by disorder, shall fail to feel that they are not alone in the world, or shall fail to see that for them a better day may dawn, as for others the sun has already risen.

It is too much to expect that there will not be controversies between American nations, to whose desire for harmony we now bear witness; but to every controversy will apply the truth that there are no international controversies so serious that they can not be settled peaceably if both parties really desire peaceable settlement, while there are few causes of dispute so trifling that they can not be made the occasion of war if either party really desires war. The matters in dispute between nations are nothing; the spirit which deals with them is everything.

The graceful courtesy of the twenty republics who have agreed upon the capital of the United States for the home of this International Union, the deep appreciation of that courtesy shown by the American Government and this representative American citizen, and the work to be done within the walls that are to rise on this site, can not fail to be powerful influences toward the creation of a spirit that will solve all disputed questions of the future and preserve the peace of the Western World.

May the structure now begun stand for many generations to come as the visible evidence of mutual respect, esteem, appreciation, and kindly feeling between the people of all the republics; may pleasant memories of hospitality and friendship gather about it, and may all the Americas come to feel that for them this place is home, for it is theirs, the product of a common effort and the instrument of a common purpose.

RECENT ARBITRATION TREATIES CONCLUDED BY THE UNITED STATES

In the Editorial Comment of the April number of this JOURNAL (II, 387) attention was called to the fact that the United States had seriously taken up the problem of arbitration treaties, and that by a happy formula of the *compromis* clause the objection of the Senate, as well as the technical objection of the foreign powers, seems to have been overcome. As the nature of the *compromis* was carefully considered, as well as the constitutional and international difficulty, it seems unnecessary to do more than to refer to the editorial in question.

The American Government has not entered into an unrestricted agreement to arbitrate any and all controversies which may rise, but has limited the scope of arbitration to controversies of a legal nature, or differences relating to the interpretation of treaties, thereby excluding any differences of a purely political nature. The reason for this restriction is self-evident; matters of policy are for the Government to determine, and it is not to be supposed that a government will generally and in advance renounce the right to conduct and to control matters of policy.

The interpretation of treaties is purely a judicial question, and therefore susceptible of judicial settlement, and would doubtless have been included within the general submission of claims of a legal nature had they not been expressly specified. Differences of a legal nature may, however, be very far-reaching, and at times involve vital interest, the independence, or the honor of the contracting parties. The treaties therefore expressly exclude questions of this nature from the general treaty. Vital interests may possess a judicial element, but it is highly probable that interests termed "vital" are at bottom political, and as such properly excluded from a general convention. The same may be said of independence, for although the question of the independence of a state may arise in a controversy of a judicial nature, the existence or nonexistence of a state has been and perhaps always will be a question of international politics. Again, the honor of the two contracting states is excluded from the arbitration agreement, and this exclusion seems susceptible of justification for the twofold reason that the expression is so indefinite as to be well-nigh meaningless, and whatever its nature it is clearly not a judicial matter. And finally, the interests of third states are excluded. It may be questioned whether this exclusion is not mere surplusage, because it is as elemental as it is fundamental that a state (as well as a person) can not be bound by an agreement to which it has not been a party.

The omission of vital interests, independence, and the honor of contracting states from a general arbitration agreement has been the subject of great and persistent criticism; yet if the views expressed in the preceding paragraph are just and reasonable, it would seem that there is no basis for criticism, because the arbitration contemplated is concerned solely with the settlement of questions of a legal and therefore judicial nature. If these questions are not judicial, or are not wholly judicial, it does not seem expedient, in the present state of affairs, to submit them to the judgment of a law court. But from another point of view the criticism is ill-founded, because the treaty of arbitration is clearly good so far as it goes, and to that extent deserving of commendation. But a conclusive answer to the objection lies in the fact that these three questions are not excluded from arbitration; for the powers may at any time by a special agreement submit to arbitration a question involving any one or all of the excluded classes. Reference may be made in this connection to the Treaty of Washington of 1871 submitting the *Alabama* claims to impartial arbitration, as indicative of the practice liable to be

followed when states, mutually respecting each other, are confronted with a difficulty of like or allied nature. In any case, notwithstanding its manifold advantages, arbitration is of recent origin and it is especially wise in matters of statecraft to make haste slowly.

However opinions may differ as to the wisdom or unwisdom of reserving certain matters from the scope of a general arbitration treaty, still all will agree that the negotiation of the treaties is in itself indicative of progress, and it is a subject of congratulation that the Secretary of State has devised a formula simple and easy of application to be understood by the man in the street, and to which no objections of a constitutional nature have been or can be raised. The unfortunate misunderstanding between Senate and Executive has passed away without leaving a trace, and in the recent session of Congress — to be more accurate, in the months of February, March, April, and May — the Senate of the United States had presented to it, and approved, no less than twelve arbitration treaties with the following States: France, Switzerland, Mexico, Italy, Great Britain, Norway, Portugal, Spain, Netherlands, Sweden, Japan, and Denmark. These treaties are strikingly similar. For example, they are concluded for a period of five years; they specify the Permanent Court at The Hague as the tribunal for the arbitration of legal — that is to say, judicial — questions, and they all exclude from the general agreement to arbitrate questions involving vital interests, independence, and honor of the contracting parties, as well as questions concerning the interests of noncontracting states. They likewise specify that a special agreement shall be concluded "defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal, and the several stages of the procedure." This "special agreement" is the English equivalent for "*compromis,*" and the regulation of this has been the great difficulty not merely in the United States but in foreign countries.

The *compromis* clause differs somewhat in the treaties, but as far as the United States is concerned there is no variation from the original type which follows: "It is understood that such special agreements on the part of the United States will be made by the President of the United States, by and with the advice and consent of the Senate." The internal machinery is thus specified and it seems only proper that there be a like specification on the part of the other contracting states, if they so desire. The following quotations show the nature and extent of the specifications in the various treaties: "On the part of France, they will

be subject to the procedure required by the constitutional laws of France;" "on the part of Switzerland, by the Federal Council of the Swiss Confederation, with the advice and consent of the Federal Assembly;" "on the part of Spain [such special agreements] shall be subject to the procedure required by her laws;" "on the part of the Netherlands, they will be subject to the procedure required by the constitutional laws of the Netherlands;" "on the part of Sweden, by the King in such forms and conditions as he may find requisite or appropriate;" "and on the part of Denmark, by the King in such forms and conditions as he may find requisite or appropriate."

Italy, Norway, and Portugal made no reservation concerning the organ or channel to be charged with the preparation of the *compromis,* for it follows of itself that the contracting party may use any machinery sanctioned by its constitution and that it is in ordinary cases unnecessary to specify it in an international agreement.

In the prolonged discussions at the recent Hague conference, Germany, speaking for the opposition, maintained that a treaty of arbitration bound the nation to prepare the *compromis* in such a manner that in a general arbitration treaty between Germany and the United States the German Emperor would be bound to prepare the *compromis* and when he did so would bind Germany, whereas the United States would not be bound until the Senate had ratified the special agreement. It is evident that an agreement — and a *compromis* is nothing but a special agreement — must be binding upon both to be binding upon either, and the obvious method of avoiding the difficulty pointed out by Germany would be to state clearly that the *compromis* should not be binding until it was definitively accepted by both.

This line of argument evidently expresses the view of Japan, for while making no reservation regarding the special agreement, the concluding paragraph of Article II expressly says that such agreements shall be binding only when confirmed by the two Governments by an exchange of notes.

The fullest and most formal expression of this view is, however, to be found in the treaty between Great Britain and the United States. As this depends upon the phraseology of the special agreement it is necessary to quote the concluding clause of Article II: "His Majesty's Government reserving the right before concluding a special agreement in any matter affecting the interests of a self-governing dominion of the British Empire to obtain the concurrence therein of the Government of that

Dominion. Such agreements shall be binding only when confirmed by the two Governments by an exchange of notes." The right of Great Britain to consult a dominion can not be questioned by the United States, and to what extent a dominion or province shall be consulted depends solely upon the internal organization and discretion of the British Government. The reservation therefore is, from an international point of view, superfluous, but it can not be doubted that it will be very pleasing to the great self-governing colonies of the British Empire. The following notes set forth the views of the contracting parties on the binding effect of the *compromis:*

BRITISH EMBASSY,
Washington, April, 4, 1908.

SIR: I have the honor to inform you that I have been instructed by His Majesty's principal Secretary of State for Foreign Affairs to place on record on behalf of His Majesty's Government, with reference to the general arbitration treaty, just signed by you and myself, that the final sentence of Article II has been inserted in order to reserve to both Governments the freedom of action secured to the United States Government under their Constitution until any agreement which may have been arrived at shall have been notified to be finally binding and operative by an exchange of notes. It is understood that this treaty will not apply to existing pecuniary claims nor to the negotiation and conclusion of the special treaty recently recommended by the International Waterways Commission or any other such treaty for the settlement of questions connected with boundary waters.

I shall be obliged if you will inform me of the concurrence of the United States Government in the terms of this note.

I have the honer to be, with the highest consideration, sir, your most obedient, humble servant, JAMES BRYCE.

Hon. ELIHU ROOT,
Secretary of State.

DEPARTMENT OF STATE,
Washington, April, 4, 1908.

EXCELLENCY: In signing with you to-day the general arbitration treaty which has been negotiated between our respective Governments, I have the honor to acknowledge and take due cognizance of your note of this day's date whereby you inform me that you are instructed by His Majesty's principal Secretary of State for Foreign Affairs to place on record on behalf of His Majesty's Government, with reference to said treaty, that the final sentence of Article II has been inserted in order to reserve to both Governments the freedom of action secured to the United States Government under their Constitution until any agreement which may have been arrived at shall have been notified to be finally binding and operative by an exchange of notes.

The Government of the United States in turn declares that its understanding of the final sentence of Article II, aforesaid, is that which you set forth on behalf of His Majesty's Government.

I also take note of and concur in the understanding expressed in your note that the treaty we have just signed will not apply to existing pecuniary claims, nor to the negotiation and conclusion of the special treaty recently recommended by the International Waterways Commission, to any other such treaty for the settlement of questions connected with boundary waters.

I have the honor to be, with the highest consideration, your excellency's most obedient servant, ELIHU ROOT.

His Excellency The Right Honorable JAMES BRYCE, O. M.,
Ambassador of Great Britain.

Another reservation in Ambassador Bryce's note should not be overlooked, because pecuniary claims are not to be submitted to the Hague Tribunal, but to a specially constituted commission, and the intricate questions concerning the international boundary between Canada and the United States are reserved for the consideration of a tribunal undoubtedly to be composed of experts and to meet within the disputed locality.

It is pleasing to turn from the treaties with monarchies to the treaty with our republican neighbor, Mexico, for in the matter of the *compromis* no embarrassment exists. For example: "It is understood that such special agreements shall be made by the Presidents of both contracting countries by and with the advice and consent of their respective Senates."

Article III of the treaty is very important; for, lest the first article of the treaty might seem to question the arbitration clause of the treaty of Guadalupe Hidalgo (1848), the clause in question is expressly confirmed and continued in effect. As the articles are fundamentally important they are quoted in their entirety:

The foregoing stipulations in no wise annul, but on the contrary define, confirm and continue in effect the declarations and rules contained in Article XXI of the treaty of peace, friendship and boundaries between the United States and Mexico signed at the city of Guadalupe Hidalgo on the second of February, one thousand eight hundred and forty-eight.

Article XXI mentioned in the above clause reads:

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 would not be 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.

It is thus seen that the negotiation of twelve treaties of general arbitration is, to use the happy phrase of our Secretary of State, "continual progress toward making the practice of civilized nations conform to their peaceful professions."

SETTLEMENT OF THE CANADIAN QUESTIONS

When Mr. Root took charge of the international relations of this Government as Secretary of State less than three years ago, not the least important of the many matters awaiting his attention was a group of unsettled questions with Great Britain, involving various matters of difference between the United States and Canada and Newfoundland, most of which had been the subject of controversy for a decade at least — some for over half a century — and almost any one of which gave promise, if left longer unadjusted, of developing into a fruitful source of international irritation.

The negotiations for the settlement of these questions which were then initiated by Mr. Root and have since been carried on by him have already produced definite results of great value, and what has actually been accomplished gives assurance that a satisfactory settlement of all of them may now be expected. Final agreements have already been reached with respect to four of these questions, as is shown by the boundary treaty, the boundary-waters fisheries treaty, the conveyance of prisoners, and the wrecking and salvage treaty, which were recently entered into with Great Britain and are printed in the Supplement to this number of the JOURNAL at pages 303–325. Moreover, the general arbitration treaty with Great Britain, signed on the 4th day of April, 1908, which is printed in the Supplement at page 298, opens the way for the settlement of at least one other of these questions — the Newfoundland and Canadian fisheries controversy — and a basis of settlement, it is understood, has been reached for several of the others. The