

**INTERNATIONAL ARBITRATION:
HISTORICAL NOTES
AND PROJECTS, NATIONAL
CONFERENCE AT WASHINGTON**

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Historical Notes

AND

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I.

HISTORICAL INTRODUCTION.¹

In ancient times, when war constituted the normal state of peoples and the foreigner was everywhere treated as an enemy, arbitrations were necessarily rare, and we do not find either a general system or harmonious rules governing the subject. There were a few cases of arbitration in the East and in Greece, but the mode of procedure was not suited to the temperament of the people; and, after the peace of Rome was established, with the civilized world under one government, there was no place for it, since arbitration presupposes a conflict between independent states.

In the Middle Ages, owing to the peaceful influence of the Church, arbitrations were more frequent; and yet their influence was far from producing all the results which might have been expected, perhaps because Europe was then divided into a great number of petty states, or because the rude manners of the period were intolerant of the idea of conciliation.

¹ This Historical Introduction, and the passages on Arbitration in the East and in Greece, Arbitration under the Roman Empire, and Arbitration in the Middle Ages and in More Recent Times, are translations from a work of great merit, entitled *Traité Théorique et Pratique de l'Arbitrage International*, by M. A. Mérignac, Professor of International Law in the Faculty of Law at Toulouse. The publisher of the work is M. L. Larose, 23, rue Soufflot, Paris.

Later history does not present many cases of arbitration, for the ambition of princes does not, any more than did that of the Roman people, adapt itself to pacific remedies in conflicts in which they hope to gain an advantage by force of arms. Absolute monarchy is essentially warlike; it rarely turns aside from the objects which it pursues, although it has not, as Rome did, either forced its yoke on all nations, or fallen under the combined assaults of those whom it has sought to subjugate.

II.**ARBITRATION IN THE EAST AND IN
GREECE.**

Exact historical ideas on the subject of International Arbitration among the peoples of the East are somewhat deficient, and the saying that one ought to hesitate to risk himself on unsettled ground seems applicable to our present subject. Here are two instances which appear exact enough. Herodotus relates that during the lifetime of Darius, a contest arose between Artabazanes and Xerxes, and that Darius decided in favor of the latter. After the death of Darius, the judgment of the deceased King not being definitive, and the feelings of the people being somewhat divided, they consented to submit the matter to the decision of the uncle of the two pretenders, Artabanus or Artaphernes, who, in the capacity of a judge, decided in favor of Xerxes. Herodotus also relates that after the defeat of the Ionians, Artaphernes, Satrap of Sardis, sent for the deputies of the cities, and made them sign a contract or a treaty, to the effect that in case of conflict they would settle it by law rather than by means of arms.

The Greeks often resorted to arbitration, but they practiced it among themselves and not with foreign nations, for, like other ancient peoples, they regarded foreigners as barbarians, and treated them

as enemies. Besides, their arbitrations did not cover great political questions, for every Greek city preserved its independence with a jealous care. They related to disputes touching religion, commerce, boundaries and the possession of contested territories, especially of the numerous islands scattered among the Grecian seas. The following are some decisions by arbitration bearing on these different points.

In the time of Solon, five Spartans were chosen to decide between the Athenians and the Megarians, on the subject of the possession of the Island of Salamis. About the year 416 B. C., Argive judges acted as arbitrators as to certain islands of which the Cimolians and the Melians disputed the ownership. The Etolians rendered an arbitral sentence on a question of boundary, between the cities of Melite and Pera in Thessaly. Themistocles determined a dispute between the Corinthians and the Corcyraeans about Leucas, deciding that the peninsula should be held in common upon the payment of twenty talents by the Corinthians. During the reign of Antigone, the inhabitants of Lebedos, having been forced to leave their country, settled in Teos; and certain questions which arose between the old and the new people of the latter city were adjusted by the city of Mitylene, appointed as arbitrator by the King Antigone.