

A PROPER CASE FOR ARBITRATION

EDITORIAL BY THEODORE ROOSEVELT

AS I need hardly say, I do not believe that all matters between nations should be arbitrated, and I do not regard even good general arbitration treaties as of really prime importance, simply because they are not, and never can be, self-acting, self-fulfilling; general arbitration treaties are merely promissory notes, and no promise comes in the same category as action. But in good faith actually to arbitrate an existing arbitral question *is* action, and action of the most practical kind; and there is now pending a question between ourselves and Russia which is of capital importance to the dignity and honor of the United States, and yet which can with all propriety be a subject for arbitration, at least in its preliminary stages. In 1832 the United States concluded a treaty with Russia which ran in part as follows:

There shall be between the territories of the high contracting parties a reciprocal liberty of

commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.

This is substantially to the same general effect as the clauses in the treaties we have made with all other civilized Powers. For half a century after its adoption no difficulty was made by Russia about carrying it out; but of recent years she has steadily refused to put into effect this provision of the treaty according to what our State Department has consistently, under every Administration, held to be not only its plain meaning but its only

possible meaning. Russia has refused to receive missionaries and ministers of various denominations who desire to travel in Russia, but, above all, she has especially refused to permit American citizens of Jewish faith to travel in Russia in accordance with the provisions of this treaty, save in wholly exceptional cases. It has been contended on behalf of Russia that, as she does not give to Jews who are Russian citizens the same rights that she gives to orthodox Russians, Americans of Jewish faith are therefore not entitled under the treaty to any rights save those granted to Russian Jews. America cannot and will not acquiesce in any such assumption.

Let us for a moment reverse the conditions and consider what our action would then be. More than once Turkey has attempted to discriminate against missionaries who are American citizens. It attempted so to discriminate at one period when Mr. Straus was Ambassador at the Porte. Mr. Straus instantly announced that the United States would not submit to any such discrimination, though we had no specific clause in our treaty with Turkey of the kind that we have with Russia; and the home Government backed him up in his attitude. Now in Turkey there have been certain periods when Jews received greater consideration than at least certain classes of Christians. But the United States would never under those conditions have submitted to the doctrine that Americans who were Christians should be treated worse than Americans who were Jews; and the time has come when it should insist that the converse of this proposition is true as regards Russia, and that we can no longer tolerate Russia's action in arbitrarily interpreting the treaty according to her own view as permitting her to discriminate against various classes of American citizens, and especially against American citizens of Jewish faith. It was right that no precipitate action should be taken in this matter, and that every effort should be made, as it has been made, to persuade Russia voluntarily, and as a matter of frank and free action on her part, to do as we request. But something further should now be done.

It is, of course, open to us to denounce the treaty of 1832, and unless an agreement can be reached in other ways, such action, I am persuaded, will become, and ought to be, inevitable. It is axiomatic that we should

not submit permanently to the continuance of a treaty when it is construed according to a principle which, if openly avowed at the time of its making, would have prevented our people from even considering the possibility of making it. Under no circumstances would we now make with Russia or with any other Power a treaty which explicitly permitted such discriminations as Russia actually makes against certain classes of our citizens. This being so, the treaty, as Russia now construes it, ought not to be, and cannot be, continued.

But before exercising our treaty right to give notice of the abrogation of the treaty because of the disagreement between ourselves and Russia as to the interpretation of the clause in question, it would be wise to seek from some impartial neutral body an authoritative construction of that clause. Ordinarily the construction of a treaty is pre-eminently a matter for arbitration, if the contracting parties disagree as to its exact reading. Ordinarily such construction is a juridical act of the kind especially suited for putting before an arbitral court. Again and again in treaties this has been recognized by various Powers, and Russia, both explicitly and implicitly, recognized this when she called the Hague Conference and took her part in constituting the Hague International Tribunal. We have the right now to ask that Russia in this case specifically apply the principles to which she unequivocally committed herself by her action in connection with the two Hague Conferences. There could be no more desirable opportunity for international arbitration than that thus afforded.

Before considering the question as to whether the treaty shall be abrogated, let us find out just exactly what the treaty means. Surely Russia cannot object to this, and of course if she should it would merely make it clear that we had no alternative except abrogation. The part of wisdom would seem to be for the United States to propose to Russia, before considering the question as to whether or not the treaty should be abrogated, the desirability of finding out exactly what the treaty means, and of doing this by submitting to the Hague Court of Arbitration the clause in question, with a recital of all the attendant circumstances, and asking the judgment of the Court on the construction of the clause.