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given on legal grounds? It is possible that this may be so, where the questions are not of vital importance, and where the arbitrators are carefully chosen with a view to the special nature of the difference. But to extend the practical bounds of arbitration in the ways indicated would be something more than to continue a process which can as yet be pronounced to be working, and will demand the active and intelligent co-operation of statesmen and of public opinion on each available occasion.

But for the encouragement of the lovers of peace it may be said that from various causes, some of which have been touched on above, international arbitration is in the air. When this happens to an idea, and as long as it continues to be the case, the power of the idea for good cannot be measured by logic, necessary as it is that we should do our best to understand the conditions in order to work with them. It is the season to raise our hopes, and do our utmost to try what the idea of international arbitration can accomplish.

J. WESTLAKE.

CHELSEA, ENGLAND, July 2, 1896.

SETTLEMENT OF THE INTERNATIONAL QUESTION.

ONE of the facts which demands the attention of scientific men and statesmen at the present day is the condition of international society. Indeed, there is no system of concrete, positive laws on the subject, determining what each state may do and what it must refrain from doing; that is to say, laws of the *modus vivendi*. Hence it is that an incessant warfare is being waged between politics and right, nourished by the tendency of governments to subordinate all their actions to the triumph of their own temporary interests in their relationship to actual conditions.

In the graver questions politics ordinarily takes precedence of right. Thus, for instance, in order to decide whether

certain provinces should be added to one state or another, whether the state's territorial possessions should be enlarged or curtailed, whether the balance of power in certain regions should be settled in favor of one or another, whether such colonial expansion can be attained and justified, and so on,—the settlement of all these and similar questions depends on the secret labors of diplomacy and on the preponderance of the interests of one or the other.

Now, since each government can sustain its political pretensions only by means of its superior strength, each state endeavors to increase its military force; and, as the power of a single government can no longer suffice, each seeks to strengthen itself by making alliances, by constantly increasing its armament, in order to gain by its own military resources and by the aid of such alliances the most effective means for insuring the triumph of its political policy.

Conflicts are of frequent occurrence. Therefore, as there is no system of law obtaining among nations fitted to determine on which side justice lies, and as besides we have no method for legally repressing abuses and preventing and repairing injuries to the rights of others, the state which considers itself offended has no other redress than to rely upon its own strength and to resort to the ruinous method of declaring war, in order to obtain reparation of the offence or execution of the obligations assumed. And since in war it is always the strongest that triumphs, the mistaken idea is admitted and accredited that in practice any pretension can be upheld if it only has force to back it up and make itself respected by others. For this reason every state during times of peace endeavors to prepare for war and aims at constantly strengthening its military power; and those states most anxious to be first study the most powerful means of offense and defence in order to be able in due time to succeed in war, and thus secure the triumph of their own political interests.

From such a necessity arise the following results: that all the states of Europe are incessantly increasing their armaments during times of peace, the actual cost of which absorbs the greater part of the income of each country; that the Par-

liaments of these countries, in order to counterbalance the preponderance of rival powers, find themselves inevitably drawn into the current and obliged to approve of ever-increasing grants for military expenses. The worst of it is that no one can foresee to what point this incessant need of new armaments will be carried; for, as science every day perfects new methods of attack, this renders indispensable a continual revision of the methods of defence in order to enable the state to present sufficient resistance. It can thus be said that the chief energy of the nations during times of peace is expended in efforts to increase their military forces in order to preserve the equilibrium of power; but they never seem to arrive at a point when they may safely consider themselves sufficiently prepared for war. When ordinary resources do not suffice for the purpose, recourse must be had to extraordinary means. The appropriations are distributed over the balance-sheet for several successive years, and if it is found necessary to make still further provision, the governments that possess credit take refuge in a loan,—a policy accepted by the Parliaments as a painful necessity imposed on all in order to sufficiently protect the life and security of the state. It is true, wars have become less frequent, both because no government can positively rely upon success in war, and because all nations hesitate to begin hostilities, in dread and horror of its inevitable consequences. At the present day armed peace prevents war. But in order to lessen the danger of war with its dreadful consequences, the disposition to increase the armament has become a perfect mania. In justification of the vast expenses caused by the excesses of militarism, ex-Chancellor Bismarck was wont to say that the money expended for the maintenance of military armaments is an insurance premium paid by the nations for the maintenance of peace,—a heavy premium, to be sure, but one which cannot be compared with the cost of war, even though successful.

The attention of men of all classes has been turned to the evils which are the inevitable result of a condition so costly and insecure as the present one of armed peace, including the possibility of war with all its horrors and attendant economic

misfortunes; and of late years the regrets and complaints caused by this state of things have become more general and more frequent.

Not only students who contemplate the dangers of the present situation and of the future, but also the working-people and their associations, and all those who live by industry, by commerce, by enterprise, or by manual work,—all have acquired the earnest conviction that it is necessary to put an end to the social disorder resulting from armed peace and excessive militarism, and that some method must be found to provide for the *modus vivendi* of civilized nations. This conviction, which is everywhere becoming popular, finds a powerful echo in the minds of those who observe how this state of things aggravates the social problem. Indeed, thoughtful men are convinced that, in order to satisfy the just demands of the social democracy,—which asks for a more just distribution of the profits of industry, a larger field for the development of every kind of activity and labor, and greater well-being for all,—it is needful, at all costs, to multiply and not to diminish the sources of wealth, to quicken the development of agriculture, of industry, and of commerce, to prevent the oscillations of credit, and to organize an international division of labor. All understand, moreover, that the social condition cannot be remedied during times of armed peace; for, on the one hand, it is constantly necessary to increase the armaments in order to prevent war, and, on the other hand, the difficulty of each state being able to begin the fight with any chance of success puts off the disastrous results of a general war without eliminating the danger of it. The truth is, that if menaces are not translated into action, it is because the governments concerned adopt the prudent course of taking time in order to be sure of measuring themselves against each other with success.

People generally being convinced of the necessity of getting rid of present evils, and of those still graver ones which might be the consequence of war, the proposal which has met with most general approval, and which may be considered most familiar and popular, is that the nations should be induced to settle all their disputes by arbitration. It has been thought,

indeed, that by forcing the nations to assume such an obligation the necessity for war would be removed and disarmament made possible, or at least excessive armaments considerably reduced. With such praiseworthy intentions in view, several legislative assemblies have passed a solemn vote inviting their own governments to agree with foreign ones in substituting arbitration for war.

Can arbitration become a legal and efficacious means for settling international questions? Can it settle controversies between nations so as to prevent and eliminate all the causes of war? Could the actual condition of international relations—which all must recognize as truly perilous and harmful by reason of excessive armaments—be substantially changed if the civilized nations would bind themselves to submit all their disputes to a tribunal of arbitration? What would be the practical influence of such an institution?

The proposal to make arbitration an ordinary and effective institution which shall take the place of war in settling international controversies has greatly interested the present generation ever since the settlement by arbitration of the Alabama question between Great Britain and the United States. We certainly do not desire to minimize its importance. It is not, indeed, a new thing, inasmuch as Thucydides and Plutarch tell us that controversies between cities belonging to the Greek confederation were submitted to arbitration. In the Middle Ages, too, the jurists and professors of universities, those especially of Perugia and Bologna, were, as is well known, called on to act as arbitrators in disputes between the various states. In modern times, moreover, arbitration has resulted in important decisions.*

* To be convinced of this, it will suffice to recall only a few of those of recent date:

Arbitration by the Emperor of Austria between Great Britain and Nicaragua, 1881.

A mixed commission to arbitrate between France and Chili, 1882.

Arbitration by the President of the French Republic between the Low Countries and the Republic of San Domingo, 1882.

Arbitration by Pope Leo XIII. between Germany and Spain. The affair of the Caroline Islands, 1885.

We would not be overestimating its importance, if we admit that the international question would be completely solved by the nations agreeing to submit to a tribunal of arbitration all controversies that might arise between them.

The difference that arose between Great Britain and the United States in the Alabama question could be opportunely solved by arbitration, because both governments had previously become convinced that their true interests required a pacific settlement. Great Britain, which is annually obliged to import grain worth about three hundred million francs to support its inhabitants, and which could not have carried on its industries without trade in cotton, was right in considering that if war was declared the United States would blockade the ports of the north and south of England, break up the trade in cotton and produce a famine, and that about five hundred thousand weavers would have been thrown out of employment. A pacific settlement was therefore sought, the chief difficulty being to find an expedient or a method of satisfying the dignity of the United States without hurting the pride of England. Great credit is due to the prudent men selected to arbitrate this important and difficult question for having been able to render a verdict acceptable to both countries, and for thus preventing war.

The commission to arbitrate between the Argentine Republic and Brazil, 1886.
Arbitration by Spain between Columbia and Venezuela, 1887.

Arbitration by the minister of Spain at Bogota between Italy and Columbia, 1887.

Arbitration by President Cleveland between Nicaragua and Costa Rica, 1888.

Arbitration by the Queen of Spain between Peru and Ecuador, 1888.

Arbitration by the Baron Lambermont between England and Germany. *Affair of Lamoo*, 1888.

Arbitration by the Emperor of Russia between France and the Low Countries. *Affair of the boundaries of Guinea*, 1888.

Arbitration by Sir Edward Momson between Denmark and Sweden, 1888.

Compromise between the United States and Venezuela, 1890.

Compromise between Germany, the United States, and Great Britain. *Affair of Terranova*, 1891.

Arbitration by Switzerland between England, the United States, and Portugal. *Affair of the railroads at Delagoa Bay*, 1891.

Arbitration between Great Britain and the United States relating to the question of the delimitation of territorial power in Behring Sea, 1893.

In other cases, too, arbitration has had good results, because the controversies related to special interests of the states in question. Hence we may reach the conclusion that arbitration is adapted to settle all questions and controversies between states that relate to their particular interests ; that it would be proper for the states to assume a formal obligation to submit to arbitration all disputes that may be settled by compromise ; and that even when they have not previously pledged themselves to such a course, those states that desire to act with prudence, rectitude, and justice should nevertheless feel themselves obliged to prevent serious conflicts by recognizing the evident reciprocal utility of submitting to the decision of a tribunal of arbitration all those differences of a legal kind which relate to their particular interests and which arise in the execution of a treaty agreed upon between them. But can we therefore conclude that by inducing the nations to agree to arbitration, and by getting them to make a treaty to that effect, we have found a solution of the international question? Would war be eliminated by the substitution of arbitration? This seems to us a generous desire, but looked at practically it appears an exaggerated hope.

In order to thoroughly solve the international question a broader conception is indispensable. We are convinced that, as long as the present condition of things remains, a proclamation that arbitration must take the place of war would not solve the international question nor do away with the excesses of militarism and the serious discomforts of armed peace. Indeed, we must realize the fact that the peril of a general war and the need which each state feels of increasing its military force is not the result merely of the desire of each nation to obtain power in order to be able to solve all political controversies in its own way. Enlightened governments—those which comprehend the political, economic, and financial results of war and the serious social disturbances it inevitably brings about—will not be inclined to go to war for any trifling reason ; for whenever it happens that some dispute of a special kind arises, such as the affair of the Caroline Islands, the boundary disputes in Guinea, or the question of the seal fish-

eries, governments generally show their willingness to submit to arbitration, mutually bound as they are by the imperious necessity of avoiding war.

It is the larger problems of a general political nature which are liable to provoke war that render armed peace necessary. Have those who propose arbitration considered whether these latter questions are fit subjects for compromise? Can such controversies as the Eastern question, such problems as the ways of communication, free trade, the annexation and separation of certain territories, maintaining the equilibrium or moderating the preponderance of power,—can these complex political questions of international interest be settled by compromise? Will nations be inclined to submit to the decrees of, say, three statisticians or of three eminent jurists for the settlement of the controversies that may arise? Have the advocates of arbitration reflected that the decrees of the tribunal would remain ineffective if the same state that had agreed to submit to the judgment of the arbitrators would afterwards, for good or pretended reasons, refuse to obey? Do they realize that in order to make the proceedings of arbitration an effective means of international justice it is absolutely indispensable to ascertain the legal methods according to which the arbitrators must act? There being deplorable uncertainty in regard to some questions, and serious gaps of information concerning others, and regarding still other points a lack at the present day of any consensus of opinion among writers, as well as any uniform understanding among governments, what can be the good of a decree of arbitration with regard to those governments which are not previously convinced that their true interests require a pacific settlement? It is admitted that the principles themselves on which arbitrators must base their judgments cannot remain permanently fixed and have absolute authority upon all. It is admitted that every government can determine at its pleasure what laws it will consider legal, according to its own political views, and that it can carry out its pretensions whenever it has the power to do so. In a word, it is admitted that at the present day there is no system of rules and laws common to

all nations which would determine their rights and their duties in times of peace and in the eventuality of war. If all this is admitted, what would be the advantage of arbitrating with a nation that would render all useless by determining in its own way the legal rules of compromise, and which proposes, whether right or wrong, to support its own claims by force of arms?

Taking into consideration all this, it is clear, first, that we cannot consider arbitration effective in the case of general political controversies and complicated interests; second, that it can only be useful for disputes concerning special questions of a legal nature, and that in respect to these it is of supreme importance that the nations should agree to abide by the decisions of the tribunal; third, that in order to make arbitration effective the nations should agree to lay down the common principles according to which the arbitrators should judge, or at least to establish how common principles could be determined in each case where the interested parties cannot come to an agreement.

We have already said that in order to solve the international question we consider a broader conception indispensable. Indeed, it seems to us that in order to thoroughly solve the question it would be necessary to excogitate a plan for giving to the association of civilized states a form of legal organization.*

It does not seem likely to us that we shall succeed in giving this association of states a form of organization similar to that of a great state. According to Bluntschli, this would be the ultimate form of the state in its highest manifestation.† The same idea has prompted Professor Lorimer, of the University of Edinburgh, to publish his own proposal for the organization of an international government with the plan of three departments, like the interior government of every state.‡ We maintain that it would be better to have an inter-

* We have explained our own views on this subject in a volume entitled, "Ordinamente giuridico della Società degli Stati."

† Bluntschli's Works, Book I, Chap. I.

‡ See the article by Professor Lorimer, "Ultimate Problems of International Law," in the *Review of International Law*, Vol. IX. (1877), p. 161.

national congress with a clearly-defined authority and mission.

Such congresses should not aim, as they have done, at regulating the consequences of war, but should rather provide for safeguarding the common interests of nations; should try to prevent dangerous complications by agreeing upon the laws of the *modus vivendi* and placing them under the combined guardianship of the nations that proclaimed them. We do not aver, as Lorimer does, that a congress should be similar to a permanent parliament, convened to elaborate and proclaim the laws of international relations as one of its ordinary functions, but we believe that the civilized nations assembled in congress should do what was done at the Congress of Paris in 1856, when, in order to prevent all controversy resulting from the uncertainty of the rights and duties of neutrals and belligerents during maritime war, the plenipotentiaries agreed to establish a common code of laws relating to piracy, blockades, and seizure of property during a naval war.

It seems to us that, in order to solve pending questions, and to prevent the continuance of a state of armed peace, with its more or less remote danger of a general war, it would certainly be timely and useful for the European states to call together a congress so as to come to an agreement concerning present problems, and in order to establish such laws as would forestall future troubles concerning particular interests, as well as those of a more general and complex kind. The latter, which could not be submitted to arbitration, it would be better to defer to a conference which, with more authority than that of a tribunal of arbitration, could decide concerning them. The congress should also determine how the conference should be held and what subjects it should discuss. It would also be well to determine the jurisdiction of the tribunal of arbitration, and how far its rules should be obligatory on the nations (independently of special cases agreed upon) in order to settle all disputes concerning questions of fact or relating to special interests. Besides, it would be necessary to determine how the rules of international law

are to be fixed by which arbitrators are to decide when the parties cannot arrive at any agreement, how their decrees should be enforced, in what way a state that refuses to submit can be made to obey, what, in short, should be the fundamental rules of procedure in arbitration, and how its execution could be secured. It would also be necessary to determine what steps could be taken during times of peace to force a state to respect such international regulations.

We do not dare to look so far ahead as to imagine that the states assembled in congress could ever succeed in compiling a body of laws having the authority and form of an international code. This would be an undertaking of the greatest importance. We must remember that in mundane matters we can only expect an end proportionate to the means, and that we cannot hope to attain the very best possible, but only what is relatively the best and helps us to avoid what is worse. Bearing this in mind, we cannot indulge in the hope that the nations will come to an agreement and compile a complete digest of international law. They might certainly recognize the common utility of solving questions that are undecided and coming to an agreement on less debated points in order to avoid settling them by war. It seems to us, however, that the nations could enlarge and complete the work initiated by the congress of Paris in 1856. At that congress the nations united in council, established several principles of maritime law to prevent future conflicts, and succeeded in establishing a common law relating to the rights and duties of neutrals and belligerents during war. At the present time, however, there are many pending questions which tend to keep up a horrible state of things and which impose the necessity of armed peace and constantly threaten more and more a general war.

Unquestionably such a state of things cannot be indefinitely protracted. However long the solution may be put off, it is, nevertheless, sure to come. Recognizing that the excesses of militarism exhaust most precious resources and aggravate the social question; that armed peace is an obstacle to all social progress and to general security; that, if not forestalled,

the nations will sooner or later be forced into a ruinous war, the governments ought to assemble a congress in order to come to an agreement concerning the solution of the international problem as it exists to-day. They could establish the rules for a *modus vivendi*. If such laws were made, they would naturally be under the protection of those states which had united in proclaiming them, as was the case at the congress of Paris. If the laws of the *modus vivendi* were once determined, the reasonable limits of armaments could be settled and disarmament effected. This being agreed upon, and the power and authority of the conference established and the power and authority to be conferred upon arbitrators determined, then arbitration as an institution might realize the effective mission of eliminating the agitations which disturb peace and lead to the excesses of militarism. Until we have reached this point, the generous desire for substituting arbitration for war will always be praiseworthy, because prompted by humanitarian sentiments, but will not result in its realization.

But who in fact could take the initiative in assembling such a congress as we desire? This is without doubt the most difficult question. The rivalry of the great powers prevents any initiative coming from among them. Politics does not inspire generous desires, nor actions not prompted by actual interests or immediate utility. The only power that possesses the authority needed to translate into action this great scheme is the Pope. He, who should not be actuated by political motives, who desires peace between civilized nations, and who seeks to abolish war and to alleviate evils of all kinds that render the social question more serious, he alone is in a position to invite all the states of Europe to assemble in congress. Not being a political leader, the initiative of the Pope would certainly not excite suspicion and would appear in its true light,—that of providing in the best possible manner for the alleviation of present evils and the promotion of civilization. In a conversation with Cardinal Rampolla, in 1895, I laid before the eminent prelate these ideas. While with admirable benevolence he recognized that “an initiative on the

part of the Pope would be entirely in harmony with his high mission," he realized that "in order to induce him to make the attempt it would be necessary to be sure of success." That the Pope understands and appreciates the absolute necessity of abolishing war is made apparent by a letter written by Cardinal Rampolla to the *Daily Chronicle* in April, 1895, wherein the Cardinal, in the name of the Pope, makes manifest "his great satisfaction in the beginnings made to promote the institution of a permanent tribunal for deciding international controversies, and thus do away with the danger of war."

If the Pope wishes to carry out effectively the noble design of eliminating war, the indispensable means would be to promote general disarmament. And since the initiative of inviting the nations of Europe to a congress to establish the laws of a *modus vivendi* which will make disarmament possible and arbitration effective cannot be taken by any political power, we trust that the time will arrive when the Pope, with his great power for moral and humanitarian ends, will feel inclined to take the first step in such an undertaking.

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