## MEXICO AND THE UNITED STATES AND ARBITRATION

From time to time the JOURNAL has had comments upon the Mexican situation in so far as its international aspects are concerned and in so far as the disturbed condition in Mexico affects the relations of Mexico and the United States. The comments have aimed to lay before the readers of the JOURNAL the facts as they are contained in official documents, as it is very difficult to obtain facts from other sources and, if obtained, it is equally, if not more difficult to sift them, separating the true from the false. In view of these circumstances, it has been deemed the policy of wisdom to avoid the expression of opinion, because an opinion based upon alleged facts or conditions resulting from alleged facts must necessarily fall or be modified when the facts themselves prove to be false or only partially correct.

The present comment will follow the policy herein stated. It will regard Mexico as a member of the society of nations; therefore, as a sovereign and independent state, and in law the equal of every other sovereign and independent state, with rights and duties precisely the same as the rights and duties of the other sovereign and independent states. It will consider the government of Carranza as the existing government of Mexico, recognized as such by the United States on October 19, 1915, and that General Carranza as the head of that government is entitled to speak for it in foreign matters and is required to meet and to fulfill the duties imposed upon his country by the law of nations.

Without stating either the rights or duties in general of Mexico and the United States in the premises, the present comment calls attention to the Treaty of Guadalupe Hidalgo, concluded February 2, 1848, between the two countries and proclaimed by the President of the United States as the law of the land on July 4, 1848, which, ending a war, sought to provide a means in Article XXI which would render war between the two countries more remote, if not impossible. Article XXI says:

> If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account,

be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it be not better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.[1]

It will be observed that this article is what may be called "all inclusive," to use an expression of the hour, for not only the treaty but the political or commercial relations of the two governments are to be subjected to the procedure prescribed in Article XXI. It will be observed that arbitration is not compulsory, to use another expression of the day, as each of the contracting parties is left free to decide whether the course laid down in Article XXI is in its opinion "altogether incompatible with the nature of the difference or the circumstances of the case." The comment leaves the article and the treaty where it finds it, to the interpretation and application of the governments of the two countries.

It has long been the effort of friends of peace, especially in this country, to persuade the nations to agree to submit their outstanding difficulties to arbitration, and indeed to bind themselves by solemn agreement to submit future differences or disputes to arbitration. This general policy was proposed, not only in abstract but in concrete form, by William Jay, whose position in the peace movement is little inferior to that of his distinguished father, who, by the treaty which bears his name, introduced arbitration again into the practice of nations.

In 1842 William Jay published in England and the United States a little book entitled *War and Peace: The Evils of the First and a Plan for Preserving the Last*, in which he recommended that the nations should bind themselves by treaty to submit their present as well as their future disputes to arbitration. He believed that a great principle should be tried under the most favorable conditions, and he therefore proposed that the first treaty of this kind should be made with France, between which country and the United States there were then no disputes, and it seemed probable to Mr. Jay that disputes of a serious kind would not arise between them. Mr. Jay's proposal follows in his own words:

[1] Malloy's Treaties and Conventions between the United States and other Powers, Vol. I, p. 1117.

Suppose in our next treaty with France an article were inserted of the following import:

"It is agreed between the contracting parties that if, unhappily, any controversy shall hereafter arise between them in respect to the true meaning and intention of any stipulation in this present treaty, or in respect to any other subject, which controversy cannot be satisfactorily adjusted by negotiation, neither party shall resort to hostilities against the other; but the matter in dispute, shall, by a special convention, be submitted to the arbitrament of one or more friendly Powers; and the parties hereby agree to abide by the award which may be given in pursuance of such submission." [2]

It is difficult to estimate the exact influence of any book or pamphlet. The ideas stated in Mr. Jay's little work appear, at least to the writer of this comment, to be so reasonable as to suggest themselves to negotiators without being specially called to their attention. It is very difficult to say when an idea first took definite form and shape and, in describing a proposition of one, we often overlook another worthy person whose claims should be borne in mind.

Without attempting to claim for William Jay the authorship of what is now familiarly termed in French the *clause compromissoire*, it is believed that a clearer and more statesmanlike formulation of it than his is not to be found, and, without attempting to maintain that Article XXI of the treaty between Mexico and the United States is due to Jay's proposal, it is interesting to note in this connection that Jay's little book appeared in 1842, just six years before the conclusion of the treaty between Mexico and the United States, that it was widely circulated in the United States as well as in England, that its distinguished author was deeply interested in the relations between Mexico and the United States, and well informed as to their relations as evidenced by his admirable book entitled *A Review of the Causes and Consequences of the Mexican War*, published a year after its termination, and that he was a man of great influence, due not only to his family connections, but to his own ability, integrity and high ideals. The writer of the brief sketch of Jay appearing in the 11th edition of the Encyclopedia Britannica felt justified in saying that "his pamphlet, *War and Peace: The Evils of the First, with a Plan for Securing the Last*, advocating international arbitration, was published by the English Peace Society in 1842, and is said to have contributed to the promulgation by the Powers signing the Treaty of Paris in 1856 of a protocol expressing the wish that nations, before resorting to arms, should have recourse to the good

[2] War and Peace: American edition, pp. 81–82; English edition, p. 40.

offices of a friendly Power." This statement is quoted and indeed the reference to Jay is made to show that those ideas were in the air in the 40's and in the 50's, and to express the hope that they may also be found to be in the air in this year of trial and tribulation.

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## THE SO-CALLED INVIOLABILITY OF THE MAILS

Recent correspondence between the Allied and United States Governments has called renewed attention to the so-called inviolability of postal correspondence on the high seas during maritime warfare.

The Eleventh Hague Convention Relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime Warfare declares:

> The postal correspondence of neutrals or belligerents, whether official or private in character, found on board a neutral or enemy ship is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.
>
> The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port (Art. I).
>
> The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war respecting neutral merchant ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible (Art. 2).

These proposals were made by Germany at the Second Hague Conference of 1907, and were supported by an argument on the part of Herr Kriege, one of the members of the German delegation, which cannot be said to have much applicability to the circumstances of the present war. Herr Kriege said:

> Postal relations have at our epoch such importance—there are so many interests commercial or other, based on the regular service of the mail—that it is highly desirable to shelter it from the perturbations which might be caused by maritime war. On the other hand, it is highly improbable that the belligerents who control means of telegraphic and radio-telegraphic communication would have recourse to the ordinary use of the mail for official communications as to military operations. The advantage to be drawn by belligerents from the control of the postal service therefore bears no prejudicial effect of that control on legitimate commerce.

It cannot be said that the Eleventh Convention of 1907 is legally binding in this war; it was not signed by Russia, one of the leading belligerents, and it has not been ratified by more than half of the states represented at the Second Hague Conference.

In any case the provisions of the first paragraph of Article I do not