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EDITORIAL COMMENT

THE TREATIES OF ARBITRATION WITH GREAT BRITAIN AND FRANCE.

On March 7, 1912, the Senate advised and consented by a vote of 76 to 3 to the ratification of the proposed treaties of arbitration with Great Britain and France, amending their texts in certain particulars and interpreting by formal resolution the obligation to arbitrate created by the treaties. The final status of the treaties, due to the action of the Senate, is clearly seen from the text of the resolution of ratification which follows in full:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES.

(Legislative day, March 5, 1912; calendar day, March 7, 1912.)

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of a treaty signed by the plenipotentiaries of the United States and Great Britain on August 3, 1911, extending

the scope and obligation of the policy of arbitration adopted in the present arbitration treaty of April 4, 1908, between the two countries, so as to exclude certain exceptions contained in that treaty and to provide means for the peaceful solution of all questions of difference which it shall be found impossible in future to settle by diplomacy, with the following

AMENDMENTS.

On page 3, line 4, after the word "Tribunal" add a comma.

In the same line strike out "may" and insert in lieu thereof "shall."

On page 4 strike out the paragraph commencing on line 28 and ending on line 35.

Provided, That the Senate advises and consents to the ratification of the said treaty with the understanding, to be made part of such ratification, that the treaty does not authorize the submission to arbitration of any question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States or of the United States, or concerning the question of the alleged indebtedness or monied obligation of any State of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe doctrine, or other purely governmental policy.

In the editorial comment in the January number of the JOURNAL an impartial summary was given of the provisions of the texts of the treaties, their aims, and purposes, the objections to their ratification contained in the various reports made by the Foreign Relations Committee, and the official interpretation and justification of their terms made by Secretary Knox, who negotiated and signed them on behalf of the United States.

In view of the fullness with which these views were set forth in the comment it does not seem necessary to restate the issues or to summarize the debates immediately preceding the ratification. Therefore, the present comment confines itself to noting the changes made in the texts of the treaties and the interpretation of the treaties contained in the resolution of ratification.

By general agreement and without the taking of a vote, the text of Article I was slightly amended, as proposed in the majority report of the Committee on Foreign Relations, by placing a comma after the word "tribunal" and substituting "shall" for "may" in the following clause, "or to some other arbitral tribunal, as may [shall] be decided in each case by special agreement."

It will be recalled that the majority report proposed to strike from the treaty the third paragraph of Article III investing the Joint High

Commission with the power to determine in case of disagreement whether the question in dispute was or was not justiciable under the obligation created by Article I. This clause, which was the subject of much discussion within and without the Senate, was as follows:

It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under Article I of this treaty, that question shall be submitted to the Joint High Commission of Inquiry; and if all or all but one of the members of the Commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration in accordance with the provisions of this treaty.

Put to a vote the amendment of the majority report was carried, that is to say, was struck out by a vote of 42 to 40. Having thus accepted the two amendments proposed by the majority report, the Senate passed to the consideration of other amendments offered by individual senators.

The first article submits to arbitration "all differences hereafter arising * * * which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity." Senator Culberson proposed to insert after the word "equity" the following phrase "but which shall not embrace any question which affects the vital interests, the independence, or the honor of either of the two contracting parties, nor any question which concerns the interests of third parties." This amendment was rejected by a vote of 45 to 37.

Senator Bacon then proposed the following amendment as a proviso to the first clause of Article I:

Provided, That this agreement of arbitration does not authorize the submission to arbitration of any question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States or of the United States, or concerning the question of the alleged indebtedness or moneyed obligation of any State of the United States or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe doctrine, or other purely governmental policy.

The vote on this stood 41 to 41 and the Vice-President declared it lost. It will be noted, however, that Senator Bacon's amendment reappears in its entirety as the official interpretation in the resolution of ratification, and the first part of it dealing with admission of aliens to the United States or to educational institutions was immediately adopted upon motion of Senator Chamberlain by a vote of 41 to 38 as a proviso at the end of the first clause of Article I.

There were no further amendments offered and the treaty as modified was reported to the Senate. Senator Lodge thereupon proposed a resolution of ratification which took note of the action of the Senate, including Senator Chamberlain's proviso.

Senator Bacon moved as a substitute for this proviso his former amendment of Article I which had been defeated by the casting vote of the Vice-President, and now changed to the form of a proviso to the resolution of ratification. This time he was more successful as the substitute was carried by a vote of 46 to 36 and as adopted it became the official interpretation of the Senate. The resolution as amended was then agreed to by a vote of 76 to 3 and the French treaty was without objection advised and consented to upon like conditions. Included in the resolution of ratification the substitute has practically the force of an amendment of the treaty for it was held by the Supreme Court in the case of *Doe v. Braden* (16 Howard 635, 656), that

where one of the parties to a treaty, at the time of its ratification annexes a written declaration explaining ambiguous language in the instrument or adding a new and distinct stipulation, and the treaty is afterwards ratified by the other party with the declaration attached to it, and the ratifications duly exchanged, the declaration thus annexed is a part of the treaty and as binding and obligatory as if it were inserted in the body of the instrument.

It is of course for the President to determine whether or not he considers the action of the Senate as impairing the value of the treaties. Should he be of the opinion that ratifications thereof should be exchanged, and if Great Britain and France are willing to accept the treaties in their present form, ratifications may be exchanged at any time agreed upon and the treaties be proclaimed. The question is one of expediency for the President and the Secretary of State to decide.

MEDIATION IN THE TURKO-ITALIAN WAR.

The war between Italy and Turkey has for some months past been reduced to a situation which may be compared to a stalemate. Both parties seem able to hold their own, yet neither party is able to push the other any further. Italy is in secure possession of the town of Tripoli and the surrounding country, but she is unable to push further back and conquer the entire territory. Turkey is still in possession of the mountains in southern Tripoli but cannot drive the Italians from the coast. Italy has thus far limited the scene of operations to Tripoli