883, p. 97; 1888, I. 181; De Card, 166, 167, 248-253; Journal Officiel (de France), September 20th, 1883; Recopilacion de Tratados y Convenciones, 1894, II. 285, 290, 323; Archives dipl. 1882-1883, IV. p. 41; A. Corsi, Arb. Int., pp. 63-176, 230-305; Mérygnhac, pp. 117-122; Dreyfus, p. 178; P.L., pp. 233-236.

112. **CHILI and ITALY, in 1882.** *Similar claims.* These were made on behalf of Italian subjects against the Government of Chili. They were referred

to a similar ARBITRAL TRIBUNAL of three, appointed by Italy, Chili, and Brazil, by *Convention*, signed at *Santiago*, December 7th, 1882, ratified April 30th, 1883. The work of the Commission required two extensions of time, and, ultimately, by a Protocol concluded January 12th, 1888, all claims then undecided by the Tribunal, to the number of 261, were settled by the Chilian Government paying 297,000 (piastres) Chilian silver dollars.

References: Moore, V. 4856; Calvo, 4th Ed., III. 455-466; For. Rel., U.S., 1888, I., 186-188, 190; Sentencias pronunciados por el Tribunal Italo-Chileno, 1884-1888; Annuaire de l'Inst. de Droit Int., 1885, p. 202; N.R.G., 2me Série, X. 638, etc.; De Card., p. 167; Trattati e Convenzioni, IX. 70; Recopilacion de Tratados, etc., 1894, II. 282, 288, 326; Méryghnac, p. 117, etc.; A. Corsi, Arb. Int., pp. 63-176, 230-305; P.I., pp. 236-240.

113. **CHILI and GREAT BRITAIN, in 1883.** *Similar claims.* These were referred to a similar MIXED COMMISSION by a *Treaty*, signed at *Santiago January 4th*, 1883. This Commission, constituted March 1st, 1884, installed anew June 26th, 1886, and, by a *Convention* of August 16th, 1886, extended for six months longer, examined the different cases submitted to it, numbering 118, and allowed Great Britain 140,000 piastres. Several claims, twenty-one in number, were left unadjudicated upon, and by a Protocol, signed September 29th, 1897, a further sum of 100,000 dollars was paid in settlement of these, when the case was completed.

This *Convention* was one of several, all of which were substantially identical in terms. Under all of them the appointment of the third Commissioner was confided to the Emperor of Brazil, who designated Senhor Lopez Netto. He discharged the duties of President of the various Tribunals in 1884, but an Award rendered by his vote in November of that year gave rise to a discussion in the Press. In February, 1885, he returned to Brazil, as already mentioned, and the Emperor appointed as his successor Senhor Lafayette R. Pereira.

References: Calvo, 4th Ed., III. 455-466; N.R.G., 2me Série, IX. 245; Hertslet, Complete Collection, etc., XV. 542, XVIII. 283; Recopilacion de Tratados y Convenciones, 1894, II. 309; For. Rel., U.S., 1888, I. 172-177; Sentencias por el Tribunal Anglo-Chileno, 1884-1887; Méryghnac, 117, etc.; A. Corsi, Arb. Int., pp. 63-176, 230-305; De Card, 169, 170; Brit. and For. State Papers, LXXIV. 321, LXXVII. 1085; Moore, V. 4928-4930; P.I., pp. 242-244.

114. **CHILI and PERU, in 1883.** *Damages in War.* It was stipulated, by Art. 12 of the *Treaty of Peace*, signed at *Lima October 20th*, 1883, which put an end to the War between Chili and Peru, that the claims of Chilian citizens against Peru for damages incurred during the War should be submitted to an ARBITRAL TRIBUNAL or MIXED INTERNATIONAL COMMISSION. Nothing was done to give effect to this stipulation until 1897, when, by a *Convention of Arbitration*, signed at *Lima, April 5th*, in that year a TRIBUNAL was organised. It was composed of three members, two of whom were chosen by the Presidents of the two Republics and the third by the Queen of Holland. We are not informed of the results of this appointment.

References: Peru, Coleccion de los Tratados, IV. 658; Memoria del Ministerio de Relaciones Exteriores, Peru, 1897, p. 66; P.I., pp. 592, 593.

115. **EGYPT and FOREIGN POWERS, in 1883.** *Damages resulting from Riots, etc.* By a *Decree* of *January 13th*, 1883, the Khédive instituted an INTERNATIONAL COMMISSION to adjust claims growing out of the insurrectionary movements which had taken place in Egypt since June 10th, 1882. This Commission was composed of two Members appointed by the Egyptian Government, one Member appointed by each of the eight Great Powers, and one by the rest collectively. The results of its labours have not been ascertained by us.

References: Calvo, 4th Ed., 468; Doc. Dipl. pres. al Parl. February 28th, 1883, and April 5th, 1884; A. Corsi, Arb. Int. 1893, pp. 202-204 (nn); Moore, V. 4862.

116. **CHINA and UNITED STATES, in 1884.** *Ashmore Fishery Claim.* This was a claim by Dr. Ashmore, an American citizen, owing to forcible dispossession of the Sun Bue fishery, which was purchased by him from its Chinese owner. Early in 1884 Mr. John Russell Young, the United States Minister at Pekin,

visited Swatow, and while there, in conversations with the Taotai of the Province of Kuang-tung, he secured the reference of the case to the Consuls of Great Britain and the Netherlands at Swatow, Messrs. George Phillips and Robert Hunter Hill, as ARBITRATORS. They gave their *Award* May 24th, 1884, and adjudged Dr. Ashmore an amount of 4,600 dollars, to be paid within two months from the date of *Award*, which was duly done.

References : Despatch of October 22nd, 1884, in MSS. Dept. of State, U.S.; Moore, II. 1857-1859; P.I., p. 601.

117. GREAT BRITAIN and SOUTH AFRICAN REPUBLIC, in 1884. *South-western boundary of South African Republic.* By Article 2 of the *Convention of London, February 27th, 1884*, the question was referred to a JOINT COMMISSION, consisting of two persons, one appointed by each; "and the President of the Orange Free State shall be requested to appoint a Referee to whom the said persons shall refer any questions on which they may disagree respecting the interpretation of the said Article (*i.e.* Art. 1., defining the boundaries) and the decision of such referee thereon shall be final." The Commissioners were Captain Claude R. Conder, R.E., and Tielman Nieuwoudt de Villiers, Esq., with an UMPIRE appointed by the President of the Orange Free State, Judge Meluis de Villiers. The Arbitrators' *Award* was given at Kunana, August 5th, 1885.

References : State Papers, LXXV. 5, LXXVI. 991, 992, LXXVII. 1280; Hertslet, Complete Collection, etc., XVII. 12, 17, 34, XVIII. 100; Hertslet, Map of Africa, etc., II. 847-856, 858-860; Moore, V. 5015; Reitz, A Century, etc., pp. 139-148; Bryce, Impressions, etc., 488-492; P.I., pp. 244, 245.

118. BOLIVIA and CHILI, in 1884. *Confiscations of Property and Goods.* The Treaty of Truce between Bolivia and Chili, which was signed at *Valparaiso, April 4th, 1884*, provided for a COMMISSION OF ARBITRATION, to settle the points in dispute with respect to the amount of indemnity for the loss and damage suffered by Chilian citizens during the late war, which Chili waged against Bolivia and Peru (1879-1883). This Commission was to be composed of three members, one named by Chili, one by Bolivia, and the third to be named by mutual accord from among the representatives of neutral nations resident in Chili, and was to be appointed as soon as possible. The ratifications of this Treaty were exchanged at Santiago November 29th, 1884; and by a complementary Protocol, signed at Santiago May 30th, 1885, it was agreed that the Third Member of the Arbitral Commission should enter upon his duties, as soon as disagreement should arise between the two Commissioners appointed between Bolivia and Chili in their consideration of any of the claims. No report, however, of the proceedings of the Arbitrators seems to have been published.

References : *Recopilacion dos Tratados*, pp. 167, 255; *The Tacna and Arica Question*, by Rafael Egaña, 1900, p. 52; P.I., p. 323.

119. HAYTI and UNITED STATES, in 1884. *Personal Claims.* These were advanced against Hayti on behalf of two American citizens, Captain A. Pelletier and Mr. A. H. Lazare, arising out of a charge of piracy and traffic in negroes against the former, and the non-execution of contract in connection with the opening of a bank by Lazare, involving questions of administrative and judicial procedure. By a *Protocol*, signed at *Washington, May 24th, 1884*, these claims were referred to Hon. W. Strong, formerly Judge of the Supreme Court, as sole ARBITRATOR. Though the claims were thus referred together, they were not otherwise connected. They differed in origin, in character, and in ownership, and the *Awards* were given separately. These, which were dated June 13th, 1885, were adverse to Hayti, the Arbitrator granting an indemnity of 57,250 dollars to A. Pelletier, and 117,500 dollars to A. H. Lazare. The *Awards* were transmitted to Mr. Bayard, then Secretary of State, on June 20th, 1885. They were afterwards impugned; the Senate asked for a report, which was made by Mr. Bayard on January 20th, 1887, after careful examination, in favour of re-opening the question in both instances, and urged that Pelletier's claim was one that could not be pressed by the United States. According to a report of Mr. Olney, transmitted to the Senate, February 28th, 1896, Hayti had not then paid the amount

awarded to A. H. Lazare. The final disposition of the case, as reported by the Secretary of State in 1887, has not been disturbed by any subsequent action of the Government.

References : N.R.G., 2me Série, XI. 798, XIII. 588, XV. 790 ; State Papers, LXXV. 382 ; Journal de Droit Int. privé, 1888, pp. 368-370 ; Revue de Droit Int., 1890, p. 360 ; Archives diplomatiques, 1885, I. 267 ; S. Ex. Doc. 64, 49, Cong. 2 Sess., 43 ; U.S. For. Rel., 1887, p. 630 ; De Card, pp. 124-128, 132, 133 ; Gaspar Toro, Notas, etc., pp. 124, 125 ; Moore, II. 1749-1805, V. 4768-4770 ; P.I., pp. 245-267.

120. **GERMANY** and **GREAT BRITAIN**, in 1884. *Land Concessions.* On the cession of the Fiji Islands to Great Britain, October 10th, 1874, it became necessary to examine carefully the concessions of land which had been made by the native chiefs to persons of various nationalities. More than 1,300 of these concessions were disposed of then. But some, which were made to German subjects, gave rise to a long diplomatic correspondence, which ended in an *Exchange of Telegrams*, dated June 19th and 21st, 1884, submitting the matters in dispute to a JOINT COMMISSION. This arrangement was confirmed by letters of July 3rd, August 4th, and September 16th, 1884. Two Commissioners were thereupon appointed, one German and one English (Dr. R. Krauel and Mr. R. S. Wright), who were instructed on March 3rd, and gave their Award, April 15th. The original claim on behalf of Germany was £140,000 ; the Award of the Commissioners was £10,620. The German Ambassador wrote on May 18th to the British Government that he was authorised to accept the Award, and to give his receipt. The money was thereupon paid.

References : Parl. Papers [C. 4433], 1885 ; Weissbuch, Zweiter Teil, pp. 89-92 ; Brit. and For. State Papers, LXXVI. 887-889 ; Moore, V. 5043 ; P.I., pp. 267-274.

121. **COLOMBIA** and **ECUADOR**, in 1884. *Private Claims.* This reference to Arbitration had for its object the settlement of indemnities claimed by Colombian citizens from Ecuador. It was made by means of a *Convention*, signed June 28th, 1884, ratified at Quito, October 8th, 1886. The ARBITRAL TRIBUNAL met at Quito on February 11th, 1887 ; thirty-even claims were presented to it, of which ten were rejected, four withdrawn, seven left unadjudicated, and *Judgment* was given in regard to the remaining sixteen, awarding a total of 78,598.76 piastres

References : Anales Diplomaticos y consulares de Colombia, 1901, II. 115 ; Informe de Relaciones exteriores, Colombia, 1888, p. 38, 1890, p. 16, 1892, p. 13 ; P.I., p. 617.

122. **CHILI** and **GERMANY**, in 1884. *Damages in War.* Claims were presented on behalf of German subjects against the Government of Chili for damages in the war of that country against Bolivia and Peru, 1879-1883. They were referred to a MIXED COMMISSION of three, one appointed by Chili, one by Germany, and the third by the Emperor of Brazil, by a *Convention of August 23rd*, 1884. The Commission was organised but gave no Award, since the claims were directly settled by a *Convention of August 31st*, 1886, and a *Protocol of April 22nd*, 1887, by which the functions of this Tribunal were declared to be terminated, a sum of 20,000 piastres having been accepted in satisfaction of the German, Austrian, and Swiss claims against Chili, all of which had been submitted to it.

References : Recopilacion de Tratados y Convenciones, 1894, II. pp. 176, 295 ; N.R.G., 2me Série, IX., etc. ; Calvo, 4th Ed., III. 455, 466 ; Mérignhac, p. 117, etc. ; De Card, p. 168 ; Moore, V. 4916 ; P.I., pp. 274-277.

123. **BELGIUM** and **CHILI**, in 1884. *Similar claims* These were made by Belgian subjects for losses in the same war. They were referred to the Italo-Chilian COMMISSION, constituted under *Convention of December 7th*, 1882, by a *Convention signed at Santiago August 30th*, 1884. There were only three claims, which amounted to 5,639.80 piastres, and they were all rejected by that Commission.

References : N.R.G., 2me Série, XI. 638 ; Moniteur Belge, April 8th, 1886 ; Archives diplomatiques, 1886, III. 164 ; Mérignhac, p. 118 ; De Card, 167, 168 ; P.I., pp. 277, 278.

124. GERMANY and GREAT BRITAIN, in 1884. *Territorial Claims.* On September 7th, 1884, the German Government instructed its Representative in London to inform the British Government that it had taken possession of the West Coast of Africa from 26th degree of latitude to Cape Frio, and to offer, for the settlement of eventual difficulties, the formation of a MIXED COMMISSION.

(a)—This proposal was formally accepted *September 22nd*, 1884, and confirmed by a later letter of October 8th. The Commissioners appointed were Messrs Bieber and Shippard, who met for the first time at Cape Town on March 27th, 1885, and proceeded to examine certain claims of British subjects as to the possession of certain islets and guano deposits, situated on the German Protectorate of Angra Pequena and neighbouring coast of South-West Africa.

(b)—Early in 1885 they failed to agree, whereupon the two Governments, by an exchange of letters, dated March 6th and 8th, 1886, formed a new Commission, consisting of Messrs. R. Krauel and Charles S. Scott, who sat at Berlin, where their *Awards* were given July 15th, 1886, and formally accepted by Great Britain, October 23rd, and by Germany, November 13th, 1886.

References: Weissbuch, Erster Teil, pp. 117, 120; Parl. Papers [C. 4262], p. 36; [C. 5180], p. 20; Hertslet, Complete Collection, etc., XVII. 1172; State Papers, LXXVII. 1042, 1283. LXXV, 547, 551, LXVII. 54; Hertslet, Map of Africa, etc., II. 608-611; P.I., pp. 278-281.

125. AFGHANISTAN and PERSIA, in 1885. *Hashtadan Boundary Dispute.* In 1885 the cultivation of certain lands at Hashtadan by Persians led to a protest from the Government of Afghanistan, the Ameer claiming the lands in question as part of his dominions. Her Majesty's Government offered, by virtue of Art. 6 of the Treaty of Paris, 1857, to act as ARBITRATOR in the question at issue. The offer having been accepted, General McLean, afterwards Her Majesty's Consul-General at Meshed, was deputed by the Government to act as ARBITRATOR. On November 9th, 1888, he proposed an *Arrangement* for the settlement of the disputed frontier, which was accepted by both the Shah and the Ameer. About a year later Gen. McLean was entrusted with the demarcation on the spot. This was completed on May 24th, 1891. His *Report* was dated July 6th, 1891. By this dual adjustment the respective water rights were clearly defined, pillars of demarcation were set up, and the Hashtadan question was finally laid to rest.

References: C. N. Aitchison, Collection of Treaties, Engagements, and Sanads, India, Calcutta, 1892, X. 27, and Appendix No. 22 (p. lxxvi.).

126. HAYTI and UNITED STATES, in 1885. *Civil Disturbances.* This case of Arbitration involved the claims of citizens of the United States for damages sustained during a riot at Port-au-Prince, September 22nd and 23rd, 1883. By a *Verbal Agreement* between the American Minister at Port-au-Prince and the Haytian Minister for Foreign Affairs, on *January 25th*, 1885, it was referred for adjustment to a MIXED COMMISSION of two Americans and two Haytians. The Commissioners were Charles Weymann and Edward Cutts (afterwards Dr. J. B. Terres), on the part of the United States, and B. Lallemand and C. A. Preston (afterwards Ségu Gentil), on the part of Hayti. On April 22nd and 24th, 1885, the Commissioners agreed on all the claims but two, which were referred to the Governments, and upon these 9,000 dollars were paid, November 30th, 1887. The total amount of their actual *Awards* was 5,700 dollars.

References: For. Rel., U.S., 1883, 594; 1885, 500-540; MSS. Dept. of State, U.S.; Moore, II. 1859-1862; P.I., pp. 291-293.

127. SPAIN and UNITED STATES, in 1885. *Maritime Capture.* This was the seizure and detention of an American ship, the "Masonic," at Manilla, for alleged smuggling, January 12th, 1879. By *Collective Letter* signed at Madrid, *February 28th*, 1885, the case was referred to Baron Blanc, the Italian Minister at Madrid. His *Award* of 51,674 dollars to the United States, for Captain Blanchard, was given June 27th, 1885. This was 2,600 dollars more than was claimed.

References: MSS. Dept. of State, U.S., 1880, 1881. 1882; For. Rel., U.S., 1885, 678-683, 687, 696, 699, 700, 725, 726, 729, 733, 748; S.P., p. 4; Moore, II. 1055-1069; P.I., pp. 281-285.

128. **AUSTRIA-HUNGARY** and **CHILI**, in 1885. *Losses in War*. The claims of Austrian subjects against Chili for losses arising out of its war with Bolivia and Peru were, by a *Convention* signed at *Santiago, July 11th, 1885*, referred to the GERMAN-CHILIAN COMMISSION, established by the Convention of August 23rd, 1884. The Commission met at Santiago, and its sittings were private, owing to the state of agitation in the country. It rendered *no Award* on these claims, for the reason mentioned above, viz., the matter was terminated by the acceptance, under a Protocol signed at Santiago, April 22nd, 1887, of a round sum of 20,000 piastres, in payment of all the claims before it—that amount to be divided between the Austrian, German, and Swiss claimants.

References: State Papers, LXXVI. 98; Recopilacion de Tratados, etc., 1894, II. 268, 295; N.R.G., 2me Série, XII. 507; Mérignhac, p. 119; De Card, p. 169; Moore, V. 4916; P.I., pp. 276, 277, 293, 294.

129. **GERMANY** and **SPAIN**, in 1885. *Disputed Territory*. This involved the sovereignty of the Caroline Islands, and led to a long diplomatic correspondence between the two Governments. Ultimately, during the month of *September, 1885*, it was, but without the usual *written* formalities, referred to the Pope, who, on October 22nd, 1885, made, in favour of Spain, a *Proposition*, which had the force of an Award. This was accepted by both Governments, and was embodied in a Protocol, signed at Rome, December 17th, 1885, by which Spain was declared sovereign, and Germany was accorded freedom of navigation, commerce, and fisheries.

References: N.R.G., 2me Série, XII. 283-296; Dreyfus, pp. 179-181; Kamarowsky, Trib. Int. (Pref.); Hazell's Annual, 1888, p. 79; 1891, pp. 534-535; Moore, V. 5043-5046; P.I., pp. 285-287.

130. **GREAT BRITAIN** and **RUSSIA**, in 1885. *North-West Boundary*. As far back as 1873 the question of this frontier had been raised between the Government of India and the Ameer of Afghanistan. The first mention between Russia and Great Britain of its delimitation was made in a despatch from M. de Giers, which was received at the British Foreign Office, May 4th, 1882. In 1884 the two Governments agreed that the frontier should be delimited by mutual consent, and a Commission was appointed and set to work. Then came the incident at Penjdh, and their proceedings were stopped. By a *Protocol*, signed at *London, September 10th, 1885*, it was again referred to a JOINT COMMISSION, which was appointed "to make an investigation on the spot jointly, for a more exact definition of the boundary line between the Russian possessions and Afghanistan." Great Britain was represented on this Commission by Sir J. West Ridgeway, the Russian Commissioner being Colonel Kuhlberg. The British members of the former Commission had been re-appointed and were mostly on the spot, so that before the Protocol was signed, the nucleus had met at Rindli, August 31st, 1884, and on November 14th, the Afghan Frontier Commission under Colonel Ridgeway arrived at Herat, and the Russian Commissioners were on their way to the frontier. The work was completed on the spot, August 21st, 1886. On April 23rd, 1887, the Commissioners resumed their labours in St. Petersburg, when they succeeded in finally settling the Boundary Question. The results were embodied in a Final Protocol, signed at St. Petersburg, July 22nd, 1887, and on August 3rd, 1887, the two Governments exchanged Notes accepting their conclusions.

References: Parl. Papers [C. 5325] Central Asia, No. 2, 1887; Delimitation Afghane, 1872-1885, St. Petersburg, 1886, p. 378; N.R.G., 2me Série, XIII. 566; Stat-Papers, LXXVI. 1102, etc.; LXXVII. 303; Hazell's Annual, 1888, p. 5; Annals of Our Time, 1884, p. 1457, etc.; The Afghan Boundary Commission, by A. C. Yate, Lond., 1887; P.I., pp. 287-291.

131. **CHILI** and **SWITZERLAND**, in 1886. *Losses in War*. This is one of the Arbitrations to which Chili had to submit after her war with Bolivia and Peru, 1879-1883, for the settlement of claims arising out of that war. By a Convention of Arbitration, signed at *Santiago, January 19th, 1886*, and ratified by Switzerland, July 10th, 1886, and by Chili, October 7th, 1886, these were referred to the GERMAN-CHILIAN COMMISSION, established under the Convention of August

23rd, 1884. The Commission rendered *no Award*, the matter being settled as in the instances mentioned above, through the intervention of the German Ambassador.

References: N.R.G., 2me Série, XIV. 324; Recopilacion de Tratados, etc., 1894, II. 272; 295; De Card, p. 169; Moore, V. 4857; P.I., pp. 276, 277, 294, 295.

132. **COLOMBIA and ITALY, in 1886.** *Cerruti Claim.* This interesting case has involved considerable difficulty. The dispute arose thus: In 1884 a civil war broke out in Colombia, and from the beginning of the rebellion Messrs. Cerruti & Co., a commercial firm established in one of the departments of Colombia, were, or were supposed to be, in open revolt against the Government. The local authorities, for that reason, in 1885, confiscated Ernesto Cerruti's property, and Signor Cerruti, being an Italian subject, took refuge on an Italian ship. The Italian Government immediately took the matter up, and entered upon long negotiations with Colombia. Several times in the course of the affair grave difficulties arose, and it was many years before the "Cerruti Claim" was finally settled. The case passed through several stages:—

(1.) The question of the nationality of Ernesto Cerruti, and all other claims pending between the two Governments on behalf of Cerruti or of other Italian subjects, were, by a *Protocol* signed at *Paris, May 24th, 1886*, referred to the Government of Spain as "Mediator." As, however, the Mediator was empowered to decide the questions submitted, and called on to render an Award, it was *de facto* an Arbitration. The "*Award of Mediation*" (so called in the Colombian Record-Anales, etc., 1901, p. 493, note 1), in favour of Italy, declared that Signor Cerruti, and the Italians who had given him asylum, had not infringed the laws of neutrality, and that he was entitled both to the restoration of his property and to damages from illegal procedures. It was given January 26th, 1888.

(2.) Art. 3 of the Paris Protocol making the reference had stipulated that "should it result from the said mediation that Colombia must pay indemnities," their amount, etc., shall form the object of an Arbitral judgment by a Mixed Commission to consist of the representative of Italy at Bogota, a Colombian, and the representative of Spain at Bogota. The Colombian Government accepted the results of the Award, a MIXED COMMISSION was, therefore, organised in accordance with the third Article of the Protocol, for the purpose of determining the amount of the indemnities due to Cerruti, and it met at Bogota September 5th, 1888. It consisted of Count Gloria (Italy), Mr. Julian Cock Bayer (Colombia), and Mr. Barnardo de Cologan (nominated by the Spanish Government), who presided. The claims, however, were not presented to the Commission, and three weeks before the time fixed for its expiration by an additional Article to the Paris Protocol, it suspended its sessions because there was no business before it.

(3.) A long diplomatic correspondence, continuing for some years, followed, until, by a *Convention*, concluded *August 18th, 1894*, the question of the Cerruti claims was referred to President Cleveland as ARBITRATOR, and he awarded £60,000 to Cerruti. This was accepted by Colombia, who paid the indemnity. The Arbitrator, however, ordered also payment of the claims of all the creditors of Signor Cerruti, which was resisted, and a rupture, involving considerable strain between the two countries, existed, until the matter was settled by the submission of Colombia and the further payment of £100,966 (504,833.669 dollars).

(4.) This point, however, was not reached without severely strained relations between the two Governments, and then not until 1899. Under a *Protocol*, signed at *Bogota on December 29th, 1898*, an INTERNATIONAL COMMISSION was instituted, consisting of Sr. Leo S. Kopp, appointed by the Diplomatic Representatives in Bogota, of England, France, and Germany, and Sr. José Maria Nuñez U, appointed by the Government of Colombia, and Sr. James C. MacNally, appointed by them as the third Arbitrator, to examine the claims of Cerruti's creditors, and to wind up the affair. This Commission met on December 31st, 1898, and sat until January 31st, 1899. After this difficulties arose, the Commissioners could not agree, Sr. Kopp retired, and the foreign representatives at Bogota declined to appoint any one in his place. Meanwhile the Italian Government had presented an ultimatum and

time was pressing. Colombia therefore created a National Commission to conclude the liquidation. Its history is given in its proper place.

References: Paul Bureau, the Italo-Colombian Dispute, Paris, 1899; Dreyfus, p. 181; Revue de Droit Int., 1887; N.R.G., 2me Série, XVIII. 659; Trattati e Convenzioni, XIII. p. 348, XV. 9-12; Anales Diplomaticos y Consulares (Colombia), I. 490-549 (see pp. 490-492 for Bibliography), II. 121; Memorias del Ministerio de R.E. al Congreso de Colombia, 1888, 1890, 1892, 1894, 1896, 1898; Moore, II. 2117-2123, V. 4699-4701; P.I., pp. 295-298.

133. **BAKWENA** and **BAMANGWATO**, in 1886. *Ownership of Wells.* In this year a serious dispute arose between these two African nations, about rights to certain wells at a place called Lopepé, on the road to the North from Molepolole to the Bamangwato. Both tribes appealed to the British Government, who appointed an ARBITRAL COMMISSION to sit at Lopepé. This Commission was presided over by Captain Goold Adams, who had been sent by the Administrator of British Bechuanaland to act as Arbitrator. It met on August 23rd, 1886, at Lopepé, and having heard witnesses on both sides, gave, on the third day, an Award to the effect that the wells should be equally divided. This Award was joyfully accepted by both sides.

References: A. J. Wookey in L. M. Chronicle (*Herald of Peace*, Nov., 1887, p. 291); E. Lloyd, Three Great African Chiefs, 1895, pp. 253, 254.

134. **BULGARIA** and **SERVIA**, in 1886. *Disputed Territory.* In 1884, differences arose between Bulgaria and Servia with reference to the right of possession to certain territory opposite to the village of Bregovo. The question was considered by the Diplomatic Representatives of Austria-Hungary, Germany, and Russia, who recommended the cession of the place to Bulgaria in return for other territory, or a money compensation. The occupation by Bulgaria of the frontier post at Bregovo was one of the causes which led to the War between Servia and Bulgaria, in November, 1885.

(a)—By an Arrangement between Servia and Bulgaria, signed at *Nisch*, October 25th, 1886, a MIXED COMMISSION was appointed for the settlement of this question. On December 16th, 1886, the Mixed Commission announced its Decision, which was confirmed on March 30th, 1887, by an Act signed between the Bulgarian and Servian Governments.

(b)—On July 13th, 1888, the SERVO-BULGARIAN COMMISSION, which had been charged to regulate an exchange of territory, made its Report, and on December 31st, 1888, an Act was signed between the Bulgarian and Servian Governments for the mutual exchange of the disputed territories, the ratifications of which were exchanged at Sofia, January 4th, 1889, which terminated the matter.

References: Hertslet, Map of Europe, etc., IV. 3183-3190, 3191, 3192, 3202, 3203.

135. **COSTA RICA** and **NICARAGUA**, in 1886. *Boundary Question.* This question involved the validity of the Treaty of Limits, of April 15th, 1858, delineating the frontiers, and of the right of the former Republic to navigation on the River San Juan. Through the good offices of Guatemala, a Treaty was signed at *Guatemala*, December 24th, 1886, ratified at Managua, June 1st, 1887, by which it was referred to President Cleveland, of the United States, as sole ARBITRATOR, who, after appointing the Hon. George L. Rives, Assistant Secretary of State, to examine the arguments and evidence, and receiving his report, gave his Award at Washington March 22nd, 1888, in favour of the validity of the Treaty of Limits of 1858, and settling the various points at issue under it. This Award was favourably received by both Governments, but when they came to carry it into effect they found themselves confronted with new difficulties. In this dilemma they accepted the mediation of the Government of Salvador, through whose good offices they concluded, at San José, April 8th, 1896, a fresh Convention for the demarcation of their boundary, and it instituted another Arbitral procedure which will appear in due course.

References: State Papers, XLVIII. 1049, LXXVII. 476, LXXIX. 555; Tratados de Costa Rica, II. 391; Annuaire de législation étrangère, 17e Année, Paris, 1888, p. 941; Gaspar Toro, Notas, etc., 147-149; Colección de Tratados, Costa Rica, 1896, p. 183; For. Rel. U.S., 1887, 267, 268; 1888, Part I. 455, 456, 457-468; 1896, 100-102, 371; Annuaire de l'Inst. de Droit Int., 1888, p. 406; Revue de Droit Int., 1888, p. 512; De Card, pp. 134-136; Dreyfus, pp. 181, 182; Moore, II. 1945-1968, V. 4704-4709; P.I., pp. 298-301.

136. **HONDURAS** and **SALVADOR**, in 1886. *Boundary Question*. The question of the frontier line between the two Republics, by a *Convention*, signed at *Tegucigalpa*, September 28th, 1886, and ratified at San Salvador July 27th, 1888, was referred to a JOINT COMMISSION of four — two land surveyors and two lawyers—appointed by the two Governments, and was to be by them determined “within three months from the date of ratification.” In case of disagreement between the Commissioners the two States agreed to submit to the decision of a friendly Power. This Convention did not prove definitive. On January 19th, 1895, the same States concluded, at San Salvador, a new Treaty of Limits which instituted, in the same terms as the analogous Treaty concluded between Honduras and Nicaragua, on October 7th, 1894, a MIXED BOUNDARY COMMISSION charged to settle pending differences and also the Boundary Line between the two Republics. It also provided an Arbitral Tribunal, in the case of difference, (Art. 3), whose decision was to be without appeal, composed of a representative of each Power, with an Umpire chosen from the Diplomatic Corps in Guatemala, in the manner prescribed, with an ultimate power of appeal to the Arbitration of the Spanish or some South American Government. We are not able to state what action, if any, was taken to give effect to these stipulations.

References: *Revue de Droit Int.*, Bruxelles, 1887, XIX. 195; Dreyfus, p. 181; Romero Giron, *Complemento*, Apéndice, III., 1896, p. 420; Gaspar Toro, *Notas*, etc., pp. 145, 146; *Tratados celebrados por el Gobierno de Honduras*, 1895, p. 83; Michel Revon; P.L., pp. 505, 506.

137. **GREAT BRITAIN** and **SPAIN**, in 1887. *Marine Collision*. A collision between a Spanish man-of-war, “Don Jorge Juan,” and a British merchant vessel, “Mary Mark,” took place near Belize, July 9th, 1884. The amount claimed for the loss sustained was 2,050 lire (£82). In April, 1887, Spain consented to Arbitration. Eventually two ARBITRATORS were chosen, viz., Sir Clare Ford, British Minister at Madrid, and the Spanish Minister of State, Señor Moret, and with the consent of the Italian Government, the Marquis Maffei, the Italian Minister at Madrid, was appointed Umpire. The *Award* was given December 5th, 1887, by the two Arbitrators without appealing to the Umpire, and a small sum of 600 lire (£24) was awarded to the owners of the British ship.

References: Count G. Tornielli, Italian Ambassador, *Statement*, *Herald of Peace*, December 1st, 1892, p. 166; Moore, V. 5017; P.L., p. 617.

138. **COLOMBIA**, **ECUADOR**, and **PERU**, in 1887 and 1894. *Disputed Territory*. This involved the question of the ownership of a vast extent of territory forming a portion of the Amazonic region of Mainas, Quijos, and Canelos.

(a)—The ancient disputed frontier between ECUADOR and PERU, which had been the object of so many Agreements, notably that of the Boundary Treaty of 1829, was, at length, by a *Convention*, concluded at *Quito August 1st*, 1887, and ratified April 14th, 1888, submitted to the ARBITRATION of the King of Spain. The duty was accepted by him, December 14th, 1888. The parties presented their respective cases in the following year at Madrid, and the Arbitrator proceeded with the consideration of the Case. Meanwhile a new Boundary Treaty, which had been promoted at Quito, was concluded between Peru and Ecuador, on May 2nd, to which a Complementary Protocol was signed, on June 5th, 1890. Thereupon, both Governments requested the Spanish Arbitrator to delay his Award. The Treaty, which was sanctioned by the Ecuadorian Congress, was subjected to amendment by Peru in 1893, and in 1894 was revoked by the Ecuadorian Congress. Intense feeling was evoked on both sides which imminently threatened a rupture. This was prevented by the mediation of the Holy See and of Colombia, which, however, in turn insisted on becoming a party to the contention, and accepted the Convention of August 1st, 1887, to which it gave its formal adhesion.

(b)—This was done in an additional Convention, signed at Lima, by the Plenipotentiaries of the three countries, December 15th, 1894, by which it was agreed to submit the whole affair anew to the King of Spain, as Arbitrator. King

Alphonso XII. died the following year (1895) and the Queen Regent, early in 1896, herself, by unanimous request, accepted the office. The result is not known.

References: State Papers, LXXVIII. 47; *Tratados del Peru*, V. 525-556, 803, 989; *Annuaire de législation*, 1888, p. 956; *Anales Diplomaticos*, etc. (Colombia), 1901, II. 114, 115, 681-796 (see pp. 681, 682 for Bibliography); Peruvian Legation (Letter), London, February 5th, 1897; Gaspar Toro, *Notas*, etc., pp. 158-161; Moore, V. 4857, 4858; *For. Rel.*, U.S., 1895, I. 250; *De Card*, pp. 99, 100; Dreyfus, p. 182; *Revue de Droit Int.*, 1888, p. 511; P.L., pp. 323-325; *Statesman's Year Book*, 1903, p. 553, 954; *Hazell's Annual*, 1895, p. 574; *Herald of Peace*, March, 1896, p. 27.

139. **GUATEMALA and MEXICO, in 1888.** *Mutual Claims.* These were presented on behalf of citizens of the two Republics for injuries suffered subsequent to 1873. The question of the amount of indemnities which should be paid was, by a *Convention*, signed at *Mexico, January 25th*, 1888 (alterations in which were approved February 15th, 1889), referred to a MIXED, *i.e.*, a JOINT COMMISSION of two members, with power to refer to a third Arbitrator, in case of difference, to be appointed by them, or, in default, by the Mexican Secretary for Foreign Affairs and the Guatemalan Minister in Mexico. The powers of the Arbitrators were renewed and prolonged by a Treaty, signed at Guatemala December 22nd, 1891. The Mexican claims which came before them reached a total of 2,954,421.28 piastres, and the Guatemalan 2,139,379.25 piastres. They Awarded 39,044.30 piastres and 49,100 piastres respectively.

References: *Tratados y Convenciones concluidos . . . por la Republica Mexicana*, 1896, pp. 278, 289; P.L., pp. 325-328.

140. **HAYTI and UNITED STATES, in 1888.** *Arbitrary Arrest.* This was a claim of Mr. C. A. Van Bokkelen, a citizen of the United States, for alleged arbitrary imprisonment at Port-au-Prince, May 24th, 1884, and for denial of legal rights. He claimed an indemnity of 113,000 dollars. Under a *Protocol*, signed at *Washington May 24th*, 1888, Mr. Alex. Porter Morse, of that city was appointed ARBITRATOR, by the joint selection of the American Secretary of State and the Haitian Minister at Washington. His *Award*, given at Washington, in a document of extraordinary length, December 4th, 1888, was adverse to Hayti, and allowed the claimant 60,000 dollars. The last instalment in payment of the Award was made by Hayti in 1895.

References: *For. Rel.*, U.S., 1883, pp. 986; 1884, pp. 306-492; 1885, pp. 498-542; 1888, pp. 984-987, 1007-1036; *Juridical Review*, II. 1890, pp. 76-78; Moore, II. 1807-1853, V. 4770, 4771; *De Card*, pp. 133, 134; *Journal de Droit Int.*, privé, 1891, p. 675; P.L., pp. 301-322.

141. **MOROCCO and UNITED STATES, in 1888.** *Illegal Arrest.* An American Consular *protégé* was arrested and imprisoned at Rabat by the Moorish authorities at Fez. An indemnity was demanded by the American Government, and for a time considerable apprehension as to the result was felt. On *April 9th*, 1888, it was announced in Madrid that an Agreement had been come to, on the intervention of Mr. Kirby Green (England) and Signor Cantagalli (Italy), between Mr. Reed Lewis, the American Consul at Tangier, and the delegates of the Sultan, Muley Hassan, to refer the dispute to an ARBITRAL COMMISSION, Mr. Lewis, if necessary, to name an umpire, who it was anticipated would be Signor Cantagalli. The dispute was apparently settled in May, but broke out again more bitterly in October. The matter was finally submitted to the decision of Arbitrators, Italy (that is Signor Cantagalli) being chosen Umpire. The result has not been ascertained.

References: Michel Revon, p. 319; *The Annual Cyclopædia (American)*, 1888; *Times*, April (esp. April 10th), 1888, October 13th, 1888; *Herald of Peace*, May, 1888, p. 61; *Hazell's Annual*, 1890, p. 422.

142. **FRANCE and HOLLAND, in 1888.** *Boundary Dispute.* This was in regard to the frontier districts between Cayenne and Surinam, *i.e.*, French Guiana and Dutch Guiana. The matter assumed importance because of the discovery of goldfields in the disputed territory. It was referred, on *November 29th*, 1888, to the decision of an ARBITRATOR. The Czar of Russia was chosen by common consent, but declined on the ground that the terms

of the reference were too narrow. By a new Convention, signed April 28th, 1890, the scope of the reference was enlarged, and the Czar accepted the office of Arbitrator, after having received a formal assurance from the two Governments that his decision would be accepted as final. He appointed a Commission to examine the subject in controversy, and his *Award* was given at Gatchina, on May 25th, 1891, in favour of Holland, but without prejudice to rights of French settlers in the disputed territory.

References : N.R.G., 2me Série, XVI. 730, XVIII. 100 ; De Card, pp. 91-97, 232-235 ; State Papers, LXXVIII. 1018, LXXIX. 795 ; Journal de Droit Int. privé, 1890, pp. 761, 922 ; Revue de Droit Int., 1891, p. 81, 84. 529, 1894, p. 47, etc. ; Revue pratique de Droit Int. privé, 1891, p. 157 ; Memorial Diplomatique, 30 Mai, 1891, p. 340 ; 6 Juin, 1891 ; 10 Octobre, 1891 ; Le Soir, 12 et 14 Juin, 1891 ; Journal Officiel Français, 19 Avril, 1888, 13 Août, 1889 ; 13 Mai, 17 Août, 1890 ; Méryghac, 104-110 ; Revon, pp. 322, 323 ; Pandectes Françaises, No. 96 ; Pradier-Fodéré, No. 2605, 262, etc. ; Gaspar Toro, Notas, etc., pp. 154, 155 ; Dreyfus, p. 183 ; Moore, V. 4866-4870 ; P.I., pp. 328-329.

143. DENMARK and the UNITED STATES, in 1888. *Seizure and Detention of Ships.* This referred to the claim of Messrs. Carlos Butterfield & Co., an American firm, against the Danish Government, arising out of the seizure of two American ships, the "Ben Franklin" and the "Catherine Augusta," at St. Thomas, in the West Indies, in the years 1854-1855. By a *Convention*, signed December 6th, 1888, the case was submitted to the ARBITRATION of Sir Edmund Monson, the British Ambassador at Athens, whose *Award* was given in favour of Denmark, January 22nd, 1890. The claim was wholly rejected.

Reference : N.R.G., 2me Série, XV. 790 ; For. Rel., U.S., 1889, pp. 151, 158 ; Revue de Droit Int., XXII., 1890, p. 360 et suiv. ; Mémoire présenté par le Gouvernement Danois à Sir E. Monson ; S.P., p. 4 ; Méryghac, pp. 122-124 ; Revon, pp. 320-322 ; Dreyfus, pp. 184, 185 ; De Card, pp. 128-131 ; Brit. and For. State Papers, LXXXII. 756 ; Moore, V. 4710, 4711 ; P.I., pp. 329-332.

144. COSTA RICA and NICARAGUA, in 1889. This Agreement to arbitrate referred exclusively to the excavation of the Inter-oceanic Canal, and to a question of the interpretation of the Treaty of April 15th, 1858, subsidiary to that which had formed the subject of the reference of December 24th, 1886, and the Award of March 22nd, 1888. It arose out of a contract which the Government of Costa Rica had entered into on July 31st, 1858, with the *Association del Canal de Nicaragua*. By a *Convention*, signed at San José, January 10th, 1889, the two Governments agreed to submit this new difference also to the President of the United States ; but as the ratifications were not exchanged before April 30th, the time stipulated in the Treaty, both parties considered that the reference had fallen through.

References : Memoria de la Secretaria de Relaciones Exteriores. Costa Rica, 1889 ; Brit. and For. State Papers. XLVIII. 1049 ; Revon, p. 320 ; P.I., pp. 332, 333.

145. GERMANY and GREAT BRITAIN, in 1889. *Disputed Territory.* This was a case for the settlement of a dispute between the British East Africa Company and the German Company of Witu, in regard to rights as to the farming of customs, and the administration of the Island of Lamu, East Coast of Africa. By an *Agreement* come to in April, 1889, which has apparently not been published and the exact date of which is, therefore, unknown, it was referred to Baron Lambertmont, Belgian Minister of State. His *Award*, given at Brussels August 17th, 1889, was in favour of Great Britain, and was accepted by both Governments and published with their consent.

References : Moniteur Belge du 28 Août 1890, p. 2461 ; Dreyfus, p. 183 ; De Card, p. 104-109 ; Revue de l'Inst. de Droit Int., 1889, XXI. 354 ; 1890, pp. 49, 349-359, 587, etc. ; Hertslet, Map of Africa, etc., II. 630-641 ; Baron Lambertmont, Letter, February 5th, 1897 ; Méryghac, pp. 124, 125 ; Moore, V. 4940-4947 ; P.I., pp. 335-340.

146. ARGENTINE REPUBLIC and BRAZIL, in 1889. *The Misiones Territory.* This was a question of boundaries which had been a subject of contention for more than a century and involved the ownership of a tract of country covering 11,823 square miles. It was referred to Benjamin Harrison, President of the United States, by a *Treaty* of September 7th, 1889, and settled by his

successor, President Cleveland, who consented to act, June, 1893. His *Award*, which was in favour of Brazil, was, on February 5th, 1895, delivered to the representatives of the contending parties. It was the occasion of great rejoicing at Rio de Janeiro, while it was heartily accepted by Argentina, telegrams of congratulation being exchanged between the two countries.

References: Relatorio do Ministerio das Relações Exteriores, 1891-1892, p. 40; 1895, Anexo I. p. 5; For. Rel., U.S., 1892, pp. 1-18; 1895, p. 1; Memoria de R.E., Argentina, 1895; Calvo IX., X.; Revon, p. 320; Gaspar Toro, Notas, etc., pp. 169-171; Moore, II. 1969-2026, V. 4688, 4689; P.I., pp. 340-342.

147. **CONGO and PORTUGAL, in 1890.** *Frontier Disputes.* By two identical *Notes*, one dated from *Brussels* and the other in *Berne*, on *February 7th*, 1890, the parties interested applied to the Swiss Federal Council to accept the office of eventual ARBITRATOR in order to decide any differences that might arise between them during the settlement of their frontiers in Africa. By a note dated February 18th, 1890, the Swiss Federal Council replied in the affirmative. It was not, however, called upon to fulfil its functions because the difficulties that arose were settled directly between the Contracting Parties, by a Convention signed at Brussels May 25th, 1891.

References: Feuille Fédérale, Suisse, 1890, I. 644; Rapport du Conseil Fédéral, 1891, pp. 30, 126; Moore, V. 5041; P.I., pp. 617, 618.

148. **CHINA and GREAT BRITAIN, in 1890.** *Reserved Questions.* These were questions relating to Sikkim and Tibet—facilities for trade, pasturage, and official communications, which were reserved for discussion under Arts. 4, 5, and 6 of a *Convention*, signed at *Calcutta, March 17th*, 1890. By Art. 7 of this Sikkim-Tibet Convention these were referred to a JOINT COMMISSION which met and, after due discussion, formulated, in nine Articles and three General Articles, Regulations which were signed at Darjeeling December 5th, 1893.

References: Parl. Papers [C. 7312], Treaty Series No. 11, 1894; *Times*, August 4th, 1903.

149. **ITALY and PERSIA, in 1890.** *Customs Dispute.* A claim was made by M. G. Consonno, an Italian subject, against the Persian Customs for confiscation of goods at Recht in November, 1882. By a *Protocol*, signed at *Teheran, June 5th*, 1890, it was referred to Sir Wm. White, the British Ambassador at Constantinople, as ARBITRATOR. His *Award*, given at Therapia, June 12th, 1891, was to the effect that the goods be retained by the Persian Government, that it pay to the owner, M. Consonno, 78,000 francs, and that the two Governments pay the expenses between them.

References: Moore, V. 5019, 5020; P.I., pp. 342, 343.

150. **GERMANY and GREAT BRITAIN, in 1890.** *Boundary of Walfisch Bay.* The Port or Settlement of Walfisch Bay, South-West Africa, was taken possession of by Great Britain on March 12th, 1878. On September 5th, 1884, the West African coast from 26 degrees south latitude up to Walfisch Bay, and from there northward to Cape Frio, was taken under the protection of the German Empire. By an Agreement, signed at Berlin, *July 1st*, 1890, it was stipulated (Art. 3) "that delimitation of the Southern boundary of the British territory of Walfisch Bay is reserved for Arbitration, unless it shall be settled by the consent of the two Powers within two years from the date of the conclusion of this Agreement." The settlement had not taken place in July, 1894; we do not know whether it has since.

References: Hertslet, Map of Africa, etc., I. 358-360, II. 646; Hazell's Annual, 1891, p. 15; Hertslet, Complete Collection, etc., XVIII. 457; P.I., pp. 601, 602.

151. **FRANCE and GREAT BRITAIN, in 1890.** *Niger and Gold Coast Boundaries.* By a *Declaration*, exchanged between the British and French and signed at *London, August 5th*, 1890, a JOINT COMMISSION was appointed, two on each side, in order to settle the details of the boundary line between their possessions in West Africa. This instrument was approved by the two Governments September 14th, 1891. The Commission, which consisted of Messrs. E. H. Egerton (later E. C. H. Phipps) and J. A. Crowe, and MM. G. Hanotaux and J. Haussmann, met in Paris, and by an Agreement, signed June 26th, 1891, laid down

instructions, both for the Technical Commissioners appointed to delimit on the spot the middle and upper Niger Districts, and also for those to do the same on the Gold Coast. The latter Commission having failed in its task, the Special Commission, by another Agreement, signed at Paris July 12th, 1893, fixed the line of frontier in that region. This "Arrangement" was accepted by the two Governments "as completing and interpreting Sect. 1 of Art. 3 of the Agreement of August 10th, 1889, which concerns the delimitation of the British and French Possessions of the Gold Coast, and the concluding paragraph of the Agreement of June 26th, 1891," dealing with the same.

References : Parl. Papers, Treaty Series, No. 13, 1893; Hertslet, Map of Africa, etc., II. 572-574, 589-591.

152. FRANCE and GREAT BRITAIN, in 1890. *Boundary Settlement.* This was in reference to the sphere of influence of France to the South of her Mediterranean Possessions, up to a line from Say, on the Niger, to Barrawa, on Lake Tchad, drawn in such a way as to comprise all that fairly belongs to the Kingdom of Sokoto. By the Anglo-French *Agreement*, signed at London, August 5th, 1890, it was referred to a SPECIAL JOINT COMMISSION, consisting of two Commissioners from each country, who were to meet at Paris "in order to settle the details of the above-mentioned line." This Agreement was approved by the British and French Governments, September 14th, 1891. The Commission, as related in another connection, met, and, June 26th, 1891, "an Agreement was signed at Paris by the Commissioners thus appointed, giving *their decision*" in a general form leaving the delimitation to be completed by a special Technical Commission.

References : Hertslet, Complete Collection, etc.; Map of Africa, etc., II. 572, 573; Hazell's Annual, 1891, p. 14; Statesman's Year Book, 1897, p. 194.

153. GREAT BRITAIN and UNITED STATES, and PORTUGAL, in 1890. *Railway Concessions.* In the summer of 1889 the Portuguese Government seized the DELAGOA BAY RAILWAY, which was constructed under a concession granted to Mr. Edward MacMurdo, an American citizen, by the Portuguese Government, and annulled its charter. The object of the Arbitral Reference was to determine the Amount of Compensation. By identical notes addressed to the President of Switzerland on August 13th, 1890, that country was asked to appoint three eminent Swiss Jurists, as ARBITRATORS. M. Joseph Blaesi, M. Andreas Heusler, and M. Charles Soldau, were named as Arbitrators by President Ruchonnet, September 15th, 1890. A Protocol to govern and regulate the submission was signed June 13th, 1891, and the Commissioners held their first meeting at Brunnen, August 3rd, 1891, when they drew up rules of procedure, and made other arrangements for the conduct of the Arbitration. All the pleadings were filed by the parties interested, and all the proofs laid before the Tribunal, prior to March 31st, 1896. On that day an expert was appointed, and the number of experts was increased to three on May 13th, 1896. The experts returned from Africa, and were said to have made their report, prior to December, 1899; but the Award of the Tribunal was not given until March 29th, 1900. By this *Award*, which was unanimous, Portugal was ordered to pay to the United States and Great Britain 15,314,000 francs (Swiss currency), in addition to the £28,000 paid on account in 1890, together with interest at the rate of 5 per cent. per annum from June 25th, 1889, up to the day of payment. At noon, November 21st, 1900, the amount of the Award, reaching nearly a million pounds, was paid at the Bank of England to Mr. W. L. F. G. Langley, for England, and Mr. Henry White, for the United States.

References : Parl. Papers [C. 5903], Africa No. 1, 1890, etc.; Sentence Finale du Tribunal Arbitral du Delagoa (200 pp.), Berne, 1900; MSS. Dept. of State, U.S.; S.P., p. 4; Revon, p. 320; Dreyfus, pp. 187, 188; Hazell's Annual, 1891, pp. 207, 536; 1892, 231; Moore, II. 1865-1899; P.I., pp. 397-410.

154. GREAT BRITAIN and HAYTI, in 1890. *Various Claims.* These were claims arising on or after August 5th, 1888, of British subjects against Hayti for supplies, loans, damages and injuries, and services. By a *Protocol*, concluded in 1890, it was agreed to submit these claims to a MIXED COMMISSION,

consisting of a British subject, a Haytian citizen, and an Umpire, to sit at Port-au-Prince. This Mixed Commission was specially empowered to decide regarding the fires at Port-au-Prince on July 4th and 7th, 1888. The Commission thus provided for was in session at that city in July, 1892, but the result has not been ascertained.

References: U.S. MSS., No. 102, Dip. Series, July 22nd, 1892; Moore, V. 4947, 4948.

155. **FRANCE** and **HAYTI**, in 1890. *Similar Claims* against the Haytian Government on the part of French subjects. Under a *Protocol* similar in terms, these were adjusted by a MIXED COMMISSION at Port-au-Prince. This Commission also was in session in July, 1892.

References: Moore, V. 4864, 4865.

156. **FRANCE** and **VENEZUELA**, in 1891. *Denial of Justice*. The question at issue involved the responsibility of the Venezuelan Government in a private lawsuit—that of a French contractor, M. Antoine Fabiani, with his wife's relatives. The verdicts of the Venezuelan Law Courts had been given in his favour, but the authorities placed obstacles in the way of his obtaining their awards, for which he demanded an indemnity. After exhausting, during the years 1867-1885, all ordinary means of procuring justice, the claimant secured the intervention of the French Government, and by a *Convention*, signed at Caracas, February 24th, 1891, the case was referred to the President of the Swiss Confederation, who was authorised, by the Federal Council, to accept the post of ARBITRATOR under a *Convention*, November 1st, 1892. The *Award* of the Federal Council, which was given on December 30th, 1896, by President Adrien Lachenal, recognised the justice of Fabiani's claim, and fixed the indemnity which the Venezuelan Government had to pay him at 4,346,656.51 francs, instead of 46,000,000, as demanded. This Arbitration required the solution of numerous points involving questions of both public and private International Law and Civil Law; and the *Award*, which adduces ample explanations valuable for the guidance of Arbitrators, will probably be classed as a document of the highest international value.

References: Différend Franco-Vénézuélien Jugement Arbitral, Genève, impr. centrale; N.R.G., 2^{ne} Série, XX. 705; Moore, V. 4878-4915; P.I., pp. 343-369.

157. **FRANCE** and **GREAT BRITAIN**, in 1891. *Fishery Dispute*. The French fishery rights on the Coast of Newfoundland date back to the Treaty of Utrecht, of March 13th, 1783, and have been the subject of a number of Treaties and the cause of many disputes since. By an Arrangement between the two Governments, signed on March 11th, 1891, it was referred to an ARBITRATION COMMISSION of seven, two, representatives of each Government, and threespecialists. These latter were: M. de Martens, Professor of Law at the University of St. Petersburg; M. Rivier, formerly Member of the Supreme Court of Brussels, and President of the Institute of International Law; and M. Gram, Swiss Consul-General in Norway. The Colonists and the Government of Newfoundland, however, strenuously objected both to the former *modus vivendi* and to Arbitration. France, too, declined to proceed with the Arbitration. Consequently nothing came of the Agreement, and the difficulty has continued, threatening at intervals, one acute stage after another, until it was finally settled by the Anglo-French Agreement, signed at London, April 9th, 1904.

References: J. Cruchon, Annales de l'Ecole libre des sciences politiques, 1891, pp. 488-497; Geffehen, Revue de Droit Int., 1890, pp. 217-220; Archives diplomatiques, 1891, II. 103, III. 260, IV. 59; Livre Jaune de 1891; Supplément au journal *le Temps*, du 17 Mars 1891; Memorial Diplomatique, 28 Mars 1891 et 21 Mai 1891; Ronard de Card, 136-153; Reyon, pp. 323-326; Dreyfus, pp. 186, 187; Parl. Papers [C. 6703]; Moore, V. 4939; P.I., p. 369.

158. **GREAT BRITAIN** and **PORTUGAL**, in 1891. *Differences in East Africa*. On June 11th, 1891, a *Convention* between these two Powers was signed at Lisbon, and, by this, Arbitral provisions were made for questions and difficulties which might arise between them in the neighbourhood of the Zambesi in South Africa.

(1) By Art. 4 a BOUNDARY COMMISSION was appointed, as related later.

(2) Art. 9 provided that "for deciding on the validity of mineral concessions

on the frontier, south of the Zambesi, a TRIBUNAL OF ARBITRATION is to be named by common agreement."

(3) Art. 11 stipulated that differences of opinion between the two Governments in regard to the execution of their respective obligations, arising out of their arrangements in regard to trade and navigation, shall be referred to the ARBITRATION of two experts, who shall, in case of difference, select an umpire, whose decision shall be final, but if they cannot agree on an umpire, the selection shall be made by a neutral Power to be named by the two Governments.

(4) Freedom of Trade and Navigation was extended to the Zambesi, and, by Art. 13, any questions arising shall be referred to a JOINT COMMISSION, and in case of disagreement, to ARBITRATION.

(5) Article 15 provides that questions relating to the telegraphic lines shall be submitted to the ARBITRATION of the experts appointed under Art. 11; and that sites, price, and regulations connected with the land leased at the Chinde Mouth of the Zambesi shall be arranged by a Mixed Commission of three—one named by each, and the third by a neutral Power to be named by them—the decision of the majority to be final.

The ratifications of this Treaty were exchanged at London, July 3rd, 1891. It is not known in all cases what has been done to carry out these provisions.

References: Parl. Papers [C. 6379], Africa No. 5, 1891; [C. 6495] Africa No. 7, 1891; [C. 6375], Portugal No. 1, 1891; Hertslet, Complete Collection, etc., XIX, 777; Hazell's Annual, 1892, pp. 15, 17, 609-611; Brit. and For. State Papers, LXXXIII. 833-894; Hertslet, Map of Africa, etc., II. 731-742; P.L., pp. 370, 371.

159. ITALY and PORTUGAL, in 1891. *Action of Port Authorities.* This case involved the claims of an Italian subject, Michelangelo Lavarello, against the Government of Portugal for damages alleged to have been caused by the Sanitary Authorities of St. Vincent, Cape Verde, by refusing pratique to the steamer "Adria," on August 28th, and again on October 16th, 1884. By an *Arbitration Convention*, signed at *The Hague, September 1st, 1891*, this was referred to "a Jurisconsult appointed by the Government of the Netherlands." Dr. Jean Heemskerck was appointed ARBITRATOR, and on March 12th, 1893, gave his *Award* to the effect that the claim was not well founded, except in part, for which the sum of 12,347.68 lire, with compound interest from September 1st, 1891, the date of the Submission, was adjudged to the heirs and assigns of the late Signor M. A. Lavarello. The total claim was for a sum of 164,188.20 lire.

References: Negocios externos, Documentos apresentados ao Cortes, 1891, Secção II., p. 63, and 1893, Secção III.; Moore, V. 5021-5034; P.L., pp. 411-420.

160. UNITED STATES and VENEZUELA, in 1892. *Seizure of Ships.* This case referred to a claim, originating in certain transactions in Venezuela on the part of the factions disputing for power in 1871 and 1872, concerning the seizure on the Orinoco, detention, and employment for war purposes in the Venezuelan Civil War, of certain steamships belonging to an American Company (the Venezuela Steam Transportation Company of New York, which was formed on May 14th, 1869), and the imprisonment of their crews, American citizens. After a diplomatic correspondence of twenty years, it was, by a *Convention*, signed at *Caracas, on January 19th, 1892*, referred to a MIXED COMMISSION, consisting of three Commissioners, one from each of the Contracting Parties, and a third belonging to neither, who was to be chosen by the other two, or in default by the Belgian or Scandinavian Minister. The Commission, which was to give its decision within three months, met at Washington on October 27th, 1894. The Commissioners were Mr. Noah L. Jeffries, Señor José Andrade, and the Umpire Señor Don Mutiás Romero, Mexican Minister at Washington, who resigned and was succeeded by Mr. A. Grip, Minister of Norway and Sweden. An *Award* was made at Washington March 26th, 1895, in favour of the United States, from which Señor Andrade dissented, and published a solemn protest against it. The amount awarded was 141,500 dollars, without interest.

References: N.R.G., 2me Série, XXII. 263; Documentos (relating to the case), Publicacion Oficial, Caracas, 1890; Dip. Cor., U.S., 1848, Part 2, p. 934, etc.; Congress Papers, U.S., 50 Cong., etc.; De Card, pp. 170, 171; Dreyfus, p. 183; Revue de Droit Int., 1891, pp. 76, 83; S.P., p. 4; Moore, II. 1693-1732, III. 2238, 2239, V. 4818-4820; P.L., pp. 420-422.

161. GREAT BRITAIN and UNITED STATES, in 1892. *The Behring Sea Seal Fisheries.* The question of jurisdictional rights in the Behring Sea was one that reached as far back as the Imperial Ukase, or Edict, of July 8th, 1799, by which Paul I. of Russia granted to the Russian-American Company its first charter. The differences arising therefrom in connection with the seal fisheries reached an acute stage through the seizures of ships by American cruisers in the years 1886, 1887, and 1889. In consequence, a *Convention* was signed at *Washington, February 29th, 1892*, by which all differences arising in connection with the Fur Seal Fishery were referred to a COMMISSION of seven members—two to be chosen by each Party, and one each by France, Italy, and Norway and Sweden. The Commissioners chosen were: Baron de Courcel, representing France (President of the Court); Lord Hannen and Sir John Thompson, Great Britain; Judge John T. Harlan and Mr. J. T. Morgan, United States; the Marquis Visconti Venosta, Italy; and Herr Gregers Gram, representing Sweden and Norway. The Court met in Paris, on February 23rd, 1893, and, on August 15th, 1893, gave a divided *Award*, mainly in favour of Great Britain:—Against the United States, claim of pelagic ownership; in favour of the United States, admission of the necessity for regulation of pelagic sealing and of their proposals for doing so. The damages claimed by Great Britain amounted to 542,169.26 dollars, without interest. A sum of 425,000 dollars was paid, which was dispensed by a Mixed Commission (which see).

References: Parl. Papers [C. 7107], U.S., No. 1, 1893, etc.; Brit. and For. State Papers; N.R.G., 2me Série, XVIII. 592, XXII. 557; Hertslet, Complete Collection, etc., XIX. 925; Papers relating to Behring Sea Fisheries, U.S.; Congress Papers, U.S., Fur Seal Arbitration, 12 vols.; De Card, pp. 153-158; Corsi, Arb. Int., p. 208, etc.; Dreyfus, pp. 188, 189; Méryghac, pp. 126-141; Bonfils, p. 584, etc.; Despagnet, p. 708; Revon, p. 320; Revue de Droit Int., 1890, p. 229, 1891, p. 238, 1893, p. 432, 1894, pp. 49, 386; Journal de Droit Int. Pr., 1893, p. 1259, 1894, p. 36; Memorial Dip., January 10th, 1891, p. 20; Revue Gen. de Droit Int. Pub., 1894, p. 35; De Martens, *Traité de Droit Int.*, I. 465; State Papers For. Rel., U.S., 1890, 1891; S.P., p. 4; Moore, I. 755-931, II. 2123-2131, V. 4759-4767; P.I., pp. 422-437, etc.

162. FRANCE and GREAT BRITAIN, in 1892. *Greffülhe Concessions.* The exclusive mintage of the Zanzibar coinage had been conceded to M. Henri Greffülhe for a period of twenty years, by a contract entered into between him and the Sultan, on December 14th, 1883. In 1886, however, the latter granted concessions to German and English East African Companies, and they believed that by the terms of their charters they were authorised to introduce into the territories held by them, money of their own coining. The French Government protested against this illicit action to the English Government, which, on establishing its protectorate over Zanzibar, had undertaken to respect and protect the rights of French subjects. The Arbitration was to ascertain the amount (if any) of damages due to M. Greffülhe, who claimed £40,000 for the loss sustained and £60,000 for the revision of the Contract. On *June 11th, 1892*, Mr. Richard Biddulph Martin, M.P., was invited by both Governments to act as ARBITRATOR, without power of appeal. His *Award* was given July 19th, 1893, in favour of M. Greffülhe, and adjudged "due to M. Greffülhe and his associates for the loss" they sustained, "and for the cancelling and surrender of the Contract, the sum of £23,500."

References: H. B. Martin, *Award and Communications* of January 19th, 1897, and July 5th, 1904; H. La Fontaine, *Histoire Sommaire*, etc., No. 135, pp. 57, 58; P.I., 618; Moore, V. 4939.

163. CHILI, FRANCE, and PERU, in 1892. During the war between Chili and Peru, by a "Supreme Decree" of February 9th, 1882, Chili directed the sale of a million tons of guano from deposits situated in Peruvian provinces conquered by her. By Art. 13 of the Decree it was provided, that the money for which the guano was sold, should be equally divided between the Chilian Government and Peruvian Bondholders; by Art. 14 that a Board of Arbitrators should be constituted to liquidate the claims of the creditors in question; and by Art. 15 that, if within a period of 180 days, the Arbitrators shall not be appointed by common accord with the creditors, Chili would appoint them directly. Finally, by Art. 16 of the Decree it was declared that the Chilian Government would deposit a sum equivalent to the moiety destined for the Peruvian creditors in the Bank of

England. The Treaty of Peace, signed at Ancon, October 20th, 1883, in Arts. 4, 6, and 7, confirmed the Decree of February 9th, 1882. The Arbitrators, however, were not appointed by common accord within the prescribed period, nor did Chili afterwards appoint them alone. On the other hand, following after an Agreement, signed between them at Santiago, January 8th, 1890, called the Elias-Castellon Protocol, in which the previous stipulations for Arbitration were not mentioned, Chili and Peru found themselves in disagreement as to the effect of that omission. Meanwhile France was pressing upon Chili the payment of certain claims connected with the matter. By a *Protocol*, concluded at *Santiago, July 23rd, 1892*, it was decided between the Governments of France and Chili to refer the matter to the ARBITRATION of the President of the Swiss Federal Tribunal, or to that body in its entirety. The Peruvian Government hereupon disputed their competency to settle it without its intervention. In June, 1893, the three contending parties addressed to Switzerland a formal request for Arbitration, which was acceded to March 24th, 1894. The Arbitral Court was then composed of three members of the Federal Tribunal, viz., Dr. Hafner, President, and Judges Broye and Morel, who were to decide the procedure to be adopted, and all questions which should arise, and to determine all the conditions of the Arbitration. These terms were accepted by all the interested Governments, including those of Chili, France, Great Britain, and Peru, and the Tribunal was duly constituted. Its *Award*, which covered 241 pages of folio, was given at Berne on November 17th, 1901, in favour of the claimants, and against the Chilian Government. The Court at its close consisted of the following judges: Doctors Hafner, Saldate, and Lienhard.

References: Mem. del Ministerio de R.E., Peru, 1891 app., 1896, pp. 402, 460, 479; Peru, Coleccion de los Tratados, IV. pp. 656, 720; Recopilacion de Tratados, etc., Chili, 1894, II. 366; Arbitrage Franco-Chilien: Memoire, etc. (Lausanne, 1897, 2 vols.); Rapport du Département Fédéral des Affaires Etrangères (de Suisse), etc., en 1893, p. 30, 1894, pp. 39; Memoria del Ministro, etc., de 1894; Gaspar Toro, Notas, etc., pp. 125, 126; U.S. For. Rel., 1883, pp. 731, 732; Moore, V. 4863, 4864; P.I., pp. 594-601.

164. **CHILI** and **UNITED STATES**, in 1892. *Mutual Claims*. These, amounting to 385 in number, mostly arose out of acts committed in the course of the wars of 1879-1882 and 1890-1891. (a) By a *Convention*, signed at *Santiago, August 7th, 1892*, they were referred to an ARBITRAL COMMISSION of three members, one chosen by the President of each Republic and a third by common agreement, or in default of this by the President of the Swiss Confederation. The Commission, as thus appointed, consisted of two Arbitrators, Mr. John Goode (U.S.) and Mr. Domingo Gana, the Chilian Minister at Washington, and an Umpire, Dr. Alfred de Claparède, Swiss Minister at Washington, who was appointed by the Swiss Federal Council in the latter capacity. The Commission met at Washington, under the presidency of the Umpire, and dealt with claims amounting to £3,877,000, allowing only £48,000 (240,564.35 dollars) against Chili, sixteen claims involving a total of £1,800,000 not having been dealt with, and two against the United States. It held its last session, the time for which it was appointed having expired, April 9th, 1894, and a *Final Award*, together with a comprehensive report of its proceedings were presented to Mr. Gresham, Secretary of State, on April 30th, 1894. (b) The unsettled claims had still to be dealt with, and by another Convention, signed at Washington, May 24th, 1897, and ratified March 12th, 1900, the Convention of August 7th, 1892, was revived and the Commission reappointed. In July, 1900, the President of the Swiss Confederation appointed Dr. J. B. Pioda, the new Swiss Minister at Washington, as Umpire, in place of his predecessor, Dr. Alfred de Claparède, who had been accredited to Vienna. This is the latest information we possess.

References: Am. State Papers, For. Rel., 1888, I. 180; N.R.G., 2me Série, XXII. 339; Printed Minutes of the Commission; Brit. and For. State Papers, LXXXIV. 600-604, XCII. 1123-1125; Corr. Bimen., June 25th, 1900; S.P., p. 5; Moore, II. 1469-1484, III. 2231-2255, 2938, etc., IV. 3255, etc., V. 4691-4694; P.I., pp. 474-478.

165. **ECUADOR** and **UNITED STATES**, in 1893. *Alleged Illegal Arrest*. An American citizen, Mr. Julio Romano Santos, of Bahía, had been arrested in

December, 1884, on a charge of complicity in a revolutionary movement, and imprisoned in Guayaquil. After various negotiations the matter was, by *Convention*, signed at *Quito*, *February 28th*, 1893, submitted to Arbitration, the British Minister at *Quito*, Mr. Mallet, being requested to act as ARBITRATOR, or, since he was on the point of removing, that he or his successor should name an Arbitrator. Mr. Jones, who succeeded him, nominated Mr. Alfred St. John, British Consul at *Callao*, as Arbitrator. Before he had completed his examination of the evidence submitted to him, the parties agreed upon an award of 40,000 dollars to M. Santos. Mr. St. John agreed to put this arrangement on record, and stated in his *Award*, given at *Lima* September 22nd, 1896, that the parties having solicited sentence in favour of the claimant, he decided that Ecuador should pay 40,000 dollars in gold to the United States Government, in four half-yearly dividends of 10,000 dollars.

References: N.R.G., 2me Série, XXII. 375; Am. State Papers For. Rel., 1896, pp. 108, 109; Brit. For. Office Communication, February 11th, 1897; Brit. and For. State Papers, LXXXVI. 1174-1177, LXXXVIII. 552. *Annuaire de Législation Etrangère*, 25 Année, Paris, 1896, p. 821; Gaspar Toro, *Notas*, etc., p. 126; Moore, II. 1579-1592, V. 4713-4715; S.P., p. 5; P.L., pp. 449-451.

166. AFGHANISTAN, GREAT BRITAIN, and RUSSIA, in 1893.

Boundary Differences. This dispute arose with reference to the N.W. Frontier of Afghanistan, and related to an alleged infraction of the stipulations of Clause 3 of Protocol 4, of July 22nd, 1887, which determined the use, by Afghans and Russians respectively, of the waters of the River *Kuskh* for irrigation and other purposes. In 1893 the two Governments came to an understanding to refer the dispute to an Anglo-Russian JOINT COMMISSION, and on March 28th, 1893, instructions were sent to Colonel Yate, Her Majesty's Representative at *Penjdeh*, who was appointed British Commissioner. The Russian Commissioner was M. V. Ignatieff. The work occupied three and half months and was completed on September 3rd, 1893.

References: Parl. Papers [C. 5235] and Information supplied by the Government India Office, London, June 15th, 1904.

167. CHILI and GREAT BRITAIN, in 1893. *Results of Civil War.*

A number of claims of British subjects were made against Chili, for damages incurred in the Chilian Civil War of 1891. These were referred by a *Convention*, concluded at *Santiago*, *September 26th*, 1893, and ratified, at the same place, April 24th, 1894, to a MIXED COMMISSION, to consist of a member appointed by each Government, and a third appointed by both jointly, but belonging to neither, and in case of their disagreement, by the King of the Belgians. Her Britannic Majesty appointed Mr. Lewis Joel, who was succeeded in December, 1894, by Mr. Alfred St. John, British Consul at *Callao*; the President of Chili appointed Señor Luis Aldunate, and the King of the Belgians named Mr. Camille Janssen. The Mixed Commission held their first meeting in *Santiago*, elected Mr. Janssen President, and adopted rules of procedure, October 24th, 1894, but began the work of adjudication August 28th, 1895. There were 103 claims, amounting to £259,431. These were variously dealt with. Sums amounting to £17,852 were awarded, and a lump sum was ultimately paid by the Chilian Government for all claims outstanding at the last session of the Commission, March 6th, 1896.

References: N.R.G. 2me Série, XXI. 649, 652; Hertslet. Complete Collection, etc., XIX. 142; State Papers For. Rel., U.S., 1896, pp. 35-38; Brit. and For. State Papers, LXXXV. 22-25, LXXXVI. 133, 172, 173; *Reclamaciones presentados al Tribunal Anglo-Chileno*, 1894-1896, 4 vols.; Moore, V, 4930-4936; P.L., pp. 451-459.

168. GREAT BRITAIN and SOUTH AFRICAN REPUBLIC, in 1894.

Question of Immigration. The South African Republic had, in 1885 and 1886, imposed a law regulating the immigration of Arab coolies, Malays, and Turks, which the English Government insisted was not applicable to the natives of the British East Indies, according to Art. 14 of the *Convention* signed at London by the two Governments, February 27th, 1884. By a *Letter*, written *March 21st*, 1894, the High Commissioner at the Cape accepted, on behalf of the English Government, the reference of the question to the Chief Justice of the Orange Free State.

This was accepted in turn by the Transvaal Republic, in a Resolution of the Volksraad, adopted June 11th, 1894. The *Award* of the Arbitrator was given at Bloemfontein, April 2nd, 1895, in favour of the Transvaal.

References: Groenboek, 1894, II. 92, 1899, III. 3, 22-53; P.L., pp. 459-474.

169. **HONDURAS and NICARAGUA, in 1894.** *Boundary Dispute.* The purpose of this arbitral reference was the settlement of the boundary between the two countries. Its peculiarity lies in the fact that Arbitration was in the first instance only secondary. By a *Boundary Convention*, signed at Tegucigalpa, October 7th, 1894, the demarcation of the frontiers was entrusted to a Mixed Commission, with the stipulation that in the case of disagreement between the Commissioners recourse should be had to an ARBITRAL TRIBUNAL of three members, the first and second appointed respectively by the Contracting Parties, and the third chosen by the two others from the accredited diplomatic body at Guatemala. In the case of the refusal to act of the third Arbitrator thus chosen, the questions in dispute were to be submitted to the Spanish Government, or to one of the other South American Governments. In the month of November, 1899, the Arbitral Tribunal was constituted, and the Mexican Minister was chosen third Arbitrator. The work of the Mixed Commission then began in the month of February, 1900, and proceeded normally.

References: Tratados celebrados por el Gobierno de Honduras, 1895, p. 29; Romero Giron, complemento, Apéndice III, 1896, p. 461; Gaspar Toro, pp. 144-145; P.L., pp. 478-480.

170. **CHILI and FRANCE, in 1895.** *Injuries in Civil War.* By a *Convention*, signed at Santiago, October 19th, 1894, expressed in substantially the same terms as the Anglo-Chilian Convention of September 26th, 1893, which was confirmed by an additional Convention of October 13th, 1895, it was agreed, that the claim of French citizens against Chili, growing out of the Civil War in the latter country, of 1891, and the subsequent events, should be referred to a MIXED COMMISSION of three members. But by an Agreement, signed at Santiago, February 2nd, 1896, the two Governments *settled* the claims *directly*, and so dispensed with the Arbitration. The sum total of the claims was upwards of 1,000,000 francs. The French Government accepted in discharge of them the sum of £5,000, or about 125,000 francs.

References: U.S. MS. Despatches from Chili. No. 47. October 24th, 1895: Am. State Papers, For. Rel., 1896, p. 42; N.R.G. 2me, Serie, XXIII. 152, 155, 231; Moore, V. 4862, 4863; P.L., pp. 480-485.

171. **GREAT BRITAIN and PORTUGAL, in 1895.** *Boundary Dispute.* This was a question of differences with regard to the frontiers of Manica-land. By the Treaty, signed at Lisbon, June 11th, 1891, and ratified July 3rd, 1891, which defined the spheres of influence of both countries, it was agreed that the limits should be decided by an Anglo-Portuguese Commission, with Umpire if necessary. In the month of June, 1892, the Commissioners of the two Governments endeavoured to trace the boundary line according to the stipulations of the Treaty, but a difference having arisen between them, the settlement was referred to their Governments. By a *Declaration*, signed in London January 7th, 1895, the question was submitted to the Italian Government, by whom Count Vigliani, a distinguished lawyer, who was Minister of Justice and President of the Italian Court of Appeal, was appointed ARBITRATOR. His *Award* was given at Florence on January 30th, 1897, and is a long and valuable document. The decision, which fixed the delimitation of the frontier, was partly in favour of each. Signor Vigliani was created a G.C.M.G. by Queen Victoria in acknowledgment of the services rendered by him as Arbitrator.

References: Délimitation de la Frontière Anglo-Portugaise: Arrêt de l'Arbitre, Florence, 1897; Parl. Papers [C. 8434]; State Papers, LXXXIII. 27-41, LXXXVII. 71-74, LXXXIX. 702-751 (Award, 714); Moore, V. 4985-5015; P.L., pp. 485-504.

172. **GUATEMALA and HONDURAS, in 1895.** *Frontier Delimitation.* This question, similar to those which had arisen between Honduras and Nicaragua (October 7th, 1894), and Honduras and Salvador (January 19th, 1895), was settled in the same way. By a *Convention* signed at Guatemala, March 1st, 1895 (similar

to the above), the delimitation of the frontier was entrusted to a MIXED COMMISSION, composed of an equal number appointed by each. But a subsidiary arrangement was also made, that in the case of disagreement between its members, and the failure to reach an understanding on the part of the Governments, recourse should be had to the ARBITRATION of the President of Salvador, Nicaragua, or Costa Rica (in this order), or in default of this to the Arbitration of the King of Spain, or of the President of one of the South American Republics. What action has been taken to carry out these provisions we do not know.

References: Romero Giron, *Complemento*, etc., Apéndice III, 1896, p. 467; *Tratados Celebrados por el Gobierno de Honduras*, 1895, p. 59; Gaspar Toro, *Notas*, etc., pp. 146, 147; P.L., pp. 506-508.

173. **GUATEMALA and MEXICO, in 1895.** *Military Occupation.* This question was closely connected with that of the delimitation of the frontiers. The Guatemalan Government had occupied by force of arms the territory on the left bank of the Rio Lacantum. Although its right to the possession of this territory had been ultimately recognised, it had, nevertheless, consented to indemnify the Mexican citizens who had suffered from the occupation. By Art. 2 of a *Treaty of Arbitration and Boundaries*, signed at Mexico, April 1st, 1895, the question of indemnity was submitted to an ARBITRATOR, to be chosen by the two Parties; and by a joint request of May 26th and 28th, 1895, the Spanish Minister in Mexico was invited to act as Arbitrator. His task was completed on January 15th, 1898, when he awarded a total sum of 86,659.80 piastres, the original amount of claim having been 1,861,543.57 piastres.

References: Romero Giron, *Complemento*, Apéndice III, 1896, p. 466; *Cuestiones entre Guatemala i México, Coleccion de Articulos*, Guatemala, 1895, p. 13; *Memoria . . . Ministerio de R.E. Guatemala*, 1896, Anexo V. p. 1; *Boletin Oficial de la Secretaria de R.E. Mexico*, V. 292-316; *Tratados de Guatemala*, p. 322; Gaspar Toro, *Notas*, etc., pp. 143, 144; *Tratados y Convenciones Vigentes, Mexico*, 1904, p. 429; P.L., p. 508, 509.

174. **GREAT BRITAIN and HOLLAND, in 1895.** *Illegal Arrest.* The question in this case was that of indemnity for the ship "Costa Rica Packet," which was seized by the Dutch authorities at Ternate, in the East Indian Archipelago, November 2nd, 1891, on a technical charge of piracy, and of the arrest and detention of the captain, Mr. Carpenter. According to the terms of the *Convention*, signed at the Hague, May 16th, 1895, referring the question to an ARBITRATOR, the Emperor of Russia, in September, 1895, by request of the two Governments, named M. de Martens, Councillor of State at St. Petersburg, as Arbitrator. His *Decision*, dated February 25th, but announced March 1st, 1897, awarded £8,550, with interest at 5 per cent., from November 2nd, 1891, to be paid by the Dutch Government, together with a further sum of £250 as costs. On March 3rd, 1897, the Dutch Minister in London, Baron Van Goltstein, transmitted to the British Government, in payment of the Award, the sum of £11,082. 7s. 6d., the receipt of which was, on the same day, duly acknowledged by Lord Salisbury.

References: *Parl. Papers* [C. 8428], Commercial, No. 3, 1897; *London Times*, December 26th, 1894, and March 3rd, 1897; Moore, V. 4948-4954; P.L., pp. 509-512.

175. **HAYTI and SAN DOMINGO, in 1895.** *Frontier Delimitation.* The object of this Arbitration was the definitive delimitation of the frontier between the two States. By Art. 4 of a *Treaty*, signed on November 9th, 1874, the two parties formally engaged to settle the lines of their mutual boundary in the way most conformable to equity and to the interests of both States, and to appoint Commissioners to conclude a special *Treaty* with that object. By an *Arbitration Convention*, signed at Santiago, July 3rd, 1895, the question was referred to His Holiness, Pope Leo XIII., as Arbitrator, and Commissioners were sent to Rome to present their respective claims, and were received at the Vatican. A despatch, dated January 24th, 1897, announced that the Pope had declined to act in view of the claims formulated by the Haytians, but subsequent reports still speak of the matter as under reference to His Holiness, others that he declines to proceed because of the form of the reference. No certain information seems obtainable.

References: N.R.G., 2me Série, XXIII. 79, XXVII. 17; Moore, V. 5018; P.L., pp. 602, 603; *Letter from Dominican Consulate*, January 4th, 1897.

176. **CHILI** and **NORWAY** and **SWEDEN**, in 1895. *Results of Civil War*. This was a question of the claims of subjects of Sweden and Norway against Chili arising out of the Chilian Civil War of 1891. By a *Convention*, signed July 6th, 1895, between Chili and Sweden and Norway, and ratified and promulgated, September 16th, 1895, it was agreed to refer these to the Anglo-Chilian TRIBUNAL mentioned above. Two such claims were submitted; the Tribunal gave judgment on one of them in favour of Chili, and declared itself incompetent to recognise the other. The Records of the various claims (British and Scandinavian) and the *Awards* of the Commission were edited by Mr. Martinez, and printed by the Chilian Government.

References: Reclamaciones presentados al Tribunal Anglo-Chileno, 1894-1896, 4 vols.; Despatch No. 42, U.S., September 21st, 1895; Memoria del Ministro de Relaciones Exteriores, 1895, p. 45; State Papers, LXXXVII. 937-939; Moore, V. 4935, 4936; P.L., p. 516.

177. **BOLIVIA** and **PERU**, in 1895. *Military Occupation*. This was a claim of Bolivian Government, arising from the invasion of Bolivian territory, on three separate occasions, during the late Peruvian civil war, 1890, on Lake Tituaca, at Berenguela, and at Desaguadero. Monsignor Macchi, Apostolic Delegate to Peru, and the French, Italian, and Colombian Ministers at Lima, secured, through their interference, a reference to Arbitration. By a *Protocol*, signed at Lima, August 26th, 1895, it was agreed to refer to the Arbitration of some South American Government the question whether Peru should salute the Bolivian flag as part of the reparation for her acts, and on September 7th, 1895, a further Protocol to that effect was signed at Lima, designating Brazil as Arbitrator, or, in case of refusal, Colombia. In the month of January, 1897, the Arbitrator was officially introduced to his mission by the Peruvian Minister to Brazil, and after that questions of procedure delayed the progress of the case. The final result is not known.

References: Legacion del Peru in London, Communication February 5th, 1897; Memoria de Relaciones Exteriores, Bolivia, 1895, p. 401; Moore, V. 5041; P.L., pp. 603, 604.

178. **GREAT BRITAIN** and **NICARAGUA**, in 1895. *Injury to Property and Goods*. This case dealt with alleged personal injuries to British subjects, including Mr. Hatch, Vice-Consul at Bluefields, and others, in the Mosquito Reserve, at the time of a war between Nicaragua and Honduras in December, 1893, and, as stated in the Convention, "owing to the action of the Nicaraguan authorities in the course of the year 1894." The claim also included the seizure of the schooner "Anglia" by Nicaraguans. The British, on February 26th, 1895, sent an ultimatum claiming an indemnity of £15,500, and the cancelling unconditionally of the decrees of exile. Nicaragua submitted to the British ultimatum so far as to pay the indemnity. The rest of the ultimatum was, by a Convention, signed at London, November 1st, 1895, referred to a Mixed Commission, composed of a British Representative ("who must be well acquainted with the Spanish language"), a Nicaraguan Representative ("who must be well acquainted with the English language"), and a jurist, not a citizen of any American State. This third person, who should be President of the Commission, was to be selected by agreement between Great Britain and Nicaragua, or, failing such agreement, by the President of the Swiss Confederation. This Convention was never carried out, owing to an arrangement having been come to for the settlement of the question in dispute through the payment by Nicaragua of a lump sum, which, in February, 1897, the British Government agreed to accept.

References: Parl. Papers [C. 8103] Treaty Series No. 11, 1896; Am. State Papers For. Rel., 1894, App. 1, 234-363, 1895, 307; *Der Bond*, May 1st, 1895; *Daily News*, March 29th, 1895; *Evening Bulletin*, Philadelphia, U.S., April 18th, 1895; *New York Herald*, May, 1895; Communication from Brit. For. Office, October 17th, 1900; Hertslet, Complete Collection, etc., XX. 818; Moore, V. 4966; P.L., pp. 516-518.

179. **GERMANY** and **HAYTI**, in 1895. *Various Claims*. A communication from Mr. Smyth, U.S. Minister to Hayti, dated May 4th, 1896, conveyed the information that "in 1895 the claims of German subjects against Hayti (arising

on or after August 5th, 1888) were adjusted in the same mode as the similar Claims of British subjects and French citizens; that is, they were referred to, and settled by, a Mixed Commission which sat at Port-au-Prince.

References: Moore, V. 4916.

180. **BRAZIL and ITALY, in 1895.** *Personal Claims.* These claims, which were of various descriptions, and amounting to a considerable sum, were made by the Italian Government on behalf of a number of its subjects who had emigrated to Brazil. By a *Protocol*, signed at *Rio de Janeiro, December 3rd, 1895*, these were referred to the President of the United States as ARBITRATOR. This Protocol was supplemented by another, which was more detailed, signed in the same city on *February 12th, 1896*. This Convention, however, required the sanction of the Brazilian Congress and the approval of the Italian Government. The Congress declined to sanction; the Foreign Minister resigned, and his successor settled the matter directly by the allowance of a certain sum for all the claims covered by the Protocol. The Agreement by which this was done was signed at *Rio de Janeiro, November 19th, 1896*, and the amount allowed was 4,000 contos de reis.

References: Relatorio do Ministerio das R.E., 1896. Annexo I. 150, 156; 1897, Annexo III. 44; Brazilian Legation, London, August 2nd, 1900; Moore, V. 5018; P.L., pp. 518-520.

181. **BRAZIL and GREAT BRITAIN, in 1896.** *Annexation.* This was a case of simple MEDIATION. The Islet of Trinidad, which lies 700 miles to the East and a little to the South, of Rio de Janeiro, was formally annexed on behalf of the British Government by H.M.'s Ship "Barracouta," in January, 1895. Great excitement in Brazil followed, and sharp diplomatic correspondence took place between the two Governments. Lord Salisbury, for Great Britain, offered to refer the matter to Arbitration. Brazil refused, but ultimately the "good offices" of Portugal were accepted, and when Portugal, after due examination, had placed before the British Government her reasons for the conviction that the island belonged to Brazil, the British Government acknowledged her rights, and the island was, on September 1st, 1896, surrendered to Brazil.

References: Foreign Office. London, Communication February 11th, 1897; London Times, July 24th, 25th, 26th, August 6th, 1895; Herald of Peace, September, 1896.

182. **FRANCE and GREAT BRITAIN, in 1896.** *The Niger Convention.* By an *Agreement*, signed *January 15th, 1896*, a SPECIAL JOINT COMMISSION was appointed "to define the boundary between French and English territory in the regions west of the Lower Niger," or, more fully, "in order to draw up, in conformity with the Declarations exchanged at London on August 5th, 1890, and January 15th, 1896, a draft of definitive delimitation," etc. As the result of their labours the Niger Convention was signed at the Quai d'Orsay, on June 14th, 1898, by the Members of this Joint Commission. This Commission had been for some time sitting in Paris, and had succeeded in removing all strain and danger of conflict between the two countries. A Protocol approving the Treaty was also signed on the same day by Sir E. Monson, the British Ambassador, and M. Hanotaux, the French Minister for Foreign Affairs. In this, provision was made for the ratification of this Convention in six months, but on December 8th, 1898, a further Protocol was signed at Paris, extending the period of ratification for another six months, dating from December 14th, 1898. The ratifications were exchanged June 13th, 1899. The provisions of this Convention were completed by a Declaration, signed at London, March 21st, 1899, the ratifications of which were exchanged at Paris June 13th, 1899.

References: Parl. Papers [C. 7976], France No. 2, 1886 [C. 9334], Treaty Series No. 15, 1899; Hazell's Annual, 1897, p. 283; London Times, Daily News, Standard, etc., June 16th, 1898, also of January, 1896; Brit. and For. State Papers, XCI. 47.

183. **GREAT BRITAIN and UNITED STATES, in 1896.** On August 21st, 1894, Mr. Grestam, U.S. Secretary of State, offered as the result of a somewhat extended negotiation, the sum of 425,000 dollars in full and final settlement

of all claims under the Paris Award in the Fur Seal Arbitration. This was accepted by Great Britain, and on *February 8th*, 1896, a *Convention* was concluded at *Washington*, for the appointment of a MIXED COMMISSION, for the purpose of determining the claims of the Canadian Sealers for damages. Any cases on which the Commissioners might be unable to agree were to be referred to an Umpire to be appointed by the two Governments, or if they disagreed, by the President of the Swiss Confederation. The Commissioners appointed were the Hon. Judge G. E. King, of the Supreme Court of Canada, and the Hon. Judge W. L. Putnam, of the U.S. Circuit Court of Appeals. They were so fortunate as to reach a unanimous decision without resort to an Umpire. Their *Award* was signed on December 17th, 1897, the total amount awarded being 473,151.56 dollars. This sum was handed to Sir Julian Pauncefote, on June 16th, by Judge Day, and paid to the Marine Department, Ottawa, August 2nd, 1898.

References: Parl. Papers [C. 8101], Treaty Series, No. 10, 1896; H. Ex. Doc. 132, 53 Cong. 3 Sess.; S. Doc. 55 Cong. 2 Sess.; Hertslet, Complete Collection, etc., XX, 935; Corresp. Bimens., Berne, July 25th, 1898; Moore, I. 960, 961, II. 2123-2131, V. 4764-4767; P.I., pp. 520-526.

184. **BRAZIL and ITALY, in 1896.** *Military Requisitions.* Claims were made by Italian subjects for requisition of animals, merchandise, and valuables, which had been made by the Brazilian Authorities, in the States of Rio Grande do Sul and Santa Catarina, in the course of hostilities against the Federal troops. The Brazilian Government did not contest liability, but disputed the amount. It was agreed, by a *Protocol*, signed at *Rio de Janeiro, February 12th*, 1896, that this question should be referred to two ARBITRATION COMMISSIONS; the one for the State of Rio Grande, sitting at Porto Alegre, and the other for the State of Santa Catarina, at Florianopolis, and that they be composed respectively of the Governor of the State and the Italian Consul, with the German Consul as Umpire, if necessary. The former Commission settled 376 claims, and the latter 63. Five of these cases, however, were sent to the Umpire, and these were settled by a direct Agreement, dated June 18th, 1898, for an amount of 59,882.5 Reis.

References: Relatorio do Ministerio das R. E., 1896, Annexo I. 151; 1897, p. 150; Moore, V. 5018-5019; P.I., pp. 526-528.

185. **COSTA RICA and NICARAGUA, in 1896.** *Boundary Questions.* The boundary between these countries was, as narrated earlier, settled by the Award of the President of the United States, of March 22nd, 1888. But it was not then actually demarcated, and, subsequently, new disputes arose between the parties. By a *Convention*, signed at *San Salvador, March 27th*, 1896, through the mediation of the Government of Salvador, after war had been actually declared by Nicaragua, these were referred to a MIXED COMMISSION with an Umpire to be appointed by the President of the United States, in case of difference. This Commission consisted of two Engineers or Surveyors, appointed by each Government, for the purpose of tracing and marking the boundary, "pursuant to the provisions of the Treaty of April 15th, 1858, and the Arbitral Award of the President of the United States." The proceedings would have been those of an ordinary Delimitation Commission but for the fact that the Commissioners having disagreed, Gen. E. P. Alexander was appointed Umpire. He gave an *Award* September 30th, 1897, and, as the work proceeded, further *Awards*, as follows:—A second, at San Juan del Norte, on December 20th, 1897; a third, at the same place, March 22nd, 1898; a fourth, at Greytown, July 26th, 1899; and a fifth at Greytown, March 10th, 1900.

References: Am. State Papers For. Rel., 1896, pp. 100-102, 371; Romero Giron, Complemento, etc., Apéndice, V., 1897, p. 420; Memoria de R.E. de Costa Rica, 1897, p. 28; 1898, pp. 146-227; Memoria de R.E. de Nicaragua, 1899, pp. 228, 232; Monthly Bulletin of the Bureau of the American Republics, 1897, V. 909, VII. 877, IX. 294-298; Moore, II. 1967, 1968, V. 5074-5079; Gaspar Toro, Notas, etc., p. 149; P.I., pp. 528-539.

186. **ARGENTINE REPUBLIC and CHILI, in 1896.** *Frontier Difficulties.* For many years there existed a difference in regard to the common boundaries. By the Treaty of Peace, concluded between the two countries in Santiago, as far back as August 30th, 1855, which was ratified April 29th, 1856,

it was agreed (Art. 39), in general terms, to submit the decision to the Arbitration of a friendly Power, and, on two subsequent occasions, January 18th and December 6th, 1878, attempts were made to conclude a similar Agreement. On the intervention of the Ministers of the United States accredited to the two Governments, a Convention was signed on July 23rd, 1881, as related elsewhere. This, however, proved not to be final, and the question became complicated by fresh difficulties, arising out of the interpretation of the Treaty in relation to the San Francisco boundary. Supplementary Conventions were concluded August 20th, 1888, May 1st, 1893, and September 6th, 1895. At length, by a *Convention*, signed at *Santiago*, April 17th, 1893, the dispute was referred to a COMMISSION, Queen Victoria being requested to act as final Arbitrator, if necessary, to which request Her Majesty acceded. The difficulties continued, in a more or less acute condition, until September 13th, 1898, when the two Governments simultaneously notified the British Government that the Arbitration might commence, and that they were prepared to submit the boundary dispute to the Arbitration of Her Majesty without any reservation whatsoever. The British Tribunal appointed to act for Her Majesty consisted of Lord Macnaghten (President), Major-General Sir John C. Ardagh, and Col. Sir Thomas H. Holdich, and held its first meeting, March 27th, 1899, at the Foreign Office, London. On the death of Queen Victoria, His Majesty King Edward VII., accepted the post of Arbitrator. Statements on each side were presented to the Tribunal; Special Commissioners were appointed to visit both countries on a mission of inquiry; and His Majesty's *Award*, after a further delay of nearly two years, was given, on November 25th, 1902. It was joyfully accepted by both countries, and a Delimitation Commission was appointed to mark out the frontier on the lines of the *Award*.

References: *Tratados de Chile*, I. 227, II. 120, 331, 385; *Tratados de la Republica Argentina*, I. 402, III. 282; *Memoria de R.E. Buenos Aires* 1894, p. 65; 1896, p. 22; *Memoria de R.E. Santiago* 1897, documentos, p. 5, 1879, p. 239; *Cuestion de limites con Chile*, Buenos Aires 1878, p. 66; 1879, p. 239; *Am. State Papers*, For. Rel., 1873, I. 39; 1896, p. 32; *Gaspar Toro*, *Notas*, etc., pp. 171-176; *Brit. and For. State Papers* LXXII. 1103, LXXXII. 684, XC. 1027-1030; *Moore*, V. 4854, 4855; *P.L.*, pp. 539-544.

187. **GREAT BRITAIN and SIAM, in 1896.** *Personal Claims.* In 1891, Mr. Murray Campbell, a British subject, undertook to build a railway from Bangkok to Korat. Some friction with the authorities followed, and Arbitration was claimed. In consequence of the intervention of the British Government, an *Agreement of Reference* to Sir George Molesworth and Herr F. Lange was signed July 2nd, 1896. The Arbitrators met at Bangkok, but adjourned to London and appointed Herr van Bosse as Umpire, who gave an award which was not acceptable. A deadlock ensued. Sir Edward Clarke, K.C., at the request of the British Foreign Office and the Siamese Government, undertook to advise what was to be done. The *Agreement of Reference* to him was signed November 14th, 1899. The hearing of arguments took place from January 25th to February 10th, 1900. Sir Edward Clarke decided that the previous *Award* was null and void, and that the whole matter should be referred to an English barrister to be agreed upon between the parties. By a further *Agreement of Reference*, July 12th, 1900, it was again referred to Sir Edward Clarke, who began, on October 15th, 1900, the work of adjudication. Forty-one sittings took place before March 2nd, 1901, when an *Award* of £161,000, inclusive of costs, was given in favour of Mr. Murray Campbell, and the money was paid at once by the Siamese Government.

References: Kindly communicated by Sir Edward Clarke, K.C., June, 1903.

188. **COLOMBIA and GREAT BRITAIN, in 1896.** *Breach of Contract.* This was a dispute between a British firm, Messrs. Punchard, McTaggart, Lowther & Co., and a Provincial Government, that of Antioquia, in Colombia, respecting the construction of a railway between the River Magdalena and the town of Medellin. Contracts had been concluded between them in 1892 and 1893. On October 9th, 1893, the work was suspended, and each blamed the other. On October 19th, 1893, the Colombian Administration cancelled the contract, and took possession of the property and securities. The Contractors appealed to the Arbitration stipulated for in the Contract, but their demand was refused. They

then appealed to the National Government, who declined to interfere, and, as a last resource, to the British Government. After fourteen months of diplomatic correspondence, an Arbitration Court was constituted at Bogota, in 1894, the German Minister-Resident being elected President of the Court, by special permission of the German Government. It sat six months, and, just as the Award was about to be declared, the Court was broken up by the German Minister being forced to resign. After further prolonged negotiations a *Convention* was signed at London, July 31st, 1896, by which the case was referred to the ARBITRATION of the Swiss Government, who accepted the charge, on August 12th, 1896, and proceeded to appoint a Court of three Arbitrators, which the Swiss Federal Council commissioned February 2nd, 1897, at the request of the two Governments. The Court consisted of Dr. Schmid and Dr. Weber, Jurists, and M. Weissenbach, Ex-Director of the Swiss Railways. The Arbitrators held their first meeting at Lausanne on February 8th, 1897. On October 25th, 1899, their Award was given in favour of Great Britain, the Colombian claim being dismissed and the British firm awarded upward of 1,000,000 francs.

References: Tribunal Arbitral International du Chemin de Fer d'Antioquia, Sentence Arbitrale, Berne, impr. Staempfli et Cie; *Ib.*, Détermination, etc., en suite du Décret, etc., Lausanne, 1899; Les Deux Amériques, September 1st, 1900; London Times, October 28th, 1899; Journal de Genève, 6 Juin, 1897; Parl. Papers; P.I., pp. 544-554.

189. **GREAT BRITAIN and VENEZUELA, in 1897.** *Territorial Contest.* A dispute, involving the ownership of a territory of 33,000 square miles which had become valuable through the discovery of gold, had been long standing. The United States Government, on February 8th, 1887, tendered its good offices to promote an amicable settlement by Arbitration. This was repeated May 5th, 1890; and again still later, on behalf of Venezuela, the United States, July 20th, 1895, demanded Arbitration. It also, on February 3rd, 1896, appointed, independently, a Commission to examine the question, and asked facilities for obtaining information. By a Convention between Great Britain and the United States, signed at Washington, November 12th, 1896, an ARBITRAL TRIBUNAL was agreed upon to determine the boundary line between British Guiana and Venezuela, consisting of four members to be appointed by the two Governments, and a fifth to be appointed by the other four, or, failing agreement, by the King of Sweden. To this Agreement Venezuela acceded, but claimed the right of representation on the Tribunal. The *Treaty of Reference* was signed February 2nd, 1897, at Washington, and ratified June 14th, 1897, Lord Herschell and Mr. Justice Richard Henn Collins, of the English Supreme Court of Judicature, being appointed, on behalf of Great Britain, and Chief Justice Fuller and Mr. Justice Brewer, of the United States Supreme Court, on behalf of Venezuela. A preliminary sitting of the Commission was held in Paris, January 25th, 1899. Lord Herschell, the President, having died suddenly and unexpectedly, in March, 1899, Lord Russell of Killowen, the Lord Chief Justice of England, was appointed, as his successor. The Tribunal sat in Paris, in the months of June, July, August, and September, 1899; the question was fully argued before it, and its Award was given at Paris, on October 3rd, 1899, and accepted as satisfactory by all parties. Following this Award a Mixed Commission was appointed to demarcate the boundary on the spot, as related elsewhere.

References: Parl. Papers [C. 7926], United States No. 1, 1896; [C. 8106], Venezuela No. 3, 1896; [C. 9336], Venezuela No. 1, 1899; No. 2 [C. 9337]; No. 3 [C. 9338]; No. 4 [C. 9499]; No. 5 [C. 9500]; No. 6 [C. 9501]; No. 7 [C. 9533]; Hertslet, Complete Collection, etc., XX. 943; Am. State Papers For. Rel., 1896, p. 254; Revue de Droit Int. 1898, XXX. 117; Memoria de R.E. Buenos Aires, 1893; Gaspar Toro, Notas, etc., pp. 155-157; State Papers, LXXXIX. 57-65, XCII. 160-162, 466-469; Moore, V. 5017, 5018; P.I., pp. 554-558.

190. **MEXICO and UNITED STATES, in 1897.** *Personal Injuries.* An indemnity was demanded by two American citizens, Charles Oberlander and Barbara M. Messenger, for alleged hardships and outrages suffered by them at the hands of certain Mexican Agents, while on the frontier, during the year 1892. The Mexican authorities disclaimed responsibility for the conduct of these Agents. It was referred to Arbitration, under an old-standing agreement between the two

countries, by a *Special Convention*, signed at Washington on March 2nd, 1897. The dispute was submitted to Señor D. Vicente G. Quesada, Minister of the Argentine Republic, at Madrid, with plenary powers as ARBITRATOR, who was to give his decision within six months from the date of the submission of the necessary evidence. The *Convention* provided for reasonable compensation to the Arbitrator and other common expenses of the Arbitration, to be paid in equal moieties by the two Governments; and for any award made to be final and conclusive. Any indemnity awarded, if in favour of the claimants or either of them, and of the contention of the United States, was to be paid by the Mexican Government within two years from the date of award. The *Award* of the ARBITRATOR was given at Madrid, on November 19th, 1897, and was in favour of Mexico.

References; Arbitraje en la Reclamacion de Charles Oberlander, etc. Mexico, 1898; Boletín Oficial de la Secretaría de Relaciones Exteriores, Mexico, III., April, 1897; Letter from Mexican Legation. London August 2nd, 1900; *El Ferrocarril*, Santiago, February 8th, 1898; For. Rel. U.S., 1897, p. 378; Boletín Oficial, V. 129; Brit. and For. State Papers, XC. 1252, 1253; Gaspar Toro, Notas, etc., pp. 126, 127; P.I., pp. 558-563.

191. BRAZIL and FRANCE, in 1897. *Boundary Dispute.* This was a question involving more territory in French Guiana, than the Venezuela dispute with Great Britain. The point to be determined was practically to settle exactly which was the River Yapce, spoken of in Art. 8 of the Treaty of Utrecht, signed April 11th, 1713. By a *Convention*, signed at Rio de Janeiro, April 10th, 1897, between M. Pichon, the French Minister, and the Brazilian Minister for Foreign Affairs, announced by M. Hanotaux at a Cabinet Council in Paris, April 15th, 1897, it was agreed to submit this dispute to Arbitration. The Treaty was approved by the Chamber of Deputies at Rio de Janeiro on November 26th, 1897; ratifications were exchanged August 6th, 1898, and, in September, the text of this Convention, designating the Swiss Confederation as ARBITRATOR, was presented by both the French and Brazilian Ministers to its President, thus fairly placing the case in the hands of the Arbitrator. The Special Commission sent to determine the frontier on the spot sailed from Bordeaux on September 25th, 1898. The *Award* was given December 1st, 1900, the greater part of the territory in dispute being adjudged to Brazil. This *Award* was very voluminous and discussed the question at issue with the greatest care.

References; Urteil des Bundesrates der Schweizrischen-Eidgenossenschaft, etc., vom 1. Dezember 1900 (840 pages) with Maps; Sentence du Conseil Fédéral Suisse, etc. (Extract from preceding); Brit. and For. State Papers, XC. 952, 953; N.R.G. 2me Série, XXV. 335; Revue du Bresil, October 1st, 1898; Revue Générale de Droit Int. Public, Paris, 1897, Documents 1; Brazilian Legation, London, August 2nd, 1900; London *Times*, December 3rd, 1900, etc.; Gaspar Toro, Notas, etc., pp. 157, 158; P.I., pp. 563-578.

192. CHILI and FRANCE, in 1897. *Personal Claims.* This was a claim made against the Chilian Government on behalf of a French subject, M. Charles Fréant, for non-execution of contracts. By a *Treaty*, signed at Santiago, July 3rd, 1897, both Governments appointed Mr. Edward H. Strobel (ex-Minister of the U.S.A. in Chili) as ARBITRATOR, with plenary powers to settle the points submitted to him. The question, however, was *not* carried to an *Award*, but was ended by a definitive settlement made directly between the Chilian Government and the heirs of the claimant for a sum of 200,000 dollars.

References; Memoria de R. E. Santiago, 1897, p. 347; Gaspar Toro, Notas, etc., p. 128; P.I., p. 579;

193. CHILI and FRANCE, in 1897. *Failure of Contract.* This was the claim of a French shipowner, M. Bordes, against the Chilian Government for the non-execution of a contract entered into in 1891, relative to transport of immigrants by the steamship "Chérifon." It was, in 1897, (exact date not known), referred to a MIXED COMMISSION, the Arbitrators representing the two States being MM. Blest Gana and Decrais, and the Umpire (*tiers arbitre*) Sir Edmund Monson. The indemnity allowed by the *Award* was 200,000 francs.

References; Memoria de Relaciones Exteriores, Chili, 1897, p. 99; 1899, p. 73; P.I., p. 618; Neither Agreement of Reference nor *Award* has been published, the diplomatic documents only give the above particulars.

194. **GERMANY** and **GREAT BRITAIN**, in 1897. *Personal Losses.* This was a claim made by a firm of German merchants, Messrs. Dehnhardt Brothers, in South Eastern Africa, on account of losses sustained by them during the rising in Witu, in 1890. In connection with the presence in Germany of Herr Gustav Dehnhardt, in the autumn of 1896, the *National Zeitung* of October 1st, announced that the negotiations between the German and English Governments with regard to the Arbitration of the question were being resumed. This was confirmed by a statement made by Baron Richthofen, Director of the Colonial Department, in the Reichstag, Berlin, during the discussion of the Colonial Estimates in 1897, in which he said that it was proposed to submit the matter to a COURT OF ARBITRATION at Zanzibar. From the Colonial Department of the German Foreign Office in Berlin, we learn that an Agreement had been come to between the two Governments to refer a part of the claims to Arbitration in Zanzibar, but that on farther negotiation with Messrs. Dehnhardt Brothers, the case was not carried to an Arbitral judgment.

References: *National Zeitung* October 1st, 1896; *London Times*, October 2nd, December 16th, 18th, 1896, etc.; *Herald of Peace*, May 1st, 1897; Auswärtiges Amt-Kolonial-Abteilung, Berlin, July 6th, 1904. The British Foreign Office says that no Parliamentary Paper has been issued on the subject.

195. **FRANCE** and **GERMANY**, in 1897. *Boundary Question.* This had reference to a portion of the "Hinterland" of Togo, on the Gold Coast, West Africa. A JOINT ARBITRATION COMMISSION was appointed to prepare a project of delimitation defining the boundary between the French possession of Dahomey and the Soudan and the German Togo Territory. *The exact date* of this appointment is unknown, but the Commission began its sittings in Paris during the last week in May, 1897. The dispute proved easy of settlement, inasmuch as each party was able to produce documentary evidence, and on July 9th, 1897, the Commission had concluded its labours, and a Protocol was signed embodying an Arrangement satisfactory to both contending parties. This was confirmed by a Convention, July 23rd, 1897, which (Art. 4) appointed a Delimitation Commission.

References: Brit. and For. State Papers, LXXXIX. 584-586; Hazell's Annual, 1902, p. 280; *Herald of Peace*, July, 1897, p. 265, August, 1897, p. 279.

196. **HAWAII** and **JAPAN**, in 1897. *Exclusion of Japanese Subjects.* Reuter's Agency reported that on July 23rd, 1897, the Japanese Government agreed to the proposal made by Hawaii to submit to ARBITRATION a dispute regarding Japanese immigration in the Sandwich Islands, which arose in March, 1897. The Court, it was agreed, should consist of three Arbitrators, two appointed by the disputants and the third by these two. The annexation of the islands by the United States of America, which was voted in the Senate at Washington only a few days after the occurrence, interfered with the carrying out of these provisions, and the matter remained, for the time, in abeyance. A treaty for the annexation of Hawaii was concluded at New York by Mr. Sherman, Secretary of State, and three Hawaiian Commissioners, June 16th, 1897, Japan lodging a formal protest. On August 1st, 1898, however, the Government of Hawaii paid to that of Japan the sum of 75,000 dollars in full settlement of all claims ensuing out of the matters in dispute, so that, ultimately, the Arbitration was not proceeded with.

References: Questions Diplomatiques et Coloniales, November 1897, pp. 396-401; Letter to Author from U.S. Department of State, September 19th, 1902; *Herald of Peace*, August, 1897, p. 279, December, 1897, p. 331, January, 1898, p. 7; *Advocate of Peace*, November, 1897, p. 236, June, 1898, p. 136.

197. **LIPPE-DETMOLD** and **SCHAUMBURG-LIPPE**, in 1897. *Question of Inheritance.* This was a domestic, or inter-statal Arbitration. It involved a claim to the regency, and therefore to the succession of the princely throne of Lippe-Detmold, arising out of the incurable illness of Prince Alexander, who succeeded his brother Waldemar on his death, in 1895. The dispute arose between Prince Adolf of Schaumburg-Lippe and Count Ernst of Lippe-Biesterfeld. Count Ernst based his claim on the fact that the Regent had been unconstitutionally appointed by decree, without the ratification of the Lippe

Diet. The Principality of Lippe, jealous of its prerogative as an independent Federal State, supported the Count, the Diet declaring in his favour. Through the mediation of the German Chancellor the dispute was submitted (date unknown) to the ARBITRATION of the King of Saxony, and a Court was formed for the purpose under King Albert's presidency. The decision, published in July, 1897, was in favour of Count Ernst of Lippe-Biesterfeld. The incident gave rise to much internal discussion in the German Empire.

References: *Pall Mall Gazette*, November, 1898; *London Times*, January 6th, 1899; *London Daily News*, July 19th, 1898; *Daily Chronicle*, January 6th, 1899; *Leeds Mercury*, December 19th, 1898; *Herald of Peace*, August, 1897, p. 279, August, 1898, p. 100, February, 1899, p. 173.

198. **GREECE and TURKEY, in 1897.** *Consular Convention.* It was provided by Article 9, of the Preliminary *Treaty of Peace*, which terminated the war between Greece and Turkey, signed at *Constantinople, September 18th, 1897*, that, in the event of differences in the course of negotiations between the two countries, the contested points should be submitted by either party to the ARBITRATION of the Representatives of the Great Powers at Constantinople, whose decisions should be compulsory for both Governments. It was specially provided that such Arbitration might be exercised, either by the Representatives themselves collectively, or by persons specially chosen by the parties interested, either directly or through the intermediary of special delegates, and that, in the event of the votes being equally divided, the Arbitrators should choose an additional Arbitrator. This was confirmed by Article 15 of the Definitive Treaty, signed at Constantinople, December 4th, 1897. Further negotiations, which lasted from December 29th, 1897, to May 14th, 1900, resulted at length, on the latter date, in the Greek Legation informing the Porte, by a Note, of its recourse to the Arbitration of the Powers as thus provided. The *Arbitral Decision* was pronounced at *Constantinople April 3rd, 1901*, and was immediately communicated to the Porte and the Greek Legation. It formulated in detail the Consular Convention, which would be binding on the two interested Parties.

References: *Convention Consulaire, Helléno-Turque (Dossier)*, 1900, presented by the Greek Government; *Brit. and For. State Papers*, XC. 422-430, 546-553, XCI. 124-473; P.I., pp. 605, 606, 641-645 (Award, communicated by the Turkish Minister in Brussels); H. La Fontaine, *Histoire Sommaire, etc.*, p. 69 (No. 163).

199. **SIAM and UNITED STATES, in 1897.** *Military Assault.* An attack was made by Siamese soldiers upon Mr. E. V. Kellett, the United States Vice-Consul in Siam, on the evening of November 19th, 1896. After some diplomatic correspondence it was agreed that a Mixed Commission should be appointed to investigate the affair, and, while the discussion was pending, a visit was paid to Bangkok by the U.S. warship "Machias." At length Mr. Barrett, the U.S. Minister, proposed that the Mixed Commission should be constituted as a BOARD OF ARBITRATION, and to this the Siamese Government acceded. Some time during 1897 Messrs. John Barrett and Pierre Orts were appointed Arbitrators, and on *September 20th, 1897*, rendered their *Award*, at Chieng-mai, in favour of the United States. The Government of Siam was condemned to express its official regrets, and to publish copies of the decision in the official gazettes.

References: *Siam Free Press*, November 15th, 1897; Moore, II. 1862-1864; P.I., pp. 604, 605.

200. **SIAM and UNITED STATES, in 1897.** *Personal Injuries.* This involved a claim of Dr. Marion A. Cheek, an American citizen, against the Government of Siam, for illegal seizure and sale of property in 1889. After voluminous correspondence, by a Protocol of Agreement, dated *July 6th, 1897*, it was referred to the ARBITRATION of the late Sir Nicholas J. Hannen, Chief Justice of Her Britannic Majesty's Supreme Court for China and Japan, who sat at Bangkok on February 1st, 1898, and on nine subsequent days, and who gave his *Award* at Shanghai, March 21st, 1898, in favour of the United States Government, and adjudged to the heirs of the claimant the sum of 706,721 ticals (£40,476).

References: U.S. MSS. Dept. of State; S. Doc. 180, 54 Cong. 2 Sess.; For. Rel. U.S., 1897, p. 479; Moore, II. 1899-1908, V. 5068-5074; P.I., pp. 579-581.

201. **GUATEMALA and ITALY, in 1898.** *Withdrawal of Employment.* On April 11th, 1892, the Government of Guatemala conceded to Miss Maria Cedroni, an Italian, the right to establish for five years an academy for young ladies. Friction arising, however, between her and the Secretary of State for Public Instruction, the Government took away her occupation from her on January 3rd, 1893. By an *Arbitral Convention of March 18th, 1898*, which does not appear to have been published, the question of the indemnity was submitted by the two Governments to the ARBITRATION of the King of Spain, by whom M. F. Garcia Gomez de la Serna was appointed as actual Arbitrator. The *Decision*, given at Madrid, October 12th, 1898, awarded 5,800 piastres instead of the 61,600 which had been claimed.

References : Memoria presentada por la Secretaria de Relaciones Exteriores, Guatemala, 1899, pp. 5-15 ; P.I., pp. 606-610.

202. **BELGIUM and GREAT BRITAIN, in 1898.** *Personal Injuries.* On August 21st, 1896, Mr. Ben Tillett, a British subject, was arrested at Antwerp, in pursuance of orders issued by the Belgian Minister of Justice. His detention and expulsion followed. By a *Convention, signed at Brussels, March 19th, 1898*, and ratified there the following day, the case was referred to a foreign jurist. M. Arthur Desjardins, Avocat-General of the French Court of Cassation, was jointly chosen as ARBITRATOR. His *Award*, which was given at Paris December 26th, 1898, was wholly in favour of Belgium.

References : Parl. Paper [C. 9235], Commercial No. 2, 1899 ; Brit. and For. State Papers, XC. 5-10, XCII. 78-104, 104-109 ; London Newspapers, January 10th and 12th, 1899 ; P.I., pp. 581-585.

203. **ECUADOR and ITALY, in 1898.** *Arbitrary Expulsion.* This case involved a claim presented by the Salesian Fathers, who were of Italian nationality, on account of a decree of expulsion issued against them by the Ecuadorian authorities. By the provisions of a *Protocol, signed at Quito, March 28th, 1898*, two ARBITRATORS were appointed, with power to appoint a third in case of disagreement. Sres. Jenaro Larrea and Francisco Andrade Marin were accordingly appointed. An additional Protocol, signed June 21st, 1899, gave the Arbitrators power to take into consideration a counterclaim formulated by the Government of Ecuador. This Protocol has not been published, nor have we been able to trace what action has been taken, if any, to carry out these provisions.

References : Informe de Relaciones Exteriores, Ecuador, 1898, p. 135, 1899, p. 48 ; P.I., pp. 647, 648.

204. **COSTA RICA and the REPUBLIC OF CENTRAL AMERICA, in 1898.** *Mutual Complaints and Claims.* These arose out of various incidents, which took place on both sides, during the revolutionary movement in Nicaragua, the situation becoming at length so acute that troops of both States advanced to the frontier. The good offices of Guatemala were interposed to prevent the war which appeared imminent, and by a *Treaty of Peace, signed April 26th, 1898*, on Board the U.S. man-of-war "Alert," off Cape Blanco, in neutral waters, both parties agreed to refer all pending questions between them to the decision of a TRIBUNAL composed of three Central Americans, one appointed by each of the contending parties, and a third by the Republic of Guatemala, in its character of pacific mediator. Art. 4 provided that the Tribunal should meet in the Capital of Guatemala within one month of ratification, but the Treaty seems not to have been ratified, owing to the dissolution of the Central American Republic, which followed shortly after. A unique feature of this Reference was contained in Art. 7 of the Treaty, which said : "The Judges of this Tribunal will try the questions submitted to them, and pass their verdict thereon, in the character not only of Arbitrators, but also as Peacemakers, allowing that feeling of charity to enter into their counsels which should reign where vexatious incidents have occurred between brothers."

References : Memoria de R.E. de Costa Rica, San José, 1898, p. 103 ; Brit. and For. State Papers, XC. 558-562 ; Gaspar Toro, Notas, etc., pp. 132, 133 ; P.I., pp. 611, 612.

205. **PERU and UNITED STATES, in 1898.** *Personal Injuries.* An Anglo-American citizen, Mr. MacCord, employed in Peru as Superintendent

of the Railroad from Mollendo to Arequipa, was, during the revolution of 1885, arrested and fined; and, three years later, on resuming his occupation, that was taken from him and given to another. His claim was tenaciously supported by the United States Government. By an *Arbitral Convention*, signed at Washington on May 17th, 1898, the question of amount of indemnity to be granted him was referred to the ARBITRATION of Sir Samuel Henry Strong, Chief Justice of Canada, who on October 15th, 1898, gave his *Award*, in favour of Mr. MacCord, for 40,000 dollars.

References: Memoria de R. E., Lima, 1898, p. 58; Memoria del Ministerio de R. E. Peru, 1898, p. 98; Gaspar Toro, Notas, etc., pp. 127, 128; P.I., pp. 612, 613.

206. **GREAT BRITAIN and RUSSIA, in 1898.** *Seizure of Sealers.* An indemnity was claimed by Great Britain for the alleged illegal seizure of Canadian vessels in the sealing grounds of the Behring Sea, within Russian jurisdiction. The question, which goes back as far as 1892, was in June, 1898, submitted to M. Alphonse Rivier, Professor of International Law in Brussels University as ARBITRATOR. By his death, in Brussels, on the 21st July, 1898, the proceedings were interrupted; but M. H. Matzen, Professor at the University of Copenhagen and President of the Danish Senate, was, in April, 1899, appointed Arbitrator in his stead. For some unknown reason the matter then seems to have lapsed. But in March, 1904, the question was reopened, and direct negotiations were begun in London by delegates appointed by the Russian and Canadian Governments, with a view to arriving at an amicable settlement. It was at first proposed to re-submit the matter to Arbitration, but a friendly compromise was reached, and an Agreement has just been signed (May 31st, 1904), which provides that the Russian Government shall pay as compensation for two out of the six vessels seized, or stopped, the sum of 44,701 dollars (about £8,940) instead of 93,497 dollars (about £18,699) claimed.

References: *Herald of Peace*, July, 1898, May, 1899, July, 1904; *Advocate of Peace*, August and September, 1898, p. 179; *Corr. Bimen.*, July 25th, 1898; *London Times and Daily News*, June 1st, 1904.

207. **GREAT BRITAIN and UNITED STATES, in 1898.** *Outstanding Questions.* An Agreement between the United States and Canada was reached on May 30th, 1898, for the creation of an ARBITRAL JOINT HIGH COMMISSION, to consider all subjects of controversy between the United States and Canada, and to frame a Treaty between the British Imperial Government and the former, for the complete adjustment of these differences. The High Joint Commission was composed of ten members—five from each side—viz., Lord Herschell, Sir Wilfrid Laurier, Sir Richard J. Cartwright, Sir Louis H. Davies and John Charlton, Esq., M.P., on the one side; and Senator Gray, Mr. Kasson, Mr. Nelson Dingley, Junr., Mr. Fairbanks, and ex-Secretary Foster on the other. The first meeting was held at Quebec, August 23rd, 1898, and Lord Herschell was appointed President. It was decided to discuss the following subjects in the order named, viz.: Behring Sea sealing; the fisheries on the Atlantic and Pacific coasts; the determination of the Alaska boundary; to arrange for the transit of bonded merchandise; alien labour laws; mining rights; the readjustment of Customs duties; to revise the agreement regarding the presence of warships on the Great Lakes; the better defining of the frontier; extradition; wrecking and salvage rights. After remaining in session at Quebec for some three weeks, *i.e.*, until October 8th, the Commission adjourned to Washington, where its sittings were resumed on November 1st, and terminated by a brilliant banquet, December 20th, 1898. The work of the Commission was somewhat interrupted by the death of Mr. Dingley and the illness of Mr. Foster. After nearly eight months' deliberation, the Joint High Commission adjourned on February 20th, 1899, without reaching any definite decision, with the intention of meeting again on August 2nd, in Quebec. An official statement of the position of affairs, issued by the British Foreign Office, February 22nd, 1899, stated that the Commission had made very substantial progress, but had been unable to agree upon the settlement of the Alaska boundary. After its adjournment it sustained another loss by the sudden and unexpected death of its President, Lord Herschell, in March, 1899. The Commission did not resume its sittings, but negotiations between the Governments

were continued, and on October 20th, 1899, an Agreement was formally come to for a temporary adjustment of the Boundary. The final adjustment was made later by a Special Commission, and forms the subject of another section. The High Commission, however, has not again met.

References : Hazell's Annual, 1901, p. 15, 1902, pp. 18, 19 ; Foreign Office Paper, June 3rd, 1899 ; See also London *Times* and *Morning Post*, June 5th, 1899 ; Brit. and For. State Papers, XCI. 116-118.

208. **CHILI** and **PERU**, in 1898. *Form of Plebiscite*. At the close of the war between Chili and Peru the provinces of Tarapaca and Tacna were ceded by the latter to her victorious rival, for a period of ten years, by the Treaty of Ancon, signed at Lima October 20th, 1883, and ratified on May 8th, 1884, on the understanding that at the end of ten years the future of Tacna and Arica should be determined by a *plebiscite* of its inhabitants. Owing to troubles in Peru, the decision was deferred, but it was finally agreed, by a *Convention*, signed at *Santiago*, April 16th, 1898, and known as the Billingham-Latorre Protocol, to submit the matter to the ARBITRATION of the Queen Regent of Spain, who would decide on the form the *plebiscite* should take. Forty days after the signature of this Protocol it was approved by the Peruvian Congress, but when it came for consideration before the Chilian Legislative Chambers, it received the ratification of the Senate, but "remains indefinitely shelved" in the Chamber of Deputies, and, although repeated attempts have been made to deal with the question, up to the present (July, 1904) nothing definite has resulted.

References : Statesman's Year Book, 1899, p. 869 ; Garland, South American Conflicts, Lima, February, 1900 ; Rafael Egaña, The Tacna and Arica Question, Santiago de Chile, 1900 ; Ricardo Salas-Edwards, The Liquidation of the War on the Pacific, London, 1900 ; Peru and Chili, Circular of the Peruvian Foreign Office on the Arica and Tacna Question, London, 1901 ; Gaspar Toro, Notas, etc., p. 132 ; Memoria de R. E., Santiago, 1898, p. (41) 59 ; Letter to Author from Chilian Embassy, April 13th, 1899 ; Peru, Coleccion de los Tratados, IV. 656 ; P. I., pp. 610, 611.

209. **ARGENTINE REPUBLIC**, **BOLIVIA**, and **CHILI**, in 1898. *Boundary Dispute*. A dispute respecting the delimitation of the Puña de Atacama, ceded by Bolivia to Argentina but claimed by Chili, which was not included in the Arbitration Protocol submitted to Queen Victoria was, by a Protocol signed at Santiago April 17th, 1896, reserved for delimitation with the co-operation of Bolivia. By two *Acts*, signed by the representatives of the two Republics at *Santiago*, November 2nd, 1898, it was referred to a CONFERENCE of five members, named by each of the Governments, to meet on March 1st, 1898, in Buenos Ayres for a term of eight days only (Art. 5). Failing an agreement at the last sitting the matter was referred, as provided in the second Act, to the decision of an ARBITRAL TRIBUNAL consisting of three persons, a delegate appointed by each Government and the United States Minister-Plenipotentiary to Buenos Ayres, the Hon. Mr. Buchanan. This Tribunal, which was composed of three as stipulated, completed its labours and unanimously agreed upon a boundary which they definitely described in a *Procès Verbal* of March 24th, 1899. The results of its labours were announced by the Argentine Government through a formal communication addressed to its various Ministers, March 25th, 1899.

References : Moore, V. 4854 ; Memoria de R. E., Argentina, 1899, pp. 94-97, 118-127 ; London *Times*, December 20th, 1898, Text of Protocol ; London *Daily News*, March 28th, 1899 ; *Herald of Peace*, April, 1899, p. 197, Text of Communication ; P. I., pp. 585-587.

210. **GREAT BRITAIN** and **HONDURAS**, in 1899. *Detention of Ship*. This case arose from the arrest of the captain of the English schooner "Lottie May," and the detention of that ship for six days, in the month of July, 1892, in the port of Roatan, because of his defiant attitude towards the commandant of the place. On February 23rd, 1893, the British Government protested, and claimed £3,134 on behalf of its subject, by way of indemnity. However, on September 24th, 1895, it reduced the amount of the indemnity demanded to £500. Finally, by an *Arbitration Agreement*, signed at *Guatemala*, March 20th, 1899, the difference was submitted to the ARBITRATION of the Chargé d'Affaires of the United States at Guatemala. The *Award*, delivered at Guatemala on April 18th, 1899,

granted to the captain an indemnity of £150, and to the owners of the ship, of £100.

References: For. Rel., U.S., 1899, p. 371; La Fontaine, *Histoire Sommaire*, No. 171, p. 72; P.I., p. 618.

211. **GERMANY, GREAT BRITAIN, and UNITED STATES, in 1899.** *Samoa Difficulty.* By the Final Act of the Berlin Conference, June 14th, 1889, the fourteen islands of Samoa were declared an independent and neutral territory, and arrangements were made for its administration. These worked successfully up to the death of the King Malietoa Laupepa, on August 22nd, 1898. During the year 1899, complications arose in connection with the succession to the throne, and civil war resulted. In a *Memorandum*, a copy of which was enclosed in a letter from Lord Salisbury, dated *April 13th*, 1899, to Mr. Eliot, the British Commissioner, covering the Queen's Commission appointing him in that capacity, it was stated that the three interested Powers had appointed a JOINT COMMISSION to consider the questions arising between themselves out of the alleged infraction of the Berlin Treaty of 1889. This "Samoan Joint High Commission" consisted of Mr. C. N. E. Eliot, C.B., of the Diplomatic Service, for Great Britain, Mr. Bartlett Tripp, formerly Minister to Austria, for the United States, and Baron Von Sternberg, First Secretary of the Embassy at Washington, for Germany, who were to proceed at once to the islands and begin their work without delay. The Commissioners sailed from San Francisco in the U.S. Cruiser "Badger," April 26th, and arrived at Apia on May 13th. They commenced their work immediately and held their last meeting at Apia; which the Commission left on July 18th, 1899. A Convention for the partition of the Samoan Islands was signed in duplicate between Germany and Great Britain at London, November 14th, 1899, and a Convention for the same object between Great Britain, Germany, and United States, was also signed at Washington, December 2nd, 1899. The ratifications of both were exchanged at London and Berlin, February 16th, 1900.

References: Parl. Papers [C. 5907], Samoa, No. 1 (1890); Samoa, No. 1 (1899); [Cd. 7], Germany No. 1, 1899; [Cd. 38], Treaty Series No. 7, 1900; [Cd. 39], No. 8, 1900; [C. 5911], and [C. 9506].

212. **HAYTI and UNITED STATES, in 1899.** *Seizure and Sale of Goods.* Messrs. John D. Metzger & Co., American citizens, claimed through their Government from that of Hayti, indemnities for seizure and sale of their goods at Port-au-Prince and Jacamel, and for failure of contract. By an *Agreement*, signed at *Washington, October 18th*, 1899, this question of indemnity was referred to the Hon. Win. R. Day, Judge of the United States Circuit Court, as ARBITRATOR. By Art. 4 the evidence was to be submitted to the Arbitrator and finally closed on or before March 1st, 1900, and his decision was to be rendered within four months thereafter.

References: Brit. and For. State Papers, XCII. 461.

213. **GERMANY and GREAT BRITAIN, and UNITED STATES, in 1899.** *Military Operations.* This was a question of compensation for losses sustained at Samoa by subjects of the three Powers in consequence of alleged unwarranted military action, during the recent disturbances, between January 1st, 1899, and the arrival of the Joint Commission in Samoa. By a *Convention* between them, signed in *Washington, November 7th*, 1899, the ratifications of which were exchanged at Washington, March 7th, 1900, these were referred to the ARBITRATION of the King of Sweden and Norway. Early in 1901, it was announced that King Oscar had formally accepted the post of Arbitrator. His *Award* was given at Stockholm, October 14th, 1902. The amount due to Germany by United States and Great Britain was not, however, determined. It has since been fixed at 1,250,000 francs (£50,000).

References: Parl. Papers, Treaty Series, No. 10, 1900 [Cd. 98]; Samoa No. 1, 1902 [Cd. 1083]; P.I., pp. 613, 614.

214. **GREAT BRITAIN and RUSSIA, in 1899.** *Title to Property.* A claim of Messrs. Jardine, Matheson & Co. to property held by them in the Russian

Concession at Hankow was, in April, 1899, discussed between M. de Giers, the Russian Minister, and Mr. Bax Ironside, the British Chargé d'Affaires at Peking. On August 2nd, 1899, Lord Salisbury proposed Arbitration both to M. Lessar, in London, and, by telegram, to Sir C. Scott at St Petersburg. The latter communicated it to Count Mouravieff, and on August 23rd, 1899, it was accepted by the Russian Government. On November 2nd, 1899, the Russian Government proposed a MIXED COMMISSION OF INQUIRY, in conformity with Article 9 of The Hague Convention, to consist of members chosen by the British and Russian Legations in Peking, prior to submitting the question to an Arbitration Court, which, said the *Novoye Vremya*, will have to examine from a strictly legal standpoint the documents produced by the firm, the formalities observed, etc. The Commission, so appointed, consisted of Mr. Wade-Gardner and Mr. Harding, of Shanghai, British Commissioners, and Messrs. Pokotiloff and Litvinoff, Russian. Further details are not known.

References: Parl. Papers [Cd. 93], China No. 1, 1900; London *Daily News*, January 18th, 1900; *Herald of Peace*, November, 1899, p. 292, February, 1900, p. 16.

215. **ITALY** and **PERU**, in 1899. *Losses in Civil War*. During the Civil War which raged in Peru during the years 1894 and 1895, some Italian subjects incurred serious losses for which reparation was demanded. By the terms of an *Agreement*, concluded at Lima, November 25th, 1899, it was decided to submit these claims to the ARBITRATION of the Spanish Minister in Peru. It is not known whether the *Award* of the Arbitrator has been rendered or not.

References: Memoria de Relaciones Exteriores, Peru, 1900, p. 645; P.I., pp. 614, 615.

216. **CHINA** and **GREAT BRITAIN**, in 1899. *Sinking of Ship*. On July 25th, 1894, the steamer "Kowshing," a British transport ship, engaged in carrying Chinese troops during the war with Japan, was stopped by a Japanese warship and sunk. A claim for indemnity was made by the owners against the Chinese Government. After repeated offers on the part of the British Government during 1898 and 1899, the Chinese Ambassador, in a letter, dated December 10th, 1899, accepted the offer on behalf of his Government, and stated that he was awaiting instruction as to which of the three modes suggested by H.M.'s Government, viz., submission to The Hague Court, an English Judge, or a Foreign Jurist, would be accepted. In February, 1900, it was announced in the British House of Commons that Arbitration had been agreed upon, and again, in August, that the Hon. J. H. Choate, the American Ambassador in London, had been selected by the Chinese Government, and had undertaken to act as ARBITRATOR; but there was still a difficulty as to the exact terms of reference, which the Chinese Minister had referred to Peking. The question, however, never came before the Arbitrator, for, after long, renewed negotiation, the Chinese Government settled direct with the British Government, by agreeing to pay over to it the sum of 280,000 taels (£33,000), as an indemnity to the owners of the ship.

References: Parl. Papers [Cd. 93], China No. 1, 1900; Wilson and Tucker, International Law, p. 442; London Papers, *Financial News*, June 8th, 1895; *Morning Herald*, June 8th, 1900; *Standard*, February 10th, 1900; *Daily News*, August 9th, 1900; *Morning Leader*, February 16th, 1903, etc.; Communication to Author by the Owners, the Indo-China Company, August 7th, 1903.

217. **GERMANY** and **GREAT BRITAIN**, in 1900. *Seizure of Ships*. This was a question of indemnity, for the seizure and detention of German mail and other steamers by the British in South Africa. Count von Bülow stated in the Reichstag, January 19th, 1900, that the British Government had admitted its obligation and declared its readiness to make all legitimate amends. Shortly afterwards the question of the amount of indemnity was, submitted to a SPECIAL JOINT COMMISSION consisting of Herr H. Eduard Woermann and Dr. Alfred Sieveking, for Germany, and Sir Walter Murton, C.B., Mr. J. G. Smith, and Mr. W. F. G. Anderson, for Great Britain. After a short but exhaustive inquiry, and after taking expert evidence on the claims, they, early in the month of September (4th), 1900, unanimously *Awarded*, (1) An indemnity

of £20,000 for detention of the three Imperial mail steamers, "Bundesrath," "General," and "Herzog," together with a compensation of £5,000 to those interested in the landing of goods; (2) a total indemnity of £4,437, for stopping the German barque "Hans Wagner"; and (3) for the arrest of the barque "Marie," an indemnity of £126.

References: Parl. Papers [Cd. 33], Africa No. 1, 1900; Norddeutsche Allgemeine Zeitung; Hazell's Annual, 1901, p. 285; London Times, September 4th, 5th, and 7th, 1900; Herald of Peace, October, 1900, p. 127.

218. **GUATEMALA** and **UNITED STATES, in 1900.** *Mutual Claims.* The cause of the dispute is not indicated, but a Supplemental Protocol, signed at Washington May 10th, 1900, referring to the Agreement to which it was annexed, states that "certain issues involved in the claim and counterclaim of Robert H. May (an American citizen) and Guatemala, had been submitted to an ARBITRATOR by this Agreement which was a *Protocol*, signed at Washington, February 23rd, 1900. Neither Agreement nor Award seems to have been published; in fact, nothing further is known, and the above supplemental Protocol seems to be the only published document.

References: P.I., pp. 615, 616.

219. **NICARAGUA** and **UNITED STATES, in 1900.** *Alleged Illegal Seizures.* Messrs. Orr and Laubenheimer, citizens of the United States, claimed the payment of indemnity, "on account of damage sustained through the alleged seizure and detention by Nicaraguan authorities of their two steam launches the "Buena Ventura" and the "Alerta"; and the Post-Glover Electric Company, also American, claimed indemnity on account of the alleged seizure at Bluefields of certain goods and chattels belonging to them. By an *Agreement*, signed at Washington, March 22nd, 1900, the question of the amount in each case was submitted to Gen. E. P. Alexander, who was by it appointed as ARBITRATOR. The result is not known.

References: P.I., pp. 616, 617.

220. **BOLIVIA** and **CHILI, in 1900.** *Losses during Civil War.* This case of Arbitration, similar to those which arose in 1893, 1894, and 1895, between Great Britain, France, Sweden and Norway, and Chili, had to deal with losses suffered by Bolivian citizens in the course of the Civil War which raged in Chili in 1891 and 1892. By an *Agreement*, signed at Santiago, May 31st, 1900, these claims were submitted to the Arbitration of the British Minister accredited to Chili. The last known of the case was that it was following its normal course before the Arbitrator.

References: Informe de Relaciones Exteriores, Bolivia, Anexos, p. 162; P.I., p. 648.

221. **RUSSIA** and the **UNITED STATES, in 1900.** *Seizure of Ships.* During the discussions respecting the Fur Seal Fishery, in 1892, some Russian cruisers captured four American fishing vessels in the Behring Sea, within seven miles of the Asiatic coast. These sealers were of an aggregate value of 150,000 dollars, but the largest items in the claim were for the sufferings of the officers and crews while they were detained. By an *Agreement* between the two Powers, signed at St. Petersburg on September 8th, 1900, the question was referred to the ARBITRATION of Professor T. M. C. Asser, of Amsterdam. An interim Award was given by the Arbitrator at The Hague, on October 19th, 1901, on certain questions which had arisen during the examination. His final Award, which was given at The Hague, on November 29th, 1902, under the sanction of The Hague Court of Arbitration, though not as part of its proceedings, was wholly in favour of the United States. In the case of the first two ships the facts were admitted, and the Award gave the sums of 38,750 dollars (£7,750) with interest at 6 per cent. from September 9th, 1892, and 28,588 dollars (£5,717) with similar interest from January 1st, 1892, respectively, to the United States. In the cases of the two latter, where the facts were not admitted, Russia had to pay 32,444

dollars (£6,488) with interest at 6 per cent. from January 1st, 1893, and 14,888 dollars (£2,977) with similar interest from August 12th, 1892.

References: *Herald of Peace*, November, 1899, p. 292, August, 1900, p. 96, January, 1902, p. 176, December, 1902, p. 331; January, 1903, p. 5; Text of Interim Award, Independence Belge, November 7th, 1901; Award, *London Times*, November 30th, 1902; Text of Award, Independence Belge, November 30th, 1902; *La Justice Internationale*, 1er Juillet, 1903, pp. 106-118; P.I., pp. 618, 645-647.

222. **ITALY and PERU, in 1900.** *Interpretation of Treaty.* A dispute arose regarding the interpretation of Article 10 of the Treaty of Friendship and Commerce concluded between Italy and Peru, December 23rd, 1874. The question was, by an *Arbitration Agreement*, signed at Lima, November 22nd, 1900, referred to a person to be appointed by the President of the Swiss Confederation. The Arbitrator thus appointed by M. Brenner on May 20th, 1901, was M. le Dr. Winkler, at that time President of the Swiss Federal Tribunal. The case was duly presented to the Arbitrator, and on September 19th, 1903, his Award was given at Berne, and gave an authoritative interpretation of the Article in question, which was accepted by both Governments as satisfactory.

References: Correspondance Bimensuelle, May 25th, 1901; *Herald of Peace*, June, 1901, p. 64, and 1903, p. 150; *La Justice Internationale*, Décembre 1903, pp. 439-455; Jugement Arbitral du 19 Septembre, 1903, etc., kindly furnished by the Arbitrator, Dr. Winkler, Berne, 9 Juillet, 1904.

II.—ARBITRAL BOARDS AND COMMISSIONS.

Cases less formal, but involving the application of the principle of Arbitration (settlement by reference), and more or less of its procedure, together with Courts or Commissions appointed to regulate, rather than to decide *ad hoc*, disputed questions, and those which have anything of a permanent character, are included in this list:—

223. The **RHENISH STATES, in 1803.** For the administration of a Sustentation Fund, to indemnify the Ecclesiastical Sovereigns dispossessed in the Rhine Districts, which was regulated by a Domestic Commission (see list IV.) organised by the Electors of Mayence and Hesse-Cassel, under Arts. 70-75 of the "*Recez*," February 25th, 1803, a SPECIAL COMMISSION was appointed by the former, who was Archchancellor, which Commission met first at Ratisbonne, and afterwards at Frankfort. It continued to act until at least December 31st, 1810, at which date it reported.

References: Schoell, II. 303; De Gardien, *Histoire Générale des Traités de Paix*, VII. 429.

224. **FRANCE and GERMANY, in 1804.** By Art. 123 *et suiv.* of the *Convention* signed at Paris, August 15th, 1804, and ratified by the Emperor, May 11th, 1805, (in conformity with a vote of the Electoral College of the Empire on March 18th, previously), a JOINT COMMISSION was appointed to adjudicate (*juger*) on matters relating to the octroi and river police of the Rhine, as a stream common to both Empires. This Commission, which was to meet each year at Mayence, was composed of two Commissioners, French and German respectively, and a Jurisconsult elected by the two others. Its Bureau was situated at Lobith. It met for the first time on February 15th, 1808, and continued until February 19th, 1810, when the Prince Primate of the Confederation of the Rhine concluded a Convention with Napoleon making other dispositions and ceding to him half the Octroi of the Rhine.

References: Schoell, II. 292-296, 506, III. 452; Kluber; *Staatsrecht des Rheinbundes*, Tübingen, 1808, 8vo; R., XI. 36; De Gardien, VII. 405, 406.

NOTE.—As it has been found impracticable to trace out the history in every instance which follows, the greater care has been taken to express the exact terms of the appointment or reference.

225. **AUSTRIA** and **SAXONY**, in 1811. A provisional arrangement was concluded on October 14th, 1809, which was changed into a definitive *Convention* on November 19th, 1811, by which an ADMINISTRATIVE BOARD for the joint working of the salt-mines in Wieliczka was established. The Members of this Board were appointed by the Emperor, but the King of Saxony added to it a Commissioner, and also a second manager for each mine. The Treaty made provisions for a period of eight years from February 1st, 1812. It was also proposed that three individuals should occupy the place of the Governor of Wieliczka, during the duration of the Treaty, of whom the Emperor should appoint one.

References: Schoell, III. p. 142; the Convention was printed officially at Vienna.

226. **AUSTRIA** and **HESSE-CASSEL**, in 1813. By a separate Article (No. 5) of the *Treaty* of Frankfort between Austria and Hesse (on the accession of the latter to the Grand Alliance against France), signed December 2nd, 1813, a JOINT COMMISSION was appointed in order to select papers, registers, and documents belonging to the Kingdom of Westphalia, which had been deposited in the Archives of Cassel, and to separate and settle all the interests which had been hitherto common to the different provinces of that Kingdom.

References: R. XII. 651; Schoell, III. 310.

227. **ALLIED POWERS** and **FRANCE**, in 1814. Ships of War, Arsenals, and Naval Ordnance and Stores left at the close of the war were by Art. 15 of the *Treaty of Peace* signed at Paris, May 30th, 1814, to be divided between France and the countries where the Maritime Places in which they may be found were situated, and it was also enacted by the same Article that COMMISSIONERS be appointed on both sides to settle the division and draw up a statement of the same.

References: Schoell, III. 358; State Papers, I. 151; Hertslet, Map of Europe, etc., I. 11. 12.

228. **FRANCE** and **GREAT BRITAIN**, in 1814. By an additional Article (No 2) of the *Treaty of Peace* signed at Paris, May 30th, 1814 (First Peace of Paris), a JOINT COMMISSION was appointed by France and Great Britain "to liquidate the accounts of their respective expenses for the maintenance of Prisoners of War, in order to determine the manner of paying the balance which shall appear in favour of the one or the other of the two Powers." By another additional Article (No. 4), the satisfaction of the claims of British subjects for property confiscated by the French authorities, loss of moneys due to them, etc., was referred to the same Commission.

References: Schoell, III. 365, 366; Hertslet, Map of Europe, etc., I. 21; State Papers, I. 151.

229. **AUSTRIA** and **BAVARIA**, in 1814. Art. 3 of the *Convention* between Austria and Bavaria, signed at Paris, June 3rd, 1814, provides for a MIXED COMMISSION to regulate all that has reference to the administration of territories on the left bank of the Rhine, and to collect their revenues on behalf of the two Governments.

References: Hertslet, Map of Europe, etc., I. 31; Schoell, III. 369; State Papers, I. 177.

230. **FRANCE** and **SPAIN**, in 1814. An Additional Article to the *Treaty of Peace* between France and Spain, signed at Paris, July 20th, 1814, enacts that "Disputes respecting coins in actual circulation, or which may arise hereafter between France and Spain, whether they shall have arisen before the War or at a later date, shall be settled by a MIXED COMMISSION; and if such disputes are within the jurisdiction of Courts of Justice, the respective tribunals shall be called upon, on either side, to administer a prompt and impartial justice."

References: Schoell, III. 368; R. XIII. 43; Hertslet, Map of Europe, etc., I. 36; State Papers, I. 1099.

231. **GREAT BRITAIN** and the **NETHERLANDS**, in 1814. By the Second Additional Article of a *Convention* between these two countries, signed at

London, August 13th, 1814, a JOINT COMMISSION was appointed by the respective Governments to settle the sum to be paid annually to the Dutch Government for the cession to Great Britain of the small district of Bernagore, situated close to Calcutta, which was deemed requisite to the due preservation of the peace and police of that city.

References: Schoell, III. 371; R. XIII. 57; Recueil de pièces officielles, VII. 378; Hertslet, Map of Europe, etc., I. 47; State Papers, II. 370.

232. **DENMARK** and **PRUSSIA**, in 1814. By Art. 4 of the *Treaty of Peace* between these Powers, signed at *Berlin August 25th, 1814*, a MIXED COMMISSION OF CLAIMS was appointed, which was to meet at Copenhagen immediately after the ratification of the Treaty, or within six weeks after its signature. But by Art. 9 of another Treaty, signed at Vienna June 4th, 1815, it was arranged that these claims should be settled by direct negotiation, which was, presumably, done.

References: Hertslet, Map of Europe, etc., III. 2056; State Papers, I. 255; Hertslet, Map of Europe, etc., I. 198; State Papers, II. 181.

233. **AUSTRIA** and **THE POWERS (TESSIN and URI)**, in 1815. By Art. 6 of the *Declaration*, signed at *Vienna, March 20th, 1815*, on the Affairs of the Helvetic Confederacy, embodied as Art. 81 in the Vienna Congress Treaty, June 9th, 1815, it was settled that, with a view to the establishing of reciprocal compensations, some Cantons should pay to others certain sums of money, to be applied to purposes of public instruction, etc. It was provided that the Cantons of Argovia, Vaud, and St. Gall should furnish a fund of 500,000 Swiss livres, but that the Canton of Tessin should "pay every year to the Canton of Uri a moiety of the produce of the tolls in the Levantine Valley." The execution of these arrangements was to be superintended by "a COMMISSION appointed by the Diet." Calvo states that an arbitral Award was given August 15th, 1816, in regard to the payment by Tessin to Uri.

References: Moore, V. 4856; Schoell, III. 409, XI. 96, 115; Hertslet, Map of Europe, etc., I. 67, 258; Calvo, II. 550; State Papers, II. 3, 142; R., XIII, 173; Schoell, Congrès de Vienna, Recueil de pièces officielles, VIII. p. 336.

234. **AUSTRIA** and **RUSSIA**, in 1815. By the *Treaty* between these two Countries, signed at *Vienna, May 3rd, 1815*, the navigation of the rivers and canals of the ancient Kingdom of Poland, was declared to be free, "so as not to be interdicted to any inhabitant of the Polish provinces, subject to either the Russian or Austrian Governments" (Art. 24). It was agreed, however, that a tonnage duty should be levied for the purpose of maintaining the rivers and canals in question in a navigable state" (Acts. 25 and 26), and that COMMISSIONERS should be appointed for the purpose of regulating this and other matters of navigation. The Commissioners were to be appointed without delay (Art. 27), and their labours were to be fixed, examined, and approved within six months at the latest, dating from the day of the ratification of the Treaty. These Articles were confirmed by Art. 14 of the Treaty of the Congress of Vienna, June 9th, 1815.

References: Moore, V. 4852; Hertslet, Map of Europe, etc., I. 100, 101, 221; State Papers, II. 3, 56; Schoell, III. 397, Recueil de pièces officielles, VIII. 127; R., XIII., 236.

235. **AUSTRIA** and **RUSSIA**, in 1815. With a view also of encouraging the import and export trade between the provinces which constituted the ancient Kingdom of Poland, it was, in Art. 29 of the same *Treaty*, (*May 3rd, 1815*), mutually agreed that the two Courts should name COMMISSIONERS to examine the Regulations and Tariffs in force, to present plans tending to regulate whatever is relative to this commerce, and especially to prevent abuses or undue influence on the part of the Customs.

References: Hertslet, Map of Europe, etc., I. 101; State Papers, II. 56; Schoell, III. 397, Recueil de pièces officielles, VIII. 127; R., XIII. 236.

236. **AUSTRIA** and **RUSSIA**, in 1815. Art. 34 of the same *Treaty* (*May 3rd, 1815*) enacted that immediately after the signature of the Treaty, a Com-

MISSION should be appointed, composed of a proper number of Commissioners and Assistants; it should meet at Warsaw, and its objects should be: (1) To prepare an exact balance of what is due by foreign Governments; (2) to regulate, reciprocally, between the contracting parties, the accounts of their respective Claims; (3) to settle the Claims of Subjects against their Governments. In short, to adjust whatever relates to subjects of this nature. Art. 35 provides that this Commission, immediately it should have entered upon its duty, should appoint a Committee for the restitution of all securities.

References: Hertslet, Map of Europe, etc., I. 103; State Papers, II. 56; Schoell, III. 398, Recueil de pièces officielles, VIII. 127; R., XIII. 236.

237. **PRUSSIA and RUSSIA, in 1815.** In a *Treaty* concluded on the same day (*May 3rd*, 1815) between Prussia and Russia relating to ancient Poland, similar provisions were embodied. Art. 22-24 provided for the freedom of navigation on the rivers and canals, and appointed COMMISSIONERS to regulate the Duty; and by Art. 36, a COMMISSION of Accounts was arranged for, to be composed of a proper number of Commissioners and Clerks, to meet at Warsaw. By Art. 26, a BOARD of COMMISSIONERS was appointed by the two Courts to regulate the Rights and Privileges of certain Towns and Ports; and the Commissioners appointed under this Article were empowered to determine in the prescribed term of six months, the Tariff and Duties on the import and export trade of the interested provinces. These Articles, like the similar ones in the Treaty between Austria and Russia, were confirmed by the Vienna Congress Treaty of June 9th, 1815 (Art. 14).

References: Hertslet, Map of Europe, etc., I. 112-116. 221; State Papers, II. 56; Moore, V. 4852; Schoell, III. 398, 399, Recueil de pièces officielles, VIII. 127; R., XIII. 236.

238. **AUSTRIA, PRUSSIA, and RUSSIA, in 1815.** By the *Additional Treaty* between these Powers relative to Cracow, signed at *Vienna, May 3rd*, 1815, after guaranteeing the Constitution of that free city (which was confirmed by Art. 10 of the Vienna Congress Treaty, June 9th, 1815), the signatories engage to appoint a COMMISSION consisting of three members, one appointed by each, who were to proceed to Cracow, to act in concert with a temporary and local COMMISSION, composed principally of individuals holding public situations or of persons of character. Each of the Commissioners of the three Courts was to fill the office of President alternately, by the week, and the President was to enjoy all the rights and privileges belonging to that office. The body thus constituted was to lay down the constitutional bases, and carry them into effect; make the first official appointments; assemble and put into action the new Government of the Free City of Cracow and its territory; and make all such changes in the existing administration as may be necessary for the public service, so long as the temporary state of affairs should continue. It was also to settle the postal arrangements (Art. 12) and (Art. 18) to deposit the constitution, etc., in the Archives of the City.

By a Treaty between Austria, Prussia, and Russia, of November 6th, 1846, the Independent existence of the Free City of Cracow was put an end to, and the City and its Territory were incorporated with the Austrian Dominions. The British Government protested against this infraction of the Vienna Congress Treaty, on November 23rd, 1846. The French Government also protested against it on December 3rd, 1846.

References: Hertslet, Map of Europe, etc., I. 122, 123; 220, II. 1061-1068; Schoell, III. 400, Recueil de pièces officielles, VIII. 157, 170; Brit. and For. State Papers, II. 374, XXXIII. 1042, XXXV. 1088, 1093.

239. **ALLIED POWERS and FRANCE, in 1815.** By a series of European *Treaties*, provisions have been made for the regulation of the Navigation of international streams by means of MIXED COMMISSIONS. The "Navigation of the Rhine, from the point where it becomes navigable unto the sea, and *vice versa*," was, by the Peace of Paris, of May 30th, 1814, declared to be "free, so that it can be interdicted to no one"; and it was provided that at the Congress about to be held at Vienna, "attention" should "be paid to the establishment of the principles according to which the duties to be raised by the States bordering on the Rhine may be regulated in the mode most impartial and the most

favourable to the commerce of all nations." It was further stipulated that the Congress, with a view to facilitate communication between nations, and continually to render them less strangers to each other, "should likewise examine and determine in what manner the above provisions can be extended to other rivers which in their navigable course separate or traverse different States." This was done. By the "*Regulations for the Free Navigation of Rivers*," settled in March, 1815, which formed Annex 16 to the Vienna Congress Treaty of June 9th, 1815, and were embodied in that Treaty as Arts. 108 to 116, "the Powers, whose States are separated or traversed by the same navigable river, 'engaged' to regulate, by common consent, all that regards its navigation" (Art. 1), and for this purpose to name COMMISSIONERS, who should adopt, as the bases of their proceedings, certain principles, the chief of which was that the navigation of such rivers, "along their whole course from the point where each of them becomes navigable to its mouth shall be entirely free, and shall not, in respect to commerce, be prohibited to any one," subject to regulations of police.

(a)—THE RHINE: "In order to establish a perfect control of the regulation of the Navigation," and "to constitute an authority which may serve as means of communication between the States of the Rhine upon all subjects relating to Navigation," it was stipulated (Art. 10 *et seq.*) that a CENTRAL COMMISSION should be appointed, consisting of Delegates named by the various States bordering on the Rhine, which Commission should regularly assemble at Mayence, on November 1st, in each year; and special regulations were made for the creation and control of this Commission. These arrangements continued undisturbed until 1831, when, on March 31st, a Convention was signed between the Riverain States of the Rhine, revising the Regulations for the Navigation of the Rhine, and fixing the Powers and Duties of the Central Commission. This Convention was replaced by a Convention, signed at Mannheim, October 17th, 1868, which was ratified at the same place April 17th, 1869. Between the years 1832 and 1842 various supplementary Articles, and an additional Convention, relative to the navigation of the river, were agreed upon between the Riverain States of the Rhine, all of which were embodied in a French Ordinance, dated October 15th, 1842; further supplementary Articles were also agreed upon in the years 1844, 1845, 1846, 1847, and 1860.

(b)—OTHER RIVERS: By the "*Regulations for the Free Navigation of Rivers*," etc., described above, it was provided that the same Freedom of Navigation should be extended to the Neckar, the Mayue, the Moselle, the Meuse, and the Scheldt, and these rivers came within the purview of the COMMISSIONS provided for in Art. 108 of the Vienna Congress Treaty, June 9th, 1815. Regulations for the Navigation of the Moselle and the Meuse were to be drawn up by those Members of the CENTRAL COMMISSION of the Rhine, whose Governments should have possessions on the banks of those rivers. By Art. 9 of the *Treaty of London*, November 15th, 1831, the provisions of Arts. 108 to 117 of the Vienna Congress Treaty, were "applied to those navigable rivers which separate the Belgian and the Dutch territories, or which traverse them both." It was decided that the Scheldt below Antwerp should be subject to a joint superintendence of Commissioners, appointed on both sides for this purpose. By the same Article, Commissioners were also appointed to meet at Antwerp, in the space of one month, to regulate the tolls. This Treaty was cancelled by Treaties of April 19th, 1839, but the above provisions were confirmed by Art. 9, Sects. 1 and 6 of the Annex to the Treaty of that date, signed at London, between the Powers and the Netherlands. The Regulations between Belgium and the Netherlands for the Navigation of the Scheldt were drawn up in October, 1839, but they were cancelled by the Regulations of May 20th, 1843. The Scheldt Toll was redeemed by the Treaty between Great Britain, etc., and Belgium, of July 16th, 1863.

(a)—References: Hertslet, Map of Europe, etc., I. 75-90, 269-272, II. 848-855, III. 1850; State Papers, II. 3, 162, XVIII. 1076, LIX. 470; Moore, V. 4851-4852; Schoell, III. 356, 497.

(b)—References: Hertslet, Map of Europe, etc., I. 76, 91-93, 269-272, II. 863, 864, 986, 987, III. 1532, 1550, 1561; State Papers, II. 3, 162, XVIII. 646, XXVII. 990, LIII. 8, 15; Moore, V. 4851, 4852; Schoell, III. 497; Parl. Papers, House of Commons, 1864, III., 1865. XCIII.

240. **PRUSSIA and SAXONY, in 1815.** *The Elbe.* By the *Treaty* between Prussia (Austria and Russia) and Saxony, of *May 18th*, 1815, provision was made (Art. 17) for the creation of a MIXED COMMISSION to regulate the navigation of the Elbe, in accordance with the general principles adopted at the Congress of Vienna, and embodied in the Regulations of March, 1815, for the free navigation of rivers. This Commission ended its labours June 23rd, 1821, in the *Treaty* of that date, which was signed at *Dresden*, between Austria, Denmark, Great Britain, Prussia, Saxony, Hanover, Mecklenburg-Schwerin, Hamburg, etc., relative to the free navigation of the Elbe, and in which that river, from the point at which it becomes navigable down to the open sea, and *vice versa*, was declared to be "entirely free with respect to commerce." To secure this end various stipulations were made, including a provision for the appointment (Art. 30) of a COMMISSION OF REVISION, whose members should be appointed by the States bordering on the river—each State sending one member—and whose object and powers should be "to watch over the due observance of the present Convention; to form itself into a Committee for the settlement of any differences which may arise between the States bordering on the river, and to determine upon the measures which by experience may be found to be necessary to the improvement of commerce and navigation." The first Commission was to assemble at Hamburg at the expiration of one year from the day on which the Convention should begin to operate, and before closing its sittings the Commission should determine upon the period and place at which the next Commission should assemble. By a Convention, signed at *Dresden*, April 13th, 1844, the Brunshausen (Stade) Toll was referred to this Commission. The Stade Toll was abolished by a Treaty dated June 22nd, 1861. The Elbe Duties were abolished by a Treaty, dated June 22nd, 1870.

References: Hertslet, Map of Europe, etc., I. 75-93, 141, 671-692, II. 1036, 1037, 1471-1480; Brit. and For. State Papers, II. 84, 162, VIII. 953, XXXII, 20, LI. 27-33; Moore, V. 4852; N.R., V. 714; Neumann, III. 613, IV. 608; Martens-Murhard, VI. 370, 386; Calvo, I. 370; Schoell, III. 396.

241. **ALLIED POWERS and FRANCE, in 1815.** *Claims upon the Revenue of the Navigation of the Rhine.* By certain Articles in the Recez of February 25th, 1803, these revenues were assigned to individuals. Art. 28 of the *Regulations for the Free Navigation of Rivers*, signed at *Vienna*, *March*, 1815, stipulated that the settlement of these should "be entrusted to a COMMISSION, composed of five persons, whom the Court of Vienna, at the desire of the German Government, joint possessors of the bank of the river," should nominate. Consequently, the Court of Vienna appointed a Commission, composed of Baron Pufendorf, Baron Bartenstein, and Baron Gaertner (Ex-Aulic Councillors of the Empire), and Messieurs Radeinacher and Von Breuning (Imperial Aulic Councillors). This Commission made its final *Award* in regard to the various Claims on March 26th, 1816.

References: Schoell, III. 453; Hertslet, Map of Europe, etc., I. 87; Staats Archiv des deutschen Bundes, I. 519; State Papers, II. 162.

242. **POLAND, etc., and SAXONY, in 1815.** By Art. 24 of the *Territorial Treaty* between Prussia (Austria and Russia) and Saxony, signed at *Vienna*, *May 18th*, 1815 (which formed Annex 4 to the Vienna Congress Treaty of June 9th, 1815), the claims of Saxony to a sum of 2,550,193 florins, claimed as having been transferred from the Treasury of Saxony into that of the Duchy of Warsaw, were referred to the COMMISSION OF LIQUIDATION, composed of Russian, Austrian, and Prussian Commissioners, which, as stipulated by the Treaty, signed May 3rd, 1815, between these Powers, was to meet immediately at Warsaw, and the King of Saxony was declared at liberty to send an accredited Commissioner on his part to assist in their deliberations.

References: Hertslet, Map of Europe, etc., I. 144; State Papers, II. 84; Schoell, III. 396, Recueil de pièces officielles, VIII. 181.

243. **HANOVER and PRUSSIA, in 1815.** *The River Ems.* Art. 5 of the *Treaty* between Prussia and Hanover, signed at *Vienna*, *May 29th*, 1815, which formed Annex 6 to the Vienna Congress Treaty of June 9th, 1815, the Article in question forming Art. 30 of that Treaty, stipulated that the Hanoverian

Government would execute at its own expense, during the years 1815 and 1816, the works which a MIXED COMMISSION, composed partly of artists, and to be immediately appointed by Prussia and Hanover, should deem necessary to render navigable that part of the river Ems which extends from the Prussian frontier to its mouth, and to keep it, after the execution of such works, always in the same state in which those works shall have placed it for the benefit of navigation.

References : Hertslet, Map of Europe, etc., I. 173-175, 231-233 ; State Papers, II. 3, 94.

244. NAVIGATION OF THE RIVER PO, in 1815. (a)—The ALLIED POWERS and FRANCE, in 1815. The Treaty of the *Vienna Congress, June 9th, 1815* (Art. 96), provided that the general principles adopted by the Congress of Vienna for the Navigation of Rivers should be applied to that of the Po, and that COMMISSIONERS should be appointed by the States bordering on it to regulate all that concerned its navigation.

(b)—AUSTRIA, MODENA, and PARMA, in 1849. The *Treaty* between the Governments of Austria, Modena, and Parma, on the Free Navigation of the River Po, signed at *Milan, July 3rd, 1849*, and duly ratified by each of the Powers in the same year, provided (Art. 1) that the Navigation of the Po should be free and exempt from all burden as far as the Adriatic Sea, and that in like manner the navigation of the streams joining the Po below the mouth of the Ticino should also be free. It also (Arts. 5-24) provided for the appointment and the duties of a suitable COMMISSION OF MANAGEMENT, consisting of four members and a president, who, as well as one of the Commissioners, should be named by Austria, and the three other Commissioners, one by each State. The Pope acceded to this Treaty on February 12th, 1850. These arrangements, which were confirmed by the Treaty of Zurich, November 10th, 1859, governed the Navigation of the Po until the Peace of Vienna of 1866, and placed that river under the exclusive control of the Italian Monarchy.

(a)—References : Hertslet, Map of Europe, etc., I. 264 ; State Papers, II. 3 ; Moore, V. 4851, 4852 ; Schoell, III. 491, Recueil de pièces officielles, VIII.

(b)—References : Hertslet, Map of Europe, etc., II. 1095-1103, 1112-1114, 1123, III. 1749-1759 ; State Papers, LVI. 700 ; De Clercq, VII. 643 ; N.R.G., III. pte. II. 516 ; Savoie, VIII. 697 ; Angeberg, Le Congrès, p. 1838 ; Moore, V. 4852.

245. NETHERLANDS and PRUSSIA, in 1815. By Art. 9 of the *Treaty* between the Allied Powers and the Netherlands, signed at *Vienna, May 31st, 1815* (forming Annex 10 to the Vienna Congress Treaty of June 9th, 1815), it was stipulated that a JOINT COMMISSION should be immediately appointed by the Kings of Prussia and of the Netherlands, to settle the concerns of the ceded Possessions of the House of Nassau. This Article was included in the Treaty between Prussia and Nassau, May 31st, 1815, Art. 17.

References : Hertslet, Map of Europe, etc., I. 182, 190 ; State Papers, II. 102, 137 ; R., XIII. 23 ; Schoell, III. 412, 416, Recueil de pièces officielles, VIII. 242.

246. PRUSSIA and SWEDEN, in 1815. By Art. 5 of the *Treaty* between Prussia and Sweden of *June 7th, 1815*, a JOINT COMMISSION was appointed to decide the terms and conditions of the payment of 3,500,000 Rix dollars by the former to the latter, for the Cession of Pomerania and Rügen.

References : Gesetzsamml. für die königl. Preussischen Staaten, 1817 ; Schoell, III. 420 ; Hertslet, Map of Europe, etc., III. 2064 ; State Papers, II. 975.

247. AUSTRIA, HESSE-DARMSTADT, and PRUSSIA, in 1815. *Cession of Territory.* By Art. 2 of the *Territorial Convention* between these States, signed at *Vienna, June 10th, 1815*, it was stipulated that "COMMISSIONERS shall be appointed without delay, on the part of His Majesty the Emperor of Austria, and of His Royal Highness" (the Grand Duke of Hesse), "to settle the Valuation and the Limits of the said territory, and to regulate everything bearing upon the execution of the present Article"—which provided for the Cession of Territory of the left bank of the Rhine to the Grand Duke of Hesse.

References : State Papers, II. 831 ; Hertslet, Map of Europe, etc., I. 279.

248. **PRUSSIA** and **SAXE-WEIMAR**, in 1815. A COMMISSION was appointed by both signatory Parties, under Art. 13 of the *Territorial Treaty* signed at *Paris, September 22nd, 1815*, to settle various matters under the Treaty connected with the reciprocal cession of territory. This Commission was to assemble at Weimar immediately after the territorial transfer, in order to complete the work in the shortest possible time.

References: R. XIV.; Schoell, III. 418; Hertslet, Map of Europe, etc., I. 311, 312; State Papers, II. 944.

249. **HANOVER** and **PRUSSIA**, in 1815. A JOINT COMMISSION was appointed, under Art. 3 of the *Territorial Treaty* between these Kingdoms, signed at *Paris on September 23rd, 1815*. It was to meet at Hanover as soon as possible, and proceed uninterruptedly for the valuation of the exchanges of Territory made by them.

References: R., XIII. 652; Schoell, III. 416; Hertslet, Map of Europe, etc., I. 314, 315.

250. **ALLIED POWERS** and **FRANCE**, in 1815. Art. 11 of the *Convention* between Great Britain (Austria, Prussia, and Russia) and France, relative to the Pecuniary Indemnity to be paid by France to the Allied Powers, which was signed at *Paris, November 20th, 1815*, and which was annexed to the Definitive Treaty of the same date (see Art. 4), provided that "there shall be a MIXED COMMISSION, composed of an equal number on both sides of Allied and French Commissioners, who shall examine every six months the state of the payments, and shall regulate the balance. A further Convention between these Powers, signed at *Aix-la-Chapelle, October 9th, 1818*, and a Protocol signed at *Aix-la-Chapelle, November 3rd, 1818*, regulated the close of this payment.

References: Hertslet, Map of Europe, etc., I. 347, 354, 557-562; State Papers, III. 280, 293, VI. 6, 11.

251. **SARDINIA** and **SWITZERLAND**, in 1816. By Art. 20 of the *Treaty* between Sardinia, the Swiss Confederation, and the Canton of Geneva, signed at *Turin, March 16th, 1816*, it was stipulated that "His Majesty shall appoint two COMMISSIONERS who shall regulate and complete, with the least possible delay, in conjunction with two other Commissioners to be appointed by the Canton of Geneva, the liquidation of Debts owing to or by the ancient department of the Lemán, as well as those connected with the relations which have existed between the two States."

References: State Papers, VII. 21; Hertslet, Map of Europe, etc., I. 421-432.

252. **AUSTRIA** and **BAVARIA**, in 1816. By Art. 5 of the Treaty of *Teschau, May 13th, 1779*, the Rivers Danube, Inn, and Salza, were declared to be common to the House of Austria and the Elector Palatine for the Navigation of their subjects. These stipulations were confirmed as to the Salza and Saale by the *Treaty of Munich*, between Austria and Bavaria, of *April 14th, 1816*. The General Principles agreed upon by the Congress of Vienna, and embodied in the Regulations for the Navigation of Rivers, signed at Vienna, March, 1815 (which provided for the appointment of a Commission of Management), were by Art. 9 of the above Treaty of Munich, applied to the Navigation of the Rivers Salza and Saale, as far as these rivers separate the two Countries.

References: Hertslet, Map of Europe, etc., I. 75-78, 439; Schoell, III. 555; State Papers, VII. 63; Moore, V. 4853.

253. **AUSTRIA** and **BAVARIA**, in 1816. By Arts. 20 and 21 of the *Treaty of Munich, April 14th, 1816*, it was stipulated that a SPECIAL COMMISSION should be immediately appointed, "composed of an equal number of individuals on both sides," charged with the liquidation of Claims arising out of the transfer of territory, and with the regulation of all ancient Grants and clearing of the Forests of the Valley of the Saale. This Commission was to meet at Salzburg, and to terminate its labours in the space of six months.

References: State Papers, II. 162, VII. 63; Hertslet, Map of Europe, etc., I. 142; Schoell, III. 555.

254. **AUSTRIA, HESSE-DARMSTADT, and PRUSSIA, in 1816.** (a)—By Art. 19 of the *Treaty of Frankfort, June 30th, 1816* (forming Annex 2 to the General Treaty, signed at Frankfort July 20th, 1819), it was agreed that a COMMISSION should be appointed by the Emperor of Austria and the Grand Duke of Hesse, to ascertain the state of the Debts and Pensions assigned on the Duchy of Westphalia, etc., and to regulate their allotment.

(b)—By Arts. 9, 10, and 14 of the *same Treaty*, it was agreed "immediately after the signature of the present Treaty," to appoint a COMMISSION, composed of one or several Functionaries of the Grand Duke of Hesse, and of one or more Officers delegated *ad hoc* by the Government of the Fortress of Mayence, to define Dependencies, and to regulate all the other points between the Military Government and the Civil Authority, including matters of exemption from Duties and free postage of letters, official residence, etc. A Treaty, of which Arts. 1 to 25, both inclusive, were literally conformable to the above Treaty (Annex 3, etc.), was signed between Great Britain and Hesse-Darmstadt, at the same place and date.

References : R., XIV. 73 ; Hertslet, Map of Europe, etc., I. 457-471 ; State Papers, VII. 30, 39 ; Schoell, III. 557-560.

255. **NETHERLANDS and PRUSSIA, in 1816.** (a)—The *Treaty* between Prussia and the Netherlands, signed at *Frankfort, November 8th, 1816*, and forming Annex 4 of the General Treaty of Frankfort, July 20th, 1819, stipulates (Art. 10) that "all discussions which may arise," in the City and Fortress of Luxemburg, "shall be decided by a MIXED COMMISSION, under the direction of the Governor."

(b)—Art. 13 of the *same Treaty* provided that the necessary Funds for alterations and repairs of the Fortifications shall be entrusted to a MIXED COMMISSION placed under the direction of the Governor ; this Commission was to "give receipts for the sums expended on these alterations, which at the closing of the Accounts of each year," shall be inspected by a Prussian and a Dutch officer.

References : State Papers, VII. 40 ; Hertslet, Map of Europe, etc., I. 486-496.

256. **GREAT BRITAIN and PORTUGAL, in 1817.** *Slave Trade.* For the purpose of preventing any illicit Traffic in Slaves, the Governments of these Countries signed at *London, July 28th, 1817*, a *Convention*, additional to the Treaty of January 22nd, 1815, by which three PERMANENT MIXED COMMISSION TRIBUNALS were instituted to decide : (1) upon the legality of the capture of slave ships ; and (2) upon the amount of indemnity, when necessary. These Commissions were to be located on the Coast of Africa, in the Brazils, and at London. They were composed each of two Commissary Judges and two Commissioners of Arbitration, who were authorised to "judge the causes submitted to them without appeal" according to the regulations and instructions annexed to the Convention. When Brazil was separated from Portugal, it was agreed, by Art. 3 of the Treaty of Rio de Janeiro, between Brazil and Great Britain, November 23rd, 1826, that the Convention of July 28th, 1817, should be maintained in its integrity. No history of the decisions of these Commissions has been published, so far as we are aware.

References : Hertslet, Complete Collection, etc., II. 89-95, 105-121 ; P.L., pp. 84-88.

257. **FRANCE and PORTUGAL, in 1817.** Attached to the *Treaty, August 28th, 1817*, for the settlement of the frontiers of Guiana, a separate Article of the same date provided for a Special Convention, also of the same date, by which all difficult points connected with the question of the Guiana frontiers, such as the payment of debts, the recovery of revenues, and the extradition of slaves, should be referred to an ARBITRAL COMMISSION similar to that under the Treaty of November 20th, 1815, except that it was stipulated that the term of a year fixed for a presentation of claims should date from the signature of the Convention, not from its ratification, which however, took place, May 9th, 1818.

References : Schoell, III. 562.

258. **GREAT BRITAIN and SPAIN, in 1817.** By Art. 12 of the *Treaty of September 23rd, 1817*, between Great Britain and Spain, MIXED COMMISSIONS

were also instituted, to decide on the fate of ships captured for illicit traffic in slaves.

Reference : Schoell, III. 563. (This Treaty is found in Vol. XIV. of R.)

259 **GERMANIC CONFEDERATION, in 1820.** The *Final Act* of the Ministerial Conferences held at Vienna to complete and consolidate the Organisation of the Germanic Confederation, signed at Vienna, May 15th, 1820 (Arts. 21 to 24), instituted the ARBITRATION COURT (Austrägal Instanz) of the Confederation, to which the Diet had to appeal for the settlement of differences between the Members, observing, in the absence of any special Convention, the regulations contained in the Resolutions of the Diet of June 16th, 1817. Modifications of the Federal Constitution of the Confederation, which was established by the Federal Act of 1815, were introduced by the Act of the Diet of Frankfurt, October 30th, 1834, which enacted that, after every legal and constitutional means of Conciliation had been exhausted, the difference should be decided by a Federal Tribunal of Arbitrators. (*See infra*, pp. 294-296.) The Germanic Confederation was dissolved in 1866.

References : State Papers, VII. 399 ; Hertslet, Map of Europe, etc., I. 636-651.

260. **HANOVER, PRUSSIA, etc., in 1823.** *Free Navigation of the Weser.* In order to apply to the River Weser the general principles for the navigation of rivers, as laid down in Arts. 108 to 116 of the Vienna Congress Treaty, June 9th, 1815, the states interested appointed a COMMISSION as provided, and this body drew up a Special Convention for the purpose, which was signed at Minden, September 10th, 1823. Besides the usual provisions this Convention stipulated the appointment of a Revision Commission from time to time.

References : Hertslet, Map of Europe, etc., I. 208-277 (esp. p. 269, n.), 707-709 ; State Papers, II. 3, etc., XXII. 1029.

261. **RUSSIA and TURKEY, in 1826.** By the *Treaty of Ackermann*, signed October 7th, 1826 (Art. 6), and in accordance with the express stipulations of Art. 10 of the Treaty of Bucharest, May 28th, 1812, a JOINT COMMISSION was appointed to examine the losses sustained by Russian subjects by the depredations of Moorish pirates, and other acts, including those since 1821, and to fix the amount of the Indemnity. These arrangements, however, were not carried out, and by Art. 8 of the Treaty of Adrianople, September 14th, 1829, it was "agreed and determined that the Sublime Porte, by way of reparation for these losses and injuries, shall pay to the Imperial Court of Russia, within the course of eighteen months the sum of 1,500,000 ducats of Holland," the payment of which "shall put an end to every reciprocal demand or claim of the two Contracting Powers, on the score of the circumstances above mentioned."

References : State Papers, XIII. 899, XVI. 647, 654, 657 ; Hertslet, Map of Europe, etc., I. 747, 751, II. 813-831.

262. **GREECE and TURKEY, in 1827.** By a *Treaty*, signed at London, July 6th, 1827, Great Britain, France, and Russia entered into an Agreement for the pacification of Greece. An additional Article to this Treaty, in its third paragraph, provided that if the Ottoman Porte refused their propositions, or "if, on the other hand, the Greeks decline the conditions stipulated in their favour by the Treaty of this date, the High Contracting Powers, will, nevertheless, continue to prosecute the work of pacification, on the bases upon which they have agreed ; and, in consequence, they authorise, from the present moment, their Representatives at London to discuss and determine the future measures which it may become necessary to employ." In pursuance of this paragraph a Conference of the Representatives of the three Signatory Powers met at London, on July 12th, 1827, and continued to meet from time to time as a DELIBERATIVE and DETERMINING BOARD for more than ten years. Under the instructions of this "CONFERENCE OF LONDON," Conferences were held at Constantinople in 1827, and at Poros, in 1828, but without much ultimate result. On September 9th, 1829, the Porte promised to accept all the conclusions of the Conference of London, and by Art. 10 of the Treaty of Adrianople, made with Russia, September 14th, 1829, the Porte declared

its "entire adhesion to the Treaty of London." A question as to the district of Zeitoun was by the "Arrangement" signed at Constantinople July 21st, 1832, referred to the London Conference, thus showing its Arbitral character.

References: Protocols of the Conference of London in the Parl. Papers for 1830, 1832, and 1843; also in Marten's N.R., XII., XVI., XVII., and in The Brit. and For. State Papers, XVII., XVIII., XIX., XXII., XXV.; see also the Protocols of the Conference at Constantinople (August 16th to December 4th, 1827) and of Poros (December 28th, 1828) in the Parl. Papers for 1830; Hertslet, Map of Europe, etc., I. 769-774; State Papers, XIV. 632; T. E. Holland, pp. 10, 11.

263. **GREECE and TURKEY, in 1828.** *Indemnity.* (a)—The *Conference of Poros*, held December 12th, 1828, between the Representatives of Great Britain, France, and Russia, relative to the Insular and Continental Boundaries of Greece, etc. (Protocol, Art. 11), agreed to institute a MIXED COMMISSION by which the verification of the Titles of Land and admitted Claims should be effected for the purpose of paying an Indemnity to former Mussulman proprietors, etc., under Art. 2 of the Treaty of London, July 6th, 1827. This Commission should commence its labours as soon as the Porte had acceded to the new state of affairs; and fix the value of the land and periods of payment, subject to appeal to the Arbitration of the Agents of the Allied Courts. The London Conference in its meeting of March 22nd, 1829 (see Protocol), agreed that this Mixed Commission should be composed of Greek and Mussulman Commissioners, in equal number on both sides.

(b)—In order to solve the difficulties which might arise between the Greek and Ottoman Commissioners, to abridge the period of this liquidation, and to lead in each case to a definite decision, there was also instituted a COMMISSION OF APPEAL and ARBITRATION, composed of Commissioners of the three Allied Powers, who "shall decide in the last instance upon all the claims respecting which the Ottoman and Greek Commissioners shall not have been able to come to an understanding." The Porte declared its adhesion to this Protocol in its Treaty with Russia, of September 14th, 1829 (Art. 9).

References: State Papers, XVI. 1095, XVII. 405; Hertslet, Map of Europe, etc., I. 802, 806.

264. **GREECE and TURKEY, in 1832.** Art. 7 of the *Boundary Arrangement* made at Constantinople on July 21st, 1832, runs: "A term of eighteen months, dating from the day on which the labours of the demarcation shall have been completed, is accorded to such individuals as may desire to quit the territories which form the object of the present arrangement, and to sell their estates. This term of eighteen months may, in special cases, and under unforeseen circumstances, be prolonged some months, and a COMMISSION OF ARBITRATION shall determine on the validity of these cases for exception, and shall assist in causing the sales to be effected at a fair price." We have no record of the proceedings of this Commission.

References: Prot. of Conf. of London, No. 52, Annexe A. (August 30th, 1832); Hertslet, Map of Europe, etc., II. 907; State Papers, XXII. 934; T. E. Holland, p. 16.

265. **BELGIUM and HOLLAND, in 1839.** The *Treaty of London*, of April 19th, 1839, which cancelled and yet confirmed similar provisions in the Treaty of November 15th, 1831, appointed "COMMISSIONERS to be named on both sides," to "meet within the space of fifteen days in the town of Utrecht, in order to proceed to the transfer of the capitals and annual interest which, upon the division of the Public Debt of the Kingdom of the Netherlands, are to pass to the charge of Belgium, up to the amount of 5,000,000 florins of Annual Interest." (Annex Art. 13.) This COMMISSION was charged to deliver up the Archives, Maps, Plans, etc., belonging to Belgium, to settle Claims on Private Establishments, and if, "under the head of the *French Liquidations*," any Belgian subject should still be able to bring forward claims to be inscribed, such claims shall also be examined and settled by the said Commission." (Arts. 13 and 22.)

References: Hertslet, Map of Europe, etc., II. 866-870, 990-994; State Papers, XVIII. 646, XXVII. 990, 1320.

266. **BADEN, HESSE-DARMSTADT, and WURTEMBERG, in 1842.** A *Convention* between these States for the regulation of Navigation on the Neckar, signed at *Carlsruhe, July 1st, 1842*, applied to that river the provisions of the *Vienna Congress Act of June 9th, 1815*, which included a MIXED COMMISSION. "For the complete application of those provisions," says the Preamble, "the Neckar Bank States have resolved to agree upon a Neckar Navigation Ordinance on the basis of the Convention existing between them of July 30th, August 5th and 15th, 1835, respecting the Neckar Navigation, and the Neckar Toll, according to Art. 1 of which, the provisions of the Rhine Navigation Ordinance of March 31st, 1831, are also to be applied in general to the Neckar, so far as it is navigable."

References: Hertslet, Map of Europe, etc., II. 1027, 1028.

267. **RUSSIA and TURKEY, in 1849.** The *Act* between Russia and Turkey, relative to Moldavia and Wallachia, signed at *Balta-Liman, May 1st, 1849*, established (Art. 3) two COMMISSIONS OF REVISION, one at Jassy, and the other at Bucharest, "to whom it entrusted the task of revising the existing Regulations, and of pointing out the modifications best calculated to confer upon the Administration of the Country, the Regularity and Unity in which they have frequently been deficient." By Art. 5, pending the duration of the military occupation, the two Courts appointed an Extraordinary Russian Commissioner and an Extraordinary Ottoman Commissioner, to reside in the Principalities, to watch over the progress of affairs, to advise when necessary, to agree upon the choice of the Members of the Commissions of Revision, and to report the work of those Commissions to their respective Courts. The duration of this Agreement was fixed at seven years, when the two Courts would reconsider the situation.

References: Hertslet, Map of Europe, etc., II. 1092, 1093.

268. **AUSTRIA and MODENA, in 1849.** (a)—By Art. 12 of a *Treaty* between Austria and Modena respecting the Navigation and the Regulation of Limits on the River Po, signed at *Milan, August 8th, 1849*, a COMMISSION was appointed to decide upon the respective Sovereignty of the Islands in the Po. (b)—By Art. 13 of the above Treaty another COMMISSION was appointed to decide upon any exchanges of Territory required to regulate the Boundary.

References: Hertslet, Map of Europe, etc., II. 1112.

269. **FRANCE and GREAT BRITAIN, in 1855.** This was a peculiar case of Arbitral Agreement arising out of the co-operation of the two Powers in the War against Russia. By a *Declaration* exchanged between Great Britain and France, relative to the Division of Trophies and Booty, signed at *Paris, July 10th, 1855*, to which Sardinia and Turkey acceded on November 15th, 1855, it was agreed (Art. 5) "That Disputed Questions which may arise with regard to the Distribution of Booty shall be decided by a MIXED COMMISSION, which shall sit at Paris, and shall be composed of two Delegates, one English and the other French, appointed by their respective Governments. Those Delegates, before entering upon the performance of their duties, shall name two persons, of whom one shall be chosen by lot to act as an Umpire in all cases in which they may themselves differ in opinion; the decision of the Delegates, or of the Umpire, as the case may be, shall be final and without appeal." It was also agreed (Art. 6) "That whenever it may be necessary to make a Valuation upon the spot of any article captured, it shall be done by a MIXED COMMISSION, composed of competent Officers." It is not probable that any report of the proceedings in either case was published.

References: State Paper. XLV. 29; Hertslet, Map of Europe, etc., II. 1237, 1238.

270. **THE POWERS and TURKEY, in 1856.** *Danube Riverain Commission.* By Art. 15 of the *Treaty of Paris, March 30th, 1856*, the principles established by Arts. 5 and 108-116 of the Vienna Congress Treaty, June 7th, 1815, and which had been applied to various European Rivers were applied to the Danube also. In accordance with those principles a PERMANENT SUPERINTENDING COMMISSION of Riverain Powers was by Arts. 17 and 18 constituted, of delegates of Austria, Bavaria, the Porte, and Würtemberg, together with Commissioners from

the three Riverain Principalities, Servia, Wallachia, and Moldavia. This Commission, instead of being permanent, *practically ceased to exist* after the disallowance of its Navigation Act (which was signed at Vienna on November 7th, 1857) by the Powers in 1859. Although its reconstitution was contemplated by Art. 17 of the Treaty of London of 1871, it never took place.

References: Hertslet, Map of Europe, etc., II. 1258; Parl. Papers, 1878, Turkey, No. 29; N.R.G., XVI. 2 P. 75; 42; Prot. (5) N.R.G., XV. 712; State Papers, XLVI. 8; T. E. Holland, pp. 229, 230, 249.

271. **THE POWERS and TURKEY, in 1856.** *Danube European Commission.* By Art. 16 of the *Treaty of Paris, March 30th, 1856*, a temporary INTERNATIONAL COMMISSION, composed of delegates of Austria, France, Great Britain, Prussia, Russia, and Sardinia was appointed to cause the execution of certain necessary works below Isaktscha. These were to be completed within the period of two years, and then, by Art. 18, the "Permanent Riverain Commission" were to enjoy its powers. The subsequent history of these two Commissions is curious. While the Riverain Commission, after a few years of unsuccessful activity fell into abeyance, and was dissolved, the International Commission, instead of coming to an end in two years, as was contemplated, has had its powers prolonged from time to time, with the likelihood of their being prolonged indefinitely, while its jurisdiction has been extended far above the point at which it originally terminated. The Treaty of London, signed on March 10th, 1883, prolonged the duration of the Commission to April 24th, 1904, for certain, and extended its direct authority as far as Ibraila, *i.e.*, to the point beyond which seagoing vessels cannot ascend the river. The ratifications of this Treaty were exchanged in London on April 24th, 1884, the ratification of the Porte arriving on October 8th.

References: N.R.G., XV. 770, XVI. 2 P. 50, XVIII. 144, 178, XX. 401; 2me Série, VI. 573, VIII. 207, IX. 392; Parl. Papers, 1856; Parl. Papers, 1878, Turkey, No. 29 p. 22, 1882, Danube No. 1, 1883, Danube No. 5; Hertslet, Map of Europe, etc., II. 1258; State Papers, XLVI. 8; T. E. Holland, pp. 229-233, 263-271, 273-275, 303, 304, 308-322; Prot. (3) Parl. Papers, 1867, United Principalities, p. 20.

272. **ALLIED POWERS and TURKEY, in 1856.** *Moldavia and Wallachia.* By Art. 23 of the *Treaty of Paris, March 30th, 1856* "The Sublime Porte engages to preserve to these Principalities an Independent and National Administration, etc. The Laws and Statutes at present in force, however, shall be revised" and, "in order to establish a complete agreement in regard to such revision, a SPECIAL COMMISSION, as to the composition of which the High Contracting Powers will come to an understanding among themselves, shall assemble, without delay, at Bucharest, together with a Commissioner of the Sublime Porte. The business of this Commission shall be to investigate the present state of the Principalities, and to propose bases for their future organisation." The Commission commenced its sittings on May 30th, 1857. The Divans *ad hoc* of the two Principalities were also convoked by the Sultan, as stipulated in Art. 24 of the Treaty. The election followed of Colonel Couza, January 7th and February 5th, 1859, as Hospodar of both Principalities.

References: State Papers, XLVI. p. 8; T. E. Holland, pp. 234, 251; Hertslet, Map of Europe, etc., II. 1260, 1261.

273. **MONTENEGRO and TURKEY, in 1856.** At the Conference of Paris relating to the conclusion of Peace, at the close of the Crimean War, February to April, 1856, the affairs of Montenegro came under discussion (see *Protocols, March 25th and 26th*), and a LOCAL COMMISSION was charged to inquire into and report the *status quo* of the Frontiers of Albania, Herzegovina, and Montenegro, such as they existed in the month of March, 1856. This Commission reported to a Conference of the Powers at Constantinople; and by a Procès Verbal, signed November 8th, 1858, a DELIMITATION COMMISSION was appointed to complete its labours, for which purpose it received enlarged powers. The Collective Report of these Commissioners, dated March 26th, 1860, was considered by another Conference held at Constantinople "respecting the closing of the Montenegrin Boundary Commission"; and by a Protocol of this Conference, signed April 17th, 1860, it was declared that the Commissioners may be considered as having finished

their labours. As regards questions arising on the Frontier (the settlement of which had been entrusted to the Commission in the Protocol of November 8th, 1858, and the Collective Despatch of March 6th, 1860), the Representatives of the Powers considered that the wish of Prince Danilo (of Montenegro) for a Mixed Local Commission, formed by common consent between the Ottoman and Montenegrin authorities, to decide such questions, deserved the attention of the Sublime Porte.

References : State Papers, XLVI. 97, 104, L. 1001 ; Hertslet, II. 1275-1276, 1353, 1437.

274. **GREECE and the POWERS, in 1857.** The Diplomatic Representatives in Greece of Great Britain, France, and Russia had been, by Art. 12 Sect. 6 of the *Convention of May 7th, 1832*, formed into a **STANDING COMMISSION**, "especially charged to watch over the fulfilment of the stipulation for the due payment of the interest and sinking fund of the Loan guaranteed by those Powers." But the Greek Government failing to comply with the provisions of the above Convention with reference to that loan, meetings of the London Conference were held in 1856, and afterwards, upon the subject. Consequently, in 1857, a **COMMISSION** of Representatives of the three Powers sat at Athens to investigate the State of the Finances of the Country, and reported on May 24th, 1859, demanding an annual payment by the Greeks of 900,000 francs (£36,000). An "Arrangement" in this sense was made in June of the following year, after the Report of the Commission had been considered.

References : Protocols of London Conf., Nos. 60-97 ; Annexe A to Prot., No. 45 ; Parl. Papers, 1860 ; 1864, Greece, No. 2 ; N.R., X. 550 ; T. E. Holland, pp. 21, 38 ; Hertslet, Map of Europe, etc., II. 898, 1445 ; State Papers, XIX. 33.

275. **AUSTRIA, FRANCE, and SARDINIA, in 1859.** By the *Treaties of Peace* between Austria and France, Art. 8, France and Sardinia, Art. 2, and Austria, France, and Sardinia, Art. 7, signed at *Zurich, November 10th, 1859*, an **INTERNATIONAL COMMISSION** was appointed to wind up the affairs of the Monte Lombardo Veneto and to settle the proportions to be paid to each Party. Though the *Treaties of Zurich* were duly ratified on November 21st of the same year, these provisions do not seem to have been carried into effect ; for seven years later, war having again intervened, by the *Treaty of Peace* between Austria and the newly formed Kingdom of Italy, signed at Vienna, October 3rd, 1866, it was again agreed that a Commission, composed of Italian, Austrian, and French Delegates, should proceed to the liquidation of the Monte Lombardo-Venetian Debt, the debts added to it since June 4th, 1859, and a further sum of 35,000,000 florins, portion of the Loan of 1854, allotted to Venetia, which should include the price of war material. This Commission was to proceed with the Definite Regulation of the Accounts between the Contracting Parties.

References : State Papers, XLIX. 364, 371, 377, LVI. 700 ; Hertslet, Map of Europe, etc., II. 1383, 1384, 1394, 1395, 1404, 1405, III. 1751, 1752.

276. **FRANCE and SARDINIA, in 1860.** Following the cession of Savoy and Nice to France in 1860, the *Treaty* for their annexation, signed at *Turin, March 24th, 1860*, stipulates, Art. 4, that one or more Mixed Commissions shall be appointed to settle the various questions connected with the annexation, and to fix the contributive parts of those Provinces in the Public Debt of Piedmont. A Convention signed at Paris, August 23rd, 1860, states that, in conformity with that Article, a Commission had been appointed for that purpose, and this Definitive Convention embodies the basis adopted by that Commission. The ratifications were exchanged at Paris, October 4th, 1860.

References : State Papers, L. 412, 420 ; Hertslet, Map of Europe, etc., II. 1430, 1452.

277. **FRANCE and MONACO, in 1861.** Subject to a Reservation that his private property should not be included in the cession of Mentone and Rocca-bruna to France, the Prince of Monaco by a *Treaty*, signed at *Paris, February 2nd, 1861*, renounced (Art. 1) for ever, for himself and his successors all rights over those Communes. By Art. 3 of this *Treaty* a **MIXED COMMISSION** was appointed to

inquire into and point out such measures as might be deemed necessary in order to secure to the Princes the privileges of this Reservation, without prejudicing the rights of third parties. An interesting part of the stipulation is that, "it is understood that the jurisdiction of this Commission is in no way separate from that of the Courts, should it be found necessary to have recourse to them."

References: Hertslet, Map of Europe, etc., II. 1463, 1464.

278. **SERVIA** and **TURKEY**, in 1862. At a Conference between the Plenipotentiaries of the Great Powers and Turkey, the *Protocol* of which was signed at *Kanlidja*, September 4th, 1862, a MIXED CIVIL COMMISSION was appointed, composed of members named by the Ottoman Government and the Servian Government, "to decide all questions of Expropriation, and of Indemnity contemplated in the present arrangement, except those which could only be discussed between the Turkish Government and the proprietors under its direct jurisdiction." This Commission was to conclude its labours within the space of four months.

References: State Papers, LII. 114; Hertslet, Map of Europe, etc., II. 1520.

279. **MONTENEGRO** and **TURKEY**, in 1864. At the request of Prince Danilo, of Montenegro, endorsed by the Conference of the Powers to which report was made by the Mixed Commission in 1860, a Turco-Montenegrin COMMISSION was appointed for the Regulation of Private Interests on the Frontier described by that Commission. This Commission, the exact date of whose appointment is not known, consisted of Lieut.-Col. Hafiz Bey, Ottoman Commissioner, and the Voivode and Senator, Giuro Matanovich, Commissioner for Montenegro. They assembled in a Preparatory Conference, the results of which were embodied in a *Protocol*, signed at *Cettigné*, May 3rd, 1864, and agreed upon certain dispositions, as the basis of their operations, the first of which was to the effect (Art. 1) "that the Turco-Montenegrin Commission should immediately commence its labours, taking Presika as the point of departure, and that Procès Verbaux of the said Commission should be written in the Italian language." According to a *Protocol* between Turkey and Montenegro, signed at *Constantinople*, October 26th, 1866, a JOINT COMMISSION of four appointed for the purpose, exact date does not appear, two by each of the Parties, met at Constantinople on that date, and proceeded to the execution of the Protocol of May 3rd, 1864.

(a)—The Commission agreed that "a MIXED COMMISSION shall proceed in the month of April next, at the latest, to the exchange and settlement of the Indemnities of Private Properties," and the execution of other provisions of the Protocol.

(b)—"Proceeding to the examination of the Map and the Specification drawn up by the International Commission, on November 8th, 1858, the Commission, after having referred them to the respective Governments, entirely admit the tracing of the Line of Demarcation of the Frontiers."

References: Hertslet, Map of Europe, etc., III. 1602, 1787.

280. **AUSTRIA** and **PRUSSIA**, and **DENMARK**, in 1864. The *Treaty of Peace* between these Powers, signed at *Vienna*, October 30th, 1864, provided for the Rights of Mixed Proprietors, and the Mutual Restitution of all Captured Ships and their Cargoes, or their Value, and appointed (Art. 13) a MIXED COMMISSION OF CLAIMS to carry out the provision. It also provided (Art. 5) for the payment of Pensions by *Denmark* and the Government of the Duchies, and appointed another MIXED COMMISSION to decide on the claims, and to superintend the payments.

References: State Papers, LIV. 522; Hertslet, Map of Europe, etc., III. 1630.

281. **PRUSSIA** and **WURTEMBERG**, in 1866. By Art. 8 of the *Treaty of Peace* between these Powers, signed at *Berlin*, August 13th, 1866, ratified at Berlin the same month, the High Contracting Powers agree to appoint a COMMISSION to regulate Railway Traffic, and to lay down principles for the establishment of new railway communications.

References: Hertslet, Map of Europe, etc., III. 1704.

282. **BADEN and PRUSSIA, in 1866.** A similar COMMISSION was provided for, in identical terms, by Art. 8 of the *Treaty of Peace* between Prussia and Baden, signed at *Berlin August 17th, 1866*. The Ratifications of both Treaties were exchanged at Berlin in August, 1866.

References : Hertslet, Map of Europe, etc., III. 1709.

283. **BAVARIA and PRUSSIA, in 1866.** A similar COMMISSION was provided for, in identical terms, by Art. 9 of the *Treaty of Peace* between Bavaria and Prussia, signed at *Berlin, August 22nd, 1866*, ratifications of which were exchanged at Berlin, September 3rd, 1866.

References : Hertslet, Map of Europe, etc., III. 1716.

284. **AUSTRIA and PRUSSIA, in 1866.** The *Treaty of Peace* between Austria and Prussia, signed at *Prague, August 23rd, 1866*, provided (Art. 7) that, "for the purpose of making arrangements respecting the late Federal Property," a COMMISSION would "meet at Frankfort-on-the-Main, within six weeks at farthest from the Ratification of the Treaty, to which Commission all claims and demands on the German Confederation" (now dissolved) were to be sent in, "and they will be liquidated within six months. Austria and Prussia," it declared, "will send Representatives to that Commission, and all the other late Federal Governments are at liberty to do the same." The Ratifications of the Treaty were exchanged at Prague August 30th, 1866.

References : Hertslet, Map of Europe, etc., III. 1723, 1725

285. **HESSE-DARMSTADT and PRUSSIA, in 1866.** By the *Treaty of Peace* between Prussia and Hesse-Darmstadt, signed at *Berlin, September 3rd, 1866*, the Ratifications of which were exchanged on the 12th of the same month, a twofold arrangement was made :—

(1.) It was agreed (Art. 16) that COMMISSIONERS on both sides should be appointed by the High Contracting Parties to regulate the reciprocal cessions of territory, etc. These are described in two Articles of the Treaty (14 and 15), and the boundaries of the territory ceded to Prussia are described in an Appendix to Art. 15.

(2.) The books, MSS., and other inventory articles which before the year 1794 were in the Cathedral library of Cologne, but were then kept in the Grand-Ducal museum and library, were to be placed at the disposal of the King of Prussia for the Cathedral Chapter of Cologne, but the ownership of the several articles was to be finally decided by a JOINT COMMISSION of two members, appointed one by each Sovereign, or in disputed cases by an impartial Umpire, to be chosen by them.

References : Hertslet, Map of Europe, etc., III. 1729-1740.

286. **PRUSSIA and SAXONY, in 1866.** It was agreed, by the *Treaty of Peace* between Prussia and Saxony, signed at *Berlin, October 21st, 1866* (Art. 17), that a JOINT COMMISSION (consisting of "Commissioners on both sides") should meet immediately after the exchange of the Ratifications of the Treaty in order to arrange for the execution of all the stipulations referring to Telegraph Rights in both countries. The Ratifications were exchanged at Berlin October 24th, 1866.

References : Hertslet, Map of Europe, etc., III. 1777.

287. **AUSTRIA, RUSSIA, and MOLDAVIA and WALLACHIA, in 1866.** By a Treaty, signed at *Bucharest, December 15th, 1866*, between Austria, Russia, and the United Principalities of Moldavia and Wallachia, the navigation of the River Pruth was declared to be free and open to all flags, and provision was made for a PERMANENT MIXED COMMISSION, composed of delegates of Russia, Austria, and the United Principalities, for the purpose of regulating such navigation. A body of Regulations, which it was agreed might be modified when necessary by the Permanent Mixed Commission for the Navigation and Police of the River Pruth, was agreed upon by the Commissioners of Austria, Russia, and Roumania, and was signed at Bucharest, February 8th, 1871.

References : State Papers, LVIII. 631; Moore, V. 4852; Hertslet, Map of Europe, etc., III. 1789-1796, 1909.

288. **FRANCE** and **TUNIS**, in 1869. By a *Decree* of the Bey of Tunis of July 5th, 1869, after preliminary agreement between the Governments of Great Britain, France, and Italy, a FINANCIAL COMMISSION was established. The composition of this Commission we do not know. That it was international and had a permanent character is evidenced by the fact that in a reference to a Treaty between France and Tunis, signed May 12th, 1881, made by a Note between the British and French Governments, of May 20th, 1881, the former express the opinion that if the agreement contained in Art. VII. of that Treaty contemplates a change in the constitution of the Financial Commission in which British creditors are represented, an opportunity should be given to the creditors of expressing their views on the subject.

References : State Papers, LXXIII. 495 ; Hertslet, Map of Africa, etc., II. 549-553.

289. **FRANCE** and **GERMANY**, in 1871. (1.) By an *Additional Convention* to the Treaty of Peace, May 10th, 1871, between France and Germany, signed at Frankfort, December 11th, 1871, the Ratifications of which were exchanged at Paris, January 11th, 1872, a JOINT FINANCIAL COMMISSION was appointed (Arts. 11, 13, 14), which was to take charge of the accounts of works on both sides of the frontier, and to be entrusted with the accounts of various canals, of the canalisation of the Moselle, and of other interests belonging to the departments of the Meurthe and Moselle.

(2.) The same instrument stipulated that a MIXED COMMISSION should be appointed (Art. 14) relative to canals from the Rhone to the Rhine, and from the Marne to the Rhine.

(3.) MIXED COMMISSIONS were also appointed (Art. 15) for the maintenance of frontier waterways.

References : Hertslet, Map of Europe, etc., III. 1968-1973.

290. **UNION POSTALE UNIVERSELLE**, in 1874. THE INTERNATIONAL POSTAL UNION forms a STANDING COURT OF ARBITRATION, on the model of The Hague Court, inasmuch as Art. 16 of the *Treaty* constituting it, signed at Berne October 9th, 1874, between twenty-one of the Powers, provides that "in case of disagreement between two or more members of the Union, relative to the interpretation of the present Treaty, the question in dispute must be settled by Arbitral Judgment ; for this purpose each of the administrations affected by the case shall choose another member of the Union, which is not interested in the matter. The decision of the Arbitrators shall be given by an absolute majority of votes. In case of the votes being equally divided, the Arbitrators, in order to settle the question, shall choose another administration, equally free from interest in the dispute." This is, of course, a permanent factor of the administration of the Union.

References : *Annuaire de l'Inst. de Droit Int.*, 1877, pp. 218, 309-318.

291. **EGYPT** and the **POWERS**, in 1876. *International Courts*. The institution of these Courts is the turning point of recent Egyptian history. The inefficiency of the then existing machinery for the administration of justice to foreigners was explained in a report drawn up by Nubar Pasha in 1867, and communicated to the Powers. Negotiations followed, and Commissions of delegates of the Powers sat at Cairo in 1869, and at Constantinople in 1873. The result of their labours was a draft *Règlement d'Organisation Judiciaire pour les Procès Mixtes en Egypte*, by Art. 10 of which foreigners are empowered to bring actions against the Egyptian Government and the Estates of the Khedive. The French Government gave its adhesion to the Règlement, with certain modifications, in a Protocol, signed November 10th, 1874. The accession of Great Britain to the Convention was on July 31st, 1875. The Powers which sooner or later became parties to the arrangement were fourteen in number, viz., Germany, Austria, Belgium, Denmark, Spain, France, Great Britain, Greece, Italy, the Netherlands, Portugal, Russia, Sweden and Norway, and the United States. New Codes, to be administered by the Courts, came into operation on

October 18th, 1875, and the Courts themselves were opened for business on January 1st, 1876. The powers of the Courts, originally granted for five years, have been prolonged by a series of Decrees.

References: *Annuaire de l'Inst. de Droit Int.*, 1877, pp. 321, 337; 1878, p. 273; *Parl. Papers*, 1876, Egypt, No. 3; 1884, Egypt, No. 24; *N.R.G.*, 2me Série, II. 695; *T. E. Holland*, pp. 102, 103, 128-147.

292. **EGYPT** and the **POWERS**, in 1876. The *Caisse*:—*Treasury of the Egyptian Debt*. The pressure of debt had already become serious. In November, 1875, the year preceding the opening of the Courts, the Khedive sold his Canal shares to the British Government, and Mr. Cave was sent out, at the request of Nubar Pasha, to report upon the condition of the finances. His report was published in April, 1876. On the 8th of the same month a Decree was issued, postponing for three months the payment of the coupon about to become due, and on *May 2nd*, 1876, a Decree established the *Caisse de la Dette Publique*, which still subsists. The Commissioners of the *Caisse* were to be Egyptian functionaries, but to be foreigners nominated by the Governments of the countries which they were called upon to represent. Messrs. Kremer, Baravelli, and de Blighnières were appointed accordingly, on the nomination of Austria, Italy, and France respectively. Major Baring was appointed for England on November 18th, but not on the nomination of the English Government. The functions of the *Caisse* were to commence from June 10th, 1876. An International Authority was for the first time given to the *Caisse* by the "Law of Liquidation," which was sanctioned by a Decree of July 17th, 1880.

References: *Parl. Papers*, 1876, Egypt, No. 7; Egypt, No. 8, pp. 54, 60, 63; 1879, Egypt, No. 2, p. 28; 1880, Egypt, No. 4; *T. E. Holland*, pp. 103, 104, 107, 147-154, 154-165.

293. **EGYPT** and the **POWERS**, in 1878. **COMMISSION OF INQUIRY**. Early in 1878 the state of Egyptian finance was again critical, and the government evaded the execution of Decrees granted against it by the International Courts. On March 30th, 1878, appeared a Decree appointing a **COMMISSION OF INQUIRY**, consisting of the four Commissioners of the *Caisse*, with M. de Lesseps as President, and Major Baring and Riaz Pasha as Vice-Presidents. Their report, dated August 19th, was accepted on the 28th by the Khedive, who accordingly, with the approval of the British Government, appointed Nubar Pasha, Prime Minister, with Mr. Wilson, as Minister of Finance, and M. de Blighnières, as Minister of Public Works. A report made by the Commission of Inquiry on April 8th, 1879, showed the country to be bankrupt.

References: *Parl. Papers*, 1879, Egypt No. 2, pp. 230, 326; 1879, Egypt, No. 5, pp. 97, 159; *T. E. Holland*, p. 105.

294. **RUSSIA** and **TURKEY**, in 1878. By Art. 21 of the *Treaty of San Stefano*, March 3rd, 1878, which was not superseded by the Treaty of Berlin, as most of its clauses were, it was agreed that real property, belonging to the State, or to religious establishments situated out of the localities ceded to Russia, should be sold within the interval of three years, as should be arranged by a special **RUSSO-TURKISH COMMISSION**. The same Commission was to be entrusted with determining how the Ottoman Government was to remove its war material, munitions, supplies, and other State property actually in the forts, towns, and localities ceded to Russia, and not at the time occupied by Russian troops. The Ratifications of the Treaty of San Stefano were exchanged at St. Petersburg, March 17th, 1878.

References: *Hertslet*, Map of Europe, etc., IV. 2689; *T. E. Holland*, pp. 345, 346.

295. **AUSTRIA-HUNGARY** and **SERVIA**, in 1878. (a)—*On July 8th*, 1878, a *Convention* was concluded between Austria-Hungary and Servia, by which the Government of the former engaged to connect within three years its Railway System with that of Servia at Belgrade. The two Governments further engaged to act together to form junction lines with the Ottoman and Bulgarian Railways: and agreed that after the conclusion of peace a **COMMISSION**, composed of Delegates from Austria Hungary, Servia, Turkey, and Bulgaria, should meet at Vienna to draw up the necessary *Convention* on the subject.

(b)—A Railway Convention between Austria-Hungary and Servia, signed at Vienna, April 9th, 1880, in execution of Art. 38 of the Treaty of Berlin, stipulated that the Contracting Parties will unite in their endeavours to ensure, as soon as possible, the execution of the above Convention. It also provided for a SPECIAL JOINT COMMISSION of experts to settle points connected with the erection of a permanent bridge over the Save, and other matters—this Commission to arrive at the decisions in question as soon as possible, and at the latest within a period of six months after the exchange of ratifications. These were exchanged at Vienna June 14th, 1880.

References: State Papers, LXIX. 612; Hertslet, Map of Europe, etc., IV. 2788, 2947.

296. **THE POWERS and TURKEY, in 1878.** At the sitting of the Congress of Berlin, July 11th, 1878, it was decided that an INTERNATIONAL COMMISSION should be appointed to inquire into the state of the Rhodope Districts, Buyukdéré. On the 17th of the same month a Memorandum was drawn up by the Ambassadors of Great Britain, Austria-Hungary, France, Germany, Italy, and Russia, at Constantinople, for the appointment of this Commission, on which Great Britain was represented by Mr. Fawcett, Consul-General and Judge of the British Consular Court, Constantinople. The Commissioners visited various districts, and on their return, Identical Reports were drawn up by the British, French, Italian, and Turkish Commissioners at Buyukdéré on August 27th, 1878, and presented to their respective Ambassadors; but the Commissioners of Austria, Germany, and Russia refused to adopt the Report. The correspondence which passed respecting the proceedings of the International Commission sent to the Mount Rhodope Districts was laid before the British Parliament on August 15th and December 6th, 1878.

References: State Papers, LXIX. 862, etc., 1112; Parl. Papers, 1878, Turkey, Nos. 49, 50, and 52; Hertslet, Map of Europe, etc., IV. 2756, 2803.

297. **The POWERS and TURKEY, in 1878** The Plenipotentiaries of France, Great Britain, and Italy at the Congress of Berlin presented to its sitting of July 11th, 1878, a Declaration that a FINANCIAL COMMISSION should be established at Constantinople, to examine into the complaints of the Bondholders of the Ottoman Debt. This was done, for, on September 17th, 1881, a Conference, upon the subject of Bulgaria's share of the Public Debt of the Empire, was adjourned in consequence of a representation from the Russian Delegate, to the effect that the total amount of the Ottoman debt had not yet been ascertained by the Financial Commission recommended by the 18th Protocol of the Congress. This Commission was appointed thus: A Decree of the Ottoman Government recording the Arrangement agreed upon between the Sublime Porte and the Delegates of Foreign Bondholders respecting the Imperial Ottoman Debt, issued at Constantinople, December 20th, 1881, stated that the Imperial Government had, by a Note of October 23rd, 1880, invited the Foreign Bondholders to send a number of Delegates to Constantinople, and that this had been done. It had then appointed a Special Commission of its own charged to treat with these Delegates, and that "the deliberations of the said Commission commenced on September 1st, and continued during the months of September, October, November and December of the current year, having had for result a complete understanding as recorded in the Procès Verbaux of the Commission bearing the signatures of both Parties"; and forming the basis of the present Decree.

References: Hertslet, Map of Europe, etc., IV. 2755, 3079; T. E. Holland, p. 284, n. 2; Parl. Papers, 1882, Turkey No. 2; State Papers, LXIII. 115.

298. **BULGARIA and TURKEY, in 1878.** The provisional administration of Bulgaria after the Russo-Turkish War was, by the Powers which were signatories of the Berlin Treaty of July 13th, 1878 (Arts. 4-7), placed under the direction of a MIXED COMMISSION until the completion of the Organic Law of Principality by the Assembly of Notables of Bulgaria, convoked at Timova, to which the drawing up of the Law had been entrusted, when the election of the Prince should follow immediately. The Commission consisted of an

Imperial Russian Commissary, an Imperial Turkish Commissary, and the Consuls of the other signatory Powers, delegated *ad hoc*. In case of disagreement the Representatives of the signatory Powers at Constantinople, assembled in Conference, were to decide. This provisional arrangement was not to last beyond nine months from the exchange of ratifications of the Treaty. The ratifications were exchanged August 3rd and 28th, 1878. The proclamations of the Czar to the Bulgarians of the Principality and of Eastern Roumelia respectively, counselling submission to their new rulers, were dated April 23rd, 1879.

References: N.R.G., 2me Série, V. 504; State Papers, LXIX. 749, etc.; LXX. 711; T. E. Holland, pp. 283, 284; Hertslet, Map of Europe, etc., IV. 2769-2771.

299. THE POWERS and TURKEY, in 1878. BULGARIA and TURKEY. (a)—By Art. 12 of the *Treaty of Berlin, July 13th, 1878*, it was stipulated that "a Turco-Bulgarian COMMISSION shall be appointed to settle, within a period of two years, all questions relative to the mode of alienation, working, or use, on account of the Sublime Porte, of property belonging to the State and religious foundations" (Vakoufs), as well as the questions regarding the interests of private persons engaged therein. No such arrangement, according to Hertslet, had been made up to January, 1889. Whether anything has been done since to carry this stipulation into effect we have been unable to ascertain.

References: Parl. Papers, 1878, Turkey, No. 44; N.R.G., 2me Série III. 449; State Papers, LXIX. 749, etc.; T. E. Holland, p. 286; Hertslet, Map of Europe, etc., IV. 2773.

(b)—MONTENEGRO and TURKEY. Art. 30 of the *Berlin Treaty, July 13th, 1878*, stipulated that a Turco-Montenegrin Commission should be appointed to settle all such questions in Montenegro within a period of three years. Non-compliance with this provision was given by the Porte in March, 1884, as its reason for delaying the settlement of the frontier question. No such arrangement had been made up to January, 1889. Whether it has been since is not known.

References: T. E. Holland, p. 296; Hertslet, Map of Europe, etc., IV. 2784; State Papers, LXIX. 749, etc.

(c)—SERVIA and TURKEY. A Turco Servian COMMISSION was appointed by Art. 39 of the same *Treaty, July 13th, 1878*, to settle within a period of three years all similar questions in Servia. Presumably, too, that provision was not carried out. It has not been traced.

References: T. E. Holland, p. 300; Hertslet, Map of Europe, etc., IV. 2789; State Papers, LXIX. 749, etc.

300. EASTERN ROUMELIA and the POWERS, in 1878. Art. 18 of the *Treaty of Berlin, signed July 13th, 1878*, provided for a EUROPEAN COMMISSION to arrange, in concert with the Ottoman Porte, the organisation of Eastern Roumelia and to administer, in concert with the Sublime Porte, the finances of the province until the completion of the new organisation. This Commission was to do its work, "within three months." It actually took nine months. The Commission sat from September 30th, 1878, till June 3rd, 1879. The administration of the finances was done by a Sub-committee. In August, 1878, Sir Henry Drummond Wolff and the Earl of Donoughmore were appointed members of this Commission. Mr. Thomas Michell (Consul-General for Eastern Roumelia) was appointed Assistant Commissioner May 20th, 1879, and remained as sole Commissioner after the departure of Sir H. Drummond Wolff, June 9th, 1879. The Organic Statute for Eastern Roumelia was signed at Galata Serai (Constantinople) April 26th, 1879, and on May 16th, 1879, a Firman was issued by the Sultan, ordering its execution.

References: Parl. Papers, 1879, Turkey, No. 9; N.R.G. V. 250, T. E. Holland, pp. 289, 290; Hertslet, Map of Europe, etc., IV. 2777, 2860-2863, 2870; State Papers, LXIX. 749, etc., LXX. 759, LXXXI. 700.

301. ROUMANIA and TURKEY, in 1878. By Art. 47 of the *Treaty of Berlin, July 13th, 1878*, it was agreed in regard to Roumania, that "the

question of the division of the waters and the fisheries shall be submitted to the ARBITRATION of the EUROPEAN COMMISSION of the Danube." The later proceedings of this Commission show how this provision was carried out.

References: State Papers, LXIX. 749; T. E. Holland, p. 302; Hertslet, Map of Europe, etc., IV. 2792.

302. **RUSSIA and TURKEY, in 1879.** By Art. 6 of the *Treaty of Peace* between these Powers, signed at *Constantinople, February 8th, 1879*, of which the Ratifications were exchanged at St. Petersburg February 21st, 1879, it was agreed that a SPECIAL COMMISSION should be appointed by the Imperial Government of Russia and the Sublime Porte, in order to draw up an account of the expenditure caused by the maintenance of Ottoman prisoners of war. The account was to be made up to the date of the signing of the Berlin Treaty; from it were to be deducted the expenses incurred by the Ottoman Government for the maintenance of Russian prisoners, and the balance once settled, was to be paid by the Sublime Porte in twenty-one equal instalments within the space of seven years.

References: N.R.G., 2me. Série, III. 468; T. E. Holland, p. 349; Hertslet, Map of Europe, etc., IV. 2347.

303. **EGYPT and the POWERS, in 1880.** *Commission of Liquidation.* On *March 31st, 1880*, a Declaration was signed by the Consuls-General of the five Powers, promising to accept the decision of a proposed "Commission of Liquidation" (and to get it accepted by the other Powers), and also to consent that the decision of the Commission should be binding upon the Mixed Courts. The Commission, consisting of two Englishmen, two Frenchmen, one German, one Austrian, and one Italian, was appointed by a Decree of the same date (March 31st, 1880), and presented its report on April 17th. A "Law of Liquidation," in accordance with this report, was sanctioned by a Decree of July 17th, 1880, and all the Powers interested in the Mixed Courts had assented to it before the end of August. This law reduced the interest on the unified debt to 4 per cent. and abolished the Monkabalab.

References: Parl. Papers, 1880, Egypt No. 2; 1880, Egypt, No. 4; 1884, Egypt, No 10; T. E. Holland, pp. 107, 167-193.

304. The **POWERS and TURKEY, in 1880.** It was stipulated, by Art. 23 of the *Treaty of Berlin, July 13th, 1878*, that Laws similar to the Organic Law for Crete (January 10th, 1868), but adapted to local requirements, should be introduced into the other parts of Turkey in Europe for which no special organisation had been provided by that Treaty, and further, that the Sublime Porte should depute SPECIAL COMMISSIONS, in which the native element should be largely represented, to settle the details of the new laws in each Province; the European Commission instituted for Eastern Roumelia being consulted before the resulting schemes of organisations were put into force. The appointment of these Special Commissions was urged by Sir A. H. Layard in a *Note Verbale*, of June 27th, 1879. In *May 1880*, an International Commission, on which Great Britain was represented by Lord Edmond Fitzmaurice, sat accordingly at Constantinople, and on August 23rd a new Law for the European Provinces of Turkey, as revised by that Commission, was signed and sealed, when it adjourned *sine die*. The Commission also recommended to the Porte, as suitable for the Government of Albania, a scheme prepared by the Commissioners of Austria and France.

References: Parl. Papers, 1880. Turkey. No. 16; T. E. Holland, pp. 291, 292; Hertslet, Map of Europe, etc., IV. 2779, 2990; State Papers, LXIX. 749, etc.

305. **GREECE and TURKEY, in 1881.** By Art. 9 of the *Convention of May 24th, 1881*, (Ratifications exchanged June 14th, 1881), it was stipulated that "a Turco-Hellenic COMMISSION shall be entrusted with the settlement, within two years, of all matters concerning the property of the State, as well as of questions relating to the interests of private individuals, who may happen to be connected with them. This Commission will have to decide on the indemnity which Greece is to pay to Turkey from the lands which shall be admitted to

belong *bonâ fide* to the Ottoman Government, and to fix the annual revenue to be paid on them. Those questions on which an understanding cannot be come to shall be submitted to the decision of the mediating Powers." Art. 6 provided that contested questions connected with the disposal of the Imperial Estates should be submitted to this Commission, and eventually, according to the terms of Art. 9, to the decision of the mediating Powers. Also questions relating to arrears of taxes due to the Ottoman Government in the ceded territories were, by Art. 14, entrusted for settlement to the same Commission. Down to the end of 1884 no steps appear to have been taken towards carrying out these provisions, though they did not cease to be operative.

References: Parl. Papers, 1881, Greece, No. 7; 1882, Greece, No. 2; N.R.G., 2me Série, VI. 753; T. E. Holland, pp. 64-66.

306. **GREECE and TURKEY, in 1881.** By Art. 16 of the *Convention May 24th, 1881*, of which the Ratifications were exchanged on June 14th, 1881, and whose provisions were embodied in a Convention between Turkey and Greece, signed on July 2nd, 1881, "the mediating Powers reserve to themselves the power to appoint TECHNICAL COMMISSIONERS for the purpose of superintending the operations connected with the cession of the territories to Greece." Art. 3 of the Annex to this Convention stipulates that "the Mediating Powers will name Military Delegates, who will constitute a COMMISSION destined to act as intermediary, for the evacuation by the Ottoman Authorities and the taking over by the Hellenic Authorities of the ceded territories"; and it defines the functions and duties of the Commission. This Commission, on which Major Ardagh was the British representative, arrived on June 30th, at Prévésa, and its final act was signed at Volo, on November 14th, 1881.

References: Parl. Papers, 1881, Greece, No. 7; 1882, Greece, No. 1, No. 2; N.R.G., 2me Série, VI. 753; T. E. Holland, pp. 66-69.

307. **GREECE and TURKEY, in 1881.** By Art. 3 of an Annex to the Convention between the six Great Powers and Turkey, signed at *Constantinople, May 24th, 1881*, it was agreed that the mediating Powers would appoint a MILITARY COMMISSION to exercise a general supervision over the evacuation and occupation of the ceded territories. This Commission, on which Major-Gen. Sir E. B. Hamley, Lieut.-Col. C. F. Clery, Major Leopold Victor Swaine, and Lieut. E. Vincent were the British Representatives, arrived on June 30th at Prévésa, and its final Acts were signed at Arta, July 6th, 1881, at Tchâi-Aghsi, September 18th, 1881, and at Volo, November 14th, 1881.

References: Parl. Papers, 1882, Greece, No. 1; T. E. Holland, pp. 68, 69; Hertslet, Map of Europe, etc., IV. 3051, 3062-3078.

308. **THE POWERS and TURKEY, in 1883.** *Mixed Commission of the Danube.* The appointment of this Commission was suggested by an *avant-projet*, drawn by a sub-committee of representatives of Austria, France, and Italy, which was considered by the European Commission of the Danube, assisted by Delegates of Servia and Bulgaria, in the spring of 1881. A Conference of the Powers called to consider this, and other questions, relative to the Navigation of the Danube, met at London on February 8th, 1883. By an Annex to the Treaty drawn up by this Conference, and signed at *London, March 10th, 1883*, the MIXED COMMISSION of the Danube was instituted for the superintendence of the middle portion of the river, *i.e.*, the part of the Danube situated between the Iron Gates and Braila. This Annex consists of 108 Articles, of which 1-10 refer to various matters of Navigation, 11-95 to the River Police, and 96-108 to the constitution and duties of the Mixed Commission. Ratifications of the Treaty were exchanged at the Foreign Office in London on August 21st, 1883, by Germany, Austria, France, Great Britain, and Italy; on August 24th by Russia, and on October 25th by the Porte.

References: Parl. Papers, 1882, Danube, No. 5; N.R.G., 2me Série, IX. 392, 395; T. E. Holland, pp. 232, 233, 313-322.

309. **GREAT BRITAIN and PORTUGAL, in 1884.** By the provisions of the Congo Treaty (Arts. 4 and 5) between these Powers, which was signed at

London *February 26th*, 1884, freedom of trade and Navigation was applied to the River Congo and other waterways on the West Coast of Africa, and a MIXED COMMISSION, composed of Delegates of Great Britain and Portugal was appointed to draw up regulations for the Navigation, police, and supervision, etc., of these rivers. This Treaty was not ratified. The arrangement as regards the Congo was superseded by the provisions of the Berlin Act, of *February 26th*, 1885, appointing the International Navigation Commission of the Congo (which see).

References: Parl. Papers, Africa, No. 3, 1884; State Papers, LXXV. 476; Hertslet, Map of Africa, etc., II. 713, 714.

310. **CONGO and FRANCE, in 1885.** An Additional Convention between France and the International Association of the Congo, signed at *Paris, February 5th*, 1885, provided for the appointment of a JOINT COMMISSION composed of Delegates of the Contracting Parties, in equal number on both sides, to make an estimate of the value of each of the Stations ceded to France; such estimate to serve as a basis to determine equitably the sum to be paid by the Government of the French Republic to the Association for the said cession.

Reference: Hertslet, Map of Africa, etc., I. 212.

311. The **EUROPEAN POWERS** (and Africa), in 1885. The *General Act* of the Conference of *Berlin*, relative to the Development of Trade and Civilisation in Africa, etc., signed in that city, *February 26th*, 1885, contained (Chaps. 4 and 5) an "Act of Navigation for the Congo" (Arts. 13-25) and also an "Act of Navigation for the Niger" (Arts. 26-35), which applied to these rivers and their affluents the principles of the Final Act of the Congress of Vienna of 1816. By Art. 17 was instituted the "INTERNATIONAL NAVIGATION COMMISSION OF THE NIGER," charged with the execution of this Act. By Art. 8, also, the right of surveillance of territories where no Powers exercised rights of Sovereignty or Protectorate, was vested in this Commission. A Protocol recording the ratification of the Berlin Act by all the Powers, fourteen in number (except the U. S.) was signed at Berlin, April 19th, 1886.

References: State Papers, LXXV. 1178, LXXVI. 1021; Hertslet, Map of Africa, etc., I. 20-45, 45-47, 440.

312. **EGYPT and the POWERS, in 1885.** *Suez Canal.* It was agreed by common consent, between the Governments of Great Britain, Germany, Austria-Hungary, France, Italy, Russia, and Turkey, by a *Declaration*, signed at *London, March 17th*, 1885, that a COMMISSION, composed of Delegates named by these Governments, should meet at Paris on March 30th, 1885, to prepare and draw up a Conventional Act, establishing a definitive regulation guaranteeing at all times and for all Powers the freedom of the Suez Canal. This "SUEZ CANAL INTERNATIONAL COMMISSION," on which Great Britain was represented by Sir Julian Pauncefote and Sir Charles Rivers Wilson, met at Paris on the date agreed upon, and continued its sittings until June 13th, 1885, when the *Draft Treaty* for ensuring free use of the Suez Canal was adopted, and the sitting and work of the Commission closed with thanks to Secretaries and President.

References: Parl. Papers, 1885, Egypt, No. 19; Hertslet, Complete Collection, etc., XVII. 349; T. E. Holland, pp. 195, 359; Hertslet, Map of Europe, etc., IV. 3270-3274.

313. **BULGARIA and EASTERN ROUMELIA, in 1886.** By Art. 3 of the Arrangement of *April 5th*, 1886, it was agreed that, with a view to ensure for the future the order and tranquillity of Eastern Roumelia, a JOINT COMMISSION, appointed by the Sublime Porte and by the Prince of Bulgaria, should be directed to examine the Organic Statute of that Province of April 26th, 1879. This Commission was to complete its labours within a period of four months, and the results were to be submitted to the sanction of the Conference at Constantinople, when the Powers would give their formal sanction to the revision.

References: Hertslet, Map of Europe, etc., IV. 3155, 3156.

314. **MONTENEGRO** and **TURKEY**, in 1886. By an Arrangement between the Governments of Montenegro and Turkey, respecting the regulation of the question of Emigrants, and their debts or credits, done in duplicate at *Cettigné*, October 21st, 1886, it was agreed that the settlement of debts between Montenegrins and Emigrants should be relegated to a MIXED COMMISSION, composed of two members, Ottoman and Montenegrin, assisted by ten Valuers, half chosen amongst Montenegrins and half amongst Mussulman Emigrants. A note to this Arrangement, signed at *Cettigné*, January 20th, 1888, declares that the two Governments, not having given their approval to this Arrangement until the month of January, 1888, the period of one year accorded to debtors and creditors, to enable them to present themselves before the Mixed Commission, should be reckoned as commencing from the date of the formation of the said Commission.

References: Hertslet, Map of Europe, etc., IV. 3186, 3187.

315. **MEXICO** and **UNITED STATES**, in 1889. These countries adopted a notable Arbitral Measure in the *Convention of March 1st*, 1889, by which a Permanent Board, denominated an INTERNATIONAL BOUNDARY COMMISSION, is established for the determination of questions arising out of changes in the course of the Rio Grande and the Colorado River, where they form the boundary. A Convention, signed November 12th, 1884, had provided that the boundary line should change with any natural changes in the channels of these rivers; and this was the result. The provision, however, is the more notable because it was the consummation of Arbitral stipulations for determining the boundary, which are found in the Treaties between the two countries of January 12th, 1828, February 2nd, 1848, December 30th, 1853, and July 29th, 1882. By a Convention, signed at Washington, November 21st, 1900, and ratified December 24th, 1900, the powers of this International Commission were prolonged by the two Governments for an indefinite period.

References: American Conference on International Arbitration, p. 190; Am. State Papers, 1889, 1900; Brit. and For. State Papers, XCII. 1126, 1127; *Tratados y Convenciones Vigentes*, Mexico, 1904, 75-79, 168-172, 472-474; Gaspar Toro, *Notas*, pp. 142, 143; Moore, II. 1359, V. 4851; P.I., pp. 333-335.

316. **GERMANY**, **GREAT BRITAIN**, and **UNITED STATES**, in 1889. A Conference of the Plenipotentiaries of the three Governments respecting the affairs of Samoa, was held at Berlin from April 29th to June 14th, 1889. By the Final Act of this Conference, signed on the latter date, and ratified April 12th, 1890:—

(a)—A SUPREME COURT was established in Samoa, and its jurisdiction defined (Art. 3); it was also agreed that the Chief Justice should be named by the three Signatory Powers in common accord, or, failing their agreement, by the King of Sweden and Norway, who, by a Decree of October 3rd, 1890, appointed M. O. G. W. Cedercrantz to be the first Chief Justice of Samoa.

(b)—In order to adjust and settle all claims by aliens, of titles to lands, a COMMISSION was appointed (Art. 4), consisting of three members, one named by each of the three Treaty Powers, together with an officer to assist, styled "Natives' Advocate," appointed by the Chief Executive of Samoa, with the approval of the Chief Justice of Samoa. The Supreme Court was perpetuated, and all future alienation of land prohibited, by the amended Act of 1899. The President of the Municipal Council of Apia was also appointed, by agreement of the three Powers. They agreed upon Baron von Pilsach.

References: Parl. Papers, Samoa No. 1, 1890; No. 2, 1890; No. 1, 1899; *Dreyfus*, 185, 186.

317. **GREAT BRITAIN** and **PORTUGAL**, in 1891. By a mutual exchange of correspondence the two Governments, on June 11th, 1891, agreed to lease territory on the Zambesi and on Lake Nyassa, and appointed a MIXED COMMISSION, consisting of three members, one appointed by each and the third to be named by a neutral Power, to determine sites, prices, etc.

References: State Papers, LXXXIII. 890 (833-894).

318. **GREECE and TURKEY, in 1897.** *Payment of Indemnity.* By Art. 2 of the preliminary Treaty of Peace, signed at *Constantinople, September 18th, 1897*, Greece undertook to pay a war indemnity to Turkey of £T.4,000,000. It was stipulated, that for the purposes of facilitating the speedy payment of this indemnity, an INTERNATIONAL COMMISSION should be constituted at Athens, composed of one representative of each of the Mediating Powers, and that the Greek Government should secure the passing of a law, previously sanctioned by the Powers, which should regulate the mode of Procedure of the Commission, etc. This was done, and Art. 1 of the Greek Law of Control, which was transmitted by the Greek Minister to the Powers on March 10th, 1898, placed the collection of revenue and the service of the loan for the war indemnity absolutely under the control of the International Commission.

References : State Papers, XC. 403-430, 546-553 ; XCI. 124, 473 ; *Herald of Peace* (Text of Treaty), October 1st, 1897.

III.—DELIMITATION COMMISSIONS.

The survey, and so the final settlement, of international boundaries, is committed, sooner or later, to Joint Commissions, but, as a rule, the functions of these Commissions are judicial only in a limited sense. Such are the following :—

319. **FRANCE and WESTPHALIA, in 1808.** By Art. 17 of the *Treaty of Leipzig*, dated *March 19th, 1808*, a COMMISSION was appointed for the definite demarcation of the boundaries between the two kingdoms. The result of its labours, as regards the delimitation, are unknown, but a Convention was published, signed by it, at Auerstadt on February 26th, 1812, and at Cassel on April 15th, 1812, for the repression of mutual forestal misdemeanours.

References : Schoell, II. 499 ; *Moniteur*, September 28th, 1813.

320. **AUSTRIA and BAVARIA, in 1809.** By Art. 3 of the *Treaty of Schoenbrunn, October 10th, 1809*, the tracing of the line from the Danube to the Lake of Atter, which marked the boundary of the part of Upper Austria, in the District of Hausrück, ceded to the King of Bavaria, was entrusted to a DELIMITATION COMMISSION. The Commissioners found they could not follow the instructions of the Article, because the framers of the Treaty had been furnished with faulty maps ; they therefore struck out a line of their own.

References : Schoell, II. 507, III. 139 ; R., XII. 210 ; *Moniteur*, October 29th, 1809.

321. **AUSTRIA and FRANCE, in 1809.** In execution of Art. 12 of the *Peace of Schoenbrunn, October 10th, 1809*, a Military Convention was concluded at Vienna on October 26th, in the same year, and ratified at Schoenbrunn the following day, by Marshal Berthier and Count de Wrba. It was composed of nineteen Articles, and, under No. 13, a JOINT COMMISSION was appointed, the members of which were chosen by the Commanders of the Russian and Austrian Armies, for carrying out the objects of the Convention, in general, and the provisional delimitation of a district of Eastern Galicia, ceded by Austria to Russia, in particular.

References : Schoell, III. 142 ; R., XII. 217.

322. **BAVARIA and ITALY, in 1810.** *Boundary and Cession of Territory.* Art. 3 of the *Treaty of February 28th, 1810*, between Italy and Bavaria, ceded to Napoleon Bonaparte, in his capacity as King of Italy, parts of the Italian Tyrol. The French and Bavarian members of the BOUNDARY COMMISSION met at Bolzano, and settled the new frontier by a Procès Verbal, which was signed on June 7th, and the cession was proclaimed, by a Royal Patent, on June 23rd, 1810. The part of the Tyrol given up comprised a considerable part of the Districts of the Adige and the Eisach, and included 305,000 inhabitants.

References : Schoell, II. 508 ; Winkopp, XVI. 254 (for patent).

323. **PERSIA and RUSSIA, in 1813.** In *October* 1813, Peace was concluded between Persia and Russia, at Gulistan, and a *Treaty* was concluded which indicated generally the Boundary between the Russian and Persian Empires, but leaving its exact direction to be settled by a **JOINT COMMISSION** appointed by Art. 2 of the Treaty. For some years afterwards a nominal Peace was maintained, but in the adjustment of the boundaries by this Commission many difficulties and disputes arose. The Russians occupied, and refused to evacuate, the District of Gokcha which the Persians claimed. Hostilities were therefore renewed in 1826.

References: C. U. Aitchison, Collection of Treaties, Engagements and Sanads, India, Calcutta, 1892, X. 10. and Appendix No. 5, p. X.

324. **FRANCE and SPAIN, in 1814.** By Art. 3, Sec. 8, of the *First Peace of Paris, May 30th*, 1814, it was agreed that on the side of the Pyrenees the Frontiers between the two Kingdoms of France and Spain shall remain as they were on January 1st, 1792, and "a **JOINT COMMISSION** shall be named on the part of the two Crowns for the purpose of finally determining the line."

References: Hertlet, Map of Europe, etc., I. 7; State Papers, I. 151.

325. **PRUSSIA and RUSSIA, in 1815.** In the Treaty between Prussia and Russia, relating to Poland, signed at *Vienna, May 3rd*, 1815, it was agreed that a "**MILITARY AND CIVIL COMMISSION** shall be immediately appointed, to construct an exact Map of the new Frontier, annexing the topographical description thereto, to place the boundary posts, and describe the angles of its situation, so that in no case the least doubt, dispute, or difficulty may arise, if, in the course of time, the replacing of a boundary mark, destroyed by any accident, should be disputed" (Art. 41). By a Russian Manifesto of February 26th, 1832, the Kingdom of Poland was declared to be perpetually united to the Russian Empire, and to form an integral part thereof. The British Government protested against this Manifesto on July 3rd, 1832, as being an infraction of the Vienna Congress Treaty.

References: Hertlet, I. 105-119; Schoell, III. 399; State Papers, II. 56.

326. **AUSTRIA and RUSSIA, in 1815.** The same provision was made, in identical terms, in the **TREATY** signed the same day (*May 3rd*, 1815) between Austria and Russia, relative to Poland, which Treaty formed Annexe 1 to the Vienna Congress Treaty of June 9th, 1815 (Art. 38). The Boundary Treaty between these two countries, signed at *Radziwilow, July 10th*, 1829, was formed, the two Rulers "having resolved to carry out" the above Article, "for the re-establishment by a **MIXED COMMISSION** of the Frontier, commencing at the Boug, to the Dniester between the Russo-Polish Provinces," etc., in accordance with Art. 3 of the same Treaty, to regulate and renew the line of demarcation between Bessarabia and the Bucovine, etc.

References: Hertlet, Map of Europe, etc., I. 94-104, II. 810; Schoell, III. 398; State Papers, II. 56.

327. **PRUSSIA and SAXONY, in 1815.** By Art. 3 of the *Treaty*, signed between Saxony and the Allies (Austria, Prussia, and Russia) at *Vienna*, on *May 18th*, 1815, a **MIXED COMMISSION** was agreed upon, to be appointed, one each by the King of Prussia and the King of Saxony, and a third by the Emperor of Austria, to proceed conjointly in fixing the Limits of the Countries which were to change Sovereigns by virtue of the Treaties. As soon as the Commissioners should execute the duty assigned to them, and this had been approved by the two Sovereigns, maps should be constructed, and signed by the respective Commissioners, and Boundary Marks placed to define their limits.

References: Hertlet, Map of Europe, etc., I. 134-136; State Papers, II. 84; Schoell, III. 395.

328. **AUSTRIA, PRUSSIA, and RUSSIA, in 1815.** By another *Additional Treaty* between these Powers, relative to Cracow, signed at Vienna, *May 30th*, 1815, a "**COMMISSION** to mark Boundaries" was appointed. The provision ran (Art. 5):—"Immediately after the signature of the present Treaty a **JOINT COMMISSION** shall be appointed, composed of an equal number of Commissioners

and Engineers, to mark out the line of demarcation, to place the Boundary posts to describe the angles and bearings, and to construct a Map containing a local description, so that no misunderstanding or doubt may in future arise upon these points. The Boundary posts, describing the territory of Cracow, shall be numbered and marked with the arms of the Power bordering on that territory, and of those of the free City of Cracow. The frontiers of the Austrian territory, opposite to that of Cracow, being formed by the *Thalweg* of the Vistula, the Austrian Boundary posts shall be fixed on the right bank of that river. The circle comprehending the free commercial territory of Podgorze shall be pointed out by particular posts, marked with the arms of Austria, and bearing the inscription "Free Line of Commerce" (Wolny okrag dia handlu).

References: Hertslet, Map of Europe, etc., I. 122; Schoell, III. 400; State Papers, II. 74.

329. **NETHERLANDS and PRUSSIA, in 1815.** Boundaries of the Kingdom of the Netherlands. By Arts. 2 and 4 of the *Treaty* between Great Britain, Austria, Prussia, and Russia, and the Netherlands, signed at *Vienna May 31st*, 1815, which formed Annex to the Vienna Congress Treaty of June 9th, 1815—the Articles in question forming Nos. 66 and 68 of the latter Treaty, the line of the frontier was defined. This line, it was stipulated, should be examined by a MIXED COMMISSION to be appointed without delay, for the purpose of proceeding to the exact determination of the limits both of the Kingdom of the Netherlands and of the Grand Duchy of Luxemburg, in other Districts, and in the whole territory as far as Kerkerdom. The demarcation between the two Kingdoms, Prussia and the Netherlands, formed the object of two later Treaties, that of June 26th, 1816, at Aix-la-Chapelle, and the other of October 7th, 1816, at Cleves, Arts. 2-45 of which gave a detailed description of the line of Frontier to be traced by Commissioners. By the Treaty of November 15th, 1831, between the five Powers and Belgium, the Union between Holland and Belgium was dissolved, and the above arrangement was revised.

References: Hertslet, Map of Europe, etc., I. 179-181, 230, 248-252; R., XIV. 24, 25; Schoell, III. 411; State Papers, II. 3, 137.

330. **ALLIED POWERS and FRANCE, in 1815.** By Art. 1, Sec. 2, of the *Definitive Treaty* of Peace between Great Britain, Austria, Prussia, and Russia on the one side, and France on the other, signed at *Paris, November 20th*, 1815, it was stipulated that a COMMISSION, the Members of which should be named on both sides by the High Contracting Parties, should, within the space of three months, proceed upon the survey of the frontiers of Eastern France, along the Rhine, etc.

References: State Papers, III. 280; Hertslet, Map of Europe, etc., I. 345.

331. **ALLIED POWERS and FRANCE, in 1815.** By the same Article (1, Sec. 6) it was agreed that "the High Contracting Parties shall name, within three months after the signature of the present Treaty, COMMISSIONERS to regulate everything relating to the designation of the Boundaries of the respective Countries, and, as soon as the labours of the Commissioners shall have terminated, Maps shall be drawn and landmarks shall be erected, which shall point out the respective limits."

References: State Papers, III. 280; Hertslet, Map of Europe, etc., I. 346.

(a)—In conformity with the above, and according to the stipulation of the Treaty of Paris of May 30th, 1814, FRANCE and the NETHERLANDS concluded a Boundary Treaty, which was signed at Courtray, March 28th, 1820. Art 1 of this Treaty provides that the Boundary should be settled according to the Procès-Verbaux and Drawings of the Commissioners, made separately on either side under the direction of the Sieur Etienne Nicolas Rousseau for France, and the Sieur Jean Egbert van Gorkum for the Netherlands, both Members of the Boundary Commission, whose labours were regulated by this Treaty.

References: State Papers, LV. 395; Hertslet, Map of Europe, etc., I. 624-627.

(b)—References to the execution of the above Article and the appointment of

Commissioners according to its provisions are to be found, also (1) in the Boundary Convention between BAVARIA and FRANCE, signed at Weissenburg, December 9th, 1825, and (2) the Boundary Convention between FRANCE and PRUSSIA, signed at Sarrebruck, October 23rd, 1829. Reference is also made (3) to the Members of the Boundary Commission, whose names follow, in the Procès Verbal between the Commissioners of FRANCE, SWITZERLAND, and NEUFCHATEL for the Demarcation of the Frontier between France and Neufchatel, November 4th, 1824.

References: Hertslet, Map of Europe, etc., I. 718, 736, II. 837; State Papers, XVI. 907.

332. **SARDINIA and SWITZERLAND, in 1816.** Art. 22 of the *Treaty* between Sardinia, the Swiss Confederation, and the Canton of Geneva, signed at Turin, March 16th, 1816, provides for the immediate appointment of a BOUNDARY COMMISSION of two Members, one by His Sardinian Majesty and the other by the Swiss Authorities, "to proceed to the Delimitation between the two countries, in such manner as to complete it before the exchange of the Ratifications." "The Commissioners," it stipulated, "shall draw up a Procès Verbal of their proceedings, joining thereto a topographical plan of the whole of the Limits, wherein the several Communes shall be described, which Plan shall be signed by them. The said document shall be signed in triplicate, and shall be annexed to the present Treaty.

References: State Papers, VII. 21; Hertslet, Map of Europe, etc., I. 433.

333. **AUSTRIA and BAVARIA, in 1816.** The ancient boundaries separating the country of Salzburg from that of Berchtoldsgaben (belonging to Bavaria), and from the Bailiwick of Reichenhall, having several disputable points, the High Contracting Parties to the *Treaty of Limits*, signed at Munich April 14th, 1816 (which formed Annex No. 11, to the General Treaty of Frankfort of July 20th, 1819), agreed (Art. 19) that as soon as the season should permit, a MIXED COMMISSION should "be sent to those points to settle the same definitely, in such a manner as to remove the cause of every future contention." The result of its labours was embodied in the Boundary Convention between the two Parties, which was considered as a supplement to this Treaty (Art. 3), signed at Salzburg, September 30th, 1818.

References: Hertslet, Map of Europe, etc., I. 441, 442, 556; Schoell, III. 555; State Papers, VII. 63.

334. **FRANCE and PORTUGAL, in 1817.** A difference between the Courts of Paris and Rio Janeiro, in reference to the delimitation of Guiana, was ended by a *Treaty*, which the Duke de Richelieu and the Chevalier de Brito, Portuguese Minister at the Court of France, signed at Paris, August 28th, 1817. By Art. 2 of this Treaty it was agreed that immediate steps should be taken to appoint and send out a COMMISSION to fix the limits of the French and Portuguese Guianas, in conformity with the precise sense of Art. 8 of the Treaty of Utrecht (April 11th, 1743), and to the stipulations of the Act of Congress of Vienna (June 9th, 1815), "the said Commissioners shall terminate their labours within the delay of one year at latest from the day of their meeting in Guiana. If, at the expiration of the term of one year, the said respective Commissioners should not have come to an understanding, the two High Contracting Parties shall come to some other amicable arrangement under the Mediation of Great Britain, and always in conformity with the precise sense of Art. 8 of the Treaty of Utrecht, concluded under the Guarantee of that Power."

References: State Papers, IV. 818; Hertslet, Map of Europe, etc., I. 530; Schoell, III. 561, 562.

335. **BAVARIA and FRANCE, in 1825.** By the BOUNDARY CONVENTION between these two countries, signed at Paris, July 5th, 1825, a Joint Commission was appointed to delimitate the unsettled part of the Boundary between them. Art. 2 contains a description of the Boundary Line from the Commune of Oberstembach to the Rhine, and in Arts. 4 to 6, the duties of the Boundary

Commissioners are set forth. Other parts of the Boundary between France and Germany, *e.g.*, between Baden and France, were settled by Treaties of January 30th, 1827, and April 5th, 1840.

References: State Papers, XVII. 1270, XXIX. 1092; Hertslet, Map of Europe, etc., I. 727-730, 764-766, II. 1006, 1007.

336. **RUSSIA and SWEDEN, in 1826.** *Lapland Boundary.* In order to prevent the collisions to which the absence of a precise demarcation between Norway and Russia gave rise in the Foellels Districter (Districts in common) in Lapland, these two Powers, by the *Convention of Limits*, signed at *St. Petersburg May 14th, 1826*, appointed (Art. 4) a JOINT COMMISSION to demarcate, on principle of reciprocal necessity, the Limits of their respective Possessions as well as the frontier relations of the Lapland Communes in those districts. JOINT COMMISSIONERS, says Art. 11, had been sent to the spot in 1823, and the topographical chart, drawn up and signed by the respective Commissioners, had formed the basis of the negotiations and was annexed to the present Convention.

References: State Papers, XIII. 1034; Hertslet, Map of Europe, etc., I. 744-746.

337. **MEXICO and UNITED STATES, in 1828.** By the *Treaty of Limits of January 12th, 1828*, the United States and Mexico engaged to appoint each a Commissioner and a Surveyor to determine the Boundary Line, and they also agreed to accept the result reached by them. There was no provision for the decision of questions of difference, if any, between the persons so appointed.

References: Moore, II. 1358.

338. **COLOMBIA and PERU, in 1829.** The original Republic of Colombia, founded by Simon Bolivar in 1819, entered into an Agreement with Peru in the Convention of Giron, signed on *February 28th, 1829*, to appoint a JOINT COMMISSION to settle the limits of the two States on the basis of the political division of the Viceroyalties of New Granada and Peru, August, 1809. A new Government was formed in Peru. Conferences followed at Guayaquil, September 16th to 22nd, 1829, to formulate a definitive Treaty of Peace, the protocols of which Conferences contain a new Agreement for a Mixed Boundary Commission, and the Treaty of Peace itself, signed at Guayaquil, September 22nd, 1829 (Arts. 5-8) contains the provisions for the same. The Treaty was reported and approved, and the Colombian members of the Joint Boundary Commission appointed. The ratifications were exchanged at Lima, October 20th, 1829. On August 11th, 1830, a Protocol was signed at Lima laying down instructions for the Commission, the Colombian members of which were on the frontier ready for work on December 1st. But the Delegates from Peru were not appointed, and the dismemberment of ancient Colombia, by the separation of Venezuela and Ecuador on February 29th, 1832, followed soon after, and put an end to the delimitation proceedings.

References: Anales Diplomaticos y Consulares (Colombia), 1901, II. 117, 700-708, 790-796; Tratados del Peru, V. 717-782; Statesman's Year Book, 1897, pp. 433, 459; Gaspar Toro, Notas, etc., p. 158.

339. **GREECE and TURKEY, in 1832.** The *Boundary "Arrangement,"* signed at *Constantinople, July 21st, 1832*, between France, Great Britain, and Russia, on behalf of Greece and the Porte, which "was destined to remain in force for nearly half a century," fixed the frontiers between the two States and (Art. 1) the indemnity to Turkey "in consequence of the decision of the Conference of London" (Art. 2), and, also, appointed a BOUNDARY COMMISSION, which should "immediately proceed to the marking out of the Boundary now settled." "A Commissioner," it said, "shall be appointed by the Sublime Porte to join in the labours of this Demarcation," and a Commissioner appointed by the Greek Government may co-operate in the same labours. The Commissioners were: for Great Britain, Lieut.-Col. G. Baker; for France, Lieut.-Col. J. Barthélemy; and for Russia, Col. A. Scalon. They commenced their labours in September, 1832, and the territory assigned to the new Kingdom was incorporated into it by an Act of the Regency dated February 21st, 1833. The maps prepared by

the Commissioners were presented by the representatives of the three Powers to the Porte, and its approval of them was brought to the cognisance of the Conference of London on January 30th, 1831. The "Arrangement" remained in force till the Convention of May 24th, 1831.

References: Hertslet, Map of Europe etc., II. 905, 906, 917; State Papers, XXII. 934, 963; Protocols, No. 52, Annexe A, No. 58; Holland, pp. 15, 20, 21, 35n.

340. **SERVIA and TURKEY, in 1833.** A Firman of the Sultan (Mahmoud II.), addressed to the Prince of Servia, in *December*, 1833, refers to other Firmans by which it was ordered that COMMISSIONERS should be appointed by the Prince as well as by Hossein Pasha, "to go on the spot to make a correct survey, and to determine the Boundary of the Districts of Servia according to the topographical maps and other information furnished for the purpose."

References: Hertslet, Map of Europe, etc., II. 930.

341. **RUSSIA and TURKEY, in 1834.** A *Treaty* between Russia and Turkey, respecting Moldavia and Wallachia, signed at *St. Petersburg, January 29th*, 1834, affirms that "the two High Courts having deemed it necessary to establish, as has been stipulated in the *Treaty of Adrianople*" (September 14th, 1829), "a Line of Demarcation between the two Empires in the East, such as may henceforth prevent every species of dispute and discussion," therefore "Conformably to Art. 4" of the above *Treaty*, a Line is described, and COMMISSIONERS are appointed on both sides to examine the localities, settle the Frontiers, and erect Posts marking the Boundary.

References: Hertslet, Map of Europe, etc., II. 936, 937; State Papers, XXVI. 1245.

342. **PRUSSIA and RUSSIA, in 1835.** A *Definitive Treaty* between Prussia and Russia, signed at *Berlin, March 4th*, 1835, defined the Boundary between the Prussian States and Poland, from the confines of the Grand Duchy of Posen to the Republic of Cracow, and (by Arts. 55 and 56) appointed COMMISSIONERS to complete the Demarcation of 1808. The Preamble to this *Treaty* notes the fact that "the Commission appointed in 1808 to fix the limits between the Prussian States and the Duchy of Warsaw, did not determine the Frontier on all points where the territories were claimed by both parties." The *Boundary Act* between Prussia and Russia, signed at Tarnowitz, December 13th, 1836, concluded the labours of the Demarcation Commissioners, after they had settled the Boundary on the spot, and gave a detailed description of the places at which the Frontier Posts had been erected.

References: Hertslet, Map of Europe, etc., II. 953-955, 964, 965; State Papers, XXIII. 283.

343. **BELGIUM and HOLLAND, in 1839.** (a)—By Art. 6 of the Annexe of the *Treaty of London, April 19th*, 1839, which cancelled and yet confirmed the *Treaty of November 15th*, 1831, it was settled that "the said limits" (as described in Arts. 1, 2, and 4), of the territories of the separated Kingdoms "shall be marked out in conformity with those Articles by Belgian and Dutch COMMISSIONERS of DEMARCATION, who shall meet as soon as possible in the town of Maestricht."

References: Hertslet, Map of Europe, etc., II. 860-863, 982-985; State Papers, XVIII. 646, XXVII. 990.

(b)—The *Boundary Treaty* between Belgium and Holland, signed at *The Hague, November 5th*, 1842, recognises (Preamble) the point at which the labours of the Commissions appointed above had reached, and in order to smooth all difficulties, settles certain points which had not been sufficiently determined in the above *Treaty*. It also stipulates (Art. 70) that MIXED COMMISSIONS should assemble fifteen days after the ratification of the *Treaty*. A *Boundary Convention*, signed at Maestricht, August 8th, 1843, refers (Art. 1) to the Maps and Plans drawn by the Commissioners.

References: Hertslet, Map of Europe, etc., II. 1029-1033; State Papers, XXXI. 815, XXXV. 1202.

344. **AUSTRIA and ITALY, in 1841.** The State Boundary Line was laid down by an *Italiano Illyrian* Commission in 1841; and, by the Final Boundary Act, between Austria and Italy, signed at *Venice, December 22nd, 1867*, this line was taken to form the Boundary of private or communal property.

References: Hertslet, Map of Europe, etc., III., 1833.

345. **GREAT BRITAIN and UNITED STATES, in 1842.** The settlement of the North-Eastern Boundary line, which was described in Art. 1 of the *Webster-Ashburton Treaty of August 9th, 1842*, was entrusted to a JOINT COMMISSION of DELIMITATION, and on June 28th, 1847, Col. J. Bucknall Estcourt and Mr. Albert Smith, the British and American Commissioners, signed, at Washington, their final report, at the conclusion of which they say, "that the most perfect harmony has subsisted between the two Commissioners from first to last, and that no differences have arisen between the undersigned in the execution of the duties entrusted to them."

References: Moore, I. 154, 161; Brit. and For. State Papers, LVII. 823, 832; XXXIII. 763-806; Curtis's Life of Webster, II. 204, 205; see also for the Joint Report of DELIMITATION, Smith and Estcourt on the N.E. Boundary, and Richardson's Messages and Papers of the Presidents, IV. 170.

346. **PERSIA and TURKEY, in 1843.** This was a question of the Perso-Turkish Frontier, for the settlement of which a MIXED ANGLO-RUSSIAN COMMISSION was appointed in 1843. The outcome of the labours of this Commission, which lasted more than twenty-five years, has been rather a careful delineation of the disputed tract than the delimitation of an exact boundary. The territorial claims of Turkey and Persia were founded upon the Treaty of Sultan Murad IV. with Shah Suli, in 1639, and that was made on the basis of Suleyman's Treaty of 1555.

References: Encyc. Britannica, XVIII. 616, 617; Turkey, Story of the Nations, p. 220.

347. **NATAL and ZULULAND, in 1843.** On *October 5th, 1843*, a Treaty was concluded between Panda, King of the Zoolah (Zulu) nation, and the Hon. Henry Cloete, LL.D., H.B.M. Commissioner for Natal, which, after settling the Boundary between Natal and Zululand (Art. II.) provided that the boundary line should be fixed by a JOINT COMMISSION, consisting of such Commissioner as Her Majesty may appoint, and any two Indunas or Commissioners whom Panda, the Zoolah (Zulu) King, may appoint for that purpose.

References: Hertslet, Complete Collection, etc., XV. 848; State Papers, XXXIII. 1075; Hertslet, Map of Africa, etc., I. 434, 532.

348. **AUSTRIA and BAVARIA, in 1844.** The *Treaty* between Austria and Bavaria respecting the Boundary of Tyrol and Vorarlberg, which was signed at *Munich, January 30th, 1844*, was concluded, in order to put "an end to the controversies respecting this Boundary, and to prevent such boundary disputes in future." With this object it arranges to have "the whole Boundary line, from Scheibelberg, where the boundaries of Salzburg, Tyrol, and Bavaria meet, to the Lake of Constance (Bodensee), examined by COMMISSIONERS, and to have it defined and permanently marked." Art. 41 provides for the settlement of disputes, should they arise.

References: Hertslet, Map of Europe, etc., II. 1034.

349. **AUSTRIA and SARDINIA, in 1844.** *Italian Boundaries.* By an Agreement between Austria and Sardinia, forming Art. 8 of the *Treaty of Delineation* between Lucca, Modena, Tuscany, Austria, and Sardinia, signed at *Florence, November 28th, 1844*, a JOINT COMMISSION was instituted in the following terms:—"Nevertheless, the value of the above-mentioned States to be exchanged between them, namely, Placentia, with a circle (*zona*) or district that has been decided upon, and the Parmesan territory which borders on Sardinia, must be ascertained and agreed upon on the precise time of Reversion" (contemplated by the Treaty of May 20th, 1815) "in an impartial and equitable manner by an

AUSTRO-SARDINIAN COMMISSION, and, in the improbable case of dissension, it has been agreed between the two Parties to refer the case at once to the decision of the Holy See."

References: Hertslet, Map of Europe, etc., II. 1045-1060.

350. **MODENA, TUSCANY, etc., in 1844.** Article 9 of the *Treaty of Delineation* between Lucca, Modena, Tuscany, Austria, and Sardinia, signed at Florence, November 28th, 1844, provides that the frontier line will be "determined" and "traced out by TUSCAN and MODANESE COMMISSIONERS, and in the manner now fixed upon." Then followed detailed instructions.

References: Hertslet, Map of Europe, etc., II. 1055-1059.

351. **MEXICO and UNITED STATES, in 1848.** By Art. 5 of the *Treaty of Guadalupe Hidalgo, signed February 2nd, 1848*, which described the Boundary Line between the two countries, a JOINT DELIMITATION COMMISSION was appointed, consisting of four members, a Commissioner and a Surveyor being appointed by each of the parties. The Commission was to meet, within a year from the date of ratification, in the Port of San Diego, and to proceed to mark out the described line throughout its course to the mouth of the Rio Bravo del Norte. The Treaty was ratified at Querétaro on May 30th, 1848. This Mixed Commission met and did its work as stipulated.

References: *Tratados y Convenciones Vigentes, Mexico, 1904*, pp. 1-25, 27; Moore, II., 1248, 1358.

352. **DENMARK and PRUSSIA, in 1850.** By Art. 5 of the "*Treaty of Peace* between the King of Prussia, in his own name and in the name of the Germanic Confederation, on the one part, and Denmark, on the other part, signed at Berlin, July 2nd, 1850, it was agreed to appoint JOINT COMMISSIONERS," to determine, according to the documents and to other proofs relative to the subject, the Boundary between those States of His Danish Majesty not comprised in the Germanic Confederation and those which belong thereto.

References: Hertslet, Map of Europe, etc., II. 1129, 1131; State Papers, XXXVIII. 99.

353. **COMBO (GAMBIA) and GREAT BRITAIN, in 1850.** On December 26th, 1850, a Convention was concluded between the Governor of the British Settlement in the Gambia, and the King and Chiefs of Combo and the Headmen of Baccon, in the Kingdom of Combo, which declared that "a JOINT COMMISSION, consisting of three members, Daniel Robertson, Col. Sec., Col. William Bage, and Staff-Surgeon Thomas Kehoe, on the part of Queen Victoria, and four [Major J. J. S. Finden and three Natives] on the part of the King and people of Combo, and that the said Commissioners on the 26th inst. proceeded to view, and did mark out and designate accurately the ground and territory then ceded to Great Britain. The Convention also stipulated that the Governor of the British Settlement in the Gambia should appoint one or more competent persons to make a map of the said ground and territory, and fix landmarks to define its limits, copies of the maps to be given to the said [King] Ansumarna Jarta." This Convention was confirmed on February 25th, 1851.

References: State Papers, XLVIII. 894; Hertslet, Complete Collection, etc., XII. 47; Hertslet, Map of Africa, etc., I. 378-379.

354. **OLDENBURG and PRUSSIA, in 1853.** BOUNDARY COMMISSIONERS were appointed by Art. IX. of the *Territorial Treaty* between Prussia and Oldenburg, signed at Berlin, July 20th, 1853. These were to proceed at once to the settlement of the boundaries on the spot, and were "authorised to agree to deviations in particulars, according to the respective requirements, adhering, however, to the superficial area fixed by the description of the Boundaries. The boundary lines thus settled were to be marked on land by fixed stones or stakes, and on the water by placing proper sea marks; these boundary marks were to be fixed and maintained at the joint expense of the Parties." This Treaty also contained provision for Arbitration in case of difference in the interpretation of Treaty.

References: Hertslet, Map of Europe, etc., II. 1161-1170.

355. **MEXICO and UNITED STATES, in 1853.** The work of the MIXED COMMISSION under the Treaty of Guadalupe Hidalgo did not extend to the whole frontier line. Another Commission was therefore appointed under Art. 1 of the *Treaty of Limits*, signed at Mexico, December 30th, 1853, and ratified by Mexico, May 31st, 1854, and the United States, June 29th, 1854. The Commission was composed of two members, one appointed by each of the Governments, and was to meet in the City of Paso del Norte three months after the exchange of ratifications, to survey, and demarcate on the spot, the stipulated boundary. The Commission completed its survey according to the Agreement.

References: *Tratados y Convenciones Vigentes*, Mexico, 1904, pp. 25-32; Moore, II. 1358.

356. **RUSSIA and TURKEY, in 1856.** By Art. 30 of the *Treaty of Paris*, March 30th, 1856, it was agreed that "in order to prevent all local dispute, the line of Frontier of the possessions of both Powers in Asia should be verified, and, if necessary, rectified.

(a)—For this purpose a MIXED COMMISSION, composed of two Russian and two Ottoman Commissioners, together with one English and one French Commissioner, should be sent to the spot immediately after the resumption of diplomatic relations; their labours to be completed within a period of eight months. The *Final Act* of this Mixed Commission, recording the completion of its labours, was signed at Constantinople on December 5th, 1857, and a Protocol, signed at Paris, April 28th, 1858, takes cognizance, on behalf of the Powers, of the fulfilment of Art. 30 of the Treaty of Paris.

(b)—A Boundary Commission was appointed by the Mixed Commission in 1857, and on September 11th, 1858, this Commission assembled at the village of Hussein-Kent, for the purpose of carrying out its instructions. A Supplementary Act of this Boundary Commission appointed by the Mixed Commission, which was signed on September 11th, 1858, at Hadji Bairam, recorded the final proceedings on the spot, and the choice of nationality by the inhabitants of the districts affected.

References: N.R.G. XX. 13, 18; See also the Protocol of the Conference of Paris of April 28th, 1858; State Papers, XLVI. 8, 73, L. 995, 1000; T. E. Holland, pp. 253, 305; L. 995, 1000; Hertslet, Map of Europe, etc., IV. 1263, 1323, 1324, 1325, 1326, 1350-1352.

357. **FRANCE and SPAIN, in 1856.** The Treaty to determine the frontier signed at Bayonne, December 2nd, 1856, after describing the Boundary, appointed (by Arts. 10 and 11) a JOINT DELIMITATION COMMISSION which, together with Delegates from the French and Spanish Communes interested, should proceed to define and demarcate the whole line of frontier as agreed upon, and stipulated that their *Procès Verbaux*, duly attested, should be attached to the copies of the Treaty.

References: Brit. and For. State Papers, XLVII. 765-773.

358. **ALLIED POWERS and RUSSIA, in 1857.** By Arts. 20 and 21 of the Treaty of Paris, March 30th, 1856, the Emperor of Russia consented to the rectification of his frontier in Bessarabia, and it was agreed that Delegates of the Contracting Powers should fix in its details the line of the new frontier. Some controversy having arisen as to these two Articles, it was provided, by a *Protocol*, signed at Paris, January 6th, 1857, to have the force of a Convention, that the Boundary should be traced in detail by a DELIMITATION COMMISSION, by March 30th, at which date the Austrian troops were to have evacuated the Principalities, the British squadron to have left the Black Sea, and the Straits Convention to come into operation. The Delimitation Commission signed their Definitive Act at Kischeneff, March 30th 1857, and a Treaty was signed at Paris, June 19th, 1857, by the representatives of the Powers there, superseding the Protocol, by embodying its provisions and adopting the Act of the Delimitation Commission. By Art. 45 of the Treaty of Berlin, the portion of the Bessarabian territory detached from Russia by the Treaty of Paris was restored to Russia, and, by Art. 46, the Delta of the Danube and the Isle of Serpents were added to Rumania. It was also

decided that the new frontier line should be determined on the spot by the European Commission appointed for the Delimitation of Bulgaria.

References : Parl. Papers, 1856, 1857, 1858 ; N.R.G., XV. 770, 793, XVI. 2P. p. 11, XX. 4 ; State Papers, XLVI. 8, XLVII. 60, 92, L. 1020 ; T. E. Holland, pp. 250, 260-262, 302 ; Hertslet, Map of Europe, etc., II. 1259, 1260, 1298-1300, 1313-1315, 1320-1322.

359. **MONTENEGRO and TURKEY, in 1858.** In November, 1858, with a view to putting an end to the perpetual hostilities between the Principality and the Turks, a Conference of the representatives of Great Britain, Austria, France, Prussia, Russia, and the Porte was held at Constantinople, and traced anew the boundaries of the Principality. The Conference took into consideration the labours of the Local Commission charged to report the *statu quo* of the Frontiers of Albania, Herzegovina, and Montenegro, such as they existed in the month of March, 1856. By a *Procès Verbal* of this Conference, signed at *Constantinople November 8th*, 1858, a BOUNDARY COMMISSION of Engineers was agreed upon to proceed to the Frontier, in the next spring, to settle the details on the spot. Major Francis Edward Cox, R.E., was the British member of the Montenegrin Boundary Commission from March to July, 1859. These Commissioners reported upon the result of their labours to another Conference at Constantinople, April 17th, 1860, when they were complimented on their work, and their labours declared to be terminated. By a Protocol of Turkish Conditions, accepted by the Prince of Montenegro, signed at Scutari, August 31st, 1862, it was decided that the line of demarcation traced by the Boundary Commission in 1859 should constitute for the future the boundary of Montenegro.

References : State Papers. L. 1001 ; T. E. Holland, p. 237 ; Hertslet, Map of Europe, etc., II. 1353, 1437, 1438. III. 1603.

360. **MOROCCO and SPAIN, in 1859.** (a)—A *Convention* between Spain and Morocco, concluded at *Tetuan*, on *August 24th*, 1859, stipulated the cession to Spain of additional territory near Melilla (Art. 1) and also (Art. 2) that the limits of this concession should be fixed by a JOINT COMMISSION, consisting of "Spanish and Maroquine engineers, who shall adopt as their basis of operations, for fixing the extension of the said limits the range of a piece of cannon of 24 of the old make."

(b)—This Convention was confirmed by the Treaty of *April 26th*, 1860, signed at *Tetuan*, and notified on May 26th, 1860, which also provided (Art. 3) for cession of territory by Morocco to Spain, the boundaries of which it defined, and for the appointment (Art. 4) of a Boundary Commission.

(c)—This Treaty, of *April 26th*, 1860, also stipulated (Art. 8) the cession to Spain of ground near Santa Cruz la Pequeña (called in the Arabic version of the Treaty "Agadir"), for a fishing establishment similar to that which Spain possessed there in ancient times, and also that Commissioners should be appointed on either side to mark out the grounds and limits of the intended establishment.

(d)—Differences having arisen respecting the fulfilment of the above Convention and Treaty, another Treaty was concluded between Spain and Morocco, on *October 30th*, 1861, and confirmed, by Art. 61 of the Commercial Treaty of November 20th, 1861, which stipulated that the demarcation of the limits of the fortress of Melilla should be made in conformity with the Convention of August 24th, 1859, confirmed by the Treaty of Peace of April 26th, 1860.

(e)—In October-November, 1893, hostilities ensued between the authorities of Melilla and the Moors in the neighbourhood, which were terminated by a Treaty signed in the city of Morocco on *March 5th*, 1894, which repeated the above stipulation (Art. 2), and provided once more for the appointment of BOUNDARY COMMISSIONERS.

(f)—A Supplementary Convention, signed in Madrid *February 24th*, 1895, and ratified at Tangier on April 4th, 1895, postponed the delimitation for another year.

References : *Tratados de España*, Don Florencio Janer, p. 192 ; Archives Diplomatiques, 1861, III. 332 ; State Papers, LI. 928, LIII. 1052, 1089 ; Spanish Red Book. Affairs of Morocco, p. 1894 ; Hertslet, Map of Africa, etc., II. 894-902, III. 1062, 1063.

361. **AUSTRIA, FRANCE and SARDINIA, in 1859.** By the *Treaties of Peace* between Austria and France (Art. 4), France and Sardinia (Art. 1), and Austria, France, and Sardinia (Art. 3), signed at *Zurich, November 10th, 1859*, the Line of Frontier between Lombardy and the Tyrol is described in identical terms, and it is agreed that "a MILITARY COMMISSION, appointed by the Governments interested, will be charged with the duty of tracing the line on the ground with the least possible delay. On the exchange of ratifications at Zurich, November 21st, 1859, a Protocol was signed amending the description of the the new Delimitation along the Po. The Commission, consisting of six members, two appointed by each State, met at Peschiera, and immediately began its operations. The *Final Act* of the Demarcation definitely fixed by this Commission, was signed at Peschiera, June 16th, 1860.

References: State Papers, XLIX. 364, 371, 377, L. 1019, LIII. 943; Hertslet, Map of Europe, etc., II. 1383, 1393, 1394, 1403, 1404, 1414, 1439-1443.

362. **BRAZIL and VENEZUELA, in 1859.** By Art. 3 of the *Treaty of Limits*, signed at *Caracas, May 5th, 1859*, it was agreed that "after the ratification of the present Treaty, the High Contracting Parties will each name a Commissioner to proceed by common accord, in the shortest possible time, to the demarcation of the line at the points where it may be necessary in conformity with the preceding stipulations."

References: Brit. and For. State Papers, L. 1164-1169.

363. **FRANCE and SARDINIA, in 1860.** Following the cession of Savoy and Nice to France, by the *Treaty* for their annexation (Art. 3), signed at *Turin March 24th, 1860*, a MIXED COMMISSION was appointed to "determine in a spirit of equity the frontiers of the two States, taking into account the configuration of the mountains and the requirements of defence." The Boundary Treaty, signed at Turin March 7th, 1861, of which the Ratifications were exchanged at Turin, March 16th, 1861, declares that staff officers of the armies had been appointed to trace the line of delimitation on the spot, and that they had performed their mission in conformity with the instructions which they had received.

References: State Papers, L. 412, LI. 685; Hertslet, Map of Europe, etc., II. 1430, 1466.

364. **FRANCE and MONACO, in 1861.** By a *Treaty* between France and Monaco, signed at *Paris, February 2nd, 1861*, Mentone and Roccabruna were ceded to France. In consequence it was stipulated (Art. 1) that "the line of demarcation between the territory of the French Empire and that of the Principality of Monaco will be traced as soon as possible by a MIXED COMMISSION." The Ratifications of this Treaty were exchanged at Paris, February 11th, 1861.

References: Hertslet, Map of Europe, etc., II. 1462, 1463.

365. **ITALY and SWITZERLAND, in 1861.** The Frontier between Lombardy and the Canton of Ticino was regulated by the Treaty of Varese, of August 2nd, 1752, between Her Majesty, the Empress Maria Theresa of Austria, and the Twelve Cantons of the Helvetic League. Some disputes having arisen as to the course of the frontier, Commissioners were appointed, three for Italy and two for Switzerland, to proceed to a definitive settlement of the dissensions. When the five Commissioners had assembled at Lugano, on *September 11th, 1861*, and had exchanged their Full Powers, they constituted themselves as a COMMISSION, for the purpose, appointing a President and Secretary. The Commission immediately began its operations, adopted definite rules as the basis of the work of Delimitation, agreed to confine its business to the definition of the frontier lines between State and State, adopted detailed plans, and went *seriatim* through the points at issue, following the Articles of the Treaty of Varese, visited the grounds in company with the Communal authorities, and embodied the results in a written instrument. The frontier having been thus definitely established, and the fixing of the new landmarks arranged, the Commission again repaired to the localities to examine and verify the work, and found that all had been properly done. The Commissioners of the two States having thus completed the work of Delimitation, which it was their business to do, subscribed a *Convention, September 11th, 1861*,

which was to have force and validity only when ratified by the Supreme Powers of the Contracting States. The Ratifications were exchanged at Turin April 11th, 1862.

References : Hertslet, Map of Europe, etc., II. 1481-1497.

366. **SERVIA** and **TURKEY**, in 1862. At a Conference of the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, relative to the affairs of Servia, it was agreed, as recorded in Art. 5 of the *Protocol* signed at *Kanlidja*, *September 4th*, 1862, that "the new circuit of the Esplanade (of Belgrade) shall be marked out by a MIXED MILITARY COMMISSION, composed of an officer named by each of the guaranteeing Powers, and of an Officer named by the Ottoman Government. This Commission will avail itself of all local information which may assist it in solving the question, and shall make its report to the Ottoman Porte, which will receive favourably observations from the Servian Government."

References : State Papers, LII. 114 ; Hertslet, Map of Europe, etc., II. 1519, 1520.

367. **FRANCE** and **SWITZERLAND**, in 1862. By the *Treaty* between France and Switzerland relative to an exchange of Territory in the Vallée des Dappes, signed at *Berne*, *December 8th*, 1862, the Ratifications of which were exchanged at *Berne*, *February 20th*, 1863, a BOUNDARY COMMISSION was appointed to determine on the spot the new Line of Frontier and to draw up a *Procès Verbal* of their operations. That *Procès Verbal* would be considered as forming part of the one drawn up by the French and Swiss COMMISSIONERS appointed for the demarcation of the Frontier between the Canton of Vaud and France, and signed *September 16th*, 1825.

References : State Papers. LIII. 151 ; Hertslet, Map of Europe, etc., II. 1527.

368. **AUSTRIA**, **DENMARK**, and **PRUSSIA**, in 1864. The *Treaty of Peace* between these Powers, signed at *Vienna*, *October 30th*, 1864, definitely fixed the Boundary between Denmark and Schleswig (Art. 5) and, (Art. 6), appointed a MIXED BOUNDARY COMMISSION to determine the new Delimitation.

References : State Papers, LIV. 522, 622 ; Hertslet, Map of Europe, etc., III. 1630.

369. **FRANCE** and **SPAIN**, in 1866. The *Boundary Treaty* between France and Spain, signed at *Bayonne*, *May 26th*, 1866, makes a detailed Demarcation of the Frontier from the department of the *Pyrénées-Orientales* to the *Val d'Andorre*, and provides for an INTERNATIONAL COMMISSION of engineers, composed of French and Spanish officers, to settle Boundary Marks. A Boundary Act, signed at Bayonne the same day, united "under one Act the Regulations applicable over the whole frontier in either country." This Commission met on the same day and adopted Regulations for the waters common to both. "The Final Act of the Delimitation of the International Frontier of the Pyrenees, between France and Spain," was signed by the Members of the Commission, at Bayonne, *July 11th*, 1868, and the Ratifications were exchanged at the same place, *January 11th*, 1869. The Final Act made provision for two other Commissions, of which, by Arts. 5 and 8, it defined the composition and functions.

(1) The International Administrative Commission of the Canal of *Puycerda*.

(2) The International Administrative Commission of the Canal of *Angoustrine* and *Llivia*.

References : State Papers, LVI. 212, 226, LIX. 430 ; Hertslet, Map of Europe, etc., III. 1647, 1649, 1844.

370. **BAVARIA** and **PRUSSIA**, in 1866. By the *Treaty of Peace* between these Powers, signed at *Berlin August 22nd*, 1866, Bavaria (Art. 14), "as a regulation of Frontier has been found requisite for the preservation of strategical interests and those of traffic," cedes certain Territories in Lower Franconia to Prussia, and it is agreed that, immediately after the exchange of the Ratifications of the Treaty, the High Contracting Powers will appoint COMMISSIONERS to

undertake the regulation of the Frontier. The Ratifications were exchanged at Berlin, September 3rd, 1866. By Art. 2 of a Protocol annexed to the Treaty, it is stipulated that this Commission "will undertake all matters connected with that regulation, such as the Archives, arrears of public Taxes, and other matters of that kind."

References : Hertslet, Map of Europe, etc., III. 1715, 1718.

371. **AUSTRIA and ITALY, in 1866.** By the *Treaty of Peace* between Austria and Italy, signed at *Vienna, October 3rd, 1866*, the Emperor of Austria agreed (Art. 3) to the Union of the Lombardo-Venetian Kingdom (which had been already ceded to France, and by France to Sardinia, by the Treaties of Zurich, November 10th, 1859) to the newly formed Kingdom of Italy. "The Frontier of the Ceded Territory is determined (Art. 4) by the actual administrative confines of the Lombardo-Venetian Kingdom, and a MILITARY COMMISSION, to be appointed by the two Contracting Parties, is entrusted with the execution of the tracing on the spot, within the shortest possible delay." This Commission, which consisted of six members, three appointed by each, met at Venice, proceeded at once to its task, and embodied its conclusions in a Final Act signed December 22nd, 1867, of which the Ratifications were exchanged at Florence, 1868.

References : State Papers, LVI. 700 ; Hertslet, Map of Europe, etc., III. 1751, 1833.

372. **BRAZIL and PERU, in 1866.** In fulfilment of the Boundary Treaty of October 23rd, 1851, between Peru and Brazil, a MIXED COMMISSION proceeded to make a survey, in 1866, and 1873, and 1874, of the principal points of the demarcation of the Boundary, and to fix the various marks in Tumbatinga, the Bay of Apaporis, and in a straight line from these to Putunayo. Previously to that, in the Treaty of Peace (Art. 14) of July 8th, 1841, these countries had adopted the principle of *uti possidetis* for the delimitation of their frontiers.

References : Anales Diplomaticos y consularès de Colombia, 1901, II. 641, 658-660 (Bibliography).

373. **GERMANY and GREAT BRITAIN, in 1866.** The boundary between the German Protectorate of Togo and the British Gold Coast Colony was delimited by an Anglo-German BOUNDARY COMMISSION, by whom it was traversed in 1866. The Agreement between the two Governments, signed at *Berlin, July 1st, 1890*, which settled the frontier, stated that the boundary commences on the coast at the marks set up after the negotiations of July 14th and 28th, 1866, between the Commissioners of the two countries. The demarcation of the Hinterland of Togoland and of the Gold Coast became the subject of a later reference.

References : Hertslet, Map of Africa, etc., II. 646 (and Map), 647, 648 ; Parl. Papers, Treaty Series, No. 7 (1900), p. 4.

374. **GREAT BRITAIN and NETHERLANDS, in 1867.** The Boundary between the Dutch and English Possessions on the Gold Coast, West Africa, was defined by Art. 1 of a *Convention*, signed (in the English and Dutch languages) on *March 5th, 1867*, the Ratifications of which were exchanged at London July 5th, 1867. A JOINT BOUNDARY COMMISSION was appointed, the members being Mr. Frederick M. Skues, Assistant Staff Surgeon, for Great Britain, and Lieut. C. A. Jeckel, for the Netherlands. A Chart of the Boundary Line was prepared by them in February, 1863, and a Report upon the subject addressed to the Governors of the English and Dutch Settlements on the West Coast of Africa, by whom the Chart was duly attested.

References : Hertslet, Complete Collection, etc., XII. 1194 ; State Papers, LVII. 36 ; Hertslet, Map of Africa, etc., II. 674-676.

375. **GREAT BRITAIN and UNITED STATES, in 1870.** The disagreement of the Commissioners in 1857 as to the San Juan Water Boundary (see I. 72) did not prevent the running of the line, under the Treaty of 1846, from the Rocky Mountains to the Gulf of Georgia. This line was surveyed and

marked by Commissioners prior to 1870. *On February 24th*, in that year, Mr. Fish, Secretary of State, and Mr. Thornton, British Minister at Washington, signed a *Protocol* declaring that seven maps, certified and authenticated under the signatures of Archibald Campbell, the Commissioner of the United States, and Col. John Summerfield Hawkins, Her Britannic Majesty's Commissioner, and on which the Boundary in question was traced, were approved, agreed to, and adopted by both Governments.

References : *Treaties and Conventions, U.S., 1776-1887*, p. 440 ; Moore, I. 235 n.

376. FRANCE and GERMANY, in 1871. By the *Preliminary Treaty of Peace* between France and Germany, signed at *Versailles, February 26th, 1871*, the Ratifications of which were exchanged at Versailles, March 2nd, 1871, an INTERNATIONAL COMMISSION, composed of an equal number of representatives of the two High Contracting Parties was instituted (Art. 1), to trace on the spot the new Frontier agreed upon, and to preside over the Division of the Lands and Funds hitherto belonging to Districts or Communes divided by the new Frontier. And, by Art. 1 of the Definitive Treaty of Peace between France and Germany, signed at Frankfort, May 10th, 1871, it was agreed that this International Commission should proceed to the spot immediately after its ratification, to execute the works entrusted to them, and to trace the new Frontier. The Ratifications were exchanged at Frankfort, May 20th, 1871. By an additional Convention to this Treaty, signed at Berlin, October 12th, 1871, the Boundary Commission was charged with the delimitation of the new Frontier caused by retrocessions of territory by Germany to France. A *Procès Verbal* relating to the line of boundary between France and the German Empire was signed at Metz, April 26th, 1877.

References : *State Papers, LXI., LXIII. 1014, LXVIII. 108* ; *Archives de Droit Int., 1874, I., 46-70* ; Hertslet, *Map of Europe, etc., III. 1912, 1954, 1964, IV. 3238-3247.*

377. GREAT BRITAIN and UNITED STATES, in 1872. *The San Juan Boundary.*—Following the Award of the Emperor of Germany, by an *Act of Congress of March 19th, 1872*, "authorising the survey and marking of the boundary" in question, "the President was authorised to co-operate with the Government of Great Britain in the appointment of a JOINT COMMISSION to determine the boundary." This Commission consisted of Major D. R. Cameron, appointed by Great Britain, and Mr. Archibald Campbell, by the United States ; and engineer officers were detailed for the duty of demarcation. The labours of the Commission were concluded in 1876. The final records and maps were signed in London on May 29th, 1876, and a Protocol was drawn up and signed, setting forth the Commission's final proceedings.

References : *Report of Sec. of State, February 23rd, 1877, Sen. Ex. Doc., 41, 44 Cong. 2 Sess.* ; *H. Report, 1310, 54 Cong. 1 Sess.* ; Alex. N. Winchell, *Minnesota Hist. Soc. Colls., VIII. part 2, p. 212* ; Moore, I. 235, 236.

378. TRANSVAAL and ZULULAND, in 1878. A COMMISSION was appointed by Sir H. Bulwer, Governor of Natal, in *February, 1878*, to report on the Boundary Question between the Zulus and the Boers, consisting of Mr. Gallwey, Attorney-General of Natal, Mr. J. W. Shepstone, Acting Secretary for Native Affairs, and Lieut.-Col. Durnford, R.E. They held their sittings at Rorke's Drift, which is near the S.W. end of the disputed territory. The Boers produced written documents, as evidence in support of their case. Written agreements as between civilized men and savages, few of whom can read or write, are always open to suspicion, but it was a questionable act summarily to reject them all, as the Commission did. Their Report was produced in July, and was greatly in favour of the Zulus. The High Commissioner, Sir Bartle Frere, had to make the final Award. The Report of the Commissioners in favour of the title of the Zulus he thought one-sided and unfair to the Boers, but felt bound to accept its terms and to give his Award accordingly.

References : John Martineau, *The Transvaal Trouble, An extract from the Biography of the late Sir Bartle Frere*, pp. 73-74, 78-80.

379. **BULGARIA** and **THE POWERS**, in 1878. The Berlin Congress stipulated, by Art. 2 of the *Treaty* concluded on July 13th, 1878, that the boundary of the new Principality of Bulgaria should be defined on the spot by an EUROPEAN COMMISSION, on which the Powers, parties to the Treaty, should be represented. This Commission, on which Great Britain was represented by Col. Robert Home, and afterwards by Gen. E. B. Hamley, met on October 21st, 1878, and completed its task on September 24th, 1879. The Assent of the Porte to its decisions was given in August, 1881.

References: Parl. Papers, 1878, Turkey, No. 44; 1879, Turkey, No. 2; 1880, Turkey, No. 2; N.R.G., 2me Série, III. 449, V. 507-701; T. E. Holland, pp. 279-282, 285; Hertslet, Map of Europe, etc., IV, 2766.

A. **BULGARIA** and **ROUMANIA**. The Roumanian Frontier, from Silistria to Mangalia, occupied the Commission from October 21st to December 17th, 1878, when the Act in regard to it was signed, and the Commission adjourned.

References: Parl. Papers, 1879, Turkey, No. 2; Holland, p. 279; Hertslet, Map of Europe, IV., 2822-2841.

B. **BULGARIA** and **EASTERN ROUMELIA**. This COMMISSION met again on April 18th, 1879, and sat until September 24th of that year. The Act of the Commission defining the Boundary between Bulgaria and Eastern Roumelia, in accordance with Art. 2 of the Treaty of Berlin, was signed at Therapia, August 14th, 1879.

References: State Papers, LXX., 1274; T. E. Holland, p. 279; Hertslet, Map of Europe, etc., IV., 2822, 2871-2880, 2916.

C. **BULGARIA** and **SERVIA**, &c. The Act of the EUROPEAN COMMISSION defining the remainder of the Bulgarian Boundary—(1) The Danubian Frontier of Bulgaria; (2) the Frontier between Bulgaria and Turkey (Macedonia); and (3) the Frontier between Bulgaria and Servia, in accordance with Art. 2 of the Treaty of Berlin, was signed at Constantinople, September 20th, 1879.

References: State Papers, LXX. 1282; T. E. Holland, p. 279; Hertslet, Map of Europe, etc., IV. 2897-2911; Protocols of Sitzings, 2912-2919; Parl. Papers, 1880, Turkey, No. 2.

380. **BULGARIA** and **TURKEY**, in 1878. All the members of the European Commission appointed by Art. 2 of the Treaty of Berlin, July 13th, 1878, to delimitate the Bulgarian Frontier, the Russian excepted, decided on fixing the point at which the Frontier should terminate 800 yards from the outworks of Silistria, where alone in that neighbourhood a bridge could be thrown over the Danube. The Russian Commissioner objected. The Roumanians urgently replied. It was at length agreed that the best position for a bridge should be fixed by a TECHNICAL COMMISSION, on which Captain Sale was the British Commissioner, which accordingly met on the spot, and, after sitting from October 27th to November 9th, 1879, confirmed the previous decision.

References: Parl. Papers, 1880, Turkey No. 2, pp. 417-449; N.R.G., VI. 155-224; T. E. Holland, p. 280; Hertslet, Map of Europe, etc., IV, 2766, 2939, 2940.

381. **EASTERN ROUMELIA** and **TURKEY**, in 1878. At the first Meeting of the European Delimitation Commission for Bulgaria, appointed by the Treaty of Berlin, July 13th, 1878, certain of its Members separated themselves from it to form a DELIMITATION COMMISSION for the Southern Frontier of Eastern Roumelia (Art. 4). This Commission sat from October 28th till December 9th, 1878, and again from April 21st till October 25th, 1879. Major R. W. T. Gordon was the British Commissioner. The Boundary Act of this Commission was signed in French, at Constantinople October 25th, 1879.

References: Parl. Papers, 1879, Turkey, No. 2, pp. 54-160, 1880, Turkey, No. 2; N.R.G., 2me Série, V. 254-350; T. E. Holland, pp. 279 n., 289 n.; Hertslet, Map of Europe, etc., IV. 2775, 2818-2821, 2920-2924, 2925-2936; State Papers, LXX. 1293; Cat. of Maps in Lib. of For. Office, London, "Turkey," 26 b.

382. **MONTENEGRO** and **TURKEY**, in 1878. (a)—The Frontier had been agreed upon in principle during the sittings of the Berlin Congress, and the new frontiers had been fixed by Art. 28 of the Berlin Treaty, July 13th, 1878, but details remained to be settled by the DELIMITATION COMMISSION for

Montenegro, on which Capt. Sale was the British Representative. This Commission was not provided for by the Treaty of Berlin, but was appointed at the instance of Russia in *August*, 1878. It met on April 30th, 1879, and sat until September 8th, but encountered considerable difficulties; it met again at Ragusa, on May 10th, 1880, and at Scutari, on January 28th, 1881, and finished its labours there on February 4th, 1881. It was not until December 21st, 1884, that a Convention was signed at Constantinople on behalf of Turkey and Montenegro for delimitation and final settlement.

(b)—That, however, did not conclude the work of the Commission. A *Convention*, signed between Turkey and Montenegro on *December 21st*, 1884, provides that the bend of the line agreed upon shall be technically determined by the COMMISSION OF DELIMITATION.

(c)—In *July*, 1887, at *Cetingé* an Agreement was entered into between Turkey and Montenegro for the settlement of the Boundary Dispute in the District of Vaganitza and on the spurs of Mokra Planina, which provided that the rights and property of individuals, whether Ottoman or Montenegrin subjects, on either side of the Frontier, should be respected, and that the COMMISSION should settle the limits within which such rights were to hold good.

(d)—The question of pasture rights of Montenegrin subjects was also settled shortly afterwards; but, during the years 1888 and 1889, constant raids and cut-rages took place on the Montenegrin Frontier, and the question of lands owned by Montenegrins at Mikochich was eventually settled by a MIXED COMMISSION, in December, 1889. The longstanding dispute respecting rights of pasturage between the Montenegrins at Secular and the Albanians of Rugova, has also been settled since the latter date.

References: Parl. Papers, 1880, Turkey, No. 2, 1881, Turkey, No. 1; N.R.G., 2me Série, V. 351-484, 701, 703; T. E. Holland, 282 n 1, 293-295; Hertslet, Map of Europe, etc., IV. 2781, 2890-2896, 2955, 3015-3028, 3029-3034, 3097, 3133-3137, 3139, 3140, 3193; State Papers, LXXI. 1223, 1234.

383. **SERVIA and TURKEY, in 1878.** The frontiers of Servia were fixed by Art. 36 of the *Berlin Treaty*, *July 13th*, 1878. Following from this Article the DELIMITATION COMMISSION for Servia, on which Great Britain was represented by Major C. W. Wilson and afterwards by Capt. S. Anderson, assisted by Lieut. J. F. G. Ross, of Bladensburg, was appointed, at the instance of Russia, in *August*, 1878. It sat from October 22nd till November 17th, 1878, when it adjourned for the winter, and again from May 9th to August 19th, 1879. Its tracing of the frontier between Servia and Bulgaria was adopted by the Bulgarian Delimitation Commission. On August 18th, 1879, Capt. Anderson reported to his Government that the whole of the new Turco-Servian Boundary, as marked by the Commission, had been accepted by the Sublime Porte and by all the Commissioners, and "that the whole Servian frontier as laid down by Art. 36 of the Treaty of Berlin had been marked on the ground." The Boundary Act was signed at Belgrade, August 19th, 1879.

References: Parl. Papers, 1879, Turkey, No. 2, p. 34; 1880, Turkey, No. 2, p. 252; N.R.G., 2me Série, VI. 267-354; T. E. Holland, 282 n 1, 299; Hertslet, Map of Europe, etc., IV., 2786, 2816, 2817, 2881-2889; State Papers, LXIX. 749, etc., LXX. 1319.

384. **RUSSIA and ROUMANIA, in 1878.** By Art. 45 of the *Treaty of Berlin*, *July 13th*, 1878, the Principality of Roumania restored to Russia that portion of the Bessarabian territory which had been detached from Russia by the Treaty of Paris of 1856. On *December 3rd*, 1878, the Russo-Roumanian Commission, consisting of Col. Touguenhold (Russian Delegate) and Col. Pencovici and Lieut.-Col. N. Demetresco-Maicau (Roumanian Delegates), appointed by their respective Governments, under the Treaty of Berlin, met at Bucharest, constituted themselves a COMMISSION, and after, having visited the places and examined Art. 45 of the Treaty of Berlin, fixed the new frontier line between the two States, which they indicated on the Chart annexed to the *Procès Verbal* drawn and signed by them at Bucharest, December 17th, 1878.

References: State Papers, LXIX. 749, 862, 1122; Hertslet, Map of Europe, etc., IV. 2791, 2842, 2843; T. E. Holland, p. 302.

385. **ROUMANIA and TURKEY, in 1878.** Art. 46 of the *Treaty of Berlin, July 13th, 1878*, stipulated that the frontier lines of Roumania would be determined on the spot by the EUROPEAN COMMISSION appointed for the delimitation of Bulgaria. The Commission met on October 21st, 1878, and completed its task on September 24th, 1879. The Act as to the Roumanian frontier from Silistria to Magnalia was signed on December 17th, 1878.

References : Parl. Papers, 1878, Turkey, No. 44 ; 1879, Turkey, No. 2 ; 1880, Turkey, No. 2 ; N.R.G., V. 507-701 ; N.R.G., 2me Série, III. 449 ; State Papers, LXIX. 749. etc. ; Hertslet, Map of Europe, etc., IV. 2792 ; T. E. Holland, p. 302.

386. **RUSSIA and TURKEY, in 1878.** The Asiatic Boundary between these two Countries was settled by Arts. 58 to 60 of the *Treaty of Berlin, July 13th, 1878*.

(a)—“Point West of Karaourgan.” This point from which the Frontier line was to start, was, in accordance with Art. 58 of the Treaty of Berlin, fixed by a MIXED COMMISSION, consisting of British, Russian, and Turkish Commissioners, on which Major-General Hamley was the chief British representative, at Stamboul, on May 17th, 1880.

References : T. E. Holland, p. 305 ; Hertslet, Map of Europe, etc., IV. 2795, 2957.

(b)—By an *Agreement*, signed at Berlin on July 12th, 1878, on behalf of Great Britain and Russia, a MILITARY COMMISSION was appointed, composed of a Russian, an Ottoman, and an English officer, for the more detailed tracing, from the point thus settled, of the line of the Alaschkerd. This Agreement was carried out by a Commission, on which Major-General Hamley was the principal British representative, and the new frontier was traced from the point near Karaourgan to the point where it falls into the older frontier near Mount Tendourek. The final act of this Commission was signed at Kara Kalissa on August 11th, 1880. On April 13th, 1881, the British and Russian Ambassadors attended at the Porte, and presented a Memorandum stating that this Commission had concluded its labours.

References : Parl. Papers, 1881, Turkey, No. 10 ; T. E. Holland, p. 305 ; Hertslet, Map of Europe, etc., IV. 2796, 2977-2982, 2983-2989 ; State Papers, LXXII. 1324.

387. **PERSIA and TURKEY, in 1878.** (a)—According to Art. 60. of the *Treaty of Berlin, July 13th, 1878*, a MIXED ANGLO-RUSSIAN COMMISSION was appointed for the delimitation of the Frontiers of Turkey and of Persia. This Commission, which consisted of Sir A. B. Kemball and General Zelenoy, in July, 1879, completed the tracing of a Boundary line which, however, was not then carried out.

(b)—On July 27th, 1880, a special ANGLO-RUSSIAN COMMISSION, consisting of General Sir E. Hamley and General Zelenoy, was appointed, and met at Sary Kamish, carefully examined that part of the work of the Anglo-Russian Commission which concerned the territory of Khotour alone, and signed a Protocol defining the Boundary. It was not, however, until May 22nd and 24th, 1883, that the Persian Government and the Porte respectively intimated their conditional acceptance of the proposed delimitation of the territory ; but difficulties afterwards ensued, and the Boundary Line was not marked out on the ground until 1891.

References : Encycl. Brit., Persia. XVIII. 616, 617 ; T. E. Holland, p. 306 ; Hertslet, Map of Europe, etc., IV. 2796, 2974-2976.

388. **GREECE and TURKEY, in 1881.** By Art. 1. of a *Convention* between the Great Powers and the Sultan, for the settlement of the Frontier between Greece and Turkey, signed at Constantinople, May 24th, 1881, of which the Ratifications were exchanged on June 14th, 1881, a DELIMITATION COMMISSION was appointed as follows : “This delimitation will be fixed on the spot by a Commission composed of the Delegates of the six Powers and of the two Parties interested.” This Commission, on which Major Ardagh was the

British representative, held its sittings partly in Greece and partly at Constantinople, from July 6th to November 23th, 1881, when its final Protocol was signed, the Turkish Commissioner signing under reserve as to four points in the new frontier, which Turkey objected to surrender to Greece, viz., Karalik-Dervend, Nezeros or Anallysis, Kritzovali, and Goun-tza. The questions thus left outstanding were eventually disposed of by a Protocol signed, on behalf of Turkey and Greece, on November 9th, 1882, by the Commissioners of both Parties, accepting the frontier as it had been laid down by the International Commission. The Final Act of this Commission was signed at Constantinople November 27th, 1881.

References: Parl. Papers, 1882. Greece, No. 1; N.R.G., 2me Série, VIII. 44; T. E. Holland, pp. 27, 63; Hertslet, Map of Europe, etc., 3044, 3069-3078, 3093, 3094; Cat. of Maps, Archives For. Office, London, Turkey, 44 B.

389. ARGENTINE REPUBLIC and CHILI, in 1881. A long-standing dispute between these Countries respecting their common boundaries has had varying fortunes. As long ago as 1856, by Art. 39 of the Treaty of April 30th in that year, it was decided to refer it to the Arbitration of a friendly nation. Again, on two occasions, in 1878 (January 18th and December 6th), it was agreed to refer it to Arbitration, in accordance with the provisions of the Treaty of 1856. These efforts were not accepted by the legislatures, and for a time the relations between the two Countries were considerably strained. Through the good offices, however, of the United States Ministers in those countries, Messrs. Thomas O. Osborn and Thomas A. Osborn, a *Treaty* was signed *July 23rd*, 1881, by which the boundaries were settled; the Straits of Magellan were made for ever neutral, their navigation was declared free to all nations; fortifications or military establishments on their banks were forbidden; and a MIXED COMMISSION, composed of an expert appointed by each side, and a third, in case of disagreement, was appointed. This Treaty proved not to be final. The Commission completed its task, but the Argentine Government insisted that the Commissioners appointed to fix the boundary under the Treaty had made an evident mistake in placing the landmark of San Francisco, and the two Governments still differed as to the principle of the demarcation. The difficulties, therefore, continued until they were submitted to Arbitration in 1896 (San Francisco) and 1898 (Puna de Atacama).

References: Moore, V. 4854; Gaspar Toro, pp. 171-176; *Tratados de Chile*, I. 227, II. 120; *Tratados de la Republica Argentina*, I. 402, III. 282; *Cuestion de Limites con Chile*, Buenos Aires, 1878, p. 66; *Memoria de Relaciones Exteriores Chile*, 1879, p. 239; U.S. For. Rel. 1873, I. 39, 1896, 32; State Papers, LXXII. 1103; P.I., pp. 539-543.

390. GREAT BRITAIN and the TRANSVAAL, in 1881. The Boundaries of the Transvaal were defined by the 1st Article of the Convention for the settlement of the Transvaal territory, signed on *August 3rd*, 1881, at *Pretoria*. By Art. 19 of this Convention it was agreed that the Royal Commission should forthwith appoint a person to beacon off the boundary line in question, and to make arrangements between the owners of farms, on the one hand, and the authorities of the Barolong tribe on the other, in regard to the water supply. An Agreement upon this subject was signed between Lieut.-Col. Moysey, R.E., the Royal Commissioner, appointed to beacon off the Boundary of the Transvaal, and the Boundary Chief Montsoia, on September 1st, 1881.

References: Hertslet, Complete Collection, etc., XV., 401-404; Hertslet, Map of Africa, etc., II. 846; J. Bryce, Impressions of South Africa, p. 481; Reitz, A Century of Wrong, p. 136.

391. GREAT BRITAIN and the TRANSVAAL, in 1881. For the settlement of the native tribes of the Transvaal State, Arts. 21-23 of the Convention, signed at *Pretoria*, *August 3rd*, 1881, provide that immediately after the taking effect of the Convention, a NATIVE LOCATION COMMISSION will be constituted, consisting of the President, or in his absence the Vice-President, of the State, or some one deputed by him, the Resident, or some one deputed by him, and a third

person to be agreed upon by both, and such Commission will be a standing body for reserving and defining the boundaries of the locations allotted to the native tribes of the State. "The Native Location Commission will reserve to the native tribes of the State such locations as they may fairly and equitably be entitled to, due regard being had to the actual occupation of such tribes."

References: Hertslet, Complete Collection, etc., XV. 401-413; J. Bryce, Impressions of South Africa, pp. 485, 486; Reitz, A Century of Wrong, p. 137; J. P. Fitzpatrick, The Transvaal from Within, App., pp. 374, 375.

392. FRANCE and GREAT BRITAIN, in 1882. The frontier to the North of Sierra Leone was settled by Art. 1 of a *Convention* for that purpose, signed at Paris, June, 28th, 1882, and

(a)—it was stipulated that the exact position of the line should be settled on the spot by a JOINT COMMISSION, consisting of four members, two appointed on each side, with power of reference to the two Governments, as provided by Art. 7. This Convention was not ratified, but it was accepted by both Powers as a binding arrangement, and its stipulations were thenceforth observed on both sides.

(b)—In 1888 it was evident that this arrangement was insufficient, and negotiations were commenced, which ended in a fresh Agreement, signed at Paris, August 10th, 1889, which again defined (Art. 2) the frontier North of Sierra Leone, and appointed a JOINT TECHNICAL COMMISSION, composed of English and French delegates named for the purpose (Art. 5 and Annexe 1 and 2), a similar provision contained in the 1882 Convention not having been acted upon. After the Agreement of June 26th, 1891, of the Special Commission of Plenipotentiaries appointed August 5th, 1890, which laid down instructions for its guidance, the Boundary Commission in the Sierra Leone district set to work, and the line was surveyed by the British Section, 1891-1892; but the Boundary was not then defined; for, "the Special Commissioners nominated in accordance with Art. 5 of the Agreement of August 10th, 1889, having failed to trace a line of demarcation between the territories of the two Powers, to the North and East of Sierra Leone," an Agreement of the Special Commissioners mentioned above, signed at Paris, January 21st, 1895, was accepted by the two Governments, as completing and interpreting Article 2 and Annexes 1 and 2 of the Agreement of August 10th, 1889, and the Agreement of June 26th, 1891.

References: State Papers LXXVII. 1007; Hertslet, Complete Collection, etc., XVIII. 419; Journal Officiel of March 28th, 1883; Parl. Papers, Africa, No. 7 (1892): [C 7600], Treaty Series, No. 5 (1895); Hertslet, Map of Africa, etc., II. 554, 559-569, 572-573, 582-587, III. 1048-1058.

393. MEXICO and UNITED STATES, in 1882. By the *Convention of July 29th, 1882*, these Countries agreed to create an INTERNATIONAL BOUNDARY COMMISSION, consisting of a Chief Engineer and Associates appointed by each party, to re-locate the boundary in places where the marks of prior surveys had been destroyed or displaced. This Convention having lapsed by reason of delays in the appointment of Commissioners, it was revived by a Convention of February 18th, 1889, by which the time for the execution of the work was fixed at five years from the date of the exchange of the Ratifications of the new Convention. By another Convention of August 24th, 1889, this period was extended for two years from October 11th, 1894.

References: Moore, II. 1358; Tratados y Convenciones Vigentes, Mexico, 1904, 53-58.

394. GUATEMALA and MEXICO, in 1882. A question of boundary between the territories of Chiapas and Seconnoco was, by a Preliminary Treaty of Arbitration, signed at New York, August 12th, 1882, referred to a JOINT COMMISSION, with power to invite the President of the United States to act as Umpire or Arbitrator, in case of disagreement. The Definitive Treaty, however, concluded at Mexico, September 27th, 1882, made no mention of this provision, Mexico objecting thereto. The matter was therefore left with the Commissioners, whose term of labour was extended by a Protocol of June 8th, 1885, and prorogued by a Convention, signed at Mexico, October 16th,

1886 (ratified June 4th, 1887), for two years, ending October 31st, 1888. A Treaty, signed at Mexico, April 1st, 1895, stipulated (Art. 5) that if the Commissioners for the demarcation could not agree, the difference should be submitted to an expert as Arbitrator. "The labours of this Boundary Commission between Mexico and Guatemala," we learn from a communication received from the Mexican Legation in London, dated August 2nd, 1900, "were finished some years ago, and the line fixed to the satisfaction of both parties." The Agreement of the Commission was signed April 8th, 1899.

References: State Papers, LXXIII. 273, LXVII. 479; Gaspar Toro, *Notas*, etc., pp. 143, 144; Romero Giron, *Complemento, Apéndice*, III. 1896, p. 466; *Cuestiones entre Guatemala i Méjico*, Guatemala, 1895, p. 13; *Tratados de Guatemala*, p. 322, and *Tratados y Convenciones Vigentes*, Mexico, 1904, 58-63, 429.

395. **FRANCE** and **GREAT BRITAIN**, in 1883. A JOINT BOUNDARY COMMISSION was at work on the Gold Coast in 1883-4. The Annexé to an Arrangement, signed at Paris, August 10th, 1889, says:—The "map showing the towns and villages visited by the Assinee Boundary Commissioners in December, 1883, and January, 1884," has served for the description of this part of the frontier, etc.; and both this and a later Agreement refer to "the house occupied in 1884 by the British Commissioners" at Newtown. The date of the appointment of this Commission is not known by us; it was probably decided upon by the Commissioners appointed on both sides in 1881, who met at Paris to arrange the questions at issue between the two Governments in West Africa. Special Commissioners of Delimitation were also nominated to trace the line of demarcation on the spot by Art. 5 of the Agreement of August 10th, 1890. They were set to work in the Gold Coast District, but failed in their task. The line was fixed satisfactory to both Governments by the Agreement of the Joint Commission of Plenipotentiaries, as related earlier, July 12th, 1883.

References: Hertslet, *Complete Collection*, etc., XVIII. 419; *Parl. Papers*, Africa, No. 7, 1892, *Treaty Series*, No. 13 (1893); Hertslet, *Map of Africa*, etc., II. 559, 563, 567, 587, 589-591.

396. **CONGO** and **FRANCE**, in 1885. The Frontiers between the possessions of France and those of the Congo were settled by Art. 3 of a *Convention* between the Government of the French Republic and the International Association of the Congo, signed at Paris, February 5th, 1885. By Art. 4 of this Convention, a JOINT COMMISSION, composed of Representatives of the two parties, an equal number on each side, was entrusted with the duty of marking out on the spot a Frontier line, in conformity with these stipulations. It was also agreed that, in case of a difference of opinion, the question should be settled by Delegates to be named by the International Commission of the Congo. This Convention was ratified on March 12th, 1885. A Protocol, signed at Brussels, April 29th, 1887, states that after examining the work of the above Commission, the two Governments have agreed on the provisions recorded therein, which definitely settle the execution of the task entrusted to it.

References: Hertslet, *Map of Africa*, etc., I. 210, 211, 217.

397. **CONGO** and **PORTUGAL**, in 1885. By a *Convention* between Portugal and the International Association of the Congo, respecting Boundaries, signed at Berlin, February 14th, 1885, and ratified August 14th, 1885, the Frontiers between Portuguese possessions and those of the Association are defined (Art. 3), a BOUNDARY COMMISSION is agreed upon (Art. 4), and it is stipulated that in case of a difference of opinion the question is to be settled by delegates. Another Convention, signed at Brussels, May 25th, 1891 (Ratifications exchanged at Lisbon, August 1st, 1891), for the settlement in a friendly and direct manner of certain differences and difficulties which have arisen on the occasion of the work of delimitation under the above Convention, readjusts (Arts. 1-3) the Boundaries dealt with under it, and provides (Art. 6) for the reference to Arbitration of any disputes arising out of the present Convention, and also (Art. 5) for the maintenance of the *Status Quo* pending the marking out of the New Boundary Line on the spot.

References: Hertslet, *Map of Africa*, etc., I. 232, 233, 236-238.

398. **ARGENTINE REPUBLIC** and **BRAZIL**, in 1885. The question of the survey of certain rivers connected with the Misiones boundary was, by an Agreement signed at *Buenos Ayres*, September 28th, 1885, and ratified at Rio Janeiro, March 4th, 1886, referred to a JOINT COMMISSION, each of the Parties naming a Commission composed of a first, second and third Commissioner and three assistants, and the territories were neutralised till the accomplishment of its task. The Joint Commission entered upon its labours in 1887, and concluded them in 1890. The Commission ascertained that one of the rivers in question, the San Antonio-Guazú, which was supposed to be the Chopim, was in reality the Jangadu. The Argentine Commission proposed to survey this river, but the Brazilian refused, because the Treaty and the instructions of 1885 designated the Chopim. The Brazilian Government, however, agreed that the survey should be made. The Treaty of Arbitration was concluded, September 7th, 1889. Some days after its ratification the Republic was proclaimed in Brazil, and the Provisional Government agreed to the division of the contested territory, which was done by the Treaty of January 25th, 1890, at Monte Video. This Treaty, however, met in Brazil with the utmost opposition, and the Special Commission appointed by the Brazilian Congress recommended that it be rejected and that recourse be had to Arbitration, which was done. The question was submitted to the ARBITRATION of the President of the United States, whose Award was determined by the Map and Report of the survey made in 1887.

References: State Papers, Vol. LXXVII. 476; Moore, II. 2020; Relatorio de Ministerio de R.E. 1895 Anexo I. 5; For Rel. U.S.A., 1895, p. 1; P.I. pp. 341, 342.

399. **FRANCE**, **GERMANY** and **GREAT BRITAIN**, in 1885. Following negotiations between these three Powers, with a view to the appointment of a JOINT COMMISSION for the purpose of inquiring into the claims of the Sultan of Zanzibar to sovereignty over certain territories on the East Coast of Africa, and of ascertaining their precise limits, an understanding was eventually arrived at, and on October 17th, 1885, Col. (now Lord) H. H. Kitchener, R.E., was appointed the British Delimitation Commissioner. On June 9th, 1886, the Delimitation Commissioners made their unanimous Report, which was accepted by the British and German Governments, by an exchange of Notes, on October 29th and November 1st, 1886, and by the Sultan of Zanzibar on December 4th, 1886.

References: Parl. Paper, Zanzibar, No. 3 (1887); State Papers, LXXVII. 1128, 1130; Hertslet, Map of Africa, etc., I. 312; II. 605, 615, 622.

400. **FRANCE** and **GERMANY**, in 1885. (Slave Coast.) It was agreed by Art. 2 of a Protocol relating to the German and French possessions on the West African Coast, signed at *Berlin*, December 24th, 1885, that the Boundary between the German and the French territories should be determined on the spot by a MIXED COMMISSION. A *Procès Verbal* fixing the delimitation of these possessions, signed at Paris, February 1st, 1887, declares that the Delimitation Commissioners, duly authorised for this purpose, after having met upon the spot, had fixed with one accord the separating line. The Report was done in duplicate at Little Popo, February 1st, 1887.

References: State Papers, LXXVI. 303; Deutschen Kolonialblatts (Extra Nummer), March 16th, 1894; Hertslet, Map of Africa, etc., I. 293, 295, 297; III. 999.

401. **BULGARIA** and **EASTERN ROUMELIA**, in 1886. The delimitation of the Canton of Kirdjali and of the Rhodope District was entrusted to a JOINT COMMISSION, composed of three Turkish and two Bulgarian Delegates, appointed under Art. 2 of the *Arrangement of April 5th*, 1886. The Commission sat from May 8th till June 13th, 1886. A detailed specification of the new Frontier was signed by four of the Commissioners (the third Turkish member abstaining), at Tchanakdjî, on that date.

References: Hertslet, Map of Europe, etc., IV. 3155, 3167-3171.

402. **BOLIVIA** and **PERU**, in 1886. By a preliminary Treaty of Limits, signed at *La Paz*, April 20th, 1886, National Commissions were appointed to delimit the frontier. On the conclusion of their labours, if any differences were found to exist, they were to be submitted (Arts. 7 and 8) to an Arbitral Tribunal,

with absolute powers, as stipulated in the Treaty (Arts. 9 and 12.) According to the terms of a supplementary Protocol, signed at La Paz, April 24th, 1886, each Commission was to consist of two duly accredited national representatives. After examination on the spot the four representatives were to form themselves into an INTERNATIONAL COMMISSION, to deliberate and fix by a majority of votes the boundary, and in the case of any disagreement the Spanish Government (Art. 5) should be appointed Chief Arbitrator.

References: *Tratados del Peru*, II. 464; Gaspar Toro, *Notas*, etc., pp. 162, 163.

403. **FRANCE and PORTUGAL, in 1886.** The frontiers of the French and Portuguese Possessions in West Africa were defined in a Treaty signed at *Paris, May 12th, 1886*, those on Guinea by Art. 1, and those in the region of the Congo by Art. 3. By Art. 7 a JOINT COMMISSION was instituted to determine on the spot the definitive position of the lines of demarcation thus laid down. This Commission was to be composed of four Commissioners, the King of Portugal and the President of the French Republic were each to name two, and the Commissioners were to meet at the place ultimately decided on by common agreement, as soon as possible after the ratifications of the Treaty. In case of disagreement they were to refer to the High Contracting Parties.

References: *Parl. Papers, Africa No. 2, 1890* [C. 5904]; Hertslet, *Map of Africa*, etc., I. 298-300; *State Papers, LXXVII*, 517.

404. **BOLIVIA and PARAGUAY, in 1887.** The first attempt to settle their frontiers was made in the Quijaro-Decoud Treaty of October 15th, 1879, which, however, made no provision for Arbitration, or even delimitation. On *February 16th, 1887*, the Tamayo-Aceval Treaty was concluded in the city of Asuncion, and it stipulated for a definitive reference to an Arbitral decision. This Treaty, however, was not ratified, and this led to serious complications. Last of all, after a series of Official Conferences, held in the city of Asuncion, the Benitez-Ichazo Treaty was signed in that city, on November 24th, 1894. By this Treaty (Art. 4) the frontier line was fixed, and provision was made for a MIXED COMMISSION to trace the delimitation on the spot, with power to submit to Arbitration any difference that might arise during the process. Nothing, however, came of these provisions, and after twenty-four years of abortive attempts to settle the frontier question, it reverted to its original position.

References: F. R. Moreno, *Diplomacia Paraguayo-Boliviana, Asuncion, 1904*; *Memoria de R. E. de Bolivia, 1895*, pp. 356-380; *Exposicion de los derechos del Paraguay*, etc., Asuncion, 1895, p. 227; Gaspar Toro, *Notas*, etc., pp. 166, 167; *Annual Register, 1889*, p. 448; Dreyfus, 181.

405. **GREAT BRITAIN and RUSSIA, in 1887.** Following the labours of the Afghan Boundary Commission in 1885 and 1886, and by Art. 6 of the Protocol signed at *St. Petersburg, July 22nd, 1887*, in which the results were embodied, and which was accepted by the two Governments on August 3rd, 1887, a MIXED BOUNDARY COMMISSION was appointed to demarcate the frontier agreed upon, on the spot, in conformity with the signed maps and other data.

References: *N.R.G.*, 2nd Série, XIII. 566; *P.I.* p. 291.

406. **BRITISH BURMA and SIAM, in 1888.** In January, 1888, four Siamese Commissioners met the British Superintendent of the Shan States to discuss frontier questions. The facts being established, the Bangkok Government were given information in regard to them, and they withdrew their troops from two States which they had annexed. Later, however, the Siamese reasserted their alleged rights and seized the country. This led to the appointment of a JOINT DELIMITATION COMMISSION to settle the matters in dispute. The Bangkok Commissioners, however, did not present themselves at all, and the British Representatives surveyed and inquired into the Boundary rights alone, and found the Siamese pretensions quite unjustifiable.

References: *Annual Register, 1890*, p. 385; *Hazell's Annual, 1891*, p. 613.

407. **RUSSIA and SWEDEN, in 1888.** A RUSSO-SWEDISH COMMISSION for marking afresh the Boundary between Sweden and Finland was occupied

from July 1st to September 1st, 1888, in this work. This boundary was marked in 1820, in execution of the Treaty of November 20th, 1810; but in consequence of the Rivers Tornea and Mnuonio having altered their course in some places, and of some of the boundary marks having been destroyed or obliterated, the boundary was retraced in 1888, as stated above, but no important modifications were made by the Boundary Commissioners.

References: Hertslet, Map of Europe, etc., IV. 3281; *London Times*, May 16th, 1888, p. 11.

408. (**ABYSSINIA**) **ETHIOPIA** and **ITALY**, in 1889. A Treaty between Ethiopia and Italy, signed *May 2nd*, 1889, and ratified September 29th, 1889, stipulated that "in order to remove any doubt as to the limits of the territory over which the two Contracting Parties exercise sovereign rights, a SPECIAL COMMISSION, composed of two Italian and two Ethiopian Delegates shall trace with permanent landmarks," etc., the leading features of which are then stated. Art. 3 of an Additional Convention to this Treaty, signed at Naples October 1st, 1889, ratified by King Menelek, at Makallé, February 25th, 1890, provides that a ratification of the territories shall be made by means of the Delegates to be nominated by the King of Italy and the Emperor of Ethiopia, according to the terms of Art. 3 of the Treaty of May 2nd, 1889. A detailed Boundary Agreement was signed on February 6th, 1891.

References: Ital. Green Book, 1890, p. 434, 1890, 2nd Series, p. 19, Missione Antonelli in Ethiopia, April 14th, 1891, p. 101; Hertslet, Map of Africa, etc., by Treaty, I. 12, 13, 16.

409. **ARGENTINE** and **BOLIVIA**, in 1889. The question of the frontiers between these two countries had been a subject of diplomatic discussion from the earliest times. A definite attempt was made to refer it to Arbitration by the Treaty of December 7th, 1858, but this was not accepted by the Argentine Congress. By Art. 20 of a Treaty signed at Buenos Ayres, July 9th, 1868, it was decided to refer to the Arbitration of a friendly nation, but this Art. was cancelled by a Protocol, signed at Buenos Ayres, February 27th, 1869. It was not until *May 10th*, 1889, by a Treaty signed at Buenos Ayres and ratified four years later, that the frontier was settled and referred to a Mixed Commission for delimitation.

References: Memoria de R.E. de Bolivia, 1893, p. xiii., and 1894; *Tratados de la Republica Argentina*, II. 257; Gaspar Toro, *Notas*, etc., pp. 163, 166.

410. **GERMANY** and **GREAT BRITAIN**, in 1890. The delimitation on the spot of the frontier between Lakes Nyassa and Tanganyika, in East Africa, was, in pursuance of Arts. 1 and 6 of the Agreement signed at Berlin, *July 1st*, 1890, referred to a MIXED COMMISSION. This Commission, consisting of Captain C. F. Close and Herr Hermann, did its work, and reported to the respective Governments, who, in a further Agreement, signed Berlin, February 23rd, 1901, embodied the Commission's proposals, which were accepted as the settlement of the question. The Protocol containing the decisions of the Commissioners was signed at Ikawa, November 11th, 1898.

References: Hertslet, Map of Africa, etc., II. 642, 648; Hazell's Annual, 1902, p. 294; Parl. Paper [Cd. 1009], Treaty Series No. 8, 1902; Brit. and For. State Papers, LXXXII. 35, XCII. 797-800.

411. **GERMANY** and **GREAT BRITAIN**, in 1890. The tracing of the boundary from the mouth of the River Umba to Lake Jipé between the spheres of interest belonging to both Countries in East Africa, was, under Arts. 1 and 6 of the Agreement signed at Berlin, *July 1st*, 1890, entrusted to a JOINT COMMISSION which was composed of Mr. Charles S. Smith (British Consul at Zanzibar) and Dr. Carl Peters. Protocols of their work on the spot were signed at Taveta, on October 27th, and at Zanzibar, on December 24th, 1892. An agreement between the two Governments, signed at Berlin, July 25th, 1893, settled the boundary on the basis of their labours, and in accordance with the Agreement of reference.

References: Hertslet, Map of Africa, etc., II. 642, 648, 652, 656; *Statesman's Year Book*, 1902, pp. 672, 673.

412. **CONGO and PORTUGAL, in 1891.** The Delimitation of the respective spheres of Sovereignty and Influence in the Lunda region was, by a Treaty concluded at *Lisbon, May 25th, 1891*, the ratifications of which were exchanged at *Lisbon, August 1st, 1891*, entrusted to a BOUNDARY COMMISSION (Art. 2). Provision was also made (Art. 4) for the reference to Arbitration of disputes arising out of the Treaty. The Commission appointed consisted of George Grenfell, Missionary of the English Baptist Mission, and Jayme Lobo de Brito Godino, Governor-General *ad interim* of the province of Angola. The latter delegated his powers to Simao-Candido Sarmento, Lieut.-Graduate of the Portuguese army, in so far as they related to the works on the spot. The Report of the Commissioners was, together with a *Procès Verbal*, signed at *Loanda, June 26th, 1893*, submitted to the two Governments, and embodied by them in a Declaration, signed at *Brussels, March 24th, 1894*, conveying their approval of the tracing of the frontier carried out by their Commissioners in the region of Lunda, in execution of the Convention concluded at *Lisbon, May 25th, 1891*.

References: Hertslet, Map of Africa, etc., I. 234, 235, III. 1004-1007.

413. **GREAT BRITAIN and PORTUGAL, in 1891.** The Boundary between the British and Portuguese spheres of influence in the region of the Zambesi, in East Africa, was settled by Arts. 1 to 5 of the Anglo-Portuguese Convention, signed at *Lisbon, June 11th, 1891*. By Art. 4 it was stipulated that this boundary should be decided by a JOINT ANGLO-PORTUGUESE COMMISSION, which should have power, in case of difference of opinion, to appoint an Umpire. On *January 20th, 1896*, an Agreement was made, by an exchange of Notes, that pending the delimitation of the boundary of the British and Portuguese sphere of influence north of the Zambesi, the *modus vivendi* of *May 31st (June 5th), 1893*, should be prolonged for the period of two years from the date of its termination, viz., until *July 1st, 1898*. It is understood that the *modus vivendi* shall cease to operate as soon as the Delegates for defining the boundary under the provisions of Art. 4 of the Treaty of *June 11th, 1891*, shall have completed their task.

References: Hertslet, Complete Collection, etc., XIX. 777; Parl. Papers [C. 6370], Africa No. 5, 1891, [C. 6495], No. 7, 1891, [C. 6375], Portugal No. 1, 1891, [C. 7971], Treaty Series, No. 3, 1896; Hazell's Annual, 1892, pp. 15, 16; P.I., pp. 370, 371.

414. **GREAT BRITAIN and UNITED STATES, in 1892.** *Alaska and Passamaquoddy Boundaries.* By a Convention, signed *July 22nd, 1892*, a JOINT COMMISSION was appointed "for the delimitation of the existing boundary between Her Majesty's possessions in North America and the United States, in respect to such portions of said boundary line as may not, in fact, have been permanently marked in virtue of Treaties heretofore concluded." The third paragraph of Art. 1 of this Convention provided that this Commission should complete the survey and submit final Reports within two years from the date of their first meeting. The Joint Commissioners held their first meeting *November 28th, 1892*, hence the time allowed by the Convention expired *November 28th, 1894*. But believing it impossible to complete the required work within the specified period, the two Governments formed a Convention, signed at *Washington, February 3rd, 1894* (ratified *March 28th, 1894*), extending the time to *December 31st, 1895*. The Alaska Boundary, however, formed one of the questions submitted to the Joint High Commission under the Agreement of *May 30th, 1898*, and was settled by the Mixed Commission of 1903.

References: Parl. Papers [C. 6821], Treaty Series No. 16, 1892; [C. 7311], Treaty Series No. 10, 1894; [Cd. 1877 and 1878], United States No. 1 and No. 2, 1904.

415. **BANGWAKETSE and BAROLONG, in 1892.** A Commission had been already held to determine the boundary between these tribes, presided over by Mr. J. S. Moffat, Assistant Commissioner of Bechuanaland, the Award of which was very far from being acceptable to the Bangwaketse. On *November 7th, 1892*, a JOINT DELIMITATION COMMISSION was appointed for putting up the beacons on the new boundary line, to which both tribes sent their representatives. Difficulties arose, and instructions were telegraphed for

to the British Administration, who sent Mr. J. S. Moffat and Mr. W. H. Surmon. These Government officers made a considerable alteration in the boundary, to allay dissatisfaction, and ultimately succeeded in reaching a final settlement.

Reference: Edwin Lloyd, *Three Great African Chiefs*, p. 171.

416. **PERSIA and RUSSIA, in 1893.** By a Convention signed at *Teheran, June 8th, 1893*, and ratified July 30th, 1893, an exchange of territory was made on the frontier of Khorassan and Hissar, and a JOINT COMMISSION was appointed to carry out the accurate delimitation on the spot and to fix the frontier marks.

References: State Papers, LXXIII. 97; LXXXVI. 1246-1249.

417. **AFGHANISTAN and GREAT BRITAIN, in 1893.** The Demarcation of the Boundary in the Kurram District, on the South-east of Afghani-tan, was, by the Durand Agreement of *November 12th, 1893*, entrusted to a JOINT COMMISSION, of which Mr. John Stuart Donald, C.I.E., was the British member. The work of the Commission was completed, and its final *Report* was signed, November 21st, 1894. This was afterwards ratified by both the Viceroy and the Ameer.

References: Parl. Papers [C. 8037], 1896, also Information furnished by British India Office, June 15th, 1904.

418. **BAKHATLA, PAKWENA, and BAMANGWATO, in 1894.** In the middle of *October, 1894*, Sir Sidney Shippard went up country to settle this Boundary dispute. It was a three-cornered disagreement between Sebelé (Chief of the Bakwena), Linchwe (Chief of the Bakhatala), and Khâmé (Chief of the Bamangwato). The Administrator was assisted in the settlement by Mr. W. H. Surmon and Mr. J. S. Moffat. After a protracted hearing of many witnesses, as well as the Chiefs, Sir Sidney Shippard gave his *Decision*, by which the new and final boundary between the Bamangwato on the one hand, and the Bakwena and Bakhatala on the other was declared as follows:—"We, the undersigned President and members of the Bechuanaland Boundary Commission, having considered the evidence adduced on the 15th, 16th, and 17th inst., make and publish the following award: . . . That is all. And I hope you will all live in peace."

References: Edwin Lloyd, *Three Great African Chiefs*, pp. 127, 128.

419. **AFGHANISTAN and RUSSIA, in 1895.** *Pamir Delimitation.* By an *Agreement* between Great Britain and Russia, *March 11th, 1895*, it was referred to an ANGLO-RUSSIAN JOINT COMMISSION, on which General Montagu Gerard represented Great Britain, and General Pavolo-Schweikovski, Governor of Ferghana, Russia. The work of the Commission was completed satisfactorily in 1895, and, according to General Gerard's testimony, with the utmost cordiality between the representatives of the two Governments.

References: State Papers. LXXXVII. 15-18; *Times*, October 17th, 1892, etc., December 26th, 1895; Statesman's Year Book, 1896, Map; Parl. Papers [C. 7643] Treaty Series, No. 8. 1895.

420. **GREAT BRITAIN and PERSIA, in 1895.** The determination and demarcation of the frontier between Persia and British Baluchistan were, by an *Agreement*, signed at *Teheran, December 28th, 1895*, referred to a JOINT COMMISSION, which began its work, February 27th, 1896, and signed its *Final Agreement* on March 24th, 1896. About 290 miles of the frontier were determined by this Commission, and about half of it demarcated on the spot.

References: Information furnished by the India Office, London, June 15th, 1904.

421. **FRANCE and GREAT BRITAIN, in 1895.** The frontier between the British Colony of Lagos and the French Colony of Dahomey was delimited on the spot by an Anglo-French Boundary Commission in 1895. The Report of this Commission was signed on October 12th, 1896, and, by Art. 2 of the Niger Convention, is recognised as henceforth fixing the line of frontier, which is set forth in detail in the remainder of the Article.

References: Niger Convention. Art. 2: Parl. Papers [C. 9334]. Treaty Series, No. 15, 1899.

422. **BRITISH BURMA and CHINA, in 1897.** Under the Conventions between Great Britain and China, dated July 24th, 1886, March 1st, 1894, and *February 4th*, 1897, which were duly presented to Parliament, a JOINT COMMISSION was, by Art. 6 of the last-named Convention, which modified the previous one, appointed to demarcate the Boundary between Burma and China. The Commission resulted in the definitive settlement of a large portion of the border, the remainder, which it was not practicable to demarcate at the time, being provisionally laid down, pending a final agreement.

References : Communication from India Office, London, November 18th, 1903 ; Brit. and For. State Papers, LXXXVII. 1311-1319, LXXXIX. 25-30.

423. **FRANCE and GERMANY, in 1897.** By a Convention between France and Germany, signed at *Paris, July 23rd*, 1897, the ratifications of which were exchanged in that City, January 12th, 1898, the Protocol of July 9th, 1897, embodying the Arrangement defining the Togo-land boundary—come to by the Joint Arbitration Commission, which had been sitting at Paris, and which consisted of MM. René Lecombe, Louis-Gustave Binger, Felix de Müller, Dr. H. Zimmermann, and Ernst Vohsen, was confirmed, and it was also stipulated (Art. 4) that a JOINT COMMISSION should be appointed to trace on the spot the line of demarcation in conformity with that Agreement.

References : Brit. and For. State Papers, LXXXIX. 584-586.

424. **GREECE and TURKEY, in 1897.** Adjudication follows, if it does not precede, and so prevent, war. That is the lesson of all Treaties of Peace. By Art. 1 of the Preliminary Treaty of Peace between Turkey and Greece, signed at *Constantinople, September 18th*, 1897, a DELIMITATION COMMISSION, consisting of delegates of the two parties interested, together with military delegates of the Ambassadors of the mediating Powers, was appointed to delimitate on the spot the new frontier line between Turkey and Greece. This Commission was to begin its work within fifteen days after the signing of the Treaty, and Sir P. Currie, the British Ambassador at Constantinople, reported, on October 18th, that the foreign members of the Commission, on which Col. Ponsonby was the British Representative, were leaving that afternoon for the frontier, and would proceed to Larissa, where the formal meeting of the Commission would take place. The Definitive Treaty of Peace, signed at Constantinople December 4th, 1897, repeated and confirmed the provisions of the Preliminary Treaty, and provided that the Definitive Act of Delimitation, with the map annexed thereto, which would be prepared and signed by the Delimitation Commission, should "form an integral part of the present Treaty."

References : Brit. and For. State Papers, XC. 422-430, 546-553, XCI. 124-173 ; Convention Consulaire Helleno-Turque, 1900 (Appendix).

425. **GREAT BRITAIN and PORTUGAL, in 1898.** The Award of Signor Vigliani in the Manicaland Arbitration was given on January 30th, 1897, but the actual delimitation of the frontier, according to the Award, was, at the request of the British Government, postponed until the following year. A JOINT COMMISSION was then appointed, and early in 1899 (March) the Portuguese members of it informed their Government that they had arrived at an understanding with their English colleagues ; that the line of demarcation fixed by the Arbitrator had been slightly modified, as the result of mutual concessions, and that the Commissioners had had maps of the new delimitation prepared for transmission to their Governments.

References : State Papers, LXXXIX. 714, etc. ; P.I., pp. 486-504 ; Parl. Paper [C. 8434] ; Delimitation de la Frontière, etc., Florence, 1897 ; *Herald of Peace*, September, 1897, p. 285, and April, 1899, p. 196.

426. **ARGENTINE and BRAZIL, in 1898.** By a Treaty signed at *Rio de Janeiro, October 6th*, 1898, settling the boundaries between the two countries according to the Award of the President of the United States, February 5th, 1875, a BOUNDARY COMMISSION was appointed (Arts. 5 and 6) to delimit the frontier on

the spot, in accordance with the Award. Each party was to appoint a first Commissioner, a Substitute, a second Commissioner, and two Assistants, together with the necessary auxiliary personnel.

References: Brit. and For. State Papers, XC. 85-87.

427. **COLOMBIA and VENEZUELA, in 1898.** The Award of the Queen Regent of Spain, of March 16th, 1891, was accepted in principle by both Governments; but, as Venezuela, especially, was not satisfied with it as a whole, the question continued for some time to form the subject of diplomatic correspondence. The two Governments, however, in an Agreement dated April 4th, 1894, embodied their views on the several points relating to the frontiers as defined in the Arbitral sentence, agreed to certain modifications, and engaged to send out, within a certain period, a MIXED COMMISSION to mark the boundary, in accordance with the award and with certain modifications agreed upon. Nothing was then done, but by Articles 38 and 39 of the Treaty of Bogota, signed November 21st, 1896, this Commission, consisting of fifteen members, eight for Colombia and seven for Venezuela, was agreed upon. This Treaty, too, was not ratified, and the matter dragged on. An Agreement, or Convention, for the execution of the Queen of Spain's Award, was signed at Caracas, December 30th, 1898, and ratified in the same city April 21st, 1899. Full and final provision were made for this COMMISSION, and instructions agreed upon for its guidance. The Commission was to meet on December 21st, 1899, in the town of Arauca, but the war in both countries prevented this, and it held its first preparatory sitting at Caracas on that date. The Commission was organised into two sections, which proceeded to work on the spot immediately, and during the year 1901 embodied the results of their labours in a series of *Acts*, which were passed from time to time, as these labours were concluded.

References: Anales Diplomaticos y Consulares de Colombia, 1900, I. 78-250, 268-271, 384-463; II. (1901) 118, 119, 413-624; Les Deux Ameriques, September 1st, 1900; U.S. For. Rel., 1894, 200; Moore, V. 4858-4662.

428. **FRANCE and GREAT BRITAIN, in 1898.** By Art. 5 of the *Niger Convention*, signed at Paris, June 14th, 1898, a JOINT COMMISSION was appointed to delimit, on the spot, the line of frontier separating the British Colony of the Gold Coast from the French Colonies of the Ivory Coast and the Sudan, that is, the Northern frontier of the Gold Coast, as defined in Art. 1. The Commission, which consisted of Captain A. E. G. Watherston, Lieut. Henderson, and Dr. Smart, for Great Britain, and Captain Peltier and Lieut. Cherier, for France, met on the frontier, in February, 1900, and completed their work in that year, Captain Watherston having returned to England in February, 1901. He reported that the relations between the Commissioners had been throughout characterised by the greatest possible cordiality.

References: Parl. Papers [C. 9334], Treaty Series, No. 15, 1899; *Herald of Peace*, March, 1901, p. 29.

429. **FRANCE and GREAT BRITAIN, in 1898.** Art. 3 of the *Niger Convention*, signed June 14th, 1898, settled the frontier between points on the Niger seven miles apart, and by Art. 5, provision was made for a Commission to determine this line on the spot. This Commission, which consisted of Lieut.-Col. Lang-Hyde (British) and Major Toutée (French), accomplished its work during 1900. Major Toutée left for Dahomey in February, and reached Ilo in July of that year, whereupon the Commissioners began and completed their task without delay.

References: Parl. Papers [C. 9334], Treaty Series, No. 15, 1899, [Cd. 1768-14], Colonial Reports. Annual No. 409, North Nigeria, Report for 1902, p. 79; *Herald of Peace*, August, 1900, p. 97.

430. **FRANCE and GREAT BRITAIN, in 1898.** By Art. 5 of the *Niger Convention*, signed June 14th, 1898, the contracting parties agreed to appoint a Joint Commission to delimit the Northern frontier of Northern Nigeria from the Niger to Lake Tchad. Under this provision a Joint Boundary Commission was appointed in the autumn of 1900, in continuation of the work already begun by the Joint Commission of 1900. The British Commissioners were Lieut.-Col. G. S.

Elliott, R.E., and two subalterns, Lieuts. Foulkes and Frith, who left Liverpool on October 4th, 1902. They reached Lokoja on November 1st, and Ilo, December 25th. Here they were joined by Captain Moll, the French Commissioner and his party, and took up the work of demarcation from the point on the Niger where Lieut.-Col. Lang-Hyde and Commandant Toutée left it in 1900. By February 18th, 1903, they had completed their survey up to the first intersection of the arc, described around the town of Sokoto, at a distance of 100 miles, with the fourteenth parallel of latitude. On January 28th, 1904, Lieut. Col. Elliott telegraphed to his Government that the Commission had completed its labours.

References: Parl. Papers [C. 9334], Treaty Series, No. 15, 1899, [Cd. 1768, 14], Colonial Reports, Annual No. 409, North Nigeria, Report for 1902, p. 79; *Herald of Peace*, October 1902—April 1904, *passim*.

431. **FRANCE and GREAT BRITAIN, in 1898.** British and French Boundary Commissioners reported as to the position of places on the Gambia, May 8th, 1893. In December, 1898, an Anglo-French Boundary Commission, under the Colonial Engineer and Captain Tyler, R.E., left to define the Boundary on the North Bank of the Gambia. It was reported in February, 1899, that its work was at a standstill, as it had been found that the old boundary line had been incorrectly placed, and that certain territories in the Wellhi district were within the fixed radius, thereby bringing the French Inland Telegraph Line within the British Protectorate. The labours of this Commission, so far as we can gather, are not recorded.

References: Hertslet, Map of Africa, etc., II. 588; *Herald of Peace*, March, 1899, p. 184.

432. **FRANCE and GREAT BRITAIN, in 1899.** The line of frontier in the Bahr-el-Ghazal region in Africa was described in paragraph 2 of a *Declaration*, signed at London, March 21st, 1899, of which the ratifications were exchanged at Paris, June 13th, 1899, and in paragraph 4, "the two Governments engage to appoint Commissioners who shall be charged to delimit on the spot a frontier line, in accordance with the indications given in paragraph 2 of the Declaration. The result of their work shall be submitted for the approbation of their respective Governments." We have been unable to trace the appointment and work of this Commission.

Reference: Parl. Papers [C. 9334], Treaty Series, No. 15, 1899.

433. **BELGIUM and FRANCE, in 1899.** This case is unique and striking. On April 4th, 1900, a Convention between France and Belgium was signed at Paris, approving and confirming the Procès-Verbal of a JOINT COMMISSION appointed to delimit a portion of the Franco-Belgian frontier, in execution of the Treaty of Courtrai of March 28th, 1820. The Commission held its last sitting and issued its *Award* at Bruges, on February 7th, 1899. The date of its appointment is not known.

References: State Papers, LV. 395, XCII. 1020-1024.

434. **GERMANY and GREAT BRITAIN, in 1900.** An Agreement respecting the Jassin and Umba Valley boundary between the possessions of these countries in East Africa was signed at Jassin, February 14th, 1900, by Messrs. E. S. H. J. Russell and Dr. F. Stuhlmann, the members of a JOINT BOUNDARY COMMISSION, on the completion of their work. The date of their appointment is not known.

References: Brit. and For. State Papers, XCII. 877-879.

435. **FRANCE and SPAIN, in 1900.** A Convention was signed between these countries at Paris, June 27th, 1900, and ratified March 22nd, 1901, for the delimitation of their possessions on the coast of the Sahara, and on the coast of the Gulf of Guinea. By Art. 8 a BOUNDARY COMMISSION was appointed to trace the lines of demarcation on the spot. Its work was finished in 1901.

References: State Papers, XCII. 1014-1017; London *Times*, December 12th, 1901.

436. **DENMARK and GERMANY, in 1900.** Owing to the alteration in the course of some streams forming the frontier (the Norderau and the Kjar-mühlenau), its rectification became necessary. This was provided for by a Convention, signed at *Copenhagen, February 12th, 1900*, and ratified February 11th, 1902, which appointed a **JOINT COMMISSION** to see that the work had been duly executed, and to make the necessary survey, and report.

References: State Papers, XCII. 1025-1027.

437. **GREAT BRITAIN and VENEZUELA, in 1900.** Following the Award of the Venezuela Arbitration Commission, which was given at Paris, October 3rd, 1899, a Joint Commission, consisting at the first of four British Commissioners and eight Venezuelan, was appointed to demarcate the line on the spot, according to that Award. On September 14th, 1900, the United States Minister to Venezuela reported in Washington that the Commission had then entered upon its labours. These have been since reported from time to time in despatches and in the public press. A final message, through Reuter's Agency, dated George Town, British Guiana, June 30th, 1904, stated "that the work of demarcating the boundary between British Guiana and Venezuela has just been completed, and the Commissioners have returned to George Town from the interior.

References: Parl. Paper [C. 9533], Venezuela No. 7. 1899; P.I., pp. 556, 557; *London Times*, September 15th, 1900, p. 6, and July 15th, 1904; *Hazell's Annual*, 1902, p. 79.

IV.—NATIONAL COMMISSIONS.

These have an Arbitral character, for they embody the principle of Arbitration, and they are so far international that they follow from an international Agreement or transaction of some kind, and, usually, an appointment for the final settlement of an international question. They are generally Domestic Tribunals for the settlement of International Claims or the conclusion of International questions.

438. The **GERMANIC EMPIRE, in 1802.** The Extraordinary Deputation of the Germanic States, appointed by a decision of the Empire, October 2nd, 1801, to execute Arts. 5 and 7 of the Peace of Luneville, February 9th, 1801, and to rearrange the Empire after the devastations of the wars of the French Revolution, met on August 24th, 1802, and immediately, *October 16th, 1802*, appointed a **COMMISSION**, consisting of the Duke of Würtemberg and the Margrave of Baden, to administer provisionally certain Districts (Westphalia), to examine the claims of the Counts therein, and to select those who were entitled to special reparation. This Commission, on which the Duke of Würtemberg was represented by M. Von der Lüh, and the Margrave of Baden by M. Hofer, proceeded at once (November 12th) to Ochsenhausen, where it began work. Its labours were finished towards the end of January (1803), and their results were embodied in the *Recez*, or Final Act, of the Deputation (Art. 24), which was signed at Ratisbon, on February 25th, 1803.

References: De Garden, VII. 344-346; Schoell, II. 271, 272.

439. The **RHENISH STATES, in 1803.** *Executive Commission of Frankfurt.* The Electors of Mayence and Hesse-Cassel having been especially entrusted by Arts. 68 and 70 of the *Recez, February 25th, 1803*, with the duty of apportioning the charges affecting the Districts of the Rhine, especially the sustentation of the dispossessed Ecclesiastical Sovereigns, a **COMMISSION** was appointed, consisting of Baron Kieningen, as sub-delegate of the former, and Baron Gayling d'Altheim, of the latter. By Art. 85 of the *Recez*, it was decided

that whenever there occurred a conflict of interests, and a friendly arrangement could not be reached, either the Princes themselves or their Commissioners should call in an Umpire (*sur-arbitre*). This Commission was constituted at Frankfort on March 8th, 1804, and continued its sittings until July 18th, 1806, when the Germanic Empire ceased to exist.

References: Schoell, II. 301-305, 315; De Garden, VII. 423-433, 457.

440. The **RHENISH STATES, in 1803.** The due apportioning, among the new possessors of the secularised States, of the debts and charges of the special Divisions (*Cercles*) of the Upper and Lower Rhine, was, by Art. 68 *et suiv.*, of the *Recez* of *February 25th*, 1803, referred for examination and settlement to the Electors of Mayence and Hesse-Cassel, with the provision in Art. 85 to call in an Umpire (*sur-arbitre*) if necessary. In fulfilment of this Commission, the former, who was also the Arch-Chancellor, in 1805 invited the Members of the two Divisions (*Cercles*) to meet at Frankfort, where their SUB-DELEGATES were occupied from November 22nd of that year to July 12th, 1806, in work preparatory to the carrying out of that paragraph of the *Recez*. They were on the point of reaching a conclusion when the Act of July 12th, 1806, dissolved the Empire and its Divisions (*Cercles*). Art. 29 of this Treaty, formed between some of the German Princes and Napoleon, enacted that the Confederated States should contribute to the Debts of these Divisions (*cercles*), and also provided for those of the Division of Swabia. The debts of the Upper and Lower Rhine were submitted to a CONGRESS summoned for the purpose, to which French Commissioners were also invited. The Congress, which was called for August 1st, was opened at Frankfort on August 8th, 1808. The debts, including the expenses of the Body appointed to carry out Art. 68 of the *Recez*, amounted to 962,921 florins, but their division never took place, and the Duke of Frankfort, by a patent dated August 3rd, 1812, took upon himself the payment of a part of them. The debts of Swabia, amounting to 3,090,860 flor. 39 kr., were dealt with by a Convention signed at Stuttgart, May 4th, 1809. The debts of Franconia, however, were adjudicated upon by a COMMITTEE consisting of Deputies of the Kings of Bavaria and Würtemberg, of the Prince Primate, and the Grand Dukes of Baden and Würzburg. This Committee opened its sittings at Nuremberg on May 1st, 1807, and closed its labours by a document signed September 13th, 1808, which disposed of a total of 1,237,406 $\frac{8}{21}$ florins, divided between twelve States.

References: Schoell, II. 305, 486-488; De Garden, VII. 423-435; Winkopp, III. 141, IV. 113, V. 252, 354, VII. 94, XI. 311, 328, XVII. 358, XVIII. 268.

441. The **RHENISH STATES, in 1803.** For the regulation and appointment of the Imperial Taxation, among the States of the Rhine Districts (*Cercles*), a COMMISSION was appointed under Art. 88 of the *Recez*, *February 25th*, 1803. This Commission met for the first time on March 6th, 1804, and continued to hold meetings until August 31st, 1806. Its chief result appears to have been the increase of the debts of the two Districts by 43,203 florins.

References: Schoell, II. 305; De Garden, VII. 433.

442. **FRANCE and the UNITED STATES of AMERICA, in 1803.** DISTRIBUTION OF FRENCH INDEMNITY. On April 30th, 1803, a *Treaty and two Conventions* were signed between France and the United States. The Treaty ceded Louisiana to the United States; the first of the two Conventions provided for the payment by the United States to France of 60,000,000 francs; the other for the payment by the United States of debts due by France to citizens of the United States, to an amount not exceeding 20,000,000 francs. The ratifications of the Treaty and Conventions were exchanged at Washington on October 21st, 1803. On *May 18th*, 1803, a COMMISSION, consisting of James Mercer, of Virginia, Isaac Cox Barnet, of New Jersey, and William McClure, of Richmond, Va., was appointed as a Board for examining claims, and carrying the second Convention into effect. The first Meeting of the Board was held on July 5th, 1803, and the last, after considerable difficulties had been encountered

in the prosecution of its labours, on December 1st, 1804, when according to the terms of the Treaty, its term had expired, and the Board was adjourned *sinè die*.

References: The Formal Record of the Proceedings of the Commission is contained in two MS. Vols. in the Department of State, one of which is entitled "American Commission, Paris, 1803, Register, A"; and the other, "American Commission, Paris, 1803, Letter Book, No. 1."; Am. State Papers For. Rel. II. 204-559, pass., VI. 149-196; Adams's Hist. of U.S., I. 409, II. chap. 1; MSS. Dept. of State; Moore, V. 4399-4446.

443. POLAND and the POWERS, in 1815. By Art. 22 of the Treaty relating to Poland signed between Austria and Russia, and Art. 20 of that signed between Prussia and Russia, on *May 3rd*, 1815, it was enacted, "The DOMICILIARY COURT shall likewise decide differences which may arise between any individual and the Governor of those territories, but it is the Chief Court of the territory wherein the property in litigation is situated which shall cause the sentence emanating from the former court to be put in execution. This Regulation shall be in force for the term of ten years, at the expiration of which the two High Powers reserve to themselves the right of making any other Regulation that may be necessary."

References: Hertslet, Map of Europe, etc., I. 1; State Papers, II. 56, 99.

444. POLAND and the POWERS, in 1815. The FREE CITY OF CRACOW. It is interesting to note that by the Constitution of the Free City of Cracow, signed at Vienna, *May 3rd*, 1815 (which was approved and guaranteed by Art 7 of the Treaty between Austria, Prussia and Russia, of *May 3rd*, 1815, and afterwards formed part of Annex 3 to the Vienna Congress Treaty of June 9th, 1815), the Assembly of Representatives included six MAGISTRATES OF ARBITRATION, actually in office, who were to serve in rotation. This is further explained in Art. 14, which says, "The Assembly of Representatives shall appoint a Magistrate of Arbitration to every district, consisting of not less than 6,000 souls. He shall exercise his function for three years. Besides his duty as Arbitrator, his business shall be to watch over the interests of minors, as well as to take cognisance of all suits relating to funds and landed property belonging to the State, or to public institutions. Upon all matters referred to him in his double capacity, he shall communicate with the youngest Senator, whose special duty it shall be to attend to the interests of minors and to actions of law concerning funds or landed property of the State."

References: Hertslet, Map of Europe, etc., I. 122, 127-131; State Papers, II. 374; Schoell, III. 400.

445. POLAND and the POWERS, in 1815. The FREE CITY OF CRACOW. The "Additional Treaty" relative to Cracow signed between Austria, Prussia and Russia at Vienna, on *May 3rd*, 1815, provided (Art. 14) that the inhabitants of Cracow should always be at liberty to submit the arrangement of their private claims to the COMMISSION authorised to settle the accounts of the City.

References: Hertslet, Map of Europe, etc., I. 125; State Papers, II. 74.

446. FRANCE and GREAT BRITAIN, in 1818. On *May 19th*, 1818, an Act of Parliament was passed (59 George III. cap. 31.), "To enable certain COMMISSIONERS fully to carry into effect several Conventions for liquidating Claims of British Subjects and others against the Government of France" (see I. Nos. 10, 11). The Act, after (Art. 1) making special reference to the Commissioners appointed under Treaty of *May 30th*, 1814, to the Commissioners appointed under Treaty of *November 20th*, 1815, to the Commissioners of Liquidation under Treaties of *May 30th*, 1814, *November 20th*, 1815, and *April 25th*, 1818, and to the Commissioners of Deposit, provides for the Appointment and Oaths of the new Commissioners (Art. 2), the Procedure to be adopted by them in the examination and the final adjustment of Claims (Arts. 1-5), Orders for payment of Claims (Arts. 7-14), Appeals to Privy Council (Arts. 8-14), etc.

References: Hertslet, Complete Collection, etc., III. 103; State Papers, V. 192; Hertslet, Map of Europe, etc., I. 555.

447. **SPAIN and UNITED STATES, in 1819.** *Indemnity under the Florida Treaty.* By Art 11 of the *Treaty of Florida, February 22nd, 1819*, the United States, exonerating Spain from all demands for the American claims that had been renounced by the previous Article (10) of that Treaty, undertook "to make satisfaction for the same" (*i.e.* to their own subjects), "to an amount not exceeding five millions of dollars," and for this purpose to appoint a COMMISSION of three citizens of the United States, which should, within three years from its first meeting, "receive, examine, and decide upon the amount and validity of all the claims included within the descriptions above mentioned." The Article further provided that, "the Spanish Government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims according to the principles of justice, the law of nations, and the stipulations of the treaty between the two parties of October 27th, 1795. The Ratifications of the Florida Treaty were not exchanged till February 22nd, 1821, and on March 31st, 1821, President Monroe appointed as Commissioners Messrs. H. L. White, of Tennessee, W. King, of Maine, and J. W. Green, later L. W. Tazewell, of Virginia, with Tobias Watkins as Secretary and Joseph Forrest as Clerk. The Board met and adopted Rules of Procedure, June 14th, 1821; and on June 8th, 1824, the day of their final meeting, after having continued their sittings for the full treaty period of three years, made a full report of their Awards, which was published in the *National Government Journal*, June 26th, 1824, and a list of the awards in the following number.

References: R.M.P., III. 410, (411); N.R., V. 328; 3 Stats. at L., 639, 673, 762; 4 Stats. at L. 33; Scott's Memoir of Judge White, Phila. 1856; Grigsby's Discourse on Hon. L. W. Tazewell, Norfolk, 1860; Reminiscences of James A. Hamilton, p. 57; Moore, V. 4487-4518; P.L., p. 7.

448. **SPAIN and UNITED STATES, in 1819.** *Settlement of the East and West Florida Claims.* Art. 9 of the *Treaty of Florida, February 22nd, 1819*, between Spain and the United States, closed with the following stipulations: "And the high contracting parties, respectively, renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas. The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida." By an Act of March 3rd, 1823, Congress authorised and directed the Judges of the Superior Courts at St. Augustine and Pensacola to form a TRIBUNAL to "receive and adjust all claims arising within their respective jurisdictions, of the inhabitants of said territory, or their representatives, agreeably to the provisions of Art. 9 of the Treaty with Spain, by which the said territory was ceded to the United States," and by it the claims were adjusted. The proceedings, which involved many important points, and much diplomatic correspondence between the two Governments, continued until 1884, papers on the subject being presented to the Senate by President Arthur on April 18th of that year. On the fourteenth of the preceding month, Mr. Herndon, from the Committee on Foreign Affairs, had reported a bill to authorise the Secretary of the Treasury to pay the claims for interest.

References: Am. State Papers For. Rel., I. 63, II. 564, III. 290-400, 539, 543-571, IV. 496, 555-560, 776-808; 2 Stats. at L., 254; 3, 471, 768; 6, 569; 9, 130 and 788; Adams's History of U.S., V. 305-315, VIII. 317-330; S. Ex. Doc. 97, 25 Cong. 3 Sess.; 46 Cong. 2 Sess.; 48 Cong. 1 Sess.; 101 and 205, 46 Cong. 2 Sess.; 158, 48 Cong. 1 Sess.; H. Report 112, 19 Cong. 1 Sess.; 16, 20 Cong. 1 Sess.; 99, 20 Cong. 2 Sess.; 176, 21 Cong. 1 Sess.; 227, 46 Cong. 3 Sess., etc.; Moore, V. 4519-4531.

449. **GREAT BRITAIN and UNITED STATES, in 1827.** *Indemnity for Slaves.* By an Act passed on *March 2nd, 1827*, to carry the Convention of November 13th, 1826, into effect, the United States appointed a DOMESTIC COMMISSION, to consider the claims and to distribute the money paid by Great Britain. Under this Act Langdon Cheves and Henry Seawell, who had served respectively as Commissioner and Arbitrator under the Convention of 1822, were appointed as the new Commissioners, and with them was joined James Pleasants, of Virginia. Their first meeting was held in Washington, July 10th, 1827. They immediately promulgated Rules to govern the transaction of business before them, and pro-

ceeded to work. The last meeting of the Commission was held August 31st, 1827. It was then found that the sums awarded, exclusive of interest, amounted to 1,197,422.18 dollars, which left only 7,537.82 dollars to be distributed. This sum the Commission ordered "to be distributed and paid ratably to all the claimants to whom awards have been made."

References: R.M.P., IV. 45; 4 Stats at L., 219, 269; Am. State Papers For. Rel., VI. 339, 372, 821-863, 882-892, 962; Moore, I. 382-390, V. 4738, 4739; P.I., p. 20.

450. **DENMARK and UNITED STATES, in 1830.** This arose out of a question of mutual claims and indemnities, which had their origin in the Napoleonic wars. After much diplomatic discussion, Denmark renounced her claims and agreed to pay 650,000 dollars. This question was settled by a *Treaty*, signed at *Copenhagen, March 28th, 1830*, and ratified at Washington, June 5th, 1830. The distribution of the Fund was by this Treaty committed to the United States, and, for the purpose of adjusting the claims, etc., Government engaged to establish a BOARD OF COMMISSIONERS composed of three American citizens, to be named by the President of the United States, with the advice and consent of the Senate, who "shall adjudge and distribute the sums mentioned in Arts. 1 and 2 of the Treaty." The Commissioners were George Winchester, Wm. J. Duane, and Jesse Hoyt, and their Secretary, Robert Fulton. They met in Washington, on Monday, April 4th, 1831. The last meeting of the Board was held on March 28th, 1833, when its work was done; and, after signing a Report to the Secretary of State, giving an account of their proceedings, the Commission adjourned *sine die*.

References: N.R., VIII. 350; State Papers, XVII. 958; Am. State Papers For. Rel., III. 327-332, 521-535, 614; Wharton's Dip. Cor. Am. Rev., III. 385-744, V. 462, VI. 261, 717, 787; Davis's Notes: Treaties and Conventions, 1776-1887, p. 1287; Elliot's Am. Dip. Code, I. 453, etc.; Moore, V. 4549-4573; Wheaton's Internat. Law, pp. 867-871; Danske Traktater, 1800-1833 (Copenhagen. 1877), pp. 139-143.

451. **FRANCE and UNITED STATES, in 1831.** Payment of a *French Indemnity* was made, the result of claims and counter-claims, arising out of belligerent depredations at sea during the Napoleonic wars, some of them dating prior to 1800. After long negotiation and much discussion, by a *Convention*, signed *July 4th, 1831*, of which the ratifications were exchanged at Washington, February 2nd, 1832, the former country agreed to pay a sum of 25,000,000 francs, with interest, the money to be distributed by the United States, and to accept the sum of 1,500,000 dollars in satisfaction of all the French claims. An Act of Congress of July 13th, 1832, made provision for carrying the Convention into effect by the appointment of "three Commissioners, who shall form a BOARD, whose duty it shall be to receive and examine all claims which may be presented to them under the Convention," etc., according to the provisions of the same, and the principles of justice, equity, and the law of nations." This Board consisted of three Commissioners, Messrs. G. W. Campbell, of Tennessee, John K. Kane, of Pennsylvania, and R. M. Saunders, of North Carolina, who were appointed by the President. They were required to meet in Washington on the first Monday in August, 1832, and to terminate their duties within two years thereafter. The labours of the Commission proved to be very onerous, and its existence was twice prolonged, first for a year, and then till January 1st, 1836. A diplomatic rupture between the two countries occurred in consequence of the Award, January 1836, but this was healed through the mediation of Great Britain, and the Award was accepted. The aggregate of the Awards was 9,362,193 dollars (£1,872,438), the last instalment of which was duly paid by France in 1836.

References: Adams's History of U.S., III. 290-383, IV. 303, V. 63, 138, 143, 242, 243, and, generally, Chapters XI., XII., and VI. 255, 256; Adams's Writings of Gallatin, II. 196, 209; Am. State Papers For. Rel., III. 25, 80, 244-291, 324-393, V. 152, 204-288, 598-629, 640, 672, etc.; Congressional Debates, XI. Part 1, 103, 200, Part 2, 1515, 1531-1634, etc.; Wharton's Dip. Cor. Am. Rev. I. 364-386; Other Congress Papers, see Moore, V. 4447-4485.

452. **NAPLES and UNITED STATES, in 1832.** *Neapolitan Indemnity.* By a *Convention*, signed *October 14th, 1832*, the King of the Two Sicilies agreed to pay to the United States 2,115,000 Neapolitan ducats, in settlement of claims arising out of

depredateions on American vessels during the Napoleonic wars ; and by an Act of Congress, March 2nd, 1833, provision was made for the appointment by the President, by and with the consent of the Senate, of a BOARD of three Commissioners "to receive and examine all claims under the Convention of October 14th, 1832, which were provided for by the said Convention according to the provisions of the same, and the principles of justice, equity, and the law of nations." It was further provided that the Board should have a Secretary, versed in the French and Italian languages, and a Clerk. Messrs. Wyllys Silliman, John R. Livingston, Jun., and Joseph S. Cabot, were appointed Commissioners ; Thomas Swann, Jun., Secretary, and John W. Overton, Clerk. They held their first Meeting on September 19th, 1833, and having disposed of all the claims before them, making about 275 separate *Awards*, aggregating a sum of 1,925,034.68 dollars, they signed their final Report March 17th, 1835, and then adjourned.

References : Am. State Papers, For. Rel., IV. 160-169 ; 4 Stats at L., 664, 680 ; MSS. Dept. of State ; Moore, V. 4575-4589 (esp. 4581, 2 and 7).

453. **SPAIN and UNITED STATES, in 1834.** This arose from new claims against Spain, after the comprehensive settlement by the Treaty of 1819, in consequence of the war between Spain and her American colonies. The following modes of settlement were proposed to Spain : either by a Convention for the establishment of a Mixed Commission, to meet at Washington, to decide upon the mutual claims, and to strike the balance, or by a Convention stipulating for the payment of a gross sum. The latter was accepted, and on these terms a *Convention* was signed, *February 17th*, 1834, by which the contracting parties renounced, released, and cancelled all claims which either might have upon the other, of whatever denomination or origin they might be, from February 22nd, 1819 (the date of the Florida Convention), till the date of settlement ; and, by Art. 1 of the Convention, the United States undertook to adjudicate on the distribution of the sum agreed upon. On June 29th, 1836, the President and Senate appointed Louis D. Henry, of North Carolina, as Commissioner, J. J. Mumford, of New York as Secretary, and C. van Ness as Clerk. They met as a BOARD, and adopted Rules of Procedure, on July 30th, 1836. The term of the Commission was at first limited to a year from the first Meeting in Washington, but was afterwards extended till February 1st, 1838. The business was disposed of, and the Commissioner made his final report, January 31st, 1838.

References : Brit. and For. State Papers, IX. 784-999, X. 938, 944, XI. 44, XV. 900, 907, XVIII. 2 ; S. Ex. Doc., 147, 23 Cong. 2 Sess. ; 5 Stats. at L., 34, 179 ; H. Ex. Doc. 73, 24 Cong. 2 Sess. ; Davis's Notes : Treaties and Conventions, 1776-1887, p. 1387 ; Moore, V. 4533-4547.

454. **FRANCE and PORTUGAL, in 1840.** An Ordinance of King Louis Philippe, of France, issued at Paris, February 15th, 1840, ordered the publication of the Convention of Claims, signed at *Paris, December 7th*, 1839, between France and Portugal, under which the latter agreed to pay the former the sum of 800,000 francs. Following this, the French King appointed a National (or Domestic) Commission to examine the Claims of French subjects, and to allot the money. This he did by an "Ordonnance relative à la liquidation des réclamations formées par les Français contre le Gouvernement Portugais et fondées sur les Traités et Conventions conclus entre la France et le Portugal antérieurement au 25 Avril, 1818," issued in Paris, *February 17th*, 1840. By Art. 1, a Special Commission of Liquidation was appointed, composed of five members named by the King, and by Art. 3, a Special Commission of Revision, also composed of five members designated by the King, was appointed.

References : Brit. and For. State Papers, XLIX. 780, etc.

455. **PERU and UNITED STATES, in 1841.** *Peruvian Indemnity.* By a *Convention*, signed at *Lima March 17th*, 1841, the Peruvian Government agreed to pay to the United States the sum of 300,000 "hard dollars," "on account of seizure, damage or destruction of property at sea, or in the ports and territories of Peru, by order of the Peruvian Government or under its authority." By the first Article of this Convention it was provided that the indemnity should be distributed

"in the manner and according to the rules that shall be prescribed by the Government of the United States." By an Act of Congress, August 8th, 1846, the Attorney-General, Mr. John Mason, was directed "to adjudicate the claims in accordance with the principles of justice, equity, and the law of nations, and the stipulations of the Convention." The completion of the task passed into the hands of his successor, Mr. Nathan Clifford, who on August 7th, 1847, reported the *Awards* which had been made to the Secretary of State, as required by the Act of Appointment.

References: S. Ex. Doc. 58, 31 Cong. 1 Sess.; 9 Stats. at L. 80; Moore, V. 4591-4607.

456. **MEXICO** and **UNITED STATES**, in 1849. By the Treaty of Guadalupe Hidalgo, signed February 2nd, 1848, and ratified May 30th, the United States, in exchange for territory ceded by Mexico, agreed not only to pay the liquidated claims under the Conventions of 1839 and 1843, but also to "discharge the Mexican Republic from all claims of citizens of the United States not heretofore decided against the Mexican Government" (Art. 14), and "to make satisfaction for the same to an amount not exceeding three and one-quarter millions of dollars" (Art. 15). For the purpose of executing this engagement as to the unliquidated claims, the United States agreed to establish a "Board of Commissioners, whose Awards should be final and conclusive." By an *Act of March 3rd*, 1849, the President was directed to appoint, "by and with the advice and consent of the Senate," a Board of Commissioners to sit in Washington. This Board consisted of Messrs. George Evans, of Maine, Robert T. Paine, of North Carolina, and Caleb B. Smith, of Indiana. Their first meeting was on April 16th, 1849, and on April 15th, 1851, the business of the Board was brought to a close, and their Awards were certified to the Secretary of State. The whole amount awarded was 3,208,314.96 dollars.

References: *Tratados y Convenciones Vigentes*, Mexico, 1904, pp. 1-25; 9 Stats. at L., p. 393; Moore, II. 1248-1286; P.L., pp. 23, 24.

457. **BRAZIL** and **UNITED STATES**, in 1849. *The Brazilian Indemnity*. By a *Convention*, concluded at *Rio de Janeiro January 27th*, 1849, a settlement was effected of the long-pending claims of citizens of the United States against the Government of Brazil, by the latter Government agreeing "to place at the disposition of the President of the United States the amount of 330,000 milreis, current money of Brazil, as a reasonable and equitable sum," to comprehend "the whole of the reclamations" collectively without reference to the merits of any particular case. The Convention provided for the distribution of this indemnity among the claimants by the Government of the United States, the Brazilian Government promising documents. It was recommended that the TRIBUNAL appointed for this purpose should sit at Rio de Janeiro, and in this some of the claimants concurred. But, an Act of Congress, approved March 29th, 1850, made provision for the appointment of a Commissioner to sit in Washington, and of a clerk to assist him. On July 1st, 1850, George P. Fisher, of Delaware, was appointed Commissioner, and Mr. Philip N. Searle, of New York, Clerk. Mr. Fisher at once entered upon his duties, as Commissioner, adopted rules for the government of procedure, and issued a notice of his appointment through the public press. He continued his work till June 30th, 1852, when after thirty-eight claims had been adjudicated upon, and fifty-nine *Awards* given, a report was rendered, attested, and published.

References: 9 Stats. at L. 422, 606; MSS. Dept. of State (U.S.A.); Moore, V. 4609-4626.

458. **TURKEY** and its **CHRISTIAN POPULATION**, in 1856. By a *Firman* and *Hatti-Sheriff* of the Sultan, relative to Privileges and Reforms in Turkey, dated *February 18th*, 1856, which is specifically referred to in Art. 9 of the Treaty of Peace, signed at Paris March 30th, 1856, that Potentate ordains: "Every Christian, or other non-Mussulman Community shall be bound, within a fixed period, and with the concurrence of a COMMISSION composed *ad hoc* of its own body, to proceed with my high approbation and under the inspection of my

Sublime Porte, to examine into its actual Immunities and Privileges, and to submit to my Sublime Porte the Reforms required by the progress of civilisation and of the Age."

References : State Papers, XLVII. 136 ; Hertslet, Map of Europe, etc., II. 1243, 1244, 1255.

459. **FRANCE and NEW GRANADA, ECUADOR, and VENEZUELA, in 1858.** By Conventions with France, signed December 4th, 1856, October 15th, 1857, and January 20th, 1858, the above South American Governments agreed to pay certain sums to French subjects for damages inflicted upon them by Colombian ships during the late war. On August 1st, 1858, the Emperor Napoleon III. issued a Decree signed at St. Cloud, forming (Art. 1) a special and voluntary Commission to apportion the indemnities paid under the above Conventions. This Commission consisted of M. le Baron Brehier (President), M. Dubois de Saligny, M. de Reiset, M. Jahan, and M. Robert, with M. de Notras, of the Department of Foreign Affairs, as Secretary. We have no record of its proceedings.

References : Brit. and For. State Papers, XLIX. 1301, etc.

460. **MOLDAVIA and WALLACHIA, in 1858.** In accordance with Art. 24 of the Treaty of Paris, March 30th, 1856, the Divans of the two Principalities were convoked *ad hoc*, and the nearly unanimous wish of both Divans for union under a single Governor was discussed by a Conference of the Powers held at Paris, from May 22nd to August 19th, 1858, which refused to sanction this proposal, but by a Convention of the latter date (*August 19th, 1858*) approved of a CENTRAL COMMISSION for the JOINT oversight of the affairs of the Principalities (Arts. 27-37). This Central Commission was to sit at Fockshani (Art. 27). It was to be composed of sixteen members, eight Moldavians and eight Wallachians, to be chosen by each Hospodar from among the members of the Assembly or persons who had filled high offices in the country, and four by each Assembly from among its own body. It was permanent (Art. 29), although it might adjourn, when its business permitted, for a period which was in no case to exceed four months. In 1861, the Powers and the Porte, by a Firman of December 2nd, recognised the union of the two Principalities under Prince Couza, and the meetings of the Central Commission at Fockshani were suspended. In February, 1866, Prince Couza abdicated and Prince Charles was elected, and the two Principalities became Rumania.

References : Convention of August 19th, 1858 ; Parl. Papers, 1859 ; N.R.G., XV. 2 P. 50, XVII. 2 P. 82, 87-91 ; State Papers, XLVIII. 70, LVII. 522 ; T. E. Holland, pp. 234, 235 ; Hertslet, Map of Europe, etc., II. 1329, 1339-1342, 1498-1502.

461. **CHINA and UNITED STATES, in 1858.** *Chinese Indemnity.* This DOMESTIC COMMISSION was formed for the distribution of a sum paid by China as indemnity for the destruction of American property, when the foreign factories at Canton were burned, and the foreigners were compelled to flee the city, on the night of December 14th, 1856. The amount (735,238.97 dollars) was settled by a *Convention*, signed at *Shanghai, November 8th, 1858*. A COMMISSION consisting of Mr. Charles W. Bradley, U.S. Consul at Ningpo, and Mr. Oliver E. Roberts, late Vice-Consul at Hong Kong, was appointed by the President, "by and with the advice of the Senate," from whose decision an appeal was allowed to the Minister of the United States in China, Mr. John E. Ward. By the Convention it was agreed that in the adjudication of claims, the Chinese Government should be represented by an officer appointed to act for it. The Commissioners met at Macao, November 18th, 1859. They concluded their labours January 13th, 1860. In most cases they came to a decision, and in every case in which they made a joint report it was approved by Mr. Ward. The total amount of the claims presented was 1,535,111.35 dollars, the whole amount awarded 489,788.43 dollars. A surplus remained after the payment of all claims ; the return of the money was proposed, but the Chinese Government declined to accept it.

References : McCarthy's Short Hist. of Our Own Times, p. 164 ; Act of March 3rd, 1859, 11 Stats. at L. 408 ; Report of Messrs. Bradley & Roberts, January 13th, 1860 ; H. Ex. Doc. 29, 40 Cong. 3 Sess., pp. 9, 17, 151, 152, 176-180, 189, 206 ; Congress Papers, Treaty Vol., p. 1259 ; For. Rel., 1855, p. 183 ; Moore, V. 4627-4637.

462. **MOLDAVIA** and **WALLACHIA**, in 1864. A MIXED COMMISSION, which was of the nature of a recurrent Domestic Commission was appointed, as part of the new organisation of the Principalities, by an *Additional Act* to the Convention of August 19th, 1858, concluded between the Porte and Prince Couza, respecting the United Principality of Moldavia and Wallachia, at *Constantinople, June 20th, 1864*. Art. 12 of this Act provided that, "at the end of each Session the Senate and the Elective Assembly shall each name a Committee, the members of which shall be chosen from among them. The two Committees shall join in a Mixed Commission, to report to the Prince on the labours of the previous Session, and to suggest to him such improvements as are deemed necessary in the various branches of the administration. The suggestions may be recommended by the Prince to the Council of State to be converted into Projects of Law." It will be seen, however, that this Mixed Commission partook more of an Advisory than an Arbitral character. The Powers gave their adherence to this Act by a Protocol signed, June 28th, 1864.

References: State Papers, LVII. 529; Hertslet, Map of Europe, etc., III. 1613-1620.

463. **GREAT BRITAIN** and **UNITED STATES**, in 1874. The "Alabama" Claims Courts.

I.—THE FIRST COURT, 1874. For the "adjudication and disposition" of the moneys received under the Geneva Award, Congress, by an *Act* approved *June 23rd, 1874*, authorised the President, by and with the advice and consent of the Senate, to appoint "five suitable persons" who should constitute a court to be known as the "Court of Commissioners of *Alabama* Claims." The amount paid by Great Britain was 15,500,000 dollars. The Court, which consisted of Hezekiah G. Wells, of Michigan, as presiding judge, and Martin H. Ryerson, of New Jersey, who in the winter of 1874-5, resigned and soon afterwards died, and who was succeeded by Harvey Jewell, of Massachusetts, Keseneth Rayner, of Mississippi, William H. Porter, of Pennsylvania, and Caleb Baldwin, of Iowa, was organised at Washington, July 22nd, 1874 and sat, with two extensions of time until December 29th, 1876, when it adjourned, having disposed of all the business before it. Altogether the court disposed of 2,068 claims aggregating 14,499,316.25 dollars exclusive of interest. The total amount of the judgments was 9,316,120.25 dollars including interest.

II.—THE SECOND COURT, 1882. As shown by the Treasury Statements of June 30th, 1876, and June 30th, 1877, there was paid out to claimants, on the judgments of the first Court of Commissioners of Alabama the sum of 9,315,753 dollars. The balance available for distribution which included interest added to the original amount was 9,703,903.89 dollars. By an *Act* which received the approval of the President on *June 5th, 1882*, which was entitled, "An Act for re-establishing the Court of Commissioners of *Alabama* Claims and for the distribution of the unappropriated moneys of the Geneva Award," that Court was re-established, the number of judges was reduced from five to three, and the title of "presiding judge" was changed to "presiding justice." The new court was organised on July 13th, 1882, and the work done by it from that date, to its final adjournment on December 31st, 1885, was as follows: First class (exculpated cruiser) claims 3,204 with a total of 3,346,016.32 dollars, including interests; second class (war premiums) claims, 8,338, with a total of 16,312,944.53 dollars including interest. Separate judgments were rendered for 10,910 claimants, and the whole number of judgments was 11,377. The judgments of the first class were paid in full, and in order that the proportion paid to claimants of the second class might be increased, it was provided by an Act of June 2nd, 1886, that to the balance of 9,703,904.89 dollars belonging to the fund proper, there should be added the money derived from premiums on the sale of bonds, making in all the sum of 10,089,004.96 dollars.

References: Moore, V. 4639-4685.

464. **RUSSIA** and **TURKEY**, in 1879. Art. 5 of the Treaty of Peace between Russia and Turkey, signed at Constantinople, February 8th, 1879, stipulated that the claims of Russian subjects and establishments (*institutions*)

in Turkey to compensation for losses sustained during the war shall be settled as soon as they shall have been inquired into by the Russian Embassy at Constantinople, and transmitted to the Sublime Porte, but that the total amount of these claims shall not exceed the sum of 26,750,000 francs. In a *Protocol*, February 8th, 1879, Prince Lobanow declared that a Commission *ad hoc* will be established at the Russian Embassy (*i.e.*, a NATIONAL or DOMESTIC COMMISSION), for the careful examination of the claims which shall be laid before it, and that, according to the instructions of his Government, an Ottoman Delegate shall be allowed to take part in it—all claims to be presented within the term of one year.

References: State Papers, LXX. 1216; Hertslet, IV. 2847, 2850; T. E. Holland, p. 349.

465. **CHILI and EUROPEAN POWERS, in 1882.** Before entering into the various Arbitrations to settle the claims of subjects of European Powers against itself for damages incurred in the war of the Pacific—between Chili and Peru against Bolivia—in 1882, Chili had organised a NATIONAL COMMISSION charged to examine and liquidate the different claims. This Commission was superseded by the various Mixed International Commissions, which in each case consisted of three Members, one appointed by Chili, another by the interested State, and a third by the Emperor of Brazil.

References; E. Rouard de Card, 1892, p. 166.

466. **INDIANS and UNITED STATES, in 1889.** The contending factions for the governorship of the Chickasaw nation reached an *Agreement on January 9th, 1889.* Each chief agreed to submit his claims to Secretary Vilas, and allow him to decide, both agreeing to abide by his Award. The contest had been in progress for three months, and had caused bloodshed and bad feeling throughout the nation.

References: *Messenger of Peace*; *Herald of Peace*, November, 1889, p. 307.

467. **COLOMBIA and ITALY, in 1899.** This was the final stage of the Cerruti affair. The International Commission of Settlement having been dissolved, as already related, the Minister for Foreign Affairs, by a *Resolution of February 8th, 1899*, which was publicly announced, appointed the COLOMBIAN (*i.e.* a National) COMMISSION. The names of the members were published on the 18th of the month, and on the 20th they were installed in the same place as the previous Commission. They began their task immediately, examined carefully all the claims made on behalf of the creditors of Cerruti & Co., and on October 20th, 1899, signed at Bogota an elaborate *Final Report*, giving all the details, which was transmitted to the Minister for Foreign Affairs, by whom it was published.

References: *Anales Diplomaticos y Consulares de Colombia*, 1901, I. pp. 525-549; *D'ario Official*, No. 10, 890.

468. **FRANCE and ITALY, in 1900.** (III.) News was received by the Abyssinian Mail in April, 1901, that the Franco-Italian Red Sea frontier had been settled by the JOINT COMMISSION appointed for that purpose. Provision was made for this delimitation by a *Protocol*, signed *January 24th, 1900.* The port of Assab was assigned to Italy.

References: *London Times*, February 14th, 1899, p. 5. July 15th, 1899, p. 7, January 25th, 1900, p. 5, April 9th, 1901, p. 3; *Herald of Peace*, May, 1901, p. 52.

469. **GREAT BRITAIN and TRANSVAAL, in 1889.** (II.) Among the events of interest during the year may be noticed the appointment of Colonel Martieu as British representative on the JOINT COMMISSION, appointed by the Transvaal and British Governments to consider and report on the internal affairs of Swaziland.

Reference: Hazell's Annual, 1890, p. 676.

470. **FRANCE** and **SPAIN**, in 1891. (III.) On January 5th, 1891, the first meeting of the French and Spanish delegates (*i.e.* JOINT COMMISSION), to delimitate the frontier between the Mourie and Benito Rivers (Gaboon) took place.

Reference: Hazell's Annual, 1892, p. 295.

471. **TURKEY**, in 1888. (IV.) The *financial* position of Turkey caused much embarrassment; urgent claims by foreign creditors, officials (whose pay was much in a rears), the Russian war indemnity, and overdue accounts demanding serious attention. A FINANCE COMMISSION was appointed by the Sultan, and protracted negotiations with the Ottoman Bank for a loan of £T.1,500,000 were carried on during the latter part of the year.

Reference: Hazell's Annual, 1889, p. 658.

TWENTIETH CENTURY.

In many of these latest instances official information is very meagre; the documents have not yet been published; and the student is more dependent on passing history, that is, necessarily, on the reports in the newspaper press.

I.—FORMAL ARBITRATIONS.

1. **FRANCE** and **GREAT BRITAIN**, in 1901. *Waima and "Sergent Malamine" Incidents.* At the end of 1893, a British force at Waima, in West Africa, was attacked by a French force under a misapprehension, and three commissioned officers, a sergeant-major, four privates, and two members of the Sierra Leone police were killed, and fifteen non-commissioned officers and men and two of the police were wounded. For these losses the British Government claimed an indemnity of £10,000, afterwards reduced to £8,000. Some years before a French vessel, the "Sergent Malamine," commanded by Lieut. Mizon, was seized and sunk by the British. For this the French claimed an indemnity of 125,267·80 francs. Both these claims were, by an *Arbitral Convention*, signed at Paris, April 3rd, 1901, and ratified July 17th, referred to ARBITRATION. Baron Lambert, Belgian Minister of State, was chosen Arbitrator, and by his *Awards*, given in triplicate at Brussels, July 15th, 1902, the sum of £9,000 was accorded to Great Britain in the Waima case, and £6,500 to France in that of the "Sergent Malamine."

References: Parl. Papers [Cd. 673] Treaty Series, No. 6 (1901), [Cd. 1,076] France, No. 1. 1902; London *Times*, August 6th, 1900, April 6th, 1901, July 21st, 1902, December 2nd, 1902, April 6th, 1902; London newspapers, August 3rd and 4th, 1900; *Advocate of Peace*, September, 1902, p. 168; *Herald of Peace*, January, 1901-June, 1903, *passim*.

2. **BRAZIL** and **GREAT BRITAIN**, in 1901. *The Guiana Boundary.* The dispute regarding the boundary between British Guiana and Brazil, which had been dragging on since 1842, and in connection with which the British proposal of Arbitration was accepted by the Brazilian Government on March 8th, 1899, was formally submitted to the ARBITRATION of the King of Italy, by Art. 1 of a *Convention*, signed at London, November 6th, and approved by the Brazilian Senate, December 27th, 1901. Sir Rennell Rodd, on behalf of the British Government, and Senhor Joaquin Nabuco, Special Envoy of Brazil, having presented

their respective cases to the King, his Majesty signed his *Award* at Rome, June 14th, 1904. The result was greatly in favour of Great Britain. The line fixed in the *Award* is said to have been the one proposed by Lord Salisbury in 1891, and rejected by Brazil.

References: Parl. Papers [Cd. 916] Treaty Series, No. 4, 1902; Brazilian Legation, London, September 5th, 1902; *Jornal do Commercio*, June, 1904; London *Times*, December 28th, 1901, February 28th, 1903 [*Award*], June 16th, 1904; *Herald of Peace*, April, 1899, pp. 196, 197, April and May, 1903, July, 1904, p. 240, etc.; *Corresp. Bimens.* (Berne), March 25th, 1903, p. 32, July 10th, 1904, p. 96; *Advocate of Peace*, December, 1901, p. 239.

3. GREAT BRITAIN and NICARAGUA, in 1901. *Company Concessions.* In December, 1901, an announcement appeared in the press that the Appellate Division of the Supreme Court of Nicaragua had sustained the decision of the Arbitrators, who decided that the English Company, which had obtained the concession to the exclusive steam navigation of the San Juan River and Lake Nicaragua, had forfeited its rights. We have not succeeded in tracing the Arbitral decision to which reference is made.

Reference: *Herald of Peace*, January, 1902, p. 176; *Advocate of Peace*, December, 1901, p. 239.

4. SALVADOR and UNITED STATES, in 1901. *Company Claims.* On December 19th, 1901, a *Protocol* was signed, submitting to ARBITRATION the claims of the Salvadorian Commercial Company for damages arising out of alleged appropriation of their concession of rights, by the Government of Salvador. The claim was for 500,000 dollars. The Arbitrators were, Chief Justice Sir Henry Strong, of Canada, appointed by King Edward VII. of Great Britain, Chief Justice David Castro, of Salvador, and the Hon. D. M. Dickinson, of Detroit. The Court held its sittings at Washington. The *Award*, given in May, 1902, was in favour of the American Company, and was made by a majority of the Arbitrators, the Salvadorian member of the Court, Dr. José Pacas, dissenting, whereupon he arose in court and denounced Sir Henry and Mr. Dickinson, the American member, "for treating him and his country with the grossest unfairness." Sir Henry, it is said, personally resented the attack. The incident shows the extreme undesirability of including citizens of either of the contending states in the composition of a Court to which their dispute is referred. A despatch from Washington, August 18th, 1903, stated that the claims of the Salvadorian Commercial Company against the Government of Salvador had been compromised. The Government of Salvador was not satisfied with the *Award* of the Arbitrators, and objected to pay the full amount, of 523,178 dollars, given to the Salvadorian Commercial Company, consequently the parties came to an agreement.

References: *Herald of Peace*, June, 1902, p. 240, October, 1903, p. 125; *Advocate of Peace*, January, 1902, p. 8, April, 1903, p. 62; September, 1903, p. 159; *Corresp. Bimens.* (Berne), June 25, 1902, p. 75.

5. MEXICO and UNITED STATES, in 1902. "*The Pious Fraud of the Californias.*" This case was the *first* submitted to a Tribunal of the Permanent Arbitration Court at The Hague. It had been the subject of an Arbitral *Award*, given by Sir Edward Thornton, the Umpire chosen under the Convention of July 4th, 1868, on November 11th, 1875. The reference was now made by a *Protocol of Agreement*, which was done in duplicate, in English and Spanish, at Washington, May 22nd, 1902. The Arbitrators chosen were Lord Justice Sir Edward Fry and Professor de Martens (by the United States), and Professor Asser and Jonkheer de Savornin Lohman (by Mexico), and these selected Dr. Matzen, of Copenhagen, as Umpire. The Court was opened on September 15th, and its first meeting was held at The Hague, September 29th, 1902, and the *Award*, in favour of the United States, was given on October 14th, 1902. The Court decided that the claimants were entitled to a permanent annual payment of 43,050.99 dollars (£8,610); that as the *Award* was binding upon both parties, the arrears should be paid in full, and that the payment of the fixed amount should thereafter be made annually. The arrears amounted to 1,420,082.67 dollars (*i.e.*, £284,016). The Court further decided that the payments should be made in Mexican currency; but the deprecia-

tion in the value of silver (which is the currency of Mexico) is such that the payment yields in United States dollars only half the amounts named.

References: *Les Fondations Californiennes*, etc., Plaidoirie de M. Descamps, Bruxelles, 1902; *Reclamaciones a Mexico por los Fondos de Californias*, por el Lic. Alejandro Villaseñor, México, 1902; *La Justice Internationale*, May 25th, 1903, pp. 18-43; *American Agents' Report*, etc., Washington, Government Printing Office, 1902; *Actes de la Conférence de la Paix*, Recueil des Actes et Protocoles, etc., Bureau Int. de la Cour Permanente d'Arbitrage, etc., La Haye, 1902; *Diplomatic Correspondence relative to the Pious Fund of the Californias*, Washington, 1902; Louis Renault, *Premier Litige devant la Cour*, etc., Alcan; *Journal des Debat*s, November 26th, 1902; *Le Mémorial Diplomatique*, 18 Octobre, 1902, and 8 Mars, 1900; *La Revue de la Paix*, November 25th, 1902; *Corresp. Bimens.* (Berne), May 10th, 1902, p. 59, August 10th, p. 97, September 10th, p. 111, September 25th, p. 115, October 25th, 1902, p. 123; *Advocate of Peace*, November, 1902, pp. 197, 198.

6. GREAT BRITAIN and RUSSIA, in 1902. *Seizure of Property.* In a despatch from Peking, December 12th, 1900, report was made that the Russians had seized some land at Tientsin, belonging to the Tientsin-Pekin Railway Company, and on March 15th, that they had placed sentries upon it, in order to prevent the British military authorities from constructing a siding. Correspondence followed, which included proposals by the British to refer the dispute to Count Waldersee, German Commander and General-in-Chief, or "to any Court which he may appoint." The situation became acute, but the military incident was satisfactorily closed without Count Waldersee's intervention, April 4th, 1901. On February 21st, 1901, a Ministerial statement, in the House of Commons, was made to the effect that a proposal for ARBITRATION had been made to Russia, and on April 29th, 1902, another, giving the information that the Russian Government had accepted the proposal. The question was referred to the British and Russian Consuls, with Mr. Detring, Director of the Imperial Maritime Customs at Tientsin, as third Arbitrator. His final *Award*, given at Tientsin, was wholly in favour of Great Britain. The bund, the station, the roads, and certain parcels of land were adjudicated to the Railway Company.

References: *Parl. Papers* [Cd. 770] China, No. 7, 1901, pp. 41-127; *London Times*, February 22nd, 1902, April 30th, 1902, July 4th, 1902, April 30th, 1903, May 1st, 1903; July 3rd, 1903; *Herald of Peace*, June, 1902, p. 240, August, 1902, p. 273, January, 1903, p. 4, May, p. 52, June, p. 71, August, 1903, p. 96; *Daily News*, July 5th, 1902; *Hazell's Annual*, 1902, 105-107; *Annual Register*, 1902, p. 387; *Corresp. Bimens.* (Berne), July 25th, 1903, p. 79.

7. AUSTRIA and HUNGARY, in 1902. *Territorial Claims.* A dispute which had caused trouble for several centuries, between Galicia and Hungary, in regard to the possession of territory around Lake Meerauge, on the frontier, in the district of Upper Tatra was, in June, 1902, submitted to an ARBITRATION TRIBUNAL, which was composed of MM. le Chev. de Tchorzuicki, President of the Superior Court (Oberlandesgericht) at Lemberg, Lehozky, President of the Court of Appeal at Pressbourg, and presided over, as Umpire, by Dr. Jean Winkler, President of the Swiss Federal Tribunal, who was chosen by the other two Arbitrators. The Tribunal was constituted at Vienna in April, 1902. It held public sittings, for the examination of evidence, from August 21st to August 30th, 1902, at Grätz; made a local inspection, September 3rd and 4th; resumed its sittings at Grätz, September 10th, to receive expert and other evidence; and sat with closed doors from September 11th to September 13th, on which day its *Judgment* was reached. This was written and revised at Vienna, September 15th to September 17th, and communicated to the parties, the Austrian and Hungarian Governments, on September 18th, 1902. The Award was in favour of Galicia to which it adjudged the four districts in dispute with the exception of a few forests. The promptitude of the action of this court is commendable.

References: Dr. Winkler, communicated July 9th, 1904; *Herald of Peace*, July, 1902, p. 259, October, 1902, p. 297, and December, 1902, p. 322; *Corresp. Bimens.* (Berne), September 25th, 1902, p. 116; *Advocate of Peace*, November, 1902, p. 205.

8. FRANCE, GERMANY, and GREAT BRITAIN v. JAPAN, in 1902. *Leas s Held in Perpetuity.* The levying of a house tax on the subjects of these

countries in Japan, the legality of which was questioned by the holders of perpetual leases, gave rise to a great controversy. The dispute involved the interpretation of the following: Par. 4, Art. 18, of the Treaty of April 4th 1896, between Japan and Germany; Par. 4, Art. 21 of the Revised Treaty of August 4th, 1896, between Japan and France; and Par. 4, Art. 18 of the Revised Treaty of July 16th, 1894, between Japan and Great Britain. By a simultaneous Protocol between Japan and each of the Powers, signed at *Tokio*, on *August 28th*, 1902, published September 26th, the question was submitted to a TRIBUNAL OF THE PERMANENT COURT OF THE HAGUE, to be composed of three members, one chosen by each party, and an Umpire by the other two, or the King of Sweden and Norway. The Arbitrators chosen were Count Montono, Professor Renault, and M. Giam, as Umpire, chosen by them. The proceedings before the Tribunal have been delayed by the war in the East, but its decision is expected in October, 1904.

References: Parl. Papers [Cd. 1810] Treaty Series, No. 16. 1903; *La Justice Internationale*, Aôut, 1903, pp. 179-181; *Hazell's Annual*, 1903, p. 355; *Corresp. Bimens.* (Berne), October 25th. 1902, p. 123, November 10th, p. 130, April 10th, 1903., January 25th, 1904 p. 10, April 10th, p. 47, June 10th, p. 80; *Herald of Peace*, November, 1902, p. 309, December, 1902, p. 322, January, 1903, p. 4, June, 1903, p. 71, January, 1904, p. 164, March, 1904, p. 189, July, 1904, p. 240; *Advocate of Peace*, December, 1902, pp. 213, 214, 223.

9. FRANCE and GUATEMALA, in 1902. *Personal Claim.* On *December 30th*, 1902, Reuter's Agency reported from Paris that within the last month the Governments of France and Guatemala had agreed in principle to submit to THE HAGUE COURT OF ARBITRATION a claim brought against the latter by a French subject, who in 1896 and 1897 had carried out important works for Guatemala, and that negotiations were actively proceeding for the drafting and signature of the necessary Agreement. In March the Foreign Minister, M. Delcassé, announced in the Chamber of Deputies that France and Guatemala had agreed to refer the dispute to The Hague Court. Further proceedings have not yet been reported.

References: *London Daily News*, December 31st, 1902; *Herald of Peace*, February 1903, p. 21, April, 1903, p. 41; *Advocate of Peace*, March, 1903, p. 46, and April, 1903, p. 66; *Corresp. Bimens.* (Berne), February 25th. 1903, p. 21.

10. GUATEMALA and ITALY, in 1902. *Claims of Italian Subjects.* In *April*, 1902, it was announced that M. Emile Loubet, President of the French Republic, had been chosen by Italy and Guatemala as ARBITRATOR, in the difference which had arisen between them on the subject of the interests of certain Italian emigrants in South America. This is confirmed by the Italian Embassy in London, who state that the Award of the President has been given but there is only one copy of the Award extant in the archives of the Italian Foreign Office and, therefore, the information is not available.

References: *La Paix par le Droit*, Mai, 1902, p. 200; *Corresp. Bimens.* (Berne), June 25th, 1902, p. 75; *Herald of Peace*, July, 1902, p. 259; *Advocate of Peace*, August, 1902, p. 155; *Ambasciata d'Italia*, London, August 9th, 1904.

11. FRANCE and VENEZUELA, in 1902. *Indemnity for Losses.* This case of Arbitration dealt with the claims made by French subjects for losses sustained in Venezuela in consequence of the insurrection of 1892. By a *Protocol*, signed at *Paris*, *February 19th*, 1902, which re-established diplomatic relation between the two countries, these claims were submitted to a TRIBUNAL of two ARBITRATORS, who were to meet at Caracas, and an Umpire in case of difference. The Arbitrator appointed by France was M. Peretti della Rocca, and by Venezuela, M. Jesús Paul, while Señor Leon y Castillo, the Marquis del Muni, Spanish Ambassador to France, was appointed Umpire, to decide, if called upon, without appeal. The Arbitrators met as stipulated at Caracas, and the claims, which they were divided upon, were, at the close of 1903, submitted to the Umpire, who *Awarded* a round sum of a million bolivars.

References: *Journal Officiel*, May, 1902; *Le Temps*, December 17th. 1902; *La Justice Internationale*, December, 1903, p. 439; *Corresp. Bimens.* (Berne), November 10th, 1903, p. 126; *Herald of Peace*, June, 1902, p. 240, January, 1903, p. 4.

12. GREAT BRITAIN and PORTUGAL, in 1903. *The Barotzeland Boundary.* The Western boundary of the kingdom of Barotzeland in South Africa was, in March, 1903, referred to an Anglo-Portuguese Commission for delimitation, this Commission having the power to appeal to an Empire "in the event of the British and Portuguese members being unable to agree," Admiral Hermenegildo Capello, Captain Ayres Onellas, of the Engineers, and Captain de Vasconcellas, of the Portuguese Navy, were appointed Portuguese Commissioners, and were charged to proceed to London, to meet the British members of the Commission. By the terms of a *Declaration*, which was signed in duplicate at London, August 12th, 1903, the King of Italy was appointed ARBITRATOR, and accepted the office. The Joint Commission, now consisting of four British and four Portuguese members, sitting in London, decided on the procedure to be adopted in the Arbitration. The cases were prepared and exchanged between the Governments in January, 1904; the drawing up of the counter cases was then proceeded with, and these, "the final memoranda of their respective Governments in the dispute," were presented by June 1st, 1904. Only the delivery of the Award now remains.

References: Reuter's Agency (in daily press), March, 1903; London *Times*, October 31st, 1903, June 2nd, 1904; *Corresp. Bimens.* (Berne), March 25th, 1903, p. 32, and November 10th, 1903, p. 126; *Herald of Peace*, April, 1903, p. 39; June, p. 71; September, p. 107; December, 1904, p. 150; April, p. 200, July, 1904, p. 240.

13. BOLIVIA and PERU, in 1903. *Question of Boundaries.* In November, 1900, a Treaty was signed, submitting to Arbitration all questions pending between these countries, but it was not ratified. By a Treaty, however, signed January 2nd, 1903, the Argentine Government was appointed as ARBITRATOR in the boundary dispute. The fact was announced by President Romana in his speech at the opening of the Congress at Lima, July 28th, 1903. At the beginning of February, 1904, the Argentine Minister for Foreign Affairs received an official communication from the Government of Bolivia, announcing that President Roca had been named Arbitrator in the boundary question between Bolivia and Peru. The case is, therefore, pursuing the normal course.

References: Hazell's Annual, 1904, p. 582; London *Times*, December 27th, 1901; London *Daily News*, January 3rd, 1903; *Herald of Peace*, February, 1903, p. 16, September, 1903, p. 108; *The South American Journal*, February 6th, 1904, p. 126; *Corresp. Bimens.* (Berne), January 25th, 1902, p. 6; January 25th, 1903, p. 9; *Advocate of Peace*, December, 1901, p. 238.

14. SAN DOMINGO and UNITED STATES, in 1903. *Liquidation of Debt.* In January of this year the Dominican Government and the American firm of J. Sala & Co. agreed to submit to Arbitration the claim of that firm, amounting to 215,000 dollars, for payment of supplies furnished to the late President. The firm selected, as Arbitrator, Mr. Frederick Van Dyne, Assistant Solicitor in the United States Department; and the Government of San Domingo chose the Bolivian Minister at Washington. Further particulars are not known.

References: *Herald of Peace*, February, 1903, p. 16; *Advocate of Peace*, January, 1903, p. 11, June, 1903, p. 108.

15. AUSTRIA-HUNGARY and TURKEY, in 1903. *Non-execution of Contracts.* This was undertaken for the settlement of a number of questions outstanding since 1888. The case includes several monetary claims, the right to certain lands at Salonica, said to be wrongly appropriated by the Administration of the Sultan's Civil List, the building of harbours at Dede-Agatch and Salonica, which the Government undertook to carry out in three years, by its Convention with the railway company of May, 1872, and various other matters in that Convention which the Government has failed to execute. In consequence of the non-execution of these obligations the Company claimed about 70,000,000 francs, for losses sustained. A communication from Constantinople, January 9th, 1903, stated that, after over a year's efforts on the part of the Austro-Hungarian Embassy, the Sultan had sanctioned the "Compromis," i.e., the Arbitration Agreement, which had been arrived at between the Oriental Railway Company and the Turkish Government, for the submission of the points at issue between

them to the Arbitration of a MIXED TRIBUNAL. The *Award* was given at the beginning of December, 1903, when, among the questions settled, the claim of the Turkish Government for the termination of its Agreement with the Company was not entertained. The passage referring to this point in the telegram announcing the *Award* was suppressed by the Censor.

References: *Financial News*, January 13th, 1903, December 7th, 1903, p. 5; *Herald of Peace*, February, 1903, p. 16.

16. **SAN DOMINGO** and **UNITED STATES**, in 1903. *Company Claims*. A telegram from San Domingo, received at New York, *January 28th*, 1903, stated that the proposal of the American Minister to refer the disputed claims of the San Domingo Improvement Company of New York to INTERNATIONAL ARBITRATION, had been accepted. The claims amounted to about five million dollars. A despatch from Santo Domingo, dated November 28th, 1903, stated that Mr. Powell, the United States Charge d'Affaires, had refused to acknowledge the Provisional Government, and had objected to the withdrawal of the Arbitrators nominated by ex-President Wos y Gil to settle the claims of the Santo Domingo Improvement Company. Mr. Powell maintained that the Board of Arbitration, having been fully constituted according to the terms of the Protocol, must proceed with the case, and that its decision must be final.

References: *London Times*, January 29th, 1903, p. 4, and November 30th, 1903; *Herald of Peace*, February, 1903, p. 16; *Advocate of Peace*, March, 1903, p. 46, June, 1903, p. 108, January, 1904, p. 10; *Corresp. Bimens. (Berne)*, April 10th, 1903, p. 39, May 10th, 1903, p. 49.

17. **TURKEY** and **THE POWERS**, in 1903. *Ottoman Public Debt*. The question of increasing the rate of interest on this debt was, by an Agreement between the Council of the Debt and the Turkish Government, in *February*, 1903, referred to an ARBITRATION COMMISSION of four, two on each side, with an Umpire, if necessary, to be chosen by them by lot. The case was heard before the Arbitrators, but their opinions were equally divided, and the matter had, therefore, to be referred to an UMPIRE for decision. Lord Alverstone, the Lord Chief Justice of England, was chosen, as provided, on *May 19th*, 1903, and intimated his readiness to accept the office. The documents in connection with the case were, on June 22nd, dispatched to London, to be communicated to Lord Alverstone, whose *Award*, given on July 23rd, 1903, was in favour of increasing the rate of interest by $\frac{1}{4}$ per cent.

References: *London Times*, February 20th, May 21st, July 24th, August 3rd, September 7th, September 14th, and September 18th, 1903; *London Daily News*, May 29th and June 26th, 1903; *Herald of Peace*, June, July, and August, 1903; *Corresp. Bimens. (Berne)*, August 25th, 1903, p. 91.

18. **GERMANY**, **GREAT BRITAIN**, and **ITALY** v. **VENEZUELA**, in 1903. *Preferential Claims*. By Art. 5 of Identical Protocols between Venezuela and the three Powers engaged in the recent blockade and bombardment of her coasts (but to which, it was provided, other interested Powers might make themselves parties), it was agreed that the question of their preferential claims should be referred to a TRIBUNAL of THE HAGUE COURT. These were signed at Washington, at midnight, on *February 13th*, 1903. They were followed by other Agreements, signed also at Washington, on *May 7th*, 1903, fixing the terms of the Reference, and agreeing that the Emperor of Russia should appoint the Tribunal from the members of the Permanent Court at The Hague. These Agreements actually constitute *three* distinct references, though treated as one; in fact, more than three, as other interested Powers have made themselves parties. At first, owing to this circumstance, some difficulty was experienced in finding suitable Arbitrators, so many of the Powers being interested parties, and the Agreement providing: "None of the Arbitrators so appointed shall be a subject or citizen of any of the Signatory or Creditor Powers." Professor Matzen, of Copenhagen, who was selected by the Tsar, being a Danish subject, was, therefore, compelled to decline, inasmuch as Denmark was one of the interested parties. For the same reason Dr. Lardy, Swiss Minister in Paris, who was also chosen by the Tsar, was compelled to decline, Switzerland being also

interested. The Arbitrators ultimately appointed by the Tsar, and definitely adopted by the contending parties, were M. Muravieff, Professor Lammasch, and M. de Martens. The Arbitrators met at The Hague on October 1st, 1903. Their Award, given at The Hague, in the Permanent Court of Arbitration, on February 22nd, 1904, sustained the right of the three claimant Powers to preferential treatment for the payment of their claims against Venezuela.

References: Parl. Papers [Cd. 1399] Venezuela, No. 1, 1903, [Cd. 1538] Treaty Series No. 8, 1903 [Cd. 1949], Venezuela No. 1, 1904; La Justice Internationale, July, 1903, p. 101. etc., September, 1903, p. 239, etc., November, 1903, p. 349, December, 1903, p. 430, January, 1904, p. 1, etc.; *Herald of Peace*, June, 1903, to May, 1904, *passim*; London *Times*, December, 1902, to April, 1904, *passim*, and Press generally for that period; Corresp. Bimens. (Berne), June 10th, July 25th, August 25th, 1903, April 10th, 1904.

19. **ECUADOR and PERU, in 1904.** *Question of Boundary.* In March of the present year, 1904, it was announced that the Secretary for Foreign Affairs of Ecuador and the Peruvian Minister at Quito had signed a Treaty, submitting to the ARBITRATION of the King of Spain the question of the Napo River boundary between Ecuador and Peru. In this case, also, the particulars have not transpired.

References: Hon. C. M. Pepper at Mohonk Arbitration Conference, June 2nd, 1904; Corresp. Bimens. (Berne), April 25th, 1904, p. 55; *Advocate of Peace*, April, p. 63, and July, 1904, p. 131; *Herald of Peace*, July, 1904, p. 240.

20. **FRANCE and GREAT BRITAIN, in 1904.** *Alleged Misuse of the French Flag in Muscat.* In 1862 these two countries entered into Treaty engagements to preserve the independence of the Sultanate of Muscat. Of recent years, however, complaint has been made against France that she has allowed her flag and the protection of semi-citizenship to cover an illicit trade in arms and slaves. This is a matter which, as stated in the House of Commons, has caused considerable friction, and sometimes brought the two Powers within an ace of war. An important statement was made in the London *Times*, at the time of Lord Curzon's visit to the Persian Gulf, in December, 1903, to the effect that "the question of principle is to be referred to The Hague Tribunal." The Prime Minister replying to a question on the subject in the House of Commons on June 2nd, 1904, confirmed this statement, and added, "that question had by common consent been referred to The Hague Tribunal for decision." The particulars have not yet transpired.

References: London *Times*, December 29th, 1903, and June 3rd, 1904; Corresp. Bimens. (Berne), July 10th, 1904, p. 97.

21. **COLOMBIA and PERU, in 1904.** *Boundary Question.* The notice has just appeared that Colombia and Peru have signed a Treaty submitting to the ARBITRATION of the King of Spain the question of the delimitation of their frontiers and establishing a *modus vivendi* in the disputed region. The particulars have not yet transpired.

References: Corresp. Bimens. (Berne), July 10th, 1904, p. 96; *Advocate of Peace*, July, 1904, p. 128; *Herald of Peace*, August, 1904, p. 252.

II.—ARBITRAL BOARDS AND COMMISSIONS.

22. **GREAT BRITAIN and ITALY, in 1901.** Outstanding differences between these two countries on the Eritrea and Sudan Frontier were referred to a MIXED COMMISSION, appointed by a *Convention*, signed April 16th, 1901. This Commission, composed of three representatives on each side, met in Rome, at the Consulta, on November 18th, 1901. On November 20th, 1901, they came to a general agreement in regard to the outstanding portions of the boundary, but as the existing maps were not sufficiently precise, they decided to request their respective Governments to authorise and appoint a Joint Commission for practical delimitation on the spot. On November 26th the Commission held two sittings, and finally completed their work by signing the Acts relating to it, which would be submitted to their Governments for ratification. A settlement was thus reached

of all questions pending, on the matter of the frontiers, and of customs, posts, and telegraphs. This settlement, as regards the frontiers, was amended by a Treaty between Great Britain and Italy, signed at Adis Ababa, May 15th, 1902, concerning which Signor Prinetti, the Italian Foreign Minister, stated in the Senate on June 18th, 1902, that "the recent Anglo-Italian Convention settled in a manner satisfactory to Italy the question of the frontiers towards the Egyptian Soudans and Ethiopia, and *in such a way that the relation with the neighbouring countries has become more cordial.*"

References: Parl. Papers [Cd. 1370] Treaty Series No. 16, 1902; London *Times*, November 7th, November 21st, and November 27th, 1901, and June 19th, 1902; *Herald of Peace*, December, 1901, p. 162, July, 1902, p. 259.

23. **CHINA and GREAT BRITAIN, in 1901.** By Art. 9 of a Protocol, signed at Peking, September 7th, 1901, a Special Joint Commission was appointed to deal with certain commercial questions specified. The British members of this Commission were Sir James L. Mackay, a member of the India Council, with two Assistant Commissioners, Mr. H. Cockburn and Mr. C. J. Dudgeon, of Shanghai. The Chinese appointed as their representatives Sheng-Hsuan-Huai, Director-General of Telegraphs, assisted by two Maritime Customs Commissioners, Messrs. A. E. Hippisley and F. E. Taylor. One of their duties was to prepare a total of specific duties, to take the place of the 5 per cent. *ad valorem* tariff, which came in force after the signature of the Peace Protocol. The result of their labours was embodied in a Treaty which was signed at Shanghai, September 5th, 1902.

References: Annual Register, 1901, p. 359; London *Times*, September 20th, 1901, p. 7 and September 8th, 1902 (Text of Treaty).

24. **RUSSIA and TURKEY, in 1902.** A Reuter's telegram to the press in *December*, 1902, announced that "a TURCO-RUSSIAN COMMISSION had been formed to adjudicate on various Russian claims, comprising the indemnity to be paid for losses sustained by Russian subjects during the Russo-Turkish war, numerous pending legal matters, and other questions affecting their interests." Particulars of this appointment are not known beyond the fact that it was appointed and set to work. In replying to a Note of the Porte, dated July 12th, 1902, in which the Turkish Government refused to recognise the Russian claim for interest on account of the delay in the payment of the indemnity to Russian subjects for losses suffered by them during the Russo-Turkish war, the Russian Embassy, on February 19th, 1903, addressed a fresh Note to the Porte, maintaining its right to demand the payment of interest, *the amount of which it proposed should be determined by the Mixed Russo-Turkish Commission, "which is at present engaged in the settlement of numerous matters which have been for some time in dispute between the Embassy and the Porte."*

References: London *Times*, December, 1902, and February 23rd, 1903; *Herald of Peace*, January, 1903, p. 4.

25. **AFGHANISTAN and PERSIA, in 1902.** The SEISTAN ARBITRATION BOUNDARY COMMISSION was appointed *at the end of 1902* (precise date unknown); for advices from Calcutta, dated January 26th, 1903, state that it had crossed the Afghan Boundary on the 23rd of that month. At the head of the Commission was Major MacMahon, who was deputed by the British Government. A Ministerial statement made by Lord George Hamilton, Secretary of State for India, in the British House of Commons, on March 3rd, was to the effect that, in accordance with Art. 6 of the Treaty of 1857, Major MacMahon, at the head of a Joint Commission, had just proceeded to the Seistan frontier to settle certain disputes which have arisen between the Afghans and Persians in regard to irrigation and boundary rights. It was reported, on February 18th, that Major MacMahon and the other members of the Commission had arrived at Jehan-Beg, and on the 12th previously had been joined by the Afghan Commissioner safely on the Helmand River. The work was said to have proceeded satisfactorily, but it had not been finished up to the close of 1903.

References: Hansard; Annual Register, 1903, p. 359; London *Times*, January 27th, p. 3, February 6th, 11th and 19th, March 4th, p. 6, August 31st, and September 15th, 1903; *Herald of Peace*, February, March, and April, 1903, May, 1904, p. 213.

26. **AFGHANISTAN and GREAT BRITAIN, in 1903** The question of strained relations and of tribal quarrels which had been of constant occurrence for several years past, between the tribesmen on either side of the frontier, that is, between the Turis, in British territory, and the local Afghan tribes, was, early in 1903, referred to an **ANGLO-AFGHAN COMMISSION**, which met on the borders of the Kurram valley. The British representative on the Commission was Mr. John Stuart Donald, C.I.E., who was British Commissioner for the demarcation of the boundary in the Kurram district in 1894, and the Amir's representative was Sirdar Gul Mahomed, ex-Governor of Khost. The result of their labours has not transpired.

References : Annual Register, 1903, p. 360 ; *Herald of Peace*, April, 1903, p. 40.

27. **GREAT BRITAIN and UNITED STATES, in 1903.** *Alaska Boundary.* When the United States Government purchased, in the year 1867, the Russian rights in Alaska, the boundary line of the country sold was to follow the Treaty which Russia had concluded with Great Britain in 1825. But that Treaty used somewhat vague expressions as to boundary lines, hence difficulty arose. By a Convention, signed January 30th, 1897, by Mr. Olney and Sir Julian Pauncefote, the question was referred to a Joint Commission of four members, who were to hold their sittings in London and Washington. It was, however, included in the matters to be discussed by the Anglo-American Commission, appointed in June, 1898, under the reference of May 30th, 1898. After long discussion, and with much difficulty, the Commissioners succeeded in reaching an Agreement to which all could subscribe, and were looking forward to a settlement of the boundary question, and of conflicting mining interests generally, in Alaska, when an Act passed by the British Columbia Legislature interfered. The two Governments, however, reached an Agreement of the nature of a *modus vivendi*, roughly defining, by certain landmarks, the boundary from the Klondike section to British Columbia. An Agreement of a similar kind was reached in October, 1899. In August, 1900, a further provisional delimitation by Messrs. King and Titman, the Canadian and United States Boundary Commissioners, was announced. On *January 24th, 1903*, a *Convention* was signed at *Washington*, appointing a **MIXED COMMISSION**, to "consist of six impartial jurists of repute," appointed jointly and equally by the parties. The first meeting of the Commission was held at the Foreign Office, London, on September 3rd, 1903. The British members were Lord Alverstone, Lord Chief Justice of England, Sir Louis Jette, K.C.M.G., and Mr. Allen Aylesworth, K.C., of Toronto (in place of Mr. Justice Armour, who died just before the opening of the Court). The United States representatives were the Hon. Elihu Root, the Hon. H. Cabot Lodge, and the Hon. George Turner. The *Award*, signed by a majority of the Commissioners, the Canadian members protesting, was given on October 20th, 1903, and was largely in favour of the United States, which created much dissatisfaction in Canada, although the Award was loyally accepted and obeyed. Although not a formal Arbitration, the judicial independence and ability of Lord Alverstone invested it with that character, and his judgment was accepted as final.

References : [Cd. 1400] United States, No. 1, 1903 ; [C1. 1877] United States, No. 1, 1904 ; [Cd. 1878] United States, No. 2, 1904 ; Hazell's Annual, 1902, p. 697, 1903, pp. 763, 764 ; *Daily News*, February 19th, 1903 ; *London Times* ; *Herald of Peace*, February and December, 1903, and press generally ; *Corresp. Bimens.* (Berne), November 10th, 1903, p. 125 ; *La Justice Internationale*, November, 1903, pp. 375-378 ; *The Law Times*, September 5th, 1903, p. 419.

POWERS and VENEZUELA.

The protocols, signed at Washington on February 13th and May 17th, 1903, between Venezuela and the three blockading Powers (Great Britain, Germany, and Italy) provided both for the reference of the preferential claims to a Hague Tribunal, and also for the appointment of Mixed Commissions at Caracas, for the examination and settlement of the respective claims. These Commissions were in each case to consist of two members, appointed by Venezuela and the opposing Power respectively, and a third, to act as Umpire, who should be

appointed as arranged in each. The creditors of Venezuela in addition to these three Powers were—the United States, France, Spain, Belgium, the Netherlands, Norway and Sweden, and Mexico. Mixed Commissions similarly composed were appointed in the case of each. The Agreements were then as follows:—

28. **GREAT BRITAIN and VENEZUELA, in 1903.** The Umpire under the *Protocol of May 7th, 1903*, was to be appointed by President Roosevelt, who selected Mr. Frank Plumley, Judge of the Court of Claims, Vermont. The Anglo-Venezuelan Mixed Commission held its first meeting at Caracas on June 12th, 1903. The amount of claims submitted to it was £500,000. Interesting *Awards* from the Umpire have been reported, one of the last reports being on May 30th, 1904.

References: Parl. Papers [Cd. 1538] Treaty Series, No. 8, 1903; *London Gazette*, May 29th, 1903; *London Times*, February 16th, May 9th, and May 30th, 1903, and later to May 31st, 1904; Newspaper press generally; *Herald of Peace*, April to November, 1903, and January, February, March, and August, 1904.

29. **GERMANY and VENEZUELA, in 1903.** By identical *Protocols*, signed at *Washington, February 13th and May 7th, 1903*, the claims of Germany against Venezuela were referred to a similar MIXED COMMISSION. President Roosevelt appointed Dr. Fred. W. Holls as Umpire, and on his death, Mr. H. M. Duffield, of Detroit. The number of claims was reported, as 79, and the Umpire *Awarded* to Germany a total of 1,673,527 marks (about £82,848); the claims refused and withdrawn amounted to 3,995,504 marks.

References: As above. Also, *Imperial Gazette*, May 11th, 1903; *La Justice Internationale*, September-October, 1903, pp. 255, 256; *London Times*, October 5th, p. 4, and October 12th, 1903, March 29th, 1904, etc.

30. **ITALY and VENEZUELA, in 1903.** Italy was the third blockading Power included in the *Joint Protocols* signed at *Washington, February 13th and May 7th, 1903*. A similar arrangement was, therefore, made, and a similar MIXED COMMISSION appointed. The same Umpire, Dr. F. W. Holls, was selected as for Germany, and, on his death, Mr. Jackson M. Ralston was appointed by the President, as third Arbitrator. Claims to the amount of £110,296 were admitted by Venezuela. *Awards* to the amount of £66,238 were made by the Mixed Commission, and claims to the amount of £1,296,419 were reserved for the decision of the Umpire, who by his final *Award* allowed £120,000 out of the amounts claimed.

References: As above. Also, *La Justice Internationale*, September-October, 1903, 253-272; *London Times*, March 29th and August 2nd, 1904, etc.

31. **UNITED STATES and VENEZUELA, in 1903.** This reference was made under a *Protocol*, signed at *Washington, February 17th, 1903*. The same provisions were made as to the MIXED COMMISSION, Queen Wilhelmina, of Holland, consenting to appoint the third Arbitrator. The Umpire, chosen by her, was Mr. Barge, Ex-Governor of Caracas (Curaçao). The United States claims against Venezuela amounted to 10,900,000 dollars (about £2,180,000). On November 10th 1903, Dr. Paul, Assistant-Counsel for Venezuela, informed the Court at The Hague that the United States had been awarded, up to that date, £68,000, and that claims to the amount of £880,000 had not yet been adjudicated upon.

References: See above. Also, *London Times*, February 18th, September 22nd and November 11th, 1903; *Memorial Diplomatique* (Paris), April, 1903; *Corresp. Bimens.* (Berne), April 10th, p. 39, and May 25th, 1903, p. 55, etc.

32. **FRANCE and VENEZUELA, in 1903.** The claims of France against Venezuela were, by a *Protocol*, signed in *Washington, February 27th, 1903*, referred to a similar MIXED COMMISSION, which was, like the others, to meet at Caracas, on June 1st. The Queen of Holland was invited to appoint the third Member of the Commission, or Umpire. She appointed M. Filz, formerly President of the High Court of the Dutch East Indies. Dr. Paul reported to The Hague Court, on November 10th, 1903, that £108,000 out of £720,000 claimed

had been awarded by the Mixed Commission, the remaining claims, amounting to a further total of over a million and a quarter sterling, having yet to be examined. The task has since been completed.

References: See above. Also, *Journal Officiel*, May 12th, 1903; *London Times*, May 14th, p. 5, July 3rd, p. 5, and November 18th, 1903, p. 3; *Corresp. Bimens.* (Berne), May 25th, 1903, p. 58.

33. SPAIN and VENEZUELA, in 1903. In *March*, 1903, a similar MIXED COMMISSION was appointed to sit at Caracas. The Umpire was appointed by Mexico. The total amount of the claims was 600,000 dollars (£120,000), and it was reported, in February, 1904, that its work had been completed.

References: See above. Also, *Advocate of Peace*, April, 1903, p. 68; *London Times and Daily News*, September 22nd, 1903; *Herald of Peace*, October, 1903, p. 125, March, 1904, p. 189.

34. BELGIUM and VENEZUELA, in 1903. The reference in this case was made by a *Protocol*, signed at *Washington, March 7th*, 1903. A similar MIXED COMMISSION was instituted. The Queen of Holland, who was requested to nominate the third Arbitrator, appointed Mr. Filz, as for the Franco-Venezuelan Commission. The claims amounted to a total of 3,093,800 dollars or £618,760. On September 11th, 1903, the Umpire awarded a sum of £400,000 to the Belgian Waterworks.

References: See above. Also, *La Justice Internationale*, September-October, 1903, pp. 251-253; *Corresp. Bimens.* (Berne), May 25th, 1903, p. 55; *London Times and Daily News*, September 22nd, 1903, *Herald of Peace*, October, 1903, p. 125, etc., *Advocate of Peace*, October, 1903, p. 176.

35. NETHERLANDS and VENEZUELA, in 1903. On *February 28th*, 1903, at *Washington*, Baron Govers and Mr. Bowen signed the Netherlands Protocol in regard to Venezuela, referring the question of claims to a MIXED COMMISSION, as in the other instances, President Roosevelt to name the Umpire. He appointed Mr. Frank Plumley, as in the case of Great Britain. The Dutch claims amounted to £209,630. On January 22nd, 1904, Baron Melvil van Lynden, Foreign Minister, stated in the States-General that fifty claims had been presented, amounting to 5,242,519 bolivars, that claims amounting to 397,554 bolivars had been admitted, besides a number of private claims amounting to 146,747 bolivars, while two claims, amounting to 4,172,967 bolivars, had been settled by private agreement.

References: See above. Also, *London Daily News*, February 29th and September 22nd, 1903; *Times*, September 22nd, 1903; *Herald of Peace*, October, 1903, p. 125, February, p. 176, and August, 1904, p. 253.

36. SWEDEN AND NORWAY and VENEZUELA, in 1903. Reference was made in this case also, precise date unknown, to a MIXED COMMISSION, to meet at Caracas. The King of Spain, who was requested to appoint the third Arbitrator, nominated Señor R. Gaytar de Ayala, the Spanish Envoy at Caracas. The total amount of claim was £40,000, and in February, 1904, it was reported that the work was completed.

References: See above. Also, *London Times and Daily News*, September 22nd, 1903; *Corresp. Bimens.* (Berne), May 25th, 1903, p. 55; *Herald of Peace*, October, 1903, p. 25, March, 1904, p. 189.

37. MEXICO and VENEZUELA, in 1903. A MIXED COMMISSION was, also appointed in this instance, the precise date of reference being unknown. Señor R. Gaytar de Ayala was appointed by the King of Spain Umpire of this, Commission. The claim of Mexico, on behalf of the house of Martinez del Rio was for 570,000 dollars (£114,000) and the Umpire, October 6th, 1903, awarded 510,000 dollars out of this sum. So fierce were the attacks made upon him in the local press, in consequence of his Award, that Señor de Ayala handed over the legation to the Secretary, and left Caracas.

References: See above. Also, *London Times*, September 22nd and October 12th, 1903; *Daily News*, September 22nd, 1903; *Corresp. Bimens.* (Berne), November 25th, 1903, p. 134; *Herald of Peace*, October, p. 125, November 1903, p. 135, January, p. 164, and March, 1904, p. 189. *Advocate of Peace*, October, 1903, p. 176.

38. **BULGARIA and TURKEY, in 1904.** By Art. 5 of the *Turco-Bulgarian Agreement*, signed at *Sofia, April 8th, 1904*, a MIXED COMMISSION was established to settle questions pending between the two countries. This Commission was to begin its work at once.

References; *London Times*, April 11th, 1904; *Herald of Peace*, May, 1904, p. 213.

39. **FRANCE and GREAT BRITAIN, in 1904.** Art. 3 of the *Convention*, signed at *London, April 8th, 1904*, provided that "a pecuniary indemnity shall be awarded to the French citizens engaged in fishing, or the preparation of fish on the 'Treaty shore,' for the loss of their establishments or occupation," and that "claims for indemnity shall be submitted to an ARBITRAL TRIBUNAL, composed of an officer of each nation, and in the event of disagreement, of an Umpire, appointed in accordance with the procedure laid down by Art. 32 of The Hague Convention."

References: Parl. Papers [Cd. 1952] France, No. 1 (1904), p. 21.

40. **FRANCE and GREAT BRITAIN, in 1904.** By Art. 3 of a *Declaration*, signed at *Paris, April 8th, 1904*, "the two Governments agree to draw up in concert an Agreement, which, without involving any modification of the political *status quo*, shall put an end to the difficulties arising from the absence of jurisdiction over the natives of the New Hebrides. They agree to appoint a COMMISSION to settle the disputes of their respective nationals on the said islands with regard to landed property. The competency of this Commission and its rules of procedure shall form the subject of a preliminary Agreement between the two Governments."

References: Parl. Papers [Cd. 1952] France, No. 1 (1904), p. 27.

III.—DELIMITATION COMMISSIONS.

41. **CONGO FREE STATE and PORTUGAL, in 1901.** The delimitation of the boundary between the Portuguese Congo and the territory of the Congo Free State was referred to a Joint Commission, the Portuguese members of which left Lisbon in May, 1901, to join the Free State Commissioners who started from Antwerp.

Reference: *Herald of Peace*, May, 1901, p. 52.

42. **CONGO FREE STATE and GERMANY, in 1901.** A Joint Commission was also appointed this year (exact date unascertainable) to survey the territory in dispute between Germany and the Congo Free State in the region of Lake Kivu. This Commission, in October, 1902, forwarded a map to Europe, embodying its labours up to date, and including the district north of Tanganyika. It expected to complete the entire work in about six months, after which a Conference would be held, composed of representatives of Belgium and Germany, to settle the delimitation of the respective frontiers. The literary organ of the Belgian army stated, in February, 1904, that the delimitation had been completed three months previously by the Belgo-German Commission appointed for the purpose. In April last it was announced that, following this, Germany and the Congo Free State were about to settle the frontier by the proposed Conference.

References: *Herald of Peace*, September, 1902, p. 285, March, 1904, p. 188, May, 1904, p. 215; *Belgique Militaire*, February, 1904; *Mouvement Géographique*, April, 1904.

43. **FRANCE and GREAT BRITAIN, in 1901.** An Agreement was come to, in *November, 1901*, for the appointment of a JOINT COMMISSION to delimit the frontier between the French Colony of the Ivory Coast in West Africa and the British Colony of the Gold Coast, as far as the ninth parallel. M. Maurice Delafosse, the Deputy Administrator of the Colonies, was appointed chief of the

French section, his colleagues being Captain Bouvet and Lieutenant Laforge, and Captain W. A. E. G. Watherston, R.E., of the English. The work was concluded, and Captain (now Major) Watherston landed at Plymouth on his return, June 21st, 1902. He had left the Commission at Bontuku, having to return on account of survey work, leaving Captain des Vœux and Captain Soden, Assistant Commissioners, who, with the French Commissioners were then going further North, to map the country. The actual delimitation was to the 9th parallel, as far as the Black Volta, but the survey was completed to the 11th parallel.

References: *Journal des Débats*, November, 1901; *London Daily News*, July 25th, 1902; *Herald of Peace*, December, 1901, p. 162, July, 1902, p. 259, November, 1903, p. 134.

44. **GERMANY and GREAT BRITAIN, in 1901.** As the result of Conferences held in Berlin between a Special British Commissioner and Representatives of the Colonial Department of the German Foreign Office, during the winter of 1900, and, as previously fixed by Clause 5 of the Convention of November 14th, 1899, between these two countries for the settlement of the Samoan and other questions, a MIXED COMMISSION was appointed to fix the frontier line between the Gold Coast and the Hinterland of Togoland, in West Africa. According to Clause 5 of this Agreement, the boundary between the British and German territories in the Salaga District should be formed by the River Daka up to its intersection with the 9th degree of north latitude. But the exact course of this river, and especially the point where it crosses the 9th degree had still to be determined. The Agreement as to the composition and powers of this Joint Commission was reached in August (*exact date unknown*), 1901, and the Commission, whose English members were Captain Johnston, Lieutenant Turner, Dr. Hood, and two non-commissioned officers, commenced its work early in October, 1901, and reached Pabia, March 15th, 1902. After eight months' work it concluded its labours, "which were conducted with the utmost cordiality on both sides." The Commissioners returned to Liverpool in September, 1902.

References: *Parl. Papers* [C.I. 38] Treaty Series, No. 7, 1900; [Cd. 788-27] Colonial Reports, Annual No. 357, Report for 1901; *Statesman's Year Book*, 1900, p. 621; *Herald of Peace*, July, 1901, p. 85, September, 1901, p. 109, October, 1902, p. 297, December, 1902, p. 322.

45. **GREAT BRITAIN and TURKEY, in 1901.** The demarcation of the Aden-Yemen Boundary—a question of the Hinterland in that region—on the proposal of the Porte was referred, in November, 1901, to a JOINT COMMISSION which pursued its task amidst great difficulties and interruptions, with varying rates of progress, and amidst occasional skirmishes. On November 23rd, 1902, the *Times* reported that as the result of an Imperial Trade the Ottoman troops had been withdrawn from the disputed territory pending the decision of the Delimitation Commission. On March 12th it stated that the Sultan was particularly desirous that the borders of Yemen should not be definitely traced, and that it was believed that deliberate procrastination had followed in consequence, but that the English had collected troops on the border and had intimated that unless the Turks promptly fulfilled their engagement they would settle the boundary line alone, without co-operation, and then maintain it by force. At length, on June 20th, 1904, the *Times* announced that the Commission had completed its work to the Red Sea, and that the members of the Commission were at Perim, with the exception of Colonel Wahab, who has sailed for home.

References: *London Times*, November, 1901, to June, 1904, *passim*; *Herald of Peace*, December, 1901, to July, 1904, *passim*.

46. **FRANCE and MOROCCO, in 1901.** In 1901 efforts were made by the Sultan of Morocco's envoy at Paris to get the boundary between the Algerian Hinterland and Morocco defined, but without immediate success. It was, however, announced (July 31st) that a friendly understanding had been come to between them and the French Foreign Office, for the application to the region in question of the principles of the Treaty of March 18th, 1845. "The members of the Moorish Commission for the delimitation of the frontier between Morocco and Algeria arrived at Tangier, November 26th, 1901, on board the 'Bashir'

from Mazagan, *en route* to the scene of their labours." The result of these we do not know, but presumably they were successful, for in October, 1902, an amicable Agreement was come to, France retaining the districts occupied by her.

References : Hertslet, Map of Africa, etc., II. 803-806 ; Hazell's Annual, 1902, pp. 460, 461, 1903, p. 45 ; London *Times*, November 27th, 1901 ; *Herald of Peace*, December, 1901, p. 162.

47. FRANCE and GREAT BRITAIN, in 1902. According to Treaty between the two countries, the short length of boundary between Sierra Leone and the French possessions in the north-east corner of the Panguma district follows an existing road, running East from Tembikundo till the valley of the Ouldafu is met with, the Ouldafu river then becoming the boundary till cut by the 13th meridian west of Paris. This short distance had not been previously delimited, but early in 1903 the Anglo-Liberian Boundary Commission, which left England in December, 1902, found a small Joint Commission, consisting of two local officials, Captain Birch representing Great Britain and M. Lescure representing France, at work on the task of its delimitation.

References : London *Times*, June 8th, 1903, p. 10 ; *Herald of Peace*, July, 1903, p. 85 ; Hertslet, Map of Africa, etc., III. 1052.

48. ABYSSINIA (Ethiopia) and GREAT BRITAIN, in 1902. A Treaty for the delimitation of the boundary between the British Soudan Territory and Abyssinia was signed at *Adis Ababa*, May 15th, 1902. By Art. 2 of this Treaty a Joint Boundary Commission was appointed to delimit and mark the boundary on the ground, the notification of the appointment to be made to their subjects by the two High Contracting Parties after delimitation. The English members of this Commission, under Mr. Archibald E. Butter, left England in August, 1902, and the Abyssinian capital in November. On August 5th, 1903, he reached home again, after completing the work entrusted to the Commission.

References : Parl. Papers [Cd. 1370] Treaty Series, No. 16, 1902, p. 3 ; *Herald of Peace*, February, 1902, p. 189, January, 1903, p. 4, July, 1903, p. 84, August, 1903, p. 95, September, 1903, p. 108 ; London *Morning Post*, August 6th, 1903.

49. ABYSSINIA (Ethiopia) and ITALY, in 1902. By Art. 1 of an Annex to the above Treaty of May 15th, 1902, it was also agreed that "the line from the junction of the Setit and Maieteb to the junction of the Mareb and Mai Ambessa shall be delimited by *Italian* and *Ethiopian* delegates, so that the Canama tribe belong to Eritrea."

Reference : Parl. Papers [Cd. 1370] Treaty Series, No. 16, 1902, p. 5.

50. GREAT BRITAIN and LIBERIA, in 1902. The delimitation of the boundary between Sierra Leone and Liberia was, in December, 1902, entrusted to a JOINT COMMISSION, consisting of Captain Pearson, R.E., Lieutenant Cox, R.E., a doctor, and two non-commissioned officers for Great Britain, and Mr. J. McCarthy and a doctor for Liberia, together with the Hon. David Williams, sent by the Liberian Government to represent the Republic, who joined the Commission at Bariwalla. The Commissioners left Liverpool on December 20th, 1902, on board the same steamer, the Elder Dempster liner, "Sekondi," and Freetown, January 8th, 1903, the British section reaching Tembikundo ("the source of the Niger"), where their work began, on the 24th. The reports received of the experience of the Commission, which finished its work, and reached the coast, by the middle of June, showed that its progress was through absolutely untraversed country, necessitating roads being cut in the dense bush, and that it was an exceedingly difficult and tedious operation.

References : These particulars have been verified by the Hon. H. W. Travis, Secretary of State for Liberia (August 9th, 1904). London *Times*, December 22nd, 1902, p. 7, June 8th, 1903, p. 10 ; Annual Register, 1902, p. 422 ; Statesman's Year Book, 1903, p. 863 ; *Herald of Peace*, January, 1903, p. 4, July, 1903, p. 85.

51. GERMANY and GREAT BRITAIN, in 1902. The work of delimitating the British and German Boundaries in Uganda, to the West of Lake Victoria, was, in March, 1902, submitted to a Joint Commission, which left Europe in July, 1902. The two British Commissioners were Major C. Delmé Radcliffe

and Major R. G. T. Bright, C.M.G., who was second in command of the two Anglo-Abyssinian expeditions under Major H. H. Austin. The Commissioners reached Mombasa in August, where they were to meet the German Commissioners. It was anticipated that the work of delimitation would occupy about eight months. It was not, however, until April, 1904, that news arrived that the delimitation was practically complete, and that Colonel Delmé Radcliffe, the British Commissioner, was returning home.

References: *London Times*, July, 1902; *Herald of Peace*, April, 1902, p. 213, August, 1902, p. 273, September, 1902, p. 285, April, 1904, p. 200, May, 1904, p. 212, July, 1904, p. 241.

52. ARGENTINE and CHILI, in 1902. The actual demarcation of the boundary between the two Republics was, by the terms of a *Protocol*, signed *May 27th*, 1902, in anticipation of the Award of King Edward VII. in the Arbitration then pending, referred to a MIXED COMMISSION, composed of M. Bertrand, the Chilean technical expert, and others, under the supervision of Colonel Sir Thomas Holdich, the British Commissioner in that Arbitration. M. Bertrand left England on November 27th, 1902, and Sir T. Holdich on the 5th of the following month. He was accompanied by three officers of the Royal Engineers, Captains Robertson, Thompson and Crosthwait, together with Captain Dickson of the Royal Artillery, and Lieutenant Holdich, of the Indian Staff Corps. The Boundary was divided into four sections, the work on each being under the supervision of one of the officers mentioned. Work on all sections proceeded simultaneously, and so was carried through quickly. A statue of Christ, unveiled March 13th, 1904, stands on a pinnacle of the Andes mountains, 14,000 feet above the sea, and on the very boundary line, to commemorate the demarcation.

References: *London Times*, July 26th, 1902; *Herald of Peace*, June 2nd, 1902, p. 240, January, 1903, p. 5; *Boston Herald*, June 26th, 1904; *Advocate of Peace*, July, 1904, pp. 131, 132; *The Lend a Hand Record* (Boston), July, 1904, p. 11.

53. FRANCE and TURKEY, in 1902. An interesting and authoritative article in the *Times*, which, however, gives no intimation of the date of the occurrence, states that the relations of these two Powers on the borders of Tripoli, had become exceedingly strained, and for some months their troops "faced each other at the frontier." At length," it says, *May 10th*, 1902, "a Joint Commission was appointed to delimitate the frontiers, and the incident ended . . . and the French troops were gradually withdrawn."

Reference: *London Times*, May 10th, 1902.

54. GERMANY and GREAT BRITAIN, in 1903. In *January*, 1903, the British and German Governments despatched to West Africa a MIXED COMMISSION to demarcate the boundaries between their territories south of Lake Tchad, as laid down by Arts. 1 and 2 of the Anglo-German Agreement which was signed at Berlin, on November 15th, 1893. The British Commissioner, Lieutenant-Colonel Louis C. Jackson, R.E., the German Commissioner, Captain Glauning, and their respective staffs, left England on the "Oron" on January 17th, 1903, the German members proceeding thither for that purpose. It was anticipated that the work would occupy from a year to eighteen months. The British members of the Commission reached Ibi on the Binue on March 10th, 1903 from Lokoja, and Yolu on April 4th. In June, 1904, full details of the work in which the Commission had been engaged for eighteen months, and which was then concluded, were received and published.

References: Parl. Papers, Treaty Series, No. 17, 1893; Diplomatic and Consular Reports, Germany, No. 2983, May, 1903; [Cd. 1768-14] Colonial Reports, Annual No. 409, North Nigeria Report for 1902; Hertslet, Map of Africa, etc., II., 658-661; *London Times*, January 17th, 1903, p. 7, February 23rd, 1903; *Daily News*, May 28th, August 24th, 1903; *Herald of Peace*, February, March, May, July, and September, 1903, January and July, 1904.

55. BELUCHISTAN and PERSIA, in 1903. The Secretary of State for India, replying in the House of Commons on *March 3rd*, 1903, to a question respecting the Seistan Boundary Commission, stated that Major MacMahon, who had been dispatched by the British Government at the head of that Commission,

“had also been instructed to take the opportunity of demarcating in conjunction with a Persian COMMISSION a portion of the Perso-Beluch frontier, which was settled, but not actually demarcated, by a Joint Anglo-Persian Commission in 1896, but regarding which some misunderstanding has recently arisen.”

References : Hansard ; Hazell's Annual, 1897, p. 41 ; London *Times*, March 4th, 1903 ; *Herald of Peace*, April, 1903, p. 40.

56. **CHINA and GREAT BRITAIN, in 1903.** *The Tibet - Sikkim Boundary.* A Ministerial statement in the House of Commons, in August, 1903, by Lord G. Hamilton, Secretary of State for India, stated that “on June 3rd last the Viceroy of India, under instructions from His Majesty's Government, had informed the Chinese Government that Colonel Younghusband, C.I.E., had been appointed British Representative on the Tibet-Sikkim Commission for the settlement of frontier questions. The Chinese Government had previously appointed Mr. Parr, of Ya-tung and Ho-Kwang-shi, on the staff of the Imperial Chinese Resident at Lhasa, as Chinese Commissioners. These appointments were in pursuance of a Convention, signed at Calcutta, March 17th, 1890.” It is true that the boundary in question was described in Art. 1 of that Convention, but demarcation was not at all provided for in the Treaty of 1890. It was first formally proposed by a letter of the Viceroy of India, dated August 9th, 1894, to the Chinese Resident at Lhasa, and on May 18th, 1895, Chinese delegates joined Mr J. C. White, the English delegate, at the Jeylap La, and proceeded to the marking of the boundary. They desisted, however, because of the suspicions of the Tibetan Lamas. On *May 7th*, 1903, the Viceroy of India telegraphed to the Secretary of State of India that he was appointing Major Younghusband, Resident at Indore, as British Commissioner, with Mr. J. C. White, Political Officer at Sikkim, as Joint Commissioner. The Chinese delegates already accredited by Amban Yu, were Mr. Ho and Captain Parr, April 16th, 1903. Exception was taken to these as not being of sufficiently high rank, and others were appointed, Lo Pu Tsang, a Secretary of State, and Wang Chu Chieh Pu, a Military Commandant, to negotiate in company with the Chinese Commissioners. Meanwhile Mr. White proceeded to Kanpa with 200 men, while Colonel Younghusband followed with 300 more, and, practically, the “Peaceful Mission” for the settlement of the frontier, resolved itself into an armed invasion of Tibet, the British army marching, as originally intimated, to Lhasa.

References ; Parl. Papers [Cd. 7312] Treaty Series, No. 11, 1894 ; Cd. [1920] East India (Tibet), 1904.

57. **AFGHANISTAN and GREAT BRITAIN, in 1904.** The delimitation of that portion of the Indo-Afghan boundary which adjoins the Mohmand Country, was, at the beginning of the year, according to advices received at Peshawar from Kabul, dated *January 26th*, 1904, referred to a JOINT COMMISSION, the Afghan members of which were chosen by the Ameer's Council at that date. The work entrusted to the Commission had reference to a portion of the boundary fixed by the Durand Agreement in 1893, but not carried out at the time, owing to the unsettled condition of the country. The chief British Member of the Commission was Major Roos Keppel, political officer in the Khaibar. Among the members of the Afghan section, it was said, were Sayad Ahmad Shah, General Bahawal Khan, and Malik Khwas Khan. This section was to be under the general supervision of the Governor of Jalalabad, who had the provisioning of the Commission with its escort of from 2,000 to 3,000 men. The results of its labours have not yet transpired.

References : Parl. Papers [C. 8037] 1896 ; London *Times*, February 23rd, 1904, p. 3 ; *Daily News*, February 23rd, 1904 ; *Herald of Peace*, March, 1904, pp. 188, 189, and April, 1904, p. 200.

58. **FRANCE and SIAM, in 1904.** By a Treaty, signed at *Paris, February 13th*, 1904, the delimitation of the frontiers was agreed upon, and it was provided that a MIXED COMMISSION should be appointed for that purpose. Clause 3 of the Treaty, however, provided that before this appointment was made, the two Governments would agree on the chief points of this delimitation, and, in

particular, on the point where the boundary line ran into the sea. This agreement has been arrived at, and the terms were officially announced in the Chamber by M. Delcassé on July 1st, 1904. Presumably, therefore, the reference will now be proceeded with.

Reference: *London Times*, February 15th, 1904, p. 6, and July 2nd, 1904.

59. GREAT BRITAIN and PORTUGAL, in 1904. A JOINT COMMISSION has been sent out by the British and Portuguese Governments to delimit the boundary between South and North-Eastern Rhodesia and Portuguese East Africa. The British Representatives, Major O'Shee, R.E., and Lieutenant Cox, R.E., left England, in *March* last, and were reported to have arrived at Chinde (Zambesia), on March 16th. From thence they were to proceed to Tete where the Portuguese officers would join them. The Commission has been sent out to complete the delimitation of the boundary between the Portuguese territory and that of the British South Africa Company, which was begun some years ago by Colonel Leveson on the broad lines laid down by the Treaty of 1890. The work is expected to occupy about two years, and with its completion practically the whole of the eastern boundaries of Rhodesia will have been fixed.

References: Hertslet, *Map of Africa*, etc., II. 715-727; *Herald of Peace*, April, 1904, pp. 200, 201, and May, pp. 212, 213.

60. GERMANY and GREAT BRITAIN, in 1904. The delimitation of the boundary between German East Africa and Uganda and British East Africa—*i.e.* on the eastern side of Lake Victoria—was committed to a Joint Commission, towards the expenses of which 70,000 marks (£3,500) was voted in the German Reichstag on *March 16th*, 1904. Colonel G. E. Smith, R.E., was appointed Chief British Commissioner; and Major R. G. T. Bright, the Assistant Commissioner, together with Lieutenant Behrens, who went out with the Boundary Commission in July, 1902, on the completion of its work on the western side of Lake Victoria, proceeded to join Colonel Smith on the spot. The Commission is now at work. Much of the boundary to be fixed is in quite unknown country, which in portions is without water. It is hoped that the Commission will be back in Europe by the end of the year.

References: *London Times*, March 30th, 1904; *Herald of Peace*, April, 1904, p. 200, May, 1904, p. 212.

IV.—NATIONAL ARBITRATIONS AND COMMISSIONS.

61. GREAT BRITAIN and NEWFOUNDLAND, in 1902. *Construction Contracts.* This Arbitration was strictly domestic. It took place between the Government of Newfoundland and the Reid Newfoundland Company of St. Johns, and dealt with claims for stations, piers, and wharves, fences and snow-fences constructed, and for additional rolling stock, equipment and accommodations furnished by the claimant company. By a *Deed of Submission*, dated *June 19th*, 1902, and made between the parties, it was "referred to three ARBITRATORS, one each to be named by the parties, and the third by the Supreme Court or a judge thereof, and in the event of their disagreement, to any two of them." The Arbitrators appointed were Charles Currie Gregory, by the Company, the Hon. Alfred Lyttelton, by the Government, and Peter Suther Archibald, by a judge of the Supreme Court. The Court opened at St. Johns, on September 1st, and the *Award* was given on October 7th, 1902, and adjudged 894,130 dollars to the claimant Company with the completion by it of certain unfinished works and the cancelling of the Agreement of June 19th, 1902, for referring the claim of the Government against the claimant.

References: *Award in the Daily News*, St. Johns, Newfoundland, October 9th, 1902; *London Times*, September 2nd, 1902, October 9th, 1902; *Corresp. Bimens.* (Berne), January 25th, 1903, p. 9; *Herald of Peace* (1901-1902), pp. 285, 297, 308, 322; *Advocate of Peace*, December, 1902, p. 224.

62. **GREAT BRITAIN and INDIA, in 1903.** *British Soldiers' Pay.* This also was strictly a Domestic Arbitration. A question of the increase of pay of the British soldier in India, and the proportion of the cost which should fall upon India, had arisen between the Secretary of State for India, the Government of India, and the War Office. By letters from the India Office, of February 20th, 1903, and the War Office, of March 5th, 1903, Lord Alverstone, the Lord Chief Justice of England, was invited to act as ARBITRATOR. He consented, and on April 3rd, 1903, the respective cases were submitted to his Lordship, who, on May 4th, 1903, gave his *Award* that the whole additional pay issued in India shall be borne by the revenues of India.

References: Parl. Papers No. 237, East India (liability for increase in British Soldiers' pay), issued by India Office, July 2nd, 1903, and ordered to be printed, July 6th, 1903.

63. **FRANCE and VENEZUELA, in 1903.** A Commission was appointed in November, 1903, at the Ministry for Foreign Affairs, in Paris, to distribute the sum of 1 000,000 bolivars awarded by Señor Leon y Castillo, the final Arbitrator appointed under the Convention, signed at Paris, February 19th, 1902, to the French sufferers by the insurrection in Venezuela of 1892. The members of this Commission were the following:—MM. Louis Renault (President), Michel Tardit, Toutain, E. Martin, and Lenepveu, Bousсароque de Lafont, with M. de Peretti della Rocca, as rapporteur, and M. Henry Quievreux, as secretary. The Commission was to hold its meetings at the Ministry for Foreign Affairs, Paris. No report of its proceedings has yet reached us.

Reference: *La Justice Internationale*, December, 1903, p. 439.



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