

# ARBITRATION : PRETENSE AND REALITY

EDITORIAL BY THEODORE ROOSEVELT

IN the year 1708 Prince Eugene of Savoy was besieging the city of Lille, which was defended by the gallant French commander Marshal de Boufflers. After much fighting, in which deeds of signal valor were performed by both sides, the situation grew so hopeless for the defenders that the Marshal offered to capitulate. Thereupon Prince Eugene, a general who was always as magnanimous in victory as he was terrible on the field of battle, wrote to the Marshal congratulating him upon the way in which he had defended the place intrusted to him, and continued: "I wish to mark the esteem in which I hold you by requesting you yourself to draw up the articles of surrender according as you judge them proper, assuring you that I shall change nothing, *save in the case that something is put in contrary to my honor and my duty*; which, however, I know I need not fear that you will do." (The italics are mine.) Marshal de Boufflers accordingly drew up the articles of capitulation as requested, paying scrupulous heed that nothing should be put in that might seem contrary to Eugene's sense of what was due from the standpoint of honor and duty to the German Empire which he served; and Eugene changed nothing in the articles submitted to him, abiding by every one, although as regards one the officers under him begged him to repudiate it.

The attitude that the highly civilized nations of to-day can take toward one another when questions involving the possibility of war are at issue between them should be in substance the same as the attitude that these two great and gallant soldiers took, who fought with each other so bravely, and kept faith with each other so honorably, two centuries ago in the Netherlands. A smaller man than Prince Eugene, or a bloodthirsty and ungenerous man, would never have written such a letter, and thereby would have shown not only less generosity but also in reality less wisdom; and, on the other hand, a weak or foolish man who had attempted to act with similar generosity would probably have promised too much, and then found himself in the discreditable position of being

obliged either to betray his country's interests or to go back on his plighted word. By reserving to himself the right to refuse to do anything inconsistent with honor and duty, by promising, therefore, nothing save what he could perform, and yet promising everything he could perform, and then making his promise good, Prince Eugene rendered a service to humanity; and in especial, by his deeds in making good his words, he advanced the standard of civilized conduct between enemies.

In proposing and in carrying out arbitration treaties the American people should act in precisely this spirit. It is astounding to realize what short memories many persons have, and the willful blindness with which they close their eyes to the teachings of even the most recent history. But even when people are blind to the past, they ought to be able to see what is happening in the immediate present. Surely the real friends of peace in this country ought to be able to profit by the events that have happened in China and in the Mediterranean during these very fall months, since the arbitration treaty was considered in the Senate. During these months we have seen a widespread revolt in China, with utter disorganization of the Empire, and we have seen war unexpectedly break out between Italy and Turkey. In China there has doubtless been much excuse for the revolt because of tyranny and misgovernment, and this tyranny and misgovernment have been greater than in any really civilized nation, although the Chinese are far more unwarlike than any civilized nation, and have an army very much less efficient than that of any civilized power. The complete absence of militarism in China, and China's effort to rely purely on pacific measures in dealing with all foreign powers, have not only caused it to lose various provinces to various foreign powers within the last few decades, but have had not the smallest effect in saving it from tyranny, misgovernment, and the most far-reaching economic misery at home, and, moreover, have had the effect of depriving it of means even of keeping order within its own boundaries.

As for the war between Italy and Turkey, I am not now concerned with its ethical justification. Personally, I believe that it is in the interest of humanity that Tripoli should fall under European control, just as it is in the interest of humanity that Morocco shall so fall; just as it has been of immeasurable benefit to mankind, and especially to Algerian and Egyptian mankind, that Algeria and Egypt should fall under the control of France and of England. But this is not the point. The point is that this war proves the utter inefficiency of paper treaties when they are unbacked by force; the utter folly of those who believe that these paper treaties accomplish any useful purpose in the present stage of the world's development when there is no force behind them; and, finally, not merely the folly but the iniquity of making treaties which there is no real intention of putting into effect. Turkey's treaties with various European Powers explicitly guarantee her integrity, and on the mere technical legalities of the case no court of arbitration in the world could possibly declare in any other way than as against Italy and for Turkey if the case at issue between them were brought to arbitration. Turkey has all the protection possible to give her by paper treaties; and yet all of these treaties thus guaranteeing her against dismemberment, thus pledging the honor of various great nations to guarantee her integrity, are not worth as much as a single gunboat of the smallest size the minute that it becomes worth while for any serious opponent to attack her. If Turkey had had a fleet which relatively to other fleets was even approximately as strong as her army, no man of any sense believes that the war would ever have occurred. She had no such fleet; she had merely the protection the treaties afforded her; and the minute the test came the treaties proved not only utterly insufficient as a substitute for a navy, but not worth the paper upon which they were written. In passing, he it observed that this was quite as much because the treaties promised too much as for any other reason.

It would be not merely foolish but wicked for us as a Nation to agree to arbitrate any dispute that affects our vital interest or our independence or our honor; because such an agreement would amount on our part to a covenant to abandon our duty, to an agreement to surrender the rights of the American people about unknown matters at unknown times in the future. Such an agreement

would be wicked if kept, and yet to break it—as it undoubtedly would be broken if the occasion arose—would be only less shameful than keeping it. A self-executing arbitration treaty of such a kind cannot be devised, simply because no such treaty that can be devised will execute itself, or will or ought to be executed by the Nation in time of stress. Of course the same reasons which make it impossible to agree to arbitrate questions that involve our vital interest, independence, or honor, apply to any proposal to submit to others the question whether or not a given dispute of such a kind is "justiciable," or does or does not involve such questions and therefore should or should not be arbitrated.

If as a people we wish to make a genuine advance, to promise what can and will and ought to be done—instead of merely making a pretense by promising something which will not and ought not to be performed should the occasion to keep the promise ever arise—we should agree definitely to submit to arbitration all disputes that do not involve the vital interest, the independence or honor of the Nation, and we should at the same time make provisions which will tend to bring about a pacific solution of all disputes not covered by the treaty. To this end a provision should be inserted in such treaty that if either party to it claims that a dispute involves its vital interest, its independence, or its honor, then (always provided that neither party takes a position that necessitates immediate action by the other), upon the request of either party, all questions of fact and all questions of law involved in the dispute shall be referred to arbitrators, who shall have no power to decide the dispute, but shall be authorized to pass upon the controversy as to questions of fact and of law, and to recommend such adjustment of the dispute as they may deem just and honorable to both the contracting nations. The recommendation of the arbitrators should then be given publicity, and, unless rejected within a specified time by one or other of the contracting parties (in the case of the United States this would mean the President and the Senate, or perhaps the President and Congress), should become binding upon both.

This would secure, in the first place, delay for adequate consideration of the questions at issue, and, in the next place, a calm and dispassionate discussion of the controversy before the civilized world; further, the elimi-



nation of questions of fact and of law from the controversy ; and, finally, it would make it easier for a government to accept a fair solution of a given controversy if there had been popular prejudice against such solution.

Some such plan as that herein suggested, if enacted into a treaty, would really forward the cause of international peace, and yet would leave the Nation arbiter of its own destiny, and would promise nothing which could

not be performed, having regard both to the vital question of National honor and, above all, to the still more vital question of National duty. On these two questions of duty and honor the Nation, if true to itself, can never be guided by any outside body, and can pay heed only to its own conscience and its own sense of right ; to fail thus to be guided would mean that it was recreant to its duty, not only to itself, but to the world at large.