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It is true, generally speaking, that the resolutions, the recommendations and the treaties resulting from these collective labors, have either not been ratified by all the nations, or have not been strictly observed. But we recollect them, in order to demonstrate the existence of a permanent sentiment, of an invariable opinion in this part of the world. It is evident, that if the acts referred to had been carried into effect, the problem of peace and justice would have been solved in America, and would not, now, occupy our attention. But it has to be observed, that from the relative lack of efficacy of these repeated endeavors, we should not argue their inopportunity, nor the neeessity of abandoning them. Such would be equivalent to declaring, that the penal laws of all nations were useless, because they had not succeeded in exterminating crime.

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Nor can it be said, strictly speaking, that the aspiration toward the establishment of arbitration had been disappointed by actual facts. There exist at least sixty treaties actually concluded, in which arbitration among American Nations has been established, either for special cases, or as a compromising clause, or as a permanent institution. There exist at the same time treaties between onr countries and European Nations, and lastly some cases can be cited in which the proceedings of aabitration have been effected and the sentence has put an end to conflicts of boundaries or other natures which threatened to disturb peace.

It seems to us that if that great number of compulsory arbitration agreements is considered as a whole, there is enough reason to assure that the question is settled in America, and that it only remains to gather from all the agreements signed, the points in common, which can be susceptible of being converted by this Conference into rules of a general character.

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The International Congresses do not in fact create laws, but they have two lofty purposes, which justify the relative frequency of their assembling in Europe and America. International Congresses must investigate, within the limit of the matters on their programs, all the stipulations provided for by the States iu their treaties, in a more or less lengthy period, and which reveal a definite juridical system. Congresses are destined, in such cases, to convert separate practices into rules of actual law, applicable to the groups of the Nations which form them. Apart from this, which is very important, Congresses will not lose sight of the ideals of International Law, for, although political interests may resist for a certain time the sanction of broad principles, the duty of the Conferences is to proclaim them and to recommend their adoption.

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With regard to Compulsory Arbitration the duties of the Conference cannot be avoided. It is necessary to at once acknowledge that that institution, with its compulsory character, is not, any more, a simple doctrine, or a mere aspiration of writers and noble minds, but has been converted into an indisputable national practice. There are very few nations in the world which on account of temporary reasons reject Compulsory Arbitration. Confining ourselves to America, from the United States of North America to Argentine and Chili, all the Republics have agreed to it at different times. It would be very troublesome to enumerate the treaties which, on account of this Conference, have been gathered together in a special publication. Europe has also, of late, given a proof of the advance made by International Law, notwithstanding the political conditions of that Continent. The Peace Conference of The Hague virtually sanctioned Compulsory Arbitration. The Russian project proposed it, and the Third Committee, to whose consideration it was submitted warmly approved it. After its acceptance, the Delegate for the Gérman Empire received instructions which did not permit him to sign the respective treaty, and the Committee then declared that the other countries gave up their opinions and their desires to advance any further on the matter of arbitration, in the recognition of the necessity of arriving at a unanimous resolution. The Committee then confirmed the private treaties of Compulsory Arbitration between the countries that formed the Conference and drafted a clause appealing to the same nations to bind themselves, in a general and permanent manner, to submit all controversies of juridical nature to arbitration. «The character of that provision which has, on account of circumstances, been necessary, said Chevalier Descamps, imposes sacrifices on the States which are resolved to take a step, though a prudent one, in the manner indicated by the Russian Delegation. But it is nevertheless necessary to state that the field remains open to further endeavors in that direction.» And the reporting Committee added: «The proposition as adopted (which excludes Compulsory Arbitration) is a vote of compromise animated by the desires to reach a unanimous agreement.»

This means, in plain words, that there was no reason why Compulsory Arbitration should be rejected as utopian or as an impracticable doctrine. It was, on the contrary, acknowledged by eminent scientific authorities, and by representatives of the most powerful European nattons, and had not special motives existed which affected only one of these nations, it surely would have been sanctioned as a rule for positive European right. Unfortunately that was not so, and the Treaty for Arbitration of The Hague did not attain all its importace, and, if considered in its technical and political sence, it simply means a method employed to temporize with a peculiar opposition and to elude, in fact, the question of effective Arbitration as a permanent institution.

These historical antecedents demonstrate two things: first, that considering the Conference of The Hague in the light of an authorized manifestation of technical and political opinions, it is clearly wrong to say that that Conference condemned Compulsory Arbitration or considered it as premature and inapplicable: and second, that the Treaty of Arbitration of The Hague, as a judical document, is not certainly, a standard worthy of imitation an America, as its own authors declared it to be a formula for European compromise, which implied the sacrifice of more advanced desires by which most of the nations represented were inspired.

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The only thing to be discussed in the matter of arbitration is the scope to be given to it, considering the nature of the subjects to be treated.

The question of time, that is to say, if it is to cover present and future questions has not given rise to serious controversies. At the Conference of The Hague the twenty–six nations there assembled accepted the idea of arbitration. including present and future conflicts. The Committee on Arbitration on the subject was very explicit. The States, it said, endeavor to protect themselves against their own future impulses by adopting means for peaceful solutions before the commencement of litigations and by adopting at certain points of their relations, a conditional peace suported by a teatry. The binding stipulation, can also be generic, and may then include the whole or at least the greater part of litigations between nations. The general Treaty of Arbitration is a truly organic contract of juridical peace, a positive recognition of arbitral justice, as a proper and normal means accepted beforehand for the solution of international litigations.

The present state of positive International Law from the point of view of the different scope of the contract of arbitration is characterized, concluded the Committee on Arbitration, by the following treaties:

1st. Progressive increase in the number of agreements wherein are to be found appeals to arbitration of present solutions.

2. Multiplicity of arbitrations in binding stipulations, keeping in view particular series, more or less numerous, oi eventual solutions.

3, Conclusion of certain conventions extending the binding stipulations, whether it be to all litigations between nations without exceptions, or to all these litigations, under a reservation considered necessary with regard to an order of solutions which the States may not think they can leave to the eventuality of arbitration.

Long before the Congress of The Hague, the same opinion was adopted in Washington, without any dissent accept on the part of Chili which neither accepted the obligation of the arbitration nor much less agreed, that in any case could it include present controversies. Ou the other hand, the treaties of Permanent Arbitration which are known, instead of excluding present controversies, have been decided upon precisely by the necessity of peacefully terminating some present conflicts.

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The question of extension on account of the nature of the subjects is doubtless the most arduous point in arbitration. If we were to base ourselves upon American traditions, we could think that it would be consistent to agree on general arbitration without excluding questions of any kind. There are numerous examples with regard to these matters. The treaty entered into on September 22, 1829, between Colombia and Peru, submitted to arbitral decision all questions, even those called of honor. This treaty stated: «Whatever the motives for dissagreements arising between two republics may be, on account of complaints of insults, offenses or damages of any kind, neither of said republics can authorize acts of reprisals nor declare war, against the other without previously submitting their differences to the Government of a power friendly to both nations.» The treaty of 1832 between Equador and Peru also submitted any disagreement which may arise between the Peruvian Repubic and the State of Equador to the decision of an albitral power.» General stipulations, without any specified exceptions, are also found in the following treaties:

1. In that of 1842 between Venezuela and New Granada.
2. In that of 1845 between Guatemala and Honduras.
3. In that of 1848 between United States of America and the United States of Mexico.
4. In that of 1850 between Costa–Rica and Honduras.
5. In that of 1855 between Salvador and Colombia.
6. In that of 1856 between New Granada and Ecuador.
7. In that of 1858 between New Granada and Peru.
8. In that of 1858 between the Argentine Republic and Bolivia.
9. In that of 1860 between Ecuador and Peru.
10. In that of 1861 between Nicaragua and Costa–Rica.
11. In that of 1862 between Guatemala and Nicaragua.
12. In that of 1863 between Bolivia and Peru.
13. In that of 1865 between Costa–Rica and Colombia.
14. In that of 1867 between Bolivia, Chile and Ecuador.
15. In that of 1868 between Costa–Rica and Nicaragua.
16. In that of 1870 between Colombia and Peru.
17. In that of 1872 between Guatemala, Honduras, Salvador and Costa–Rica.
18. In that of 1874 between the Argentiue Republic and Peru.
19. In that of 1876 between the Argentine Republic and Paraguay.
20. In that of 1876 between Bolivia and Peru.
21. Iu that of 1880 between Salvador and Colombia.
22. In that of 1880 between Salvador and Santo Domingo.
23. In that of 1883 between Uruguay and Salvador.
24. In that of 1883 between Paraguay and Uruguay.
25. In that of 1883 between Salvador and Venezuela.
26. In that of 1884 between Costa–Rica and Nicaragua.
27. In that of 1885 between Guatemala, San Salvador and Honduras.
28. In that of 1887 between the five Republics of Central America.
29. In the official protocolized conference subcribed in 1887 by the Argentine Republic Bolivia, Colombia, Ecuador, Peru, Salvador, Santo Domingo and Venezuela.
30. In that of 1888 between Mexico and Ecuador.
31. In that of 1890 between Ecuador and Costa-Rica.

32. In that of 1890 between Guatemala and Salvador.
33. In that of 1896 between Bolivia and Brazil.
34. In that of 1896 between Colombia and Venezuela.
35. In that of 1898 between Italy and Argentine Republic.
36. In that of 1881 between the Argentine Republic and Chile.
37. In that of 1890 between Peru and Bolivia.
38. Besides, in that of 1898, between the Argentine Republic and Italy.

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In these treaties there does not exist, as we have said before, the exclusion of any question. It so appears in the special publication made on the occasion of the assembling of this Conference. There are indeed very few American treaties, in which the questions of independence, safety, integrity or honor have been excluded. In the treaty of 1890 between Costa–Rica and Salvador, «the means of war for deciding questions, in which national honor is not directly interested, are considered barbarous and unjust.» In the treaty between Mexico and Salvador in 1893, reference is made to the controversies between the two countries, which must be submitted to arbitration «provided that said questions be susceptible of being decided by that means.»

In the treaty between Ecuador and Colombia 1894, reference is made «to matters affecting the national sovereignty or which may in any manner be by their nature incompatible with arbitration», for which the mediation or good offices are only agreed upon. The treaty between Guatemala and Salvador of 1890 specifies the controversies for which arbitration shall be compulsory, whether for both contracting parties or simply for one or the other. It quotes the questions concerning diplomatic and consular privileges, boundaries, indemnizations. territory, rights of navigation, validity, interpretation and execution of treaties, and, in general all other questions of whatever kind they may be. It only excepts such questions, as according to the private opinion of any of the nations interested in the dispute, may compromise their autonomy and independence. On the other hand, in other treaties between the same nations, and generally in those executed in America, arbitration for all kinds of conflicts or disagreements is provided for. The treaty of Chili, Ecuador and Bolivia of 1867 may serve as a guide, for in its 11th. clause it says:

«The contracting Republics, complying with their social antecedents, with the present requirements, and with the principles which they intend to establish in America, declare: that all questions which may arise between them on any account, whether it be through a misunderstanding of any of the articles of the present treaty, through supposed infractions of the same, upon the complaint of offenses, damages or losses by one State against the other, or through boundary disputes, shall never have recourse to arms, and war shall never be the means, between them, to exercise justice, nor of binding each other to the fulfillment of the agreement. Thus, in the unfortunate case that the harmony which now exists between them, should be interrupted, the following procedure shall be followed: the Republics at discord shall address to one another Memorandum explaining the demands of each, and the reasons on which they base them. If they should not agree by these means, they shall procure the good offices or mediation of one of the other nations. Should this measure also fail, they shall submit to the final decision of an arbitrator.»

Article I of the Treaty of 1890, between Salvador and Colombia, provides:

«The Republic of Salvador and the United States of Colombia contract the perpetual obligation of submitting to arbitration the controversies and difficulties of any kind which may arise between the two Nations, whenever a solution thereof may not be obtained through diplomatic channels.»

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Thus it can be affirmed, without any risk of inaccuracy, that the restriction of arbitration for reasons of independence, or honor, or of what is vaguely called superior interests, constitute on this Continent a new reaction, unknown for a long time in our International history. We do not think that such a reaction is worthy of being promoted by the American Conference; it seems to us, that it is the result of ideas and sentiments developed in feudal times, and that there is no reason why they should exist to day. Honor, especially, does not now consist in the almost insane susceptibility of the Middle Ages. Honor in the modern State is based on living according to law, on contributing to civilization, and the progress of humanity, in not imposing force, but in making use of it on behalf of justice, on respecting the treaties, when in possession of the material power to violate them.

The so–called «superior or vital interest» could certainly not be an object for precise definition. But it is to be believed that there is not for any nation any interest of greater importance than peace. These «interests» and the invocation of national honor were not a reason for limitation in the resolution in the Conference at Washington, in which only the questions affecting independence were excluded from Compulsory Arbitration.

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We understand sufficiently the amplitude without restraint of those American agreements, and we are glad to confirm the policy of our country in promoting or subscribing some of them, because arbitration, as Chevalier Descamps said at The Hague Conference, is not an inconsiderable abdication of sovereignty, but on the contrary a clear use thereof. We find no cause, no right, no interest, no matter how great and noble they may be considered, that should not come, if there be no other recourse, under the decision of a judge freely and faithfully designated by the parties interested. Between this humanitarian and reasonable method and that of war, uncertain and terrible, we do not hesitate to entrust the former with what is considered most precious for the country.

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Notwithstanding the foregoing, we do not want to place ourselves outside of what is practicable, and we are well aware that, in order to execute treaties, it is now indispensable to classify the question susceptible of Compulsory Arbitration and those of Optional Arbitration.

This classification, according to European practices has been determined by The Hague Conference. It was there considered that the cases of international conflicts, though numerous and infinitely varied, could be resumed in two great categories: the demands between States for causes of a different nature. With regard to conflicts of the first category, the acceptance of compulsory arbitration was considered possible and desirable. The conflicts of these kinds, the Russian project stated, referred to legal questions and do not concern either national honor of the States or vital interest. They were considered at the same time as susceptible of admitting Compulsory Arbitration:

1. Controversies relating to the treaties executed for the international protection of the great arteries of universal circulation, the postal, telegraphic and railway conventions, the conventions agreed upon for the protection of submarine cables, the regulations destined to prevent collisions of vessels on the high seas, the conventions relative to navigation on international rivers and interoceanic canals.
2. Questions relating to treaties entered into for the international protection of moral and intellectual interests, whether of particular states or in general, of all the international comunity.
3. The solution of the differences relating to the interpretation and application of treaties on International Law, private, civil, and penal.
4. The discussions and misunderstandings regarding the interpretation of boundary treaties in so far as they have a technical, and not a political character.

Although we are not entirely in accord with these ideas, they do not serve us to establish that the necessity and possibility of specifying the conflicts, which are generally subject to Compulsory Arbitration, be recognized. In many other manners all treaties would become illusory, because among the generic exceptions relating to independence, national honor and superior interests, there might be included, in moments in which nations are excited by passion, all other disputes, although entirely disconnected with the reasons enumerated.

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The extent of Compulsory Arbitration in America must be greater than in Europe. In our Continent, for reasons known by all, the difficulties, which History has accumulated in the Old World, do not exist. There is no system of international balance of power, nor has there elapsed sufficient time for our nationalities to form strong sentiment of exigencies, or ambitions, mutually incompatible. The political history of Europe, with its chain of wars of predominance, colonization, mutual territorial dismemberments, caused by the great density of the population, and other causes, has established deeply–rooted interests, which for a long time to come will be considered as intimately connected with the very life of the States. Nothing of this kinds occurs in America. Our American Republics occupy a territory which is three times greater than the area of all Europe, with a small population of only 120,000,000 inhabitants. We live practically, if we speak in general, in a desert, and our fiscal resources, naturally limited, do not lead us towars struggles for predominance, which are always the result of the great development of population and of public wealth. Our international boundaries rest upon the principle of *utti peisidetis* of 1810, incorporated in American Law, and it is only necessary in many cases to arrive at an understanding regarding the just application of this principle and to effectively designate the dividing lines in accordance with the same.

This means, that in matters of boundaries, in America, really there exist no political questions. Controversies in this respect are of a technical character, and there is not one which may not be reduced to a rule of law. This is the reason why the nations of America have at all times procured to submit their disputes over boundaries to mixed commissions, or to arbitration. In this particular, many treaties of arbitration may be cited: between Ecuador and Peru, between Peru and Brazil, between Brazil and Argentine Republic, between Brazil and Paraguay, between the Argentine Republic and Bolivia, between the Argentine Republic and Chili, and between Bolivia and Peru. The same may be said of the Central American Republics.

It appears, for that reason, that it cannot be doubted that all the boundary questions of America are susceptible of Compulsory Arbitration and should be included in the permanent treaty. These questions perhaps, are those which principally, from time to time, have originated serious disagreements, and on some occasions, have caused fratricidal struggles. They have, besides, commenced to create unrest and animosities, of such magnitude, tuat the day does not appear distant, in which an armed peace will be established in our territories, to the detriment of the evolution of our countries.

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In the Treaty of The Hague it is established that in all questions of interpretation or application of international conventions, Arbitration is to be the most efficacious and at the same time the most equitable means of deciding conflicts. The declaration of the nations assembled at The Hague is the fruit of a very extensive practice in Europe. In 1872, Mancini presented in the Italian Parliament a motion intended to recommend to the Secretary of Foreign Relations the introduction into the treaties of a clause, which would make the decision of all difficulties arising from the interpretation or execution of the treaties the subject of Arbitration. This motion was the reason, for which the Italian Government stipulated that compulsory clause in all its treaties, and that it was generally accepted in Europe. In European treaties this clause is found in all matters relating to commerce and navigation, international postal service, consular affairs and even relating to the definition of boundaries.

On this Continent the use of the compulsory clause has even been more extensive. We can cite, by way of example, the following treaties:

1.—The treaty of April 26, between Chili and Peru, states as follows: «Although it has been endeavored to express the articles of this treaty in clear and precise terms, nevertheless, if contrary to what may be expected, any doubt should arise, the contracting parties shall procure to decide it amicably, and, as a last resort, shall submit to the decision of the arbitrator mentioned.»