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Revised Edition

By

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PREFACE

PERHAPS it may appear futile to discuss the foundations of international and world society at a time when Europe is engulfed in deadly struggle. Surely if there were any foundations of an inter- or trans-national character, they are being destroyed. Surely it is a refusal to look at obvious facts to assert that human life today rests upon anything but naked force, or to claim that there is anything left but international disorganization.

However black the outlook may be, and however hopeless the task may seem, it is nevertheless the urgent business of the scientist to look beyond immediate appearances—to see whether the sun does actually go around the earth or whether in truth it is the earth which revolves around the sun. The sun appears to rise in the east and travel across the sky; but closer observation leads to a correction of first impressions. Or, to adopt another figure of speech, however devastating and disastrous an epidemic may be, the task of the scientist and the doctor is to continue diagnosis and examination as calmly and as accurately as possible, and to make clear what are the causes of disease and what are the remedies. How many panics in past ages have been due to superstitious beliefs concerning demons! How many lives have been lost through a refusal to look more closely into the facts which have produced plagues and other visitations!

If we look at the world today, we shall be astonished at the amount of human activity that cannot be described except on an international or trans-national or world basis. But human beings in the last few years have shut out the picture of the world as it is and have put on blinkers which have prevented them from seeing beyond a number of short-term interests, national myths, party symbols, and primitive emotions. Dean Pound has written that the political and legal theories of the nineteenth century were developed by men who looked at the facts of the world of the eighteenth and nineteenth centuries, but that later thinkers drew their deductions from these nineteenth-century theorists and not from looking at the changing world in which they lived. We are pay-

ing a heavy penalty for this mischievous practice of theorizing from the theories of predecessors. Francis Delaisi, in his *Political Myths and Economic Realities,* traces the consequences to civilized life of the myth of political sovereignty. H. G. Wells, in a recent volume, has reminded us that the League of Nations failed because it was too much political and legal. And, in an address at the University of Washington, Professor A. H. Compton told an audience that the simple experiment of Faraday about a hundred years ago concerning the electromagnetic field has meant more to Europe than the campaigns of Napoleon. But how many people consider Faraday and Pasteur and the other scientists who have helped us to conquer distance and triumph over disease as basically affecting the problem of government? The majority are still dominated by sentimental political and national appeals, and misinterpret the nature of the society in which we live.

The evidence contained in the following chapters should make it quite clear that nations as isolated units of government are unable any longer to perform their tasks as sovereign independent entities except at ruinous cost. The present war is an indication of the frightful sacrifices demanded in the attempt to maintain security by national effort alone or with the help of allies. And the evidence also shows unmistakably that these nations cannot by themselves adequately organize shipping, radio, properly continuous railroads, air travel, health, conservation, the prevention of crime, and a host of other activities. For what purpose then are they fighting? Looked at from this angle, the tragedy of Europe may be seen in a new light—the tragedy of countries fighting to defend themselves with a system of government which has worked well in its day but which is no longer adequate for the purposes of the present world. Blood and treasure are being sacrificed because of the retention of an instrument which should now play a subordinate (but still important) role in government but which people have vainly striven to continue as an exclusive and dominant political entity. The utmost loyalty has been demanded for a form of society which is less and less able to handle the business which confronts it. Europe and, for that matter, the world are resisting a necessary change in the structure of government and in the loyalties which governments demand. It should seem obvious that, as life changes and new problems arise, new methods of government must come into existence to meet changed conditions—otherwise disaster ensues. Feudalism played its part

and gave way in the fullness of time to a new kind of society. So must present forms of government in turn change their functions.

Seen from this standpoint, international government is not a luxury but a necessity. At the present moment the danger exists that the war may be fought for the wrong things and that men may be asking and answering with terrible intensity the wrong questions. They may not see that the essential need of the world today is constitutional building—to find the political form of society which is best suited to control the vast forces which modern science has released—and that nationalism, by attempting to maintain itself in the center of the stage, is overplaying its part, is weakening itself, and, indeed, is threatening itself with destruction. A second world war in our generation will have been fought in vain unless mankind can realize quickly the deepest problem which confronts it.

In truth, the central question is not, as so many assert, nationalism versus internationalism. The fundamental issue is what kind of nationalism can best serve the interests of the people of the world, and what kind of international organization can most efficiently minister to man's needs. It is an intensely practical question and one which demands for its answer, not the easy theorizing of the armchair philosopher, or the facile classifications of the passionate conservative and still more passionate radical partisan, or the verbal schematic products of the platitudinous theologian; on the contrary, it requires a description of things as they are, and an estimate of the significance of things as they are, and as they are developing, inasmuch as things not only *are,* but are in the process of *becoming.* And these estimates will lead to general judgments which in one sense may appear theoretical but which in another sense are the practical everyday things seen in their wider relations.

A British scholar[1] has recently criticized what he calls political utopianism and denounced many writers for their armchair and wishful thinking. He quotes from Lord Bacon, who said: "Philosophers make imaginary laws for imaginary commonwealths, and their discourses are as the stars which give little light because they are so high," and urges that "on account of the pernicious and inveterate habit of dwelling on abstractions, it is safer to begin and raise the sciences from those foundations

[1] E. H. Carr, *The Twenty Years' Crisis* (The Macmillan Company, Ltd., London, 1940).

which have relation to practice, and let the active part be as the seal which prints and determines the contemplative counterpart." Carr spends much time in demonstrating the futility which results from indulging in theoretical speculations based upon rationalism, utilitarianism, internationalism, *laissez faire,* overeasy synthesis of interests, and naïve assumptions of international economic harmony. He then attempts a "realistic criticism," and speaks of the foundations of realism. Interestingly enough, Carr falls victim to the very evils which he denounces; his analysis operates within the framework of concepts which are different from the concepts of his victims but are equally theoretical. He erects a false antithesis between utopia and reality and between man as an egoist and man as a social being. He takes the concept of national interests as fundamental, is dominated by the idea of power, and unduly contrasts realism and idealism as if these were wholly antithetical terms. Nevertheless Carr is profoundly right in urging us to beware of trying to compress a complicated world into a few simple principles, even though he himself does not escape from the danger against which he warns.

The present volume is an attempt to avoid building utopias in disregard of the tremendous complexities of the contemporary world. It is an attempt at "realism," in that it sets out to show how much the evidence compels us to see that the foundations of human life are broader than such terms as "national power" and "national interests" imply.

What is a nation or a state but a group of people associated for certain purposes? And the more purposes the people have in common as a nation or as a state, the stronger their sense of unity. But the state or nation provides only certain elements of life, not all of them. It may supply certain elements at one time and not at another. National and state institutions may be more efficient at one period than another in performing this function or that. The content of nationalism and of a state changes. It is not a closed system but may be added to, contracted, and combined with other agencies of government in order to meet human needs. Americans should not have to be told that many constitutional amendments were adopted in order to prevent the state from invading certain areas of private life. If, in order to achieve individual freedom and to insure that governments should be the servant and not the master, the nation became limited in its power over individuals within its boundaries, should it not have limitations imposed upon it in relation to peoples without? If there are certain things which

can be better done by co-operation, it is the height of folly to retain a spurious sovereignty and a false sense of independence when the burdens of new tasks become too great for separate national action.

Without denying the logic of established institutions, this volume attempts to emphasize the urgent need of developing an attitude of political discovery, so as to adapt political institutions to meet new and unprecedented tasks, to demonstrate that the full promise of contemporary civilization depends upon man's political inventiveness in this time of rapid change, and to present international relations not so much in terms of power politics as in terms of constitution building and of establishing political units more in accordance with the facts of life.

I wish to thank my wife, and also Mr. Dan Blom, Miss Thelma Williams, Miss Rose Doyle, and especially Mrs. Helen McCauley, Miss Helen Hodges, Mr. Glen Wood, Mr. Richard Rader, and Mr. Donald Urquhart for their assistance in preparing the manuscript. To Dr. Charles E. Martin I owe a debt of gratitude for many kindnesses and for his encouragement and his part in making possible the publication of the present work. I am also anxious to acknowledge the invaluable help given to me by Professor Graham H. Stuart and the Stanford University Press staff.

L. A. M.

SEATTLE, WASHINGTON
June 20, 1941

PREFACE TO SECOND EDITION

A revision of the present volume has been made necessary by the world-shaking events which have occurred since June 1941. The German invasion of the Soviet Union, the Japanese attack upon Pearl Harbor, the long, anxious years of war, the turning of the tide of battle, the terrible impact of the rocket bomb and the atomic bomb, to mention but two of the developments in the art of war, the emergence of new international agencies culminating thus far in the organization of the United Nations, all have created the vast new problems which now confront the world. They have reinforced the central theme of this book that "international government is not a luxury but a necessity," and that the most urgent political need today is to adapt political institutions to meet new and unprecedented tasks and to establish political units more in accordance with the facts of life.

I wish to thank Miss B. Ruth Jeffries, Miss Ellen Quam, and Miss Marjory Wentworth for assistance in preparing the revised edition. To Miss Dorothy Greenhut and Miss Martha Herman I owe a debt of special gratitude for their most efficient stenographic help and the generous spirit with which they carried through an exacting assignment.

L.A.M.

SEATTLE, WASHINGTON
June 1947

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Chapter I

THE DEVELOPMENT OF WAR AND ITS EFFECT UPON THE SOVEREIGN STATE

IN FEUDAL days there was no permanent army. At the end of a campaign, after having performed his military service, the knight returned home. To him fighting was a privilege reserved to the upper classes and woe betide the commoner who dared usurp his prerogative.

The growth of cities and the Protestant Reformation brought burghers and peasants into the fighting line. Frequently townspeople in their struggle against feudal lords for their liberties hired and armed mercenary troops to wage their battles for them. The use of the bow and of gunpowder put the knight at a disadvantage and dealt the landed class a heavy blow. Noblemen protested against the new, unfair methods of war! The rise of a new class and the introduction of new weapons thus had important consequences for European society.

The freedom due to the absence of any standing army, which seems so extraordinary to our modern world burdened with the cost of maintaining millions upon millions of men under arms, was offset by the danger of roving bands which came into existence when mercenaries were disbanded at the conclusion of hostilities. And, indeed, standing armies as we know them arose in order "to liquidate bothersome military groups seeking to perpetuate their existence by marauding."[1] The remedy was effective; but in turn it threatened the new middle class, which found that the standing army, called into being as its protector, was likely to become a greater menace than the disorderly marauders had been. The standing army enabled the feudal nobleman, who had been displaced by the new mercantile economy and the rising power of nationalism, to find a new vocation. Nobles monopolized army positions; they obtained prestige; in return for their readiness to serve on the field of battle they gained the privilege

[1] Alfred Vagts, *A History of Militarism* (W. W. Norton & Co., New York, 1937), p. 45.

of tax exemption; they boasted of their peculiar code of "honor," in defense of which they fought duels; and they banded together to resist even royal interference. Their honor did not extend to those of lesser rank, who found that decorations for bravery were reserved to the nobility. In this way the national standing army, officered by post-feudal noblemen, carried into the eighteenth century. At that time war was waged according to a well-accepted set of rules: Armies were small. Indeed, one outstanding leader, Marshal Saxe, claimed that an army of 42,000 was quite adequate in size, since the fundamental object was to execute skillful maneuvers, not to annihilate the enemy, and that an able general could all his life wage war effectively without fighting more than a few battles. War was essentially a game between sovereigns, characterized by restraint and the concept of honor.[2]

The eighteenth-century concept of peace, as set forth by Vattel in his *Law of Nations,* showed similar elements of restraint. A peace treaty must end a war by removing the cause which had given rise to the conflict. The victor must take only what he strictly needs. If the treaty is to be sacred to loser as well as winner, the latter must observe moderation. He must not exercise "intolerable compulsions" upon his defeated rival; he must accept an honorable compromise, and must avoid "punishing the loser in the name of justice." There must be a peace among equals.

However, new ideas appeared which were to destroy the eighteenth-century conceptions of war and peace. Military thinkers began to ask whether a nation in arms instead of a small professional army would not be more efficient and less expensive. Guibert, the Duke of Brunswick, and others urged that national armies trained in virtue and patriotism would be much more effective than the traditional standing army. But conservatism had its way until the American Revolution proved to the world that common soldiers taking cover and firing from behind natural ambush were more than a match for professional soldiers fighting in the conventional fashion.

The French Revolution and the Napoleonic Wars completed the destruction of the old military system. In 1793 France called up 300,000 men, and next year French regular troops and volunteers were amalgamated. The artillery became an important element in warfare. The French used propaganda on a wide scale and inspired their mass armies to great enthusiasm. They relied upon

[2] The difficulties of communications, due to poor roads and the problem of supplies, of course had a decisive influence upon the nature of warfare.

numbers to overwhelm theoretically better-trained troops, and despite terrible losses they won battles. The leaders developed, and acted upon, the theory of mass offensive. The great aim was to destroy the enemy forces and not, as in the eighteenth century, merely to entrap them. Napoleon carried the system still further. He introduced a new type of military honors designed to gratify the pride of the common soldier. He defrayed the costs of his campaigns as far as possible by making the conquered countries pay, and exacted hundreds of millions of francs from Austria, Prussia, Italy, and North Germany. He insisted upon the element of speed, cutting his baggage train to the lowest limit. In spite of enormous losses in manpower, his earlier wars were profitable.

The attempt to maintain mass warfare over twenty years, however, brought disaster. Napoleon gradually lost the sense of the relation of war to sanely realizable objects, and he called forth against him in other countries the very type of organization and methods which had brought him such brilliant initial results. Prussia in the face of poverty and exhaustion created a national army, which was strengthened by means of economic and political reforms, the establishment of the *Tugenbund* (League of Virtue), and the inculcation of liberalism from above. Prussia rebuilt its whole life so as the more efficiently to fight its enemy, France. Great Britain reformed its military system more slowly, and Austria continued conservative, fearing that nationalism and nations in arms would ruin her whole empire.

The 1815 treaty which was imposed upon France was, judged by the standards of 1919, not unduly severe. The inflamed masses urged the typical penalties against the defeated enemy. They would have hanged Napoleon and seized territory and money from France by way of reparation. But the statesmen were still under the influence of eighteenth-century ideals and concluded what was on the whole a relatively mild treaty between equals. Talleyrand, the French representative, took part in the peace negotiations, and the political requirements of peace were not sacrificed to the wholesale demands of the military conquerors. The statesmen, realizing the danger of national war based upon popular passion, tried to abolish conscription. Instead, France adopted a seven-year term of military service, and the Bourbons restored what they could of the classical system.

Nevertheless, the die had been cast and the nineteenth century was to witness a continuation of the violent methods and mass organization which the Revolutionary and Napoleonic Wars had

set in motion. Military writers leaned heavily upon the doctrines of Jomini and Clausewitz.[3] The latter writer, in particular, had great influence. He regarded war as nothing but a continuation of state policy by other means and developed the idea of "absolute war." The greater the development of nations, he urged, the more definitely will war become absolute in character, and the leader who uses force unsparingly will gain the advantage over one who is less vigorous. "To introduce into the philosophy of war a principle of moderation would be an absurdity. War is an act of violence pushed to its utmost bounds." Although Clausewitz qualified his statements in some respects, he preached the necessity of superiority in numbers and the need of great masses of men.

Overwhelming superiority of manpower became the great goal of military leaders. The mechanical inventions of the nineteenth century assisted them, for the coming of the railway and the telegraph enabled them to combine armies of men into numbers beyond those previously dreamed of. Moltke was thus enabled to bring the supreme command to a focus and "to direct from a single center, through fan-like controls, enormous bodies of men and operations covering hundreds of miles . . . . Larger armies, concentration of forces and command, and delegation of authority to subordinate commanders with managerial responsibility were signs of a new stage in warfare."[4]

The Crimean War (1854–1856) and the Prussian-Austrian War (1886) ended in peace treaties which were marked by restraint. But the Franco-Prussian War witnessed the triumph of military romanticism. In it the German numbers inflicted disaster upon the French, who relied upon their professional army trained in the traditional manner. The Peace of 1871, compared with those of 1815, 1856, and 1866, was not marked by moderation. Military necessity demanded that all, and not part of, Alsace-Lorraine go to Germany (the military men triumphed over Bismarck); and France, smarting under the blow, adopted the principles of the victorious enemy, and "since numbers were the most easily measurable feature of armies, the decision of the French Assembly of 1872 to have an armed force as numerous as Germany's set going the competition in which each increase of peace-time effectives induced every potential enemy to follow suit, arguing in terms of balance of power politics."[5]

[3] See Liddell Hart, *Ghosts of Napoleon* (Faber, London, 1933; Yale University Press, 1934).

[4] Vagts, *op. cit.*, p. 215.

[5] *Ibid.*, p. 232.

Captain Gilbert claimed that France had lost because it was satisfied to remain on the defensive; and at length Marshal Foch, accepting Clausewitz's ideas, wholeheartedly wrote: "Modern war knows but one argument: the tactical fact, battle." The will to conquer, the belief that an improvement in firearms would help the attack, led to an excessive devotion to the offensive *à outrance*. Colonel deGrandmaison wrote:

> The French army, returning to its traditions, no longer knows any other law than the offensive. . . . . All attacks are to be pushed to the extreme . . . . to charge the enemy with the bayonet in order to destroy him. . . . . This result can only be obtained at the price of bloody sacrifice. Any other conception ought to be rejected as contrary to the very nature of war.[6]

The theory of mass armies and mass attack carried with it the logic that war would be short and dramatic. Schlieffen and others believed that great armies maintained at great cost and operating in a world of shattered trade and commerce must strike quickly and decisively.[7] Victory would fall to those who were strongest in attack. Unfortunately, the facts did not bear out these hopes. Even in the nineteenth century it was becoming increasingly difficult for the attacking army to overcome the defensive army, and battles were becoming less and less decisive. Fundamentally this fact was due to the growth of mechanism and the improvement of firearms, which enabled defenders in trenches to withstand far superior numbers of attacking soldiers. The 1866 war between Prussia and Austria and the Franco-German war of 1870 both proved that tactical defensive had acquired a great advantage over the offensive. In the Boer War, and especially in the Russo-Japanese War, the same factor came into prominence, "the paralyzing power of machine guns, the hopelessness of frontal attacks, and the consequent relapse of armies into trenches."

But the idea of the necessity of superiority in numbers and of the offensive *à outrance* persisted. Under the influence of these theories the French made mass attacks the basis in Europe of their policy during 1914 and 1915 and lost hundreds of thousands of men in gallant but suicidal exhibitions of personal bravery. Mechanized warfare brought on exhaustion, and for months hundreds of thousands of men on both sides were unable to make any effective advance. Artillery attack proved less efficient as an offensive

[6] Quoted by Liddell Hart, *op. cit.*, p. 137.

[7] Alfred Vagts, *op. cit.*, p. 379. Also Max Werner, *Military Strength of the Powers* (Modern Age Books, New York, 1939), pp. 145–46.

weapon than had been hoped, because resulting damage to the terrain made it difficult for the infantry to advance; it also removed the element of surprise, which had become increasingly important if armies were to overcome the tactical superiority of defense made possible by the machine gun and the rifle. Moreover, industrialization brought to the World War of 1914–1918 a powerful factor, and the naval blockade (underestimated by many military leaders) helped to make the war one of attrition and exhaustion. This result had been foreseen as early as 1897 by a Polish banker, M. Bloch, who wrote:

> The war, instead of being a hand-to-hand contest, in which the combatants measure their physical and moral superiority, will become a kind of stalemate, in which, neither army being willing to get at the other, both armies will be maintained in opposition to each other, threatening the other, but never being able to deliver a final and decisive attack. . . . . That is the future of war—not fighting, but famine, not the slaying of men, but the bankruptcy of nations and the break-up of the whole social organization . . . . Everyone will be entrenched in the next war. It will be a great war of entrenchments. The spade will be as indispensable to a soldier as his rifle . . . . All wars will of necessity partake of the character of siege operations . . . . Your soldiers may fight as they please; the ultimate decision is in the hands of famine.[8]

The World War of 1914–1918 not only outstripped previous wars in the intensity and extensity of its operations; it differed from others because it lost all relation to particular ends. Nations went on fighting because they had begun and did not know how to stop.

At the end of the war, the political needs of peace were sacrificed to the military needs of victory. Propaganda had roused passions on all sides, and the restraint of the eighteenth century was no longer possible. No chivalry, no code of honor, no supernational sanction existed to restrain nations which had allowed their hate to dominate them for four years. Warfare no longer could be restricted: the sacrifice bore no reasonable proportion to the questions at stake.

In the postwar period military authorities attempted to devise means of overcoming the stalemate which had developed during the years 1914–1918. Their problem was to strengthen the offensive in order to offset the advantage which mechanization had

[8] Inter-Parliamentary Union, *What Would Be the Character of a New War?* p. 55.

given to defense. At first it seemed as if air power would supply the answer. In 1921 the Italian, Douhet, advocated the creation of an invincible air force which would be essentially the offensive arm, the army and navy to be relegated to supplementary and defensive operations. He claimed that a large fleet of bombing planes would always "get through" and that no anti-aircraft or fighting planes could provide an adequate defense. Many authorities supported his view.[9] They alleged that ten planes would be needed against each armed bomber; that within a few hours bombers could reach the capitals of the European cities and drop explosive and incendiary bombs and poison gases over large cities; that dull weather conditions would still further facilitate air attack; and that because of the rapidity of attack and the impossibility of defense the only course open would be to retaliate by counter raids upon enemy cities. Other critics alleged that airplanes, the submarine, and fast surface craft had reduced the value of battleships, which even during the war of 1914–1918 had been unable adequately to protect English commerce; that the long narrow Mediterranean could not be kept open for British shipping; and that, even though the major battleships could withstand attack in the Mediterranean, English commercial ships would have to be routed around the Cape. They further argued that, aviation being yet only in its infancy, greater attacking possibilities must still be expected and that, with the increasing conversion of civilian into military planes, the next war would witness a conflict of thousands upon thousands of machines which, by taking advantage of the law of gravity, would do incalculable damage.

The eloquent claims made by those who pictured the new air force as constituting an offensive weapon against which defensive measures would be of little avail did not remain long unchallenged.[10] Military experts pointed out that a plane can remain in the air for only a relatively short time; it must make a sudden attack, but cannot maintain its bombing for long periods because

[9] To cite a few only: Brigadier-General P. R. C. Groves, *Behind the Smoke Screen* (Fabian, London); Air Commodore Charleton, *War from the Air* (Thomas Nelson and Sons, 1935); Captain Philip S. Mumford, *Humanity, Air Power and War* (Jarrolds, London, 1936); J. M. Spaight, *Air Power in the Next War* (Geoffrey Bles, London, 1938). Spaight admits the seriousness of air power but is perhaps more conservative in his conclusions.

[10] Brigadier-General O. L. Spaulding, *Ahriman: A Study in Air Bombardment* (World Peace Foundation, Boston, 1939); R. E. Dupuy and G. F. Eliot, *If War Comes* (The Macmillan Company, 1937).

of two major difficulties—the airmen cannot stand the strain of so intense an experience beyond a few hours at the most, and when the supply of bombs has been exhausted they must return to their base of supplies. Thus the plane may produce terrible destruction but it cannot hold a country.

Military opinion tended to accept the view that the plane, as an instrument of terrorism, had been overrated. Experience in the Spanish Civil War seems to show that the civilian population is not demoralized but rather stiffened in its emotional resistance after the shock of the first raids is over. In any case the diversion of energy occasioned by attacking civilians is a weakness from the military point of view; energy should be concentrated on attacking strategic areas, such as railways, roads, junctions, factories, etc. Both sides, perhaps, will be advised to concentrate on strategic objectives and not indulge in indiscriminate civilian bombings.

Under the stress and strain of war bombers are not likely to be as accurate as under the favorable conditions of peace, where meteorological information is much more readily available. Bombers also must flatten their course before they drop their missiles, thereby giving to anti-aircraft guns, which have been developed to a high pitch of efficiency, a greater opportunity to fire upon them.

To those who believed that planes might drop gas bombs over cities and so wipe out whole centers of population, the reply was that the fear was largely unjustified. There appeared to be no gases which combined the property of deadliness and persistency. Gases which remain a long time are not deadly, and deadly gases seem to be easily dispersed by wind and readily diluted by the air. It was suggested that tons of gas would be needed to cover a large city to a depth of three or four stories (one part of gas to 10,000 parts of air) and that people would have to breathe this poisoned air continuously and without protection for at least one hour. The population could, it was claimed, obtain protection by staying in an ordinary closed room for some hours, and if they used gas masks there would be relatively little danger. The chief problem, according to one school of thought, was that of panic on the part of a city population, which might become stampeded by its fear due to its ignorance of the relatively limited potency of poison gas. Proper drill with gas masks and education in the effective measures to take would be of major importance. But it was difficult to say how much of the writing on both sides had the element of propaganda in it; and the world had to wait for the future to

bring an answer. The answer came with devastating clarity between 1940 and 1945!

In sea power similar attempts to develop new weapons took place. In the last war it was a battle between the British blockade and the German submarine. Britain won by the barest margin. After 1919 discussion took place as to whether or not the great capital ship had seen its day, being vulnerable to air force or submarine, and, if still effective (as was generally agreed), whether or not British ships of the line could so bottle up the enemy's fleet as to prevent raiders from sinking merchant ships in such numbers as to starve Great Britain.

Determined postwar efforts were made to strengthen the power of attack on land so as to be able to break through the stubborn defense which had been developed by 1918. The offensive had to increase its power and its mobility and yet maintain the element of surprise without losing the co-operation of the many units involved. The answer seemed to be found in mechanization. Great hopes were placed in the tank. In 1917 tanks had proved to be instruments of great striking power able to overcome the most formidable obstacles placed in their way. Since then great improvements have been made; today tanks weigh from three to one hundred tons and travel from four to sixty miles an hour. Motorization and mechanization have produced "cavalry" squadrons without horses; the infantry can be carried great distances in vehicles; artillery has become more mobile; and amalgamation of the various types of arms has developed. Highly mechanized units with great offensive striking power operate in co-operation with the air army.

These developments led to a new theory of the importance of mobile warfare. Some experts believed that a veritable revolution had occurred and that Europe, which in 1939 had about 25,000 planes, 30,000 tanks, 50,000 guns, and 200,000 machine guns, would not again see the trench warfare which characterized the period 1914–1918. War was to be dominated by mobility and rapid movements which would surprise opponents and compel them to sue for an early peace. Especially in Central and Eastern Europe, an area of immense plains, would a war of movement take place. The two-weeks' campaign in September 1939 which sufficed to vanquish Poland seemed to confirm the prophecy of proponents of blitzkrieg, or the strategy of annihilation.

Yet conservative critics detected weaknesses in these arguments. The tank was not a final weapon of offense, but had several limi-

tations. It lacked mobility, was readily visible, and would be an easy target for special anti-tank guns. Cannon were dangerous to it. Anti-tank mines could stop it. All kinds of artificial obstacles can be created: the Chinese swamped the dirt roads and fired from behind cover at the huge machines stuck in the mud; deep trenches and rows of stumps or concrete pillars would serve similarly.[11] Flame is a potent defense against tanks. Troops may set fire to brush and burn the men inside; gasoline may be spurted through the eye-slits of the tank. Other difficulties of the tank are its noise, which both warns the enemy and hinders the crew within from hearing where anti-tank guns are, the poorness of vision due to the small eye-slits, the difficulty of communicating with other tanks, and the danger of being isolated from them. Tanks, like automobiles, may break down and they require skilled mechanics; they use enormous quantities of gasoline and must therefore be supplied by large gasoline trucks, which, if traffic becomes congested, may be bombed by the enemy. And tanks were said to be only the spearheads; the infantry must finally conquer and hold the country.

Experts also pointed out that mechanization had served to increase the power of defense. A man behind a machine gun can defend positions with deadly efficiency. The defending force can use rapid transport to resist attack, and defenders have the advantage in view of their more intimate knowledge of the terrain. They can destroy bridges and block defiles and engage in other methods of obstruction. The advancing enemy may engage in bombardment in order to cover the advance of his infantry, but bombardment tears up the ground over which the troops must go, making infantry attack much more difficult. The offensive army must concentrate sufficient troops to strike with power; but it must also make use of the element of surprise. If the men attempt to advance under cover of darkness or smoke screens there is great danger of confusion. And progress in anti-tank defense has been so great that in the future it will not automatically bring victory.

These technical considerations of attack and defense were to be placed in an entirely new setting after the outbreak of war in 1939. Within twelve months Germany had conquered and subjugated Poland, Norway, Denmark, Holland, Belgium, Luxembourg, and France; within the last few months, after dominating Rumania and Bulgaria, it has conquered and subjugated Yugo-

[11] Major E. W. Sheppard, *Tanks in the Next War* (Geoffrey Bles, London, 1938), p. 143.

slavia and Greece, taken Crete, and invaded Russia. How could such an amazing result have been achieved? The answer lies in three directions.

First, the six- or seven-year intensive preparation within Germany was a preparation in which all aspects of life, economic, military, and psychological, were directed toward one supreme end—conquest. The philosophy of power which had been preached by many thinkers and acted upon by many statesmen was there harnessed to an efficiency and a comprehensiveness of aim unparalleled in history. Both Germany and Italy inculcated the military attitude for a long period before the outbreak of hostilities. They also accomplished an economic mobilization, directed toward war preparation, with a thoroughness which commands admiration even if not approval. Hitler turned all idle plants and labor to use. Capital, labor, and industry had to submit to fixed prices, limited profits, compulsory investment in nationally important enterprises, prohibition or control of new plants according to their usefulness in the military scheme of things, absolute control by priority of government orders, absolute government control of foreign exchange, government domination of the capital market for government loans, and limited salaries for the heads of government corporations. Labor had to accept fixed wages, and complete government direction as to where and when to work and the suppression of all strikes and independent labor unions. Consumers were forced to accept food rationing and directed consumption, eating and using less of what was short and accepting the regulation of specified control agencies. The government tried to solve the raw materials question by a strict control of foreign trade, a rationing of materials for war purposes according to the urgency of their use, and the creation of substitute or *ersatz* goods. It obtained capital by defaulting on foreign debts, by issuing public securities, and by a heavy program of taxation. It is estimated that 47 per cent of the national income has been returned to the government by drastic taxation.[12]

The second method whereby Germany was able to obtain such startling success was by weakening the morale of the potential enemy by a long period of subtle undermining.

Hitler learned as a result of his abortive putsch in Bavaria in 1923 that a head-on attack upon a government in power is foolish

[12] Otto D. Tolischus, *They Wanted War* (Reynal Hitchcock, New York, 1940); Frank Munk, *The Economics of Force* (G. W. Stewart, New York, 1940).

and wasteful.[13] Only when a government has lost the confidence of the people is it wise to show one's forceful hand. He therefore set to work to divide the German people by making promises to discontented groups, by playing upon the prejudices of parties and classes, and by skillfully using every person through an appeal to vanity, disappointed ambition, or genuine desire for a better social order. The fact that many of these promises were hopelessly contradictory in character seemed to many to doom his program to failure; but the Nazi leader showed his superior knowledge of human beings by appealing not to their rational logic but to their subrational desires.

He used the same policy on the international stage which had brought success within Germany itself. He realized that there are discontented people in every nation, and by playing upon the forces of discontent and division he hoped so to demoralize his opponents that when the shooting phase of the war began the enemy's morale would have been undermined and even destroyed. Bloodless war was thus soon raised to the highest efficiency. In this new technology of war, psychology and economics were called into play to strengthen Germany at home and to weaken nations abroad. Invisible war precedes visible war, and in some respects the former is more deadly than the latter because fighting with guns is more spectacular and attracts popular attention, but subtle destructive penetrations go on for years before their purpose is realized. In contrast to the Communists, who preached hostility from the start, the Nazis proposed to take steps as follows:

First, offer terms that appear advantageous to certain groups and propose mutual business.

Second, conclude clearing and barter agreements tending to make the respective countries depend on your business.

Third, accumulate large blocks of frozen credits within your own country.

Fourth, use your economic domination to install a government willing to take orders from you.

Fifth, under the cloak of regular business, plant agents, spies, provocateurs, members of the secret police, and army officers in important positions in the enemy country.

Sixth, prevent normal economic or military preparations for adequate defense. If they cannot be prevented altogether, apply every measure to slow down economic and military rearmament.

[13] See Francis Williams, *War by Revolution* (Viking Press, New York, 1941).

Seventh, couple economic pressure with threat of arms. Conclude alliances that will squeeze your enemy and prevent him from concentrating defenses in one direction.

Eighth, strike.[14]

More than any other group the Nazi leaders made skillful use of psychological insight. They showed uncanny skill in exploiting deep-seated tendencies in human beings and in making people serve Nazi ends. They took advantage of the freedom of political discussion and of the press, and the freedom of association, whether of employers, trade unions, or national minorities in the democracies. As a crisis developed they encouraged groups to push their own interests irrespective of national unity; thus capitalists whose markets were threatened by the prospect of a war with Germany were appealed to and their desire for immediate profit caused them to become appeasers.

In the campaign to undermine France the Bretons received propaganda leaflets which spoke of Breton nationalism and asked why they should sacrifice themselves for the Poles; also agents encouraged the Communists to redouble their criticism of the democratic governments and, by taking advantage of an already weakened unity, helped to intensify domestic dissension. The press was subsidized, and false rumors were spread. Great headlines cast doubt on the efficiency of the government, and contradictory reports appeared to bewilder an already anxious people. Radio broadcasts from Germany daily alternated peace offers and veiled or open threats. Hundreds of personal letters were received by private individuals in which the national leaders of democracy were denounced or the Jews blamed or some plea was made for an understanding with Germany. Pacifists were encouraged to oppose any foreign policy that aimed to strengthen the national armament or to oppose Germany's seizure of Austria, Czechoslovakia, or Danzig and her demands upon Poland. Within France division and disintegration spread apace. Meanwhile the controlled press in Germany concealed genuine differences of opinion at home and excluded propaganda from abroad.

After the war had begun, the German methods of breaking the enemy's morale continued with admirable success. Hundreds of agents with small radio sets directed German movements, and the French were able to find few of the culprits. False radio reports created terror and helped to create panic among the civilian

[14] Munk, *op. cit.*, p. 176.

population, which blocked the roads and prevented French army movements. Germany renewed peace offers in order to perpetuate and deepen the division within the enemy camp. The so-called fifth-column group of Germans and German sympathizers in foreign lands in the same way secretly prepared the way for the invasion of Denmark, Holland, and Norway, as records eloquently testify.[15]

The third method by which Germany was enabled to gain such rapid victories was by a remarkable use of blitzkrieg methods when it finally did strike. In previous wars generals always strove to compel their opponents to fight under adverse conditions, but in the blitzkrieg the enemy was prevented from arriving at the fight. Britain's great sea power and her reliance upon the blockade in traditional fashion proved no match, at least in the early phases of the war, for the lightning thrusts of German air power working in perfect co-ordination with mechanized forces.[16]

The outcome of the war was for long uncertain, but the advantage finally passed to the nation which had developed the greatest striking power, the most complete mobilization, and the most efficient methods of weakening the enemy's morale by preliminary propaganda and economic conquest. Undoubtedly total war can be met only by total war, and the question arises as to whether or not democracy can solve the dilemma: If it organizes for total war over a long period of time, can it survive within? If it does not organize for total war, can it survive attack from without?

The foregoing analysis is confirmed by the writings of many scholars who deal with the foundations of national power.[17] These authorities urge that the liberal democracies in the past have underestimated, and are still underestimating, the psychological aspect of war, and suffer from "a curious want of military thinking" on the part of the civilians. They urge the introduction of military history and military policy into the curriculum of the universities and widespread co-operation of civilians and military men in building up a total defense: "We are slowly gaining consciousness that

[15] Edmond Taylor, *The Strategy of Terror: Europe's United Front* (Houghton Mifflin Co., 1940); Francis Williams, *op. cit.;* M. W. Fodor, *The Revolution Is On* (Houghton Mifflin Co., 1940).

[16] S. L. A. Marshall, *Blitzkrieg* (W. Morrow, New York, 1940), p. 54.

[17] See E. M. Earle, "National Defense and Political Science," *Political Science Quarterly*, Vol. LV, No. 4, December 1940; Alfred Vagts, *War and the Colleges* (American Military Institute, 1940). Since this volume is concerned with the broader-than-national foundations of national life, no attempt has been made to include the many volumes dealing with geopolitics and allied fields.

Total War can be met only by planning for a Total Defense and are therefore entering upon an era which will bring radical alterations in our attitudes as regards military and naval power. This is not of our choice, nor, judging by contemporary evidence, is it likely to be a transitory phase in the history of the world." These authorities are anxious lest, at the end of the war, democracy, if it still survives, should lapse into a period of apathy and even hostility toward the need of defense. They say the pattern stands out clearly: Instead of concentrating attention upon international institutions which have broken down, we should increasingly use schools and universities as instruments of preparedness.

Now, if it is certain that nothing can be done to substitute some other form of political life for embattled nations facing each other in ever increasing military and naval array, such advice as these experts give is correct. But let us also recognize something of the consequences. For the principles which will be discussed concerning the balance-of-power system hold true here. Several authors advocate bigger and better and more total preparations, including psychological, for defense; if other nations do the same thing, we shall have no limits to the process. From a few courses on military affairs which in themselves are unimpeachable, we will come, as a democracy, to the same total mobilization of economic and human resources, materials, human bodies, and minds, that we have lamented in Germany and Italy and to eliminate which was the real motive of our help to Great Britain prior to Pearl Harbor.

The authorities cited assume the finality of the modern sovereign state, and suggest that the continued study of international relations as conducted during the last twenty years should be considerably modified to adapt our thinking and methods to the political fortunes of today—to beat a masterly retreat as it were and to cease studying the possibility of more adequate forms of political organization required by the present-day world. They may be right; and perhaps for some time, whatever the outcome of the war, the widespread study of military matters may have to be continued. But let us not mistake the significance of this course, if that is the only thing left to us. It means increasing the scientific study of still more terrible conflicts that must occur under the anarchical balance-of-power system. It means the more skillful use of propaganda, whipping up emotion and ultimately destroying the very basis of scientific thought itself. It means the last word in counseling despair.

It is submitted that too many writers have swung too far under the influence of the tragedy of the recent war and that, grim as the outlook now is, an urgent need exists to study the most efficient means not only of building preparedness but of exposing the deep contradictions which underlie the whole of the present international situation.

It must be emphasized and re-emphasized that, should the present international anarchy continue and a limitless increase of armaments take place, not only will our economic systems be ultimately disrupted but the whole basis of democracy will be threatened. For Nazi Germany introduced a new principle of warfare: that of psychologically undermining the unity of its potential enemies by undercover encouragement of pacifists, Communists, business men, religious groups, intelligentsia, and others interested in opposing war and in promoting international co-operation. The evidence of this kind of action is overwhelming, and the point to be remembered is that in the future it will be difficult for a democracy to decide whether those who oppose continued increase in armaments, or who criticize government policy in other fields of effort, do so in a desire to preserve and strengthen democracy or direct their criticisms against the government for the purpose of discrediting it and the institutions which it represents. Already during the present crisis we witness rising tempers and a questioning of motives on the part of those who have argued for and against the loan to Greece and Turkey. A democracy stands or falls by the quality of its differences, and the quality of its differences depends upon a sufficiently common purpose and sufficient internal unity. Continued international anarchy and mounting defense costs may well cause well-disposed people to question the wisdom of indefinitely piling up armaments and to advocate a new form of collective security or some kind of world or regional federation. But who shall guarantee that fifth columnists will not be behind such measures, supporting such policies so as to divide the country? One can easily imagine that under these circumstances independent and nonconformist attitudes of mind will become increasingly impossible and the democracy will rest upon most precarious foundations.

We must admit, however, that if the balance of power, with all its weaknesses as an instrument of security, is to continue, then we must choose the less of two evils and seek power above that of any potential enemy. But let us think clearly what it will mean is democracy and its political and social values.

One thing should be clear: Modern war has revealed that the sovereign state is an inefficient instrument for achieving national security. The nation today is as little able to defend itself without sacrificing an overwhelmingly disproportionate share of its wealth, leisure, and man power as were the feudal castles after the invention of gunpowder. It will be futile to resurrect Holland, Belgium, and the other nations as sovereign powers with their own armies, navies, and air forces; for within a short time they will fall victims to larger nations bent upon aggression. And the so-called great powers will bankrupt and ruin themselves if they continue to try to solve the problem of war by their independent sovereign efforts.

The developments of World War II confirm this judgment. Compared with the war of 1914–18, the costs were staggering, the United States alone expending ninety billions in one year. Economic life was regimented to an unprecedented degree and the production of normal consumers' goods was postponed with varying degrees of intensity according to the country involved. Thousands of scientists were taken from universities and put at research in scores of war projects. Everybody from the very old to the very young was made to feel the vital importance of his or her effort. Propaganda developed to an extent never before experienced. Extraordinary advances were made in land and sea warfare, which owing to the limitation of space cannot be listed here, but attention must be drawn to some developments which have been revolutionary beyond previous dreams, except for a few writers of fiction and fantasy.

General Arnold, in commenting on the development of aerial warfare, noted five major trends: manned or pilotless aircraft at super-speeds, the extraordinary development of guiding missiles and refinement of their controls, improved atomic bombs, perfected communication systems between air and ground, and the amazing developments of techniques of supplying air-borne forces. American bomb-tonnage figures rose from 6,000 in 1942 to 938,000 in 1944 in Europe, from 4,000 in 1942 to over 1,500,000 in 1945, and a projected 3,000,000 in 1946. Air power had increased in size, had improved its quality and the efficiency of its instruments, and improvements in training programs increased the efficiency of its weapons.[18] The rocket bomb appeared, based

[18] General H. H. Arnold, "Air Force in the Atomic Age," in Dexter Masters and Katharine Wade (eds.), *One World or None* (McGraw-Hill Co., New York, 1946), pp. 26–29.

on a new principle of engineering, not the rotary motion in a shaft or wheel but the principle of an engine that thrusts, a reaction motor acting by jet propulsion. The rocket thrower, which was used in India about 1800, was studied by William Congreve, who predicted in 1807 that "the rocket is in truth an arm by which the whole system of military tactics is destined to be changed.[19] But other developments during the nineteenth century superseded the rocket, which did not reappear until very recently. Dr. R. H. Goddard, an American physicist, began experimenting about 1914 and in 1926 made the first actual shot of a liquid-fuel rocket anywhere in the world. During the following years preceding World War II, various nations experimented, and during the war the Russians made effective use of anti-tank and anti-personnel rockets before Moscow and Stalingrad. The British used UP rockets, and rockets assisted greatly in the Allied invasion of Europe. The new weapon was tried out in the land operations of Sicily in September 1943 and rocket ships subsequently became a necessary part of virtually every Pacific land operation.[20]

The first robot bombs came over England in June 1944—more than 2,700 in the first month. Pendray suggests that if the Germans "had released 100,000 aerial torpedoes on London instead of 2,700 they might virtually have destroyed it."[21] The cost of the robots was relatively small, and these pilotless bombs, though less accurate than artillery shells, carried more explosive, had five to ten times the range, and could be shot in enormous numbers. But the robot bomb proved to be only the prelude to something far more terrible—the V-2 rockets which were powered by a single regenerative liquid-fuel motor, burning liquid oxygen and alcohol.[22] At the end of 52 seconds, its altitude was ten miles, its velocity about 2,400 feet per second, and it continued until it reached an estimated height of 65–70 miles, landing at approximately 3,000 feet per second some 200 to 225 miles from where it had been fired. There was and appears to be no defense, and authorities paint a grim picture of the future. Major General J. C. Fuller of the British Army in 1944 declared that the flying bomb carried with it the doom of the bomber and probably the doom of the cannon, and that the attack would "enable one nation to wage war on another, a war of maximum annihilation without

[19] G. Edward Pendray, *The Coming Age of Rocket Power* (Harper and Brothers, New York and London, 1945), p 130.

[20] *Ibid.*, p. 148. [21] *Ibid.*, p. 155. [22] *Ibid.*, p. 161.

moving a man." William Philip Sims, war commentator, declared: "Twenty years from now, robot bombs weighing 20, 40, or even 100 tons will almost certainly be able to wing their way across the Atlantic and hit any city aimed at." Pendray, at the conclusion of his volume, claims that the blitz of 1940 and 1944, though terrific, was mild compared with what can happen in the future.

A country sufficiently armed and ready might be able to reduce its opponent's cities almost immediately to rubble following a declaration of war or even before any such declaration. An attacked nation's first warning might well be the sight, on the radar of the future, of rocket missiles high in the air, sent by the thousands in a cloudburst of metal and explosives. . . . . For long distance attacks, such unmanned missiles might well follow a projectory so high as to appear to come not from the direction of the enemy country at all but almost from overhead.[23]

In such a war, he adds, no spot on the earth's surface will be safe from potential destruction.[24]

These developments pale into insignificance compared with the problems raised by the release of atomic energy. Modern research has at last split the atom and released energies previously unimagined. The effects of atomic bombing have been seen in the two demolished cities of Hiroshima and Nagasaki, and here it will suffice to give two examples of the power of atomic blasts. It is estimated that the temperature at the center of the sun is about twenty-five million degrees. The radiation from an atomic-energy blast is estimated at ten thousand million degrees with a four-hundred-times greater amount of energy released. J. J. O'Neil writes:

If the atomic energy-substance were confined within a space of one cubic foot before the blast, there would emanate from this small space in about a millionth of a second about 1,000,000,000,000,000,000,000,-000,000 neutrons. . . . .

The one billion, billion, billion neutrons which issued suddenly from the one cubic foot of space constituted a cosmic hurricane blowing outward in all directions from the blast at a speed in excess of 50,000,000 miles an hour.[25]

[23] Pendray, *op. cit.*, p. 221.

[24] American correspondents saw in New Mexico in May 1946, the first of twenty-five captured V-2 rockets streaking through the air 75 miles high in a desert test. Officials are attempting to design guided missiles which can seek out and find attacking rockets and destroy them harmlessly in the air.

[25] John J. O'Neil, *The All-Mighty Atom* (Ives, Washburn, Inc., New York, 1945), p. 58.

The United States uses the equivalent of 921,000,000 tons of coal to produce the energy that it needs in one year; this amount, if supplied from splitting the uranium atom, could be obtained from 368 tons of uranium 235.[26] The fission energy from one pound of uranium exceeds what can be produced from a thousand tons of coal.

Eyewitnesses of the two Japanese cities have described in some detail the appalling damage done by one bomb in each case. These descriptions are no more eloquent than the story of the contrast between the hundreds of bombers which flew over Japan dropping incendiary and other bombs and the one lone plane; the latter involved so little in the way of preparation from the air base of departure, compared with the hum of activity which preceded the prior large-scale air bombings.[27] The scientists who played a leading part in producing the bomb announced with no dissenting voice that the new weapon was so terrible as to permit of no defense.[28] Dr. J. Robert Oppenheimer, Dr. Harold C. Urey, and many others appeared before Congress and the public advocating the abolition of war itself. The cumulative effect of this urgent warning by the leading scientists is most impressive.[29]

What to do with the atomic bomb, what should be the national policy of the United States which for the time being had a monopoly of the engineering techniques of making the bomb, became immediately a question of grave importance. A bill, known as the May-Johnson Bill, was introduced into Congress for the purpose of insuring a program of domestic development of atomic energy. It was sponsored by the War Department and rushed to Congress after only a few hours of closed hearings before the House Military Affairs Committee. The bill was based upon the assumption that a monopoly of control by the United States was imperative.

[26] John J. O'Neil, *op. cit.*, p. 62.

[27] See Raymond Swing, *In the Name of Sanity* (Harpers, 1946), pp. 90–93, for summary of Dr. Philip Morrison's testimony before the McMahon Committee, and John Hershey, *Hiroshima* (A. A. Knopf, 1946). Harrison Brown, *Must Destruction Be Our Destiny* (Simon and Schuster, New York, 1946) gives a vivid description in chapter i, "The Cities of the Dead." For a criticism of Major Seversky's depreciation of the bomb's destructive power see the evidence in Bernard Brodie (Ed.), *The Absolute Weapon* (Harcourt, Brace & Co., 1946), pp 24–25.

[28] Lewis N. Ridenour, "There Is No Defense" in *One World or None* (Dexter Masters and Katharine Wade, eds., McGraw-Hill Co., 1946), pp. 330–38.

[29] See the *Bulletin of Atomic Scientists* issued on the first and fifteenth of each month by the Atomic Scientists of Chicago, Inc., for developments connected with the atomic bomb.

In its preamble no reference was made to the United Nations and only the briefest reference to the desirability of peace. The bill was attacked on these and other grounds—that the nine-man commission to be headed by an administrator might become independent of the president and give undue control to the armed forces, reducing civil control, a basic factor in Anglo-Saxon jurisprudence, to a minimum. Scientists and others pointed out that it would be impossible for the United States to maintain the secret for very long and that an act of this kind would induce a disastrous atomic arms race which could only end in universal calamity. Indeed, scientists emphasized, there was no secret as to the principles involved; they had been known to many physicists by 1939 and the fundamentals had appeared in a popular magazine as late as 1942 until further publication was prevented during the war for reasons of security.

Moreover, foreign scientists had materially assisted in developing the bomb—Bohr of Denmark, Miss Meitner of Austria, Einstein of Germany, Fermi of Italy, to name but a few; in fact, had it not been for Einstein's initiative, atomic research in the United States might have been fatally delayed. As it was, American scientists had grave fears lest the German research should prove to be successful in obtaining the secret before the Allies. Intelligence reports indicated that the Germans might be six months ahead or behind in the race, and the atomic physicists for some time were in doubt as to the outcome. Under these circumstances, to talk of maintaining a monopoly of the bomb seemed nonsense.

Whereas a preponderance of strength in armies, navies, and air power could once have given a reasonable feeling of security and an indication of final victory in case of a conflict, the situation was substantially different in the case of the atomic bomb. Should country A have, say, 100 bombs and country B 500 bombs, an attack by A upon the major centers of B would create such vast destruction that the possession of five times the atomic bombs would not constitute a definite guaranty of immunity from attack even by a weaker power. To those who asserted that the weaker power, indeed any power, would fear to attack because of the fear of retaliation, Dr. Harold C. Urey countered by claiming that it was quite possible that Anonymous War would make its appearance, a claim which Bernard Brodie heavily discounts. Unless some method were found, by means of radar or otherwise, of ascertaining beforehand that all planes coming in bore the unmistakable marks of a certain government, there would be no evidence

left after the explosion to indicate from where the attack had come. Scientists went further and indicated the possibility of surreptitious introduction of parts of bombs by potential enemy agents and kept repeating that the only defense against the bomb was the abolition of war itself.

Announcements followed to the effect that within a comparatively short time after the atomic bombing of Japan much more powerful bombs were being manufactured; a few months later, official reports emanated containing general statements of disastrous atomic poison more deadly even than the original bomb. And rumors, perhaps based on essential fact, perhaps as yet based upon the visions of the future, had it that sources of energy from cosmic rays would in turn make the then-existing methods of releasing atomic energy relatively insignificant.

These judgments were confirmed by the results of the Bikini tests. Vice Admiral Blandy and Dr. Stafford Warren, Professor of Radiology, University of Rochester, who was associated with the radiology safety section of the joint task forces, both spoke of the "far-reaching effects of the poisonous radio-activity unleashed by the explosion."[30] Dr. Warren tells of his heavy responsibility in insuring that the thousands who took part in the Bikini tests should not suffer from radiation. The radiological safety men with their Geiger counters were the first to proceed to the lagoon after the explosion; they indicated where it was and where it was not safe to go.

> We also continually tested with Geiger counters all the men who entered the lagoon—tested them naked after their showers—tested again and again, their clothes, everything they had worn or had in their pockets, their food, their water, their beds, to be sure that nothing picked up a dangerous amount of radio-activity.[31]

He tells how the Geiger counter detected radioactive material in a pair of shorts worn by a man who boarded a ship a mile and a half from the explosion three weeks later.

> The Geiger counter had picked the shorts out of the center of a pile. Everything else in the pile was all right.[32]

Dr. Warren then went on to warn that atomic bombs which burst under water have aftereffects "so insidious and so long drawn

[30] Vice Admiral William Blandy, "The Importance of Bikini to the World," Annual Forum, 1946, *New York Herald-Tribune*, p. 142.

[31] Dr. Stafford L. Warren, "The Lesson of Bikini," *ibid.*, p. 149.

[32] *Ibid.*, p. 149.

out that we must never for a moment forget them in considering the future of this deadly tool of war." Atomic bombs dropped in, say, New York harbor might appear to do no appreciable harm to the city but the wind could take "the dangerous radio-active spray," and spread it all over the metropolitan area. The buildings, stores, clothes, and everything else would be so contaminated as to make life dangerous—so much so that "New York would become a ghost town."[33]

Meanwhile science had succeeded in adding to the list of deadly weapons. In 1934 Mrs. Elvira K. Fradkin pointed to the threat of poison gas warfare and described in some detail the gas research which had been going on since World War I. We need not summarize here the new gases which were described nor indicate in detail the improvements in gas-disbursing agents. We should, however, call attention to the report of the Special Committee on Chemical Incendiary and Bacterial Weapons of December 13, 1932, submitted to the Bureau of the Conference for the Limitation and Reduction of Armaments. The committee noted that it was not possible to prevent the preparation for bacteriological warfare and, as Mrs. Fradkin put it, civilization stood in grave danger by reason of the "research and development of newer forms of destruction along these new lines."[34]

Some "realists" claimed that the danger of bacterial warfare was overrated for technical reasons, as, for example, the highly developed state of public health defenses in the major countries. However, the events of World War II proved Mrs. Fradkin's main thesis to be correct, for science within the last decade has been able to produce weapons of disease and famine to wage biological warfare with weapons "as dreadful as the atomic bomb and far more difficult to control."[35] Piel notes that the United States began in 1942 to deal with biological warfare and that ultimately 4,000 army and civilian persons were engaged "in the biggest research effort in the history of biology" and that its research into the whole problem included "all fungi, bacteria,

[33] *Ibid.*, p. 150. The investigations of Dr. L. R. Donaldson and his associates at the University of Washington School of Fisheries show that the effects of atomic radiation on fish carry through the second and third generations. The mortality is high and of those that live some are normal, but others are victims of extraordinary abnormalities. What applies to fish may well apply to humans.

[34] Elvira K. Fradkin, *The Air Menace and the Answer* (The Macmillan Company, New York, 1934).

[35] Gerard Piel, B.W., *Life* magazine, November 18, 1946, pp. 118, 122, 124, 127, 128, 130.

rickettsiae, viruses, and toxic agents from living organisms which can be used to produce disease in animals, plants, or man."[36] These lethal poisons may kill outright, cause lingering and painful illness, or merely "make people sick." Piel suggests that war is given a new dimension, for agriculture is now vulnerable. We have noted the vulnerability of industry as a result of the atomic bomb. Bacterial warfare, however, threatens the destruction of farm animals and of plants.

The War Research Service by 1942 had concluded that biological warfare involved much more serious danger than had been suspected and a great research project at Camp Detrick near Frederick, Maryland, and subsidiary stations were set up. "Next to the Los Alamos atomic-bomb assembly shops, there was no place in wartime United States more dangerous to work at than Camp Detrick."[37] The most lethal of poisonous substances, Botulinus toxin, is so powerful that one ounce theoretically has a power of killing nine hundred billion mice. Although a wide gap exists between "the toxin's laboratory and military potency," and the authorities do not fear that any extensive destruction could be carried out by sabotage methods, they are fearful that airborne disease will constitute a means of spreading wholesale disease. The fighting services can produce clouds of smoke, and what are called aerosols or cloudlets may be disseminated "as effectively from aircraft, guide mills, parachute bombs or clusters of small bombs dropped on a taget like incendiaries."[38]

Major General Alden H. Waitt, Chief of the Army's Chemical Corps, is reported as saying that agents can be carried in the air over great distances with weapons which are a thousand times more toxic than phosgene. Much research has gone into the spread and control of plague. But quite as serious are the new botanical agents, the so-called "growth regulators," described as "synthetic plant hormones which derange the growth processes of the plant." A type of poison which kills seeds may be used to kill plants which produce food for man and for animals. Piel suggests that a biological armament race "could bring progress in medicine and biology to a dead halt . . . . cancer research, for example, might conceivably develop growth regulators with as much potency for human tissues as 2, 4-*d* for plants." Since scientists are reported to believe that "eventually every living plant process may be brought into control through critical use of some growth-regu-

[36] Gerard Piel, *op. cit.*, p. 118.

[37] *Ibid.*, p. 120.

[38] *Ibid.*, p. 124.

lating substance," it is not surprising that the question of internationally controlling the development and production of biological weapons has already been placed on the agenda of the United Nations. For, whereas the production of atomic weapons "involves a massive new technology and a vast industrial system of its own," almost any biological laboratory may be used to produce the new poisons. "A biological arsenal could be tucked away in the industrial section of a city without arousing suspicion. Short of installing a huge and fantastically complex international inspection system, which would almost surely fail, there is no conceivable method of control. In reality there are no byproducts to the issue of biological warfare—the way to control biological warfare is to prevent war itself."[39]

The analysis made in this chapter surely can lead to no other conclusion than that the modern sovereign state is incapable of defending itself; more than that, if it continues to try to do so it will run the danger of annihilation. It is no longer possible to obtain security through a contest for power. What must be done is to pool the power which is too dangerous to be shared. We must now examine the attempts made in this direction.

[39] *Ibid.*, p. 130. George W. Merck, Special Consultant for Biological Warfare, in a report to the Secretary of War reproduced in *The Military Surgeon* (March 1946, pp. 237–42), describes the steps taken and concludes, in somewhat more cautious words than Piel uses, that, though biological warfare is still in the realm of theory rather than fact, in the sense of not yet having been used in military operations, this type of warfare "cannot be discounted by those concerned with national security"; it is impossible to ignore its potentialities.

Professor Donald H. Loughridge of the Physics Department of the University of Washington recently told an audience that it is possible that scientists will know how to form helium through the synthesis of hydrogen and obtain seventeen times more energy pound for pound than is now obtained through uranium. As hydrogen is available to everyone the problem of control becomes that much more difficult. Professor Loughridge declared that present indications suggest that extensive establishments will be required to produce atomic energy, even from common elements in nature. The conclusion would seem to be that an international commission must be given power to declare its own jurisdiction over materials which science may be able to transform into weapons of atomic warfare. Such a precedent exists in the League of Nations Opium Commission, which under international conventions could declare certain drugs to be dangerous and so come within the scope of the conventions themselves.

Chapter II

SECURITY: THE PROBLEM AND ATTEMPTED SOLUTIONS

ANALYSIS of the institutions of war thus makes clear that security is today the all-absorbing and urgent question. By what means shall it be attained? The methods examined in this chapter are: (1) national power; (2) alliances and the balance of power; (3) the League of Nations; (4) a strengthened League, with special agreements closing the gap in the Covenant; (5) the Kellogg Pact; (6) regional agreements; (7) federation; (8) the United Nations; and (9) reduction of armaments.

Each of the methods has its strengths and weaknesses. Some may be more unsound in principle than others. Some which are sounder in principle may be difficult to realize in practice owing to technical differences, unwillingness to give up national prejudices, or incapacity to exercise the moral restraint and intelligence necessary to control the vast resources of power unloosed by modern science.

Security rather than peace is the essential problem; for people will seldom listen to the plea for peace unless they are convinced that their country is guaranteed security. Without security, there is no peace. The search for security is the condition of the realization of peace.

NATIONAL POWER AND THE BALANCE OF POWER

Many people claim that the best means of obtaining national security is to develop national power. A nation must be strong enough to defend its territory; weakness invites attack. But if any one nation becomes too strong, other nations run the risk of being defeated. A balance of power is therefore desirable. In this sense, a certain plausibility attaches to the doctrine: "If you wish peace, prepare for war." Power is necessary to defend one's self, but excessive power in the hands of any nation may be abused.

The American Constitution provides for a division of powers within the nation; the founders believed that over-powerful governments tended to become corrupted. On similar reasoning, nations attempt a division of powers in a somewhat different sense (and with profoundly different consequences, as will later appear); they would prevent any one member within the family of nations from being able to threaten the security and independence of the rest. The greater the armaments of another nation, the greater must be one's own armaments if the balance of power is to be maintained.

The modern state system which grew out of the breakdown of the European medieval unity quickly adopted the balance-of-power idea. The concepts sovereignty and balance of power go together; one implies the other. A nation's "sovereignty" can endure only if it has the power to maintain itself; and nations can have the power to maintain themselves only if there is a certain balance among them, the ideal being that each state can keep what it already possesses and no state or group of states is able to coerce the rest. In dealing in turn with Louis XIV, Napoleon, and Germany in 1914, the balance gave way to armed conflict; and after considerable loss of life and property a new balance was achieved.

We have now to examine whether the system is inherently sound and the wars which occur within its framework are the more or less necessary accompaniments of human change; or whether it has fundamental defects which are themselves productive of chronic instability and inevitable conflict. If the former judgment be true, then the great cost of armaments will be justified, since peace and security will have been obtained, albeit expensively; if the analysis should show that the latter conclusion is correct, no amount of sacrifice and expense can achieve the desired end; in fact, the heavier and more complicated the problems, and the greater the effort put into an unsound system, the more rapidly and decisively will its organic weakness be revealed.

Without question, if one nation is stronger than another it will be safe from immediate attack, and by building up its armaments beyond those of its rival it will gain a measure of security for itself. But only for a time. For if nation A outbuilds nation B in weapons of war and thereby gains "security," B feels itself in danger and in turn speeds up its armament construction. The two nations, therefore, if they have reason to fear each other, can both have security only by each being stronger than the other! When many nations are involved and the theory of national power is

held by every one of them, the situation becomes still more illogical.

The nations must then attempt to overcome this impossibility—of every one being the strongest—by alliances and understandings. A and B will combine against C, and obtain security; whereupon C joins D; E becomes partner to A and B; and F hastens to the side of C and D. The race is simply transferred from single nations to combinations of powers. If the Triple Alliance is stronger than the Triple Entente, the latter in alarm hastens its armament preparations in order to become the stronger, which involves, when achieved, the automatic inferiority of its opponents. And so the seesaw goes on, with both alliances piling more and more fighting material on the ends of the plank; sooner or later the plank is bound to break under the intolerable load. The truth is that nobody really wishes a *balance* of power: everybody wishes to be the strongest, and in the attempt to reach that impossible goal tension increases with every increase in armaments. It is important also to note that the greater the power of armaments the greater the tension, because people know that modern implements of destruction can inflict infinitely more damage than the simple weapons of previous years. Modern tanks, bombers, dreadnaughts, poison gas, machine guns, and submarines endanger peoples to an extent undreamed of in the days of feudal armor, spears, bows and arrows, and old-fashioned muskets.

The logical outcome of the balance-of-power system with its ever-mounting armaments is that war and preparation for war lose all relation to particular ends to be gained. The balance-of-power system has led to preparations so gigantic that they have little or no relation to the problems to be solved; they increasingly involve the subordination of all aspects of life to the institution of war. The theory of totalitarian war means that in peace as well as in war nations must be placed on a war footing. Thought, as well as economic and military power, will be mobilized and regimented for one purpose only—power. But since all nations will have to pursue a similar policy, the essential problem will remain unsolved. The struggle for power grows fiercer, tension increases, the sense of insecurity mounts—until the system (or lack of it) must collapse either in open conflict or in exhaustion because of the unlimited burdens which nations are forced to carry.

Even before 1914 the system was so unstable that it was possible for a dispute over a small nation to involve a whole world, just as powerful forces if sensitively enough balanced may be set

in motion by the slightest event. Hence when Austria presented its demands to Serbia after the murder of the Archduke in June 1914, Russia intervened in order to prevent Austria from weakening Serbia, and thereby threatening Russian plans in the Near East. Russia and Serbia together could have defeated Austria; Germany then would have been surrounded by France and Russia; in order to prevent such an outcome, Germany came into the struggle. Germany and Austria combined would have beaten Russia and Serbia, leaving France in a precarious situation. Therefore France for reasons of "defense" was dragged in, and the British Empire could not remain aloof. Like mountain climbers tied together, the European nations were dragged into the abyss when one of them fell. If the system of power politics, mistakenly called the balance of power, is so unstable and is becoming more so, there would seem little reason for claiming it as an instrument of security.

The system sacrificed the independence and integrity of small nations. The urgent need of obtaining a temporary advantage led governments to take the "offensive defense"; if Belgium or Greece stood in the way, so much the worse for them. Military necessity could not wait upon the niceties of international law. The greater the forces engaged in struggling for predominance, the less the chance that weak nations will obtain justice. Germany seizes Sudetenland, Italy takes Ethiopia, Spain is sacrificed, and China is overrun. The more feverish the race for armaments, the more ruthless the political behavior of the great powers.

The piling up of armaments does not solve the problem, because both sets of potential rivals believe that the armies and navies are for "defense" and the forces of their opponents exist for "offense." In prewar days and in recent times, statesmen of all countries claimed that they were arming "in case" other powers should attack. While each group proclaims that it is preparing for defense, it regards the "other side" as the danger point, the potential aggressor, the ambitious one. Under the balance-of-power system there is no satisfactory method of ascertaining who is the offender and who is the defender in the matter of increasing armaments.

We have only to imagine what would happen in daily life if every village lived under the suspicion that the next village might attack it. If no national law courts and no police systems existed to which individuals in the last resort could refer their differences and have impartial judgments enforced, and if there were no legislatures to make new rules, there would be no security; each village

would try to be stronger than every other village, and general fear and suspicion would result.

No clear-cut test of aggression would be possible. One cannot prove aggressive and defensive designs from perusing armament figures. One cannot compare two nations separately and decide that one is more peaceful than the other. One must compare two sets of nations. Those who say that prewar Britain spent only 28 millions on the army, whereas Germany spent 68 millions, and that Germany had aggressive designs, miss an essential point: They forget Russian and French military expenditures. For the Entente armed over one and a half times as heavily as did Germany, Austria, and Italy. When one considers that Italy's alliance was regarded as "doubtful" by some and practically "valueless" by others within Austria and Germany, the Allied preponderance takes on an even greater significance.

Under the balance-of-power system it is thus not only impossible to allocate responsibility for an increase in armaments but equally impossible to reduce armaments. Lord Haldane visited Germany in 1912 in an attempt to reach an understanding with the German government. He insisted that an agreement concerning armies would be "bones without flesh" if Germany began fresh shipbuilding and so "forced us to do twice as much." But the question was one of Germany's naval competition not with Great Britain alone but with France and Russia as well. Moreover, between 1900 and 1914 German naval expenditure at no time reached one-half the amount spent by Great Britain. If A has 10 guns and B has 5, and A asks B that each destroy two guns, the result will be A, 8 guns, and B, 3 guns—the reduction will have operated to the disadvantage of the weaker party. In 1913–14, France and Russia, potential enemies of Germany, spent more on their navies than Germany. While danger of war existed between either France and Germany or Russia and Germany, it was folly to expect an Anglo-German agreement to limit naval construction. So with armies. Mr. Lloyd George, not nine months before July 1914, declared the German army "a vital necessity" to the German nation, and the Kaiser's remark to Lord Haldane in 1906 had a great degree of truth: "A splendid machine I have in this army, Mr. Haldane . . . . And what could I do without it, situated as I am between the Russians and the French?" The amount of armaments a nation has is no final gauge of its pacific or aggressive intentions.

Nor can one decide who is the aggressor merely by pointing to the nation which declares war. If two nations believe that hos-

tilities will come, the weaker may declare war and strike quickly in the hope of dealing a decisive initial blow. There is an "offensive defense" which may apply in the political as well as in the military and naval sphere. The Boers declared war on Great Britain; but who will assert that they were solely, or even mainly, guilty of provoking the conflict? Certainly the Boers thought that they were fighting a righteous and defensive war. The British, they claimed, put obstacles in the way of agreements; the Milner negotiations had broken down; and Britain was pouring troops into Cape Colony. There seemed to be no hope of agreement; and, since war appeared inevitable, the Boers claimed that they, the weaker power, must seize every advantage while time permitted. Because there were faults on both sides, and no third-party decision was invoked, the world lacked the conditions for a definite test as to which side wanted war. France declared war on Prussia in 1870, but historians are still estimating the relative degree of responsibility for the outbreak of hostilities. Germany declared war upon Russia in July 1914, after having given Russia twelve hours to demobilize its army.

For all but emotional partisans, it is impossible in the balance-of-power system to prove a particular nation responsible for a war. The system provides no test to distinguish between "offender" and "defender." The one who declares war is not necessarily the offender.

Is there no other way? Must mankind aways remain in the condition that each nation passionately believes itself to be in the right? Must inadequate international organization always permit the aggressor-minded statesmen to take advantage of the plausible excuses which the anarchic principle of the balance of power provides, enabling them to take shelter behind the confusion of evidence and the absence of precise methods which could clearly point to the aggressor? If we are limited to the balance-of-power system, we can never find any such tests, and humanity will have to endure ever increasing armaments and increasing tensions. There exists no principle of limitation in the struggle for power. The more effort nations devote to a system which can give only the most temporary protection to those who happen to be stronger at the time, the more unsound becomes the total situation.

The problem may be approached in another way. The balance-of-power system and the doctrine of national sovereignty stand in intimate relationship one to the other. If nations are sovereign, and owe no habitual obedience to any other determinate human

superior, if international law is not true law, governments are free to take any action which they deem desirable. Under this system all wars are legal, however immoral, wrong, and foolish they may be.

A system which had no provision for a hierarchy of political values, which made no distinction between legal and illegal action and possessed no means of preventing the abuse of sovereign powers, had some day to suffer the consequences of political anarchy. Within nations it had long been recognized that orderly life required rules operating within the framework of a constitution, and that law must prescribe limits beyond which individuals and corporations were not free to act. National welfare depends upon the ability with which citizens maintain order and harmony by preventing the abuse of power through the exercise of rules which clearly draw the line between legal and illegal conduct. Until international society adopts a similar principle of legal restraint, there must be anarchy. As long as war can impose conditions which when embodied in treaties are called "sacred," so long will the world suffer from a grotesque caricature of international law. And to the degree that international law recognized the forcible conquests of war, to that degree it was contradicting the essential nature of law.

Another characteristic marks the balance-of-power system, namely, that nations insist upon being judges in their own cause. Within the nation itself it is accepted as the indispensable prerequisite of law and order that, when a dispute between two persons goes beyond a certain degree of seriousness, the state will step in as a third and impartial party and render judgment. No permanent basis of order exists unless this simple but fundamental rule is observed. For frequently the problem is not one of right versus wrong but of right versus right, of conflicting conceptions of rights. It is not enough that each party believes itself to be right and moral and just. Each may be perfectly sincere and yet be mistaken. Civilized states accept the principle that social progress is wrapped up with the reign of law, requiring third-party judgments given by courts and legislatures which can hear grievances, devise new rules to remedy them, and lay down laws for future behavior.

The system was further complicated by the recognition of the right of "forcible measures short of war" which arose from conditions which must be traced far back into history.[1] After the fall

[1] See especially A. E. Hindmarsh, *Force in Peace* (Harvard University Press, Cambridge, 1933).

of the Roman Empire, disorder became widespread in Europe. The anarchical conditions of feudal times and the great differences in the feudal laws of different areas necessitated a considerable degree of self-help on the part of merchants engaged in commerce. Foreigners had difficulty in obtaining justice and were inclined to take the law into their own hands. Private reprisals, although immediately effective in some cases, did not prove to be compatible with the advance of commerce; and during the thirteenth and fourteenth centuries the rulers were able gradually to impose regulations which limited the right of self-help. Definite methods were prescribed which grew into "legally recognized practice." Thus if a foreigner could not obtain legal redress abroad after having suffered injustice, he might petition his ruler for authority to seize goods from any individual who belonged to the community of the offending person; government A would then grant a letter of marque or reprisal to its subject "a," who could then attack subject "b," subject of government B, for an injury committed by "b."

As piracy declined, the need for private self-help became less urgent. The growth of national states led governments to take a stronger hand in imposing order. Gradually the custom grew of regarding an injury to a foreign individual as an offense against his state or government. Rulers considered it inconsistent with their sovereign power to allow individuals to take independent action; sovereigns acquired the habit of dealing with sovereigns, and direct state action on behalf of an individual superseded the practice of self-help under letters of marque and reprisal. This transition from private to public reprisals spread over a long time, but by the eighteenth century the practice of national self-help and reprisals had replaced the medieval practices.

Thus conceptions of self-help which originated in the rules of earlier days became implanted in modern international life, and under international law nations frequently took forceful action against other nations without declaring war. No legal status of war resulted from this action, and no problems of the rights and duties of belligerents and neutrals which are incidental to the legal situation of war.

Such forcible methods included the use of pacific blockade of one or more ports of another country; embargoes; landing troops to protect citizens or restore order or even to collect duties; the temporary seizure of property; the occupation of territory; the declaring of certain areas to be neutral, thereby preventing a gov-

ernment from invading areas over which it claimed sovereignty. These measures were frequently regarded as necessary to enforce law and order in weak and backward countries. Doubtless the stronger governments endured many provocations. But national self-help and reprisals were often quite arbitrary; they confused "law and vengeance," power and justice, might and right. Frequently the powers refused to appeal to impartial judgment and no principle or organization existed to decide whether a government's forcible measures short of war constituted unjustifiable aggression or a legitimate protection of its citizens abroad who had been denied justice.

Just as the balance-of-power system made it impossible to distinguish between an aggressive and a defensive war, so it made it difficult to decide whether forcible actions short of war were essentially offensive or defensive in character. War itself is but the logical development of the principle of national self-help, and the balance-of-power system had evolved no adequate organization to prevent either the major self-help called war or the minor self-help called forcible measures short of war.

In 1918 Germany imposed the Treaty of Brest-Litovsk on Russia and the Treaty of Bucharest on Rumania. The terms were of the utmost severity and showed that Germany would give little mercy to her vanquished enemies. President Wilson had enumerated his Fourteen Points before this time; but the revelation of Germany's temper caused him to modify his position, and he increasingly spoke of the necessity of crushing German militarism. This fact must be kept in mind as part of the explanation of the harsh terms meted out by the Treaty of Versailles. Hitler's Germany denounces these as monstrous; but the Allies retort that Germany herself pointed the way by her action at Brest-Litovsk and Bucharest, and that the peace treaty was not based upon the Fourteen Points only.[2]

The Treaty of Versailles contained both the Covenant of the League, based upon co-operation, and the punitive sections based upon the need of crushing Germany as a military power. The two principles were incompatible, and one or the other had to give way. As recent events show, it was the League Covenant which fell and the politics of power which triumphed. France dared not let Germany have a fair chance, fearing that Germany would make use of that fair chance to pursue the policy of conquest. But to deny

[2] J. Wheeler-Bennett, *The Forgotten Peace* (Wm. Morrow & Co., New York, 1939), pp. 363–69.

a nation a fair chance, on the assumption that it will abuse its opportunity, is dangerous; for the vanquished nation will think more of the injustice it suffers than of the fact that its enemies believe that it would use an equitable settlement to act unfairly. The dilemma was complete from the beginning but took nearly twenty years to stand revealed in the final bankruptcy of war which broke out in 1939.

Until about 1930 it seemed possible that the principles of the Covenant would triumph and that Germany would be re-admitted as an equal. France in the early days after the Peace had signed military alliances and kept Germany in a position of inferiority, but one by one concessions had been made. By 1932, however, the tide had turned: Japan violated the Covenant successfully; the Disarmament Conference opened inauspiciously; and by March 1933 Hitler had come into power. His speeches and writings alarmed the French, and what he regarded as a reassertion of German rights was viewed by the French as a renewed threat to them. He denounced the military clauses of the Treaty of Versailles in 1935—another step toward equality, but to France another manifestation of the possibilities of German aggression. Hitler occupied the Rhineland in 1936. From Germany's point of view it was just; from France's point of view it weakened her in Europe by making it impossible for her to give as effective help to her allies in Eastern Europe, who began to desert. Hitler invaded Austria in 1938, invoking the principle of self-determination and of national unity, which the Treaty had denied. To France it meant power added to Germany, which would strike when the time was ripe.

Meanwhile, the balance-of-power system had been complicated by Italy's desire to gain what she thought had been denied her by the Treaty. Mussolini's troops invaded Ethiopia. The imposition of sanctions against Italy drove that country into partnership with Germany, and the two Axis powers now confronted France and Britain and to a degree the Soviet Union. Hitler demanded the Sudetenland, again appealing to German rights. His action there, however, further upset the balance of power in Europe. Collective security was dead; and a scramble ensued. The Munich Accord was an attempt on the part of Chamberlain and Daladier to reconcile the German claim to equality and national rights with the peace of Europe based upon equilibrium of the great powers. The ink was scarcely dry when the equilibrium was disturbed: Hitler accused Czechoslovakia and the Soviet Union and Great Britain

of organizing to encircle Germany, and proclaimed a protectorate over the rest of Czechoslovakia. His assertion that this action was taken in reply to aggressive action by the other powers was indignantly repudiated by the latter, who argued that Germany made use of its new strategic strength in Europe to take what the Allies could or would no longer prevent him from seizing. To them it was an unjustified act of aggression.

Soon after came Poland's turn. Poland, in fear that Germany would attack her, signed an alliance with Britain. Hitler chose to regard this step as indicative of hostility toward Germany, and he canceled the 1934 German-Polish nonaggression pact and the Anglo-German naval agreement of 1935. Matters went from bad to worse, and Hitler demanded of Poland that Danzig must be German and the Corridor returned. From the point of view of nationalism, there was much to be said for returning Danzig to Germany; but Hitler had made and contradicted so many statements that nobody believed him when he said that this was his last demand. When Poland stood firm and the outbreak came, the typical phenomena appeared—each side accused the other of provoking hostilities, of perpetrating atrocities, and of bombing open towns. These tactics are familiar to the student of international politics, and are inseparable from the balance-of-power system. They will appear again if war should come.

Each side had some right and some wrong in its policy but each side blamed the other entirely. Further, it was not only a particular action but the purpose behind it which led to misunderstanding. Hitler spoke of one purpose. His opponents believed that he had another. They said that his methods were destructive of international law and order; Hitler replied there was no other way in which he could obtain German rights, since under international law whatever he did to obtain German rights violated the law. The truth is that both sides had a certain logic, but it was an inadequate logic which did not take into account the total situation. Each side pointed to the other's faults and ignored its own. Hitler's opponents talked of the persecution of Jews in Germany; Hitler talked of the persecution of the Germans in Poland; and the Poles might have retorted by reminding Hitler of the prewar Germanization policy in Posen. Neither side possessed an adequate sense of justice; and the world has witnessed the consequence of accumulated inadequacies of policy on the part of all powers until the contradictions have become so complete that there seems to be no way out. The balance-of-power system has led to intensified

armaments, intensified propaganda charges and countercharges, a deplorable decline of public manners and morals, and an elevation of lying into a principle until no government's word can be trusted; and the modern state which demands mankind's supreme loyalty even unto death threatens to destroy all culture and goodness in the mere effort of survival and seizure of power.

Plainly the balance-of-power system will not do, is not worth restoring.

These conclusions find additional support in the recent relations between Great Britain, the United States, and the Soviet Union. The Big Three insisted upon the right of veto in the United Nations, and proponents of "realism" argued that the people of the world must depend upon the harmonious relations (based upon power) of the three Allies who had recently defeated Germany and Japan. As will appear later, the United Nations charter was based on the assumption of collective security for the smaller nations and the maintenance of the balance-of-power system among the three super powers. The naïve assumption was made by many people that somehow or other the relations between the Big Three could be so stabilized as to prevent the emergence of suspicion, rivalry, and increased armaments. Within a few months these assumptions were shown to be false and relations rapidly deteriorated. The reasons are not hard to find.

First, the recent historical background supplied ample grounds for suspicion. The Bolshevist Revolution in 1917 proclaimed world revolution against the modern capitalist system and the international framework upon which it was allegedly based. Between 1917 and 1922 the Soviets attempted to spread world revolution by increasing uprisings in various parts of Europe, by calling upon the colonial peoples to throw off their imperial masters, and by repudiating the obligations of the Czarist regimes. The Western powers refused recognition to the new government, supported counter-revolution in Russia. Between 1922 and 1935 came the period of troubled co-operation when the Soviet Union attended certain international conferences, agreed to a recognition of certain debts and borrowed capital from the West, while the Western peoples loaned money to the Soviet Union and gave *de facto* recognition to the Soviet Government. By 1935, under the threat of Nazi Germany, the Soviet Union joined the League of Nations and the International Labor Organization. It made an alliance with France and in the League strongly supported collective action against Italy, Italy's campaign in Ethiopia, and against Franco's

rebellion supported by Italy and Germany in Spain. But the Western powers seemed lukewarm in stopping the advance of Fascism and in preventing international aggression. In 1938 Britain and France compromised with Fascist Italy and Nazi Germany in sacrificing Czechoslovakia; France ignored its treaty of alliance with the Soviet Union and the next year undertook an agreement with Germany. That the Russians should have felt themselves betrayed is not surprising. In turn, they signed a pact with Hitler and soon after attacked Finland, for which they were expelled from the almost-defunct League of Nations, which had not previously expelled either Japan or Italy for their acts of aggression. Did not this also indicate the continued Western hostility to the Soviet Union?

Came the great World War II and Hitler's sudden attack upon the Soviet Union in June 1941. Mr. Churchill, British Prime Minister, despite his anti-Soviet views, instantly pledged support to Russia. But even during the war, suspicions were not allayed. Many Russians believed that the second front was unduly postponed so that Germany and the Soviet Union might mutually weaken each other. Recent discussion has turned about whether the second front should have been opened in the Balkans instead of in France—some have argued that the Underground of the Balkans would have been an outstanding help and that the war might have been shortened for other military reasons. It was also argued that Great Britain wished to have re-entry to Europe by way of the Balkans but that such a campaign was opposed by the Russians who, rumor had it, might have made a separate peace with Germany if the Balkan campaign had eventuated.

On the other hand, a number of actions were taken which British and Americans regarded as indicative of a genuine Anglo-American desire to co-operate. The United States Lend Lease may have been a decisive factor in providing the margin of material necessary to turn German troops back from Moscow and Stalingrad. Near the end of the war American troops were moved from the part of eastern Germany which they had taken in order to equalize the Russian zone of occupation. American troops were held back to enable the Red army to capture Berlin. At the international conferences which were designed to lay the foundations of the peace, President Roosevelt agreed to consider Russian votes in the United Nations general assembly; Russia was given the formerly Japanese-owned Kurile Islands; and the United States supported the Russian demand for control over the Chinese

coast cities of Port Arthur and Dairen, and backed many of the Russian proposals at the San Francisco Conference which drew up the United Nations Charter.

These actions did not suffice to reassure Russia in all respects. The country had suffered enormously in the war and its losses were much greater than that of any other country. Small wonder that it was determined to build its own strength and not to trust merely to a new, untried organization, especially in view of the past failure of the League of Nations. Just as the United States had proclaimed the Monroe Doctrine in the Americas for its own security, so the Russians argued that they had to have special relations with their neighbors—Latvia, Esthonia, and Lithuania, which were absorbed—Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, which were to come under a Russian sphere of influence and which could not be used as a base of hostile operations against the Soviet Union.

But Great Britain also had its claims to a sphere. If its empire and commonwealth, already seriously weakened by World War II, were even to maintain its position it must hold the lifeline through the Mediterranean, and to this end British policy was devoted to maintaining its position in Greece and in the Middle East. It soon became evident that under a balance-of-power arrangement no clear line could be drawn between the Russian and British spheres. They were not mutually exclusive. The problem was aggravated by United States policy of advocating an international regime for the waterways of Europe and a modification of the convention of Montreux of 1935 under which Turkey had regained a degree of control over the Bosporus and the Dardanelles but which had been somewhat to Russia's advantage. Historically, Russia had attempted to break out from the Black Sea and to dominate Turkey, and this pattern was to be repeated after 1944 or 1945. Moreover, the Soviet Union claimed a voice in the trusteeship over the Italian colonies in Tripoli, Italian Somaliland, and Eritrea and relaxed those claims only after considerable argument. Anglo-American diplomacy was joined against the Soviets over Trieste, and over the nature of the governments established in eastern Europe. The Soviets tended to support a one-party regime, the Anglo-American statesmen argued for a two-party regime, Western correspondents complained they could not penetrate the iron curtain of censorship, not only in the Soviet Union but also in the Soviet-dominated countries. And why should Russia, in February 1946, have moved to back

Albania's admission into the United Nations if not to strengthen its bloc in eastern Europe?

Bitterness developed over the operation of the United Nations Relief and Rehabilitation program. On the one hand, the Soviets were accused of not co-operating with this organization; on the other, critics claimed that food was being used as a political instrument by UNRRA in Soviet-dominated Poland and Mr. Hoover's record after the last war, which, as a Department of State publication has recently revealed, did not serve to lessen Soviet suspicion. The Big Three clashed on whether war refugees should be forced to go back to their homeland. The Russians backed a resolution giving governments the right to require their citizens to come home but finally agreed that none but war criminals and traitors should be so compelled. The independent line adopted by the Soviets in sending food aid to parts of Europe puzzled American and British public opinion, and the Russian absence from the Food and Agriculture Organization Conference of May 1946 added to the suspicion.

The long and bitter controversy over Iran was part of the power-politics struggle. Here, too, Anglo-Russian rivalry had been of long standing. The British claimed that Soviet creeping aggression in Iran constituted a threat to the security of their empire; proponents of Russian policy proclaimed that oil was a vital need of Russia. During the war 3,000 wells in the Caucasus had been destroyed by the Nazis, many refineries had been demolished, and the output of oil had steadily declined in the fields which produced 80 per cent of Russia's oil; hence the Soviet demand for a drilling concession of about 150,000 square miles in Iran. Counter-arguments were adduced to show that Russia did not suffer from an oil shortage, but on the other side of the ledger was the fact that the new oil concessions in Saudi Arabia had given the Anglo-American partnership new and most extensive sources of supply.

The United States demand for naval bases in the Japanese-mandated islands led many to believe that these bases could be directed against only one aggressor—the Soviet Union. Russia, in the meantime, had occupied parts of Manchuria and anxiety mounted as to whether it would or would not withdraw from Mukden. It finally did so in March 1946, to the accompaniment of widespread charges that it has wantonly removed much machinery.

Allied policy in Germany soon showed evidences of mis-

understanding and even of rivalry. After the Potsdam Conference which agreed on the general policy concerning the amount of industrialization to be committed to Germany, an American commission brought in a report indicating the necessity for a greater degree of industralization if Germany was to be able to support itself and Russian suspicions mounted. A prominent American reporter in February 1946 asserted that the United States and Britain for several months had been playing a sinister game of hide and seek with Russia for the use of top German scientists for research in war projects and in this operation were behaving more like enemies than allies. Russell Nixon, former director of United States military government's cartel investigations, charged that anti-Soviet elements in the State Department were attempting to exclude Russia from the search for hidden Nazi assets in western Europe, a charge which the State Department branded as "misleading and unsupported." Other critics became alarmed when they learned that the United States had allegedly sponsored several thousands of anti-Tito Yugoslav troops for occupation duty. Mr. Walter Lippman, on his return to the United States from Europe in May 1946, charged that an open rivalry was going on between Great Britain and the Soviet Union to win German support in an intense Anglo-Russian rivalry on the Continent.

Meanwhile, the United Nations was proving itself incapable of restraining these rivalries for reasons which will be analyzed later. President Truman called for large appropriations amounting to some twelve billion dollars to strengthen the Army, the Navy, and the Air Force: the United States must be strong in order to fulfill its international obligations, and also to protect itself should the United Nations fail to secure America against aggression. In March 1946 a program was announced for an American fleet which would equal the rest of the world's navies combined. It was to be a super-fleet built around bristling carrier units; this dual "instant action" armada was to contain 329 ships.

In January 1946 President Truman appealed for a foreign intelligence service designed to guard United States safety abroad, and General Arnold, retiring chief of the Army Air Forces, and others directed attention to the feasibility of an attack from over the Arctic wastes since the polar ice cap furnishes the shortest route to North America from Europe and Asia, and the jet planes would not be deterred by Arctic weather. Co-operation with Canada was taking place for the development of an extensive

Arctic defense. In the meantime, the British government was talking in terms of its security and the need of strength and, in February 1946, the central committee of the Communist party in Moscow made the security plea an important part of its election appeal. A month later Mr. Churchill made his famous speeches in the United States urging a combined Anglo-American effort to preserve the peace and claiming that Russia wanted the fruits of war—that it for months had been acquiring these fruits by separate action, and that no one could say what the limits were to the expansive and proselytizing tendencies of Russia. Marshal Stalin and his followers reacted vigorously to the Churchill oratory and, in his May Day speech, Stalin again urged the need of preparations for defense on the part of the Soviet Union.

Tension was increased by the controversy over the atomic bomb. The United States used the bomb against Japan; soon after, it announced a degree of co-operation with Canada and the United Kingdom, promising in general terms a later sharing of the secret when it was safe to do so. As pointed out elsewhere, many scientists claimed that there was no secret to keep and that unless arrangements were quickly made in setting up international authority to control atomic energy the world would witness the most ominous atomic-energy race, which could lead only to destruction on a scale of unprecedented magnitude. But steps toward co-operation moved slowly and announcements were made that Soviet research in nuclear energy were being rapidly advanced. In March 1946 occurred Canada's spectacular spy scare, which involved charges of espionage against Russians and certain Canadian officials.

The London Conference in 1945 and the Paris Conference in May 1946 broke down, and the failure added to the gloom. At Paris Mr. Byrnes offered what many Americans felt was a re-assurance to Russia, namely, a four-power, twenty-five-year alliance to keep Germany and Japan disarmed. Moscow somewhat bluntly rejected the proposal and the rebuff created a painful impression; people began to ask why this curious action, when the purpose of Mr. Byrnes's proposal was to make clear to the European powers that the United States would not in 1946 walk out on its committments in Europe as it had done in 1919. The proposal had the backing of Senators Vandenberg and Connally and would presumably have gained Senate support. The reason for the Russian rejection is fairly clear. Before the Paris Con-

ference, "inspired" stories from Washington proclaimed that the American Secretary of State was going to put Russia on the spot at Paris, that if Russia would not co-operate the United States would sign separate peace treaties with the former Axis satellites. Mr. Byrnes's proposal for a twenty-five-year four-power treaty was a surprising move, which, however, was interpreted by the Russians as putting them on the spot and, moreover, a treaty guaranteeing the stability of Europe for twenty-five years would (so critics of Russia alleged) deprive Russia of any argument that Germany was a continuing potential menace. The proposal was also disconcerting to the French and the British.

Finally, the old fears of the Western democratic countries that Communism was irreconcilably hostile to democracy revived. How far was Russian policy using Communism for imperialist aims? How far was it using its power to spread Communism and, on the other side, how far were the Western powers going to use the plea of free enterprise, Christian civilization, and other moral phrases to further their power in the mounting tension? In a debate in the House of Commons early in March 1946, the Conservative member, Mr. R. J. Boothby, said that he was not afraid of a war in the far, near, or even in the middle future, but that he was very much afraid of a kind of "frozen peace" based on suspicion and fear. Mr. Boothby may well have been right had it not been for the advent of the atomic bomb, for with a weakened Russia owing to the heavy losses of the war, an over-strained Britain, and an American public anxious to get back to peacetime activity, it may have taken many years to build up for a war in which the United States and the Soviet Union could have come to close grips. Even in this case, however, the Soviet Union could have played what Owen Lattimer calls the politics of attraction as well as the politics of penetration by moving inch by inch into neighboring lands as Hitler moved piece by piece before 1939. Such moves might not have appeared to threaten the United States any more than Hitler's moves seemed to constitute a threat to most people in America between 1933 and 1939. But to Great Britain a slow, relentless advance of the Soviet Union would have appeared much more threatening, and for that reason the optimism of such writers as W. T. Fox, expressed in his volume, *The Super Powers* (Harcourt, Brace & Company, 1945), that the Big Powers could not get at one another and hence peace was likely to endure for some time, seemed to be unwarranted. With the coming of the jet-propelled planes and the atomic bomb, distance

no longer provided immunity. The unsoundness of the balance-of-power system was being revealed on an intolerably magnified scale, with confused thinkers still of the opinion that such a system could somehow protect the people.

Despite the advent of the atomic bomb and the evidence of new and more deadly forms of bacteriological warfare, the struggle for power among the Big Three continued throughout 1946; and up to the time of completing this chapter, the area over which rivalry was being intensified grew more extensive both in space and on the psychological, scientific, and economic plane.

Reports circulated that Russia, Great Britain, and the United States were trying to outbid each other in obtaining the services of German scientists.[3] Grave differences over the German treaty, the alleged interference by the Soviet Union in the Hungarian elections, and other clashes culminated in President Truman's urgent request to the American people, in March 1947, to send financial and military aid to Greece and Turkey. The struggle for power had brought the nations to an almost complete impasse with consequences which escaped the judgment of the vast majority of people. In this struggle for power the rallying cries were anti-Communism in the United States and anti-capitalism in the Soviet Union. But it was hard to distinguish between the dog and the tail. Was Communism being used as an instrument for pushing Soviet vital interests and were capitalism and democracy the means by which the American people were being swept into the maelstrom of power politics? In any case, the great underlying tragedy was this—that the two systems, so-called private enterprise and so-called Socialist Communism which were devoted to the ideal of the material welfare of the masses of people, one primarily by nongovernmental means and the other primarily by governmental means, were both becoming militarized. The economic factor was progressively becoming a subordinate instrument to military power and the grotesque spectacle was being unfolded, namely, of the great powers which had twice within twenty-five years fought world wars for the sake of preserving their institutions of welfare going at ever-increasing speed along the line of militarization. At the moment of writing it was still uncertain whether the two great economic systems would progressively weaken and ultimately

[3] See *Christian Science Monitor,* February 25, 1947, for the alleged offer to German atomic experts by the Soviet Union; and Stephen White, "The Army's German Scientists—Their Presence in American Laboratories Is Offering Problems," *New York Herald Tribune,* Weekly Book Review, February 23, 1947.

destroy their economic standards in the vain attempt each to defeat the other by more powerful military strength at a time when modern science had made it impossible to find a solution along these lines.

Should the breakdown come and hostilities begin, each side will be persuaded as before that it is fighting a war of defense and that the opponent is the villain of the piece. The devil theories of war will have another heyday and mankind will again pay the penalty, this time in a more ghastly fashion than ever, for its devotion to a pseudo realism masquerading as true realism.

REALISM AND PSEUDO-REALISM

The pendulum of thinking seems to have swung sharply once more. In thought as in clothes there seem to be fashions of the day and at the moment it is more fashionable to talk of power politics than of international co-operation. Partly this phenomenon is due to the excessive hopes which a generation ago were in the direction of the League of Nations and to the refusal to recognize during the early years a continuance of power politics within the League system. With the breakdown of the League and the disillusionment attendant upon it, many writers have beat upon their breasts and cried *mea culpa* and have hastened to worship at the shrine of realism, throwing aside the vain idealism and sentimentality which they see revealed in their nakedness.

But the new realism seems to be as one-sided and as unsatisfactory and as lacking in depth as the rival which it has temporarily displaced. Such phrases as "States are governed by self-interest," "Nations do not act altruistically," "Power determines international relations," seem at first sight to be justified by the evidence, for have not the large powers dominated the small powers? and have not their concessions to each other resulted from demonstrations of strength and from the fear of other rivals, rather than from moral considerations? We are now told that the United States fought this war, as well as the last one, not to make the world safe for democracy and not for the four freedoms or anything like that, but for its own national power and survival, the assumption being that the two categories are exclusive or almost exclusive. I shall not even list the works of academic and other writers which repeat this theme with impressive supporting evidence. I should like, however, to subject these conceptions to closer examination to see whether they really explain as much as they appear to explain.

In the first place, we are told that power is the key to understanding international relations. Some writers appear to regard power as an end in itself. To others power seems to be the means to an end, namely, security or conquest of a military, economic, or cultural character. Concerning the former assertion one must ask why nations claim power in and for itself alone. It is not enough merely to make the assertion or to leave the argument in a twilight zone where no ends beyond power itself are stated or implied. Even the assertion that power is necessary for survival implies certain ends. Philosophically, the person who argues that the state seeks power for itself, for its own sake, must prove that the agencies which make up the state and the officials in those agencies who in everyday life have certain ideas and ideals, prejudices, family connections, and group loyalties suddenly become when chosen to be servants of the state, inexorably committed to the search for power in itself. I submit that no evidence has been adduced to show that such a dichotomy exists in those people who formulate foreign policy or in the great mass of people who in the democracies vote their officials into power. We need a detailed proof that in every step of foreign policy there is nothing but the search for power and nothing but power on the part of the statesmen and the people.

If we say that power is a means to an end and that the end is national survival or welfare, we then must ask what is the nature of the welfare, and whether the unilateral assertion of power is the best means of attaining these ends. If we say that national self-interest dictates policy, we shall have to prove that national self-interest is best obtained by military, naval, and air power. If we are to be scientific, we must ask whether it is impossible to attain national survival or welfare by any other means and, if so, what those means may be. We must ask whether in the very nature of things, it is impossible to attain national welfare by any means other than power, impossible in the sense that one cannot restore a dead person to life or a leg or an arm to a limbless person. On the other hand, if we regard national self-interest as embracing democratic institutions, political parties, freedom of the press, and the other elements which for centuries Anglo-Saxon people have regarded as the very essence of their life and institutions, we must analyze whether continued armament competition between nations will not necessarily endanger those institutions. It may well be that we can build up more and more power in the modern age but, for reasons analyzed elsewhere and as greatly demonstrated in the

recent war, a democratic form of society does not lend itself in peacetime to rapid mobilization such as did the dictator form of government.

Not only has modern war involved extreme governmental interference in economic life beyond that which would be necessary in a complex economic system to regulate rival group interests or even under peacetime socialistic economy, but a psychological warfare has introduced an element of extreme danger to free discussion in democratic countries. No student of the last decade's international scene will underestimate the importance of propaganda and the extremely subtle ways in which morale was attacked or built up by enemy and by home governments respectively. Indeed, a strong case can be made out for the claim that democratic discussion becomes extremely dangerous in a world of mounting armaments because ideas become weapons of war, potential and actual, rather than being instruments of truth.

The advent of the atomic bomb has rendered still more precarious the maintenance of national democratic welfare as indeed of any country's welfare, whatever its institutions. We have noted above that scientists warn us that there is no defense against the atomic bomb, that our modern industrial civilization is at the mercy of the bomb, and that with it in a short time the major cities of most countries could be wiped out. Even more significant are the constitutional implications of the atomic bomb. If the atomic bomb becomes known (as it may already have done) to a number of countries and an atomic armament race develops, the United States, Great Britain, and the other democracies would find themselves in a most curious position. Take the United States as an outstanding example. Congress must declare war, but can anyone imagine that while Congress was being assembled for the purpose of declaring war the enemy power, or the supposed enemy power, would not take the initiative and strike first? If the United States military authorities, realizing this elementary fact, should in the interests of American security take it upon themselves to send a fleet of planes with atomic bombs over the potential enemy's cities, they would have to do so in defiance of our Constitutional provision that Congress has the power to declare war. In other words, our Constitution appears to have become a hindrance to our own security. Yet such a conclusion would be misleading, for even if our leaders bombed the other country's cities first, we could only expect the other country, which would have had its atomic bombs dispersed long distances from the major cities, to send their planes

over our cities and return the compliment of at least partial annihilation.

Under these circumstances, is one not justified in questioning whether our realists have really followed their analysis beyond a preliminary stage, and whether they have because of an emotional fixation or for other reasons refused to look at the problem as a whole.

To assert and to show that unilateral national power cannot bring national security without ruining national welfare only proves that, unless the nations of the world can use their power co-operatively and not competitively, disaster will come. It does not of itself prove that the nations will be able or willing to act in accordance with this knowledge. They may or may not be willing to give up their sovereignty, even if one can prove, as I think it can be proved, that adherence to national sovereignty threatens ruination all around. For the curious thing is that individuals and nations may misinterpret what their self-interest is and how it can best be achieved. We, therefore, ask the realists whether they have adequately examined the concept of self-interest or whether they have permitted themselves to be hypnotized by a slogan. For national self-interest and national sovereignty and power may well be incompatible. Why, then, do people choose the wrong type of self-interest? The realist tends to content himself with saying that people do, in fact, act thus, and that that is the end of the story. It is submitted that such an analysis is incomplete and unsatisfactory. Few realists draw the conclusion, which Robert M. Hutchins suggests logically follows from the "power" view, that we had better go all out for militarizing society and bomb our potential enemies tomorrow morning. Some of them admit that the United States cannot prevent aggression and that strong armaments are therefore required, but in the same breath they say that we must be content gradually to strengthen the United Nations. Others say that we can use our strength not only to protect their security while the United Nations is growing in stature but also to put it at the disposal of the United Nations. President Truman indeed has pleaded for increased armaments on these two grounds. But the Russians are increasing their armaments and so are the British. In each case there is a grave fallacy involved. When nation A appeals to its people to increase armaments so as to defend the United Nations, nations B and C see in this step, not the purpose of strengthening the United Nations, but the challenge to their own security, and they respond by increasing their arma-

ments in the name of the United Nations though in reality as a protection against the increases of nation A. In consequence, the dilemma becomes that much more serious.

If power politics dominates the whole international scene, then we should realize the consequences, namely, that the Germans were right and their error consisted only in miscalculating what was required. If moral factors are not involved and power is the sole issue, then the Nazis may have been more honest or less skillful in not using such slogans as justice and freedom. If power is the only criterion then all Churchill's speeches and Roosevelt's pleas were delusions. These men, if power politics means everything, must be branded with epithets which one hestitates to use, and we, in so far as we believed them, were dupes. If an appeal to justice is an appeal to an illusion then the only justification for using it on the grounds of power politics is that it enables the governments of those countries to mobilize the energies of their people better; it is merely a means to an end. It is a good talking point and nothing more. But even if we assume this to be true (and it would be interesting to see if any realist would dare challenge the sincerity of the Allied leaders and the sincerity of millions upon millions of people who, for the second time, despite the disappointments of the previous generation, felt that some fundamental values were at stake), still more one must ask the question why should such an appeal to delusions have roused such energies? Why not appeal to people in the name of cold power politics? Why not tell them the brutal truth at all times? If it be replied that it is psychologically inadvisable, the counter-reply must be that the belief in justice, freedom, and such principles has to be explained by the realist whether it is based upon something more than convention or convenience, or whether it is not.

These concepts—freedom, justice, law, order, individual worth —have been imbedded in Western tradition for over two thousand years. The religious faiths of the West have preached the reality of ethical and spiritual values; whatever the origin of law courts may have been, we assume that their function is to dispense justice, and that the many detailed safeguards erected in legislative and judicial procedures are means to that end. Otherwise, why have courts? Why not permit robbery and murder? Simply because power exercised without restraint acts to the disadvantage of the community. But what is the community? It has not always been the national state; indeed, the national state has played a relatively short role on the stage of man's history. The areas of effective

community government have changed, admittedly with violence in many, many cases but not only because of violence.

Again, will the realist deny that the disinterested heroism as revealed in countless acts during the war may have tipped the scale when all appearances in 1941 and even 1942 suggested a German victory? Maybe millions of people were confused in their motives, but on what basis did they fight for the state if it was not for something beyond their own immediate personal self-interest? Once it is admitted that people act according to the concept of duty, then the thin end of the wedge has been admitted, and the realist must do a much better job of analyzing the relation of power to justice and of means to ends than he has done up to the present.

One prominent writer has repeated the statement that states do not act altruistically. It is high time that detailed studies were made of the way in which foreign policies are formed. Mr. Justice Jackson, in preparing the opening statement for the United States in the Nuremberg trials, denounced the fiction that states make wars; individuals draw up policies and plan wars, he emphasized. As mentioned above, the picture that the realist would leave in our minds is one of a number of coldly calculating government officials bloodlessly weighing national self-interest, meeting with other such fearsome individuals from foreign lands who relentlessly move the diplomatic chessmen, and keeping closly in touch with army and navy dignitaries similarly stripped of human qualities, of attachments to local groups, prejudices, and party affiliations and personal eccentricities.

How false this picture is and how little national foreign policies are framed in this way can be seen in the recent history of the United States. Our tariffs were adopted through a push and pull of sectional interests, through log rolling and the pressure of propaganda, with government departments urging this or that aspect of policy and economists raising their voices for lower tariffs generally. The tariff was not an expression of national self-interest conceived and carried through by a mystical entity called the state. It was the product of a very complex jostling of interests by importers and exporters and scores of other interested groups and associations. So even in the case of selective service and proposals for larger armies and navies, the practical picture appears very different from that suggested by the phrase, "States are dominated by self-interest," as if the state were an entity separate from the people.

I therefore re-emphasize the point that a much more realistic

analysis must be undertaken before we can accept the abstractions put forward by the realist. Experience has shown the fallacy of the concepts of the economic man and the political man and it should have demonstrated the inadequacy of the concepts of the "power man" as well as the "power state." Can one imagine that Mr. Byrnes, on moving from the Supreme Court where he was sworn to uphold justice, and being transferred to the State Department suddenly is transformed into a calculating person from whom all such sentiments as justice have been eradicated? And if it be replied that it is the permanent officials in the State Department who are the villains of the piece, one would further ask whether this person or that person (who might be named), on entering the portals of the Department of State, also suddenly or even gradually becomes dehumanized? Have the professors of international law and of economics and of political science and the young students trained in the Western tradition somehow been metamorphosed into persons without feelings to whom the State has become everything? To ask a question is surely to indicate the answer.

One has seen a magnificent response of many hundreds and thousands of American citizens to the call for food. No thought of self-interest explains their actions. It may be that the slowness of American officials to respond is due to the cold calculations of national self-interest on the part of its leaders. But a truer explanation would seem to involve the bottlenecks in our government and the delaying tactics of pressure groups who sacrifice even national policies to meet a group interest. So also in the Soviet Union where it is difficult to see where the belief in Communism begins and the traditional power politics of the Russian state ends. And does not the changed emphasis of British foreign policy under a labor government (though not so great as many people would believe) have significance?

Finally, the realist tends to banish the word "ought" from the vocabulary and to concentrate his attention on what *is*. But the "*is*-ness" may not be so simple a matter as it first appears. The power and policy of the present cannot be explained without reference to history. The "is" of today rapidly becomes the "was" of tomorrow, and since foreign policy like every other aspect of human life involves alternative choices one can say that a government or a person ought to choose this way rather than that, if it or he wishes to attain the best result. We can say that a person ought to change his way of living if he wants health. Here we have a physi-

cal imperative without perhaps much reference to ethical ideals. Similarly, there may be a technological imperative. A person who wishes to fly an airplane ought not to drink liquor before he takes over the controls. Here the ought is equivalent to must and ethical imperative comes very close to a physical or technical imperative.

Our analysis proceeds a step farther when we consider that we need consistency of expectation if we expect to build an efficient society; little stability can result unless adequate routine exists, and social routine with its consequent expectation depends upon keeping promises. Welfare and power thus imply a high degree of ethical behavior; the efficiency of the "is" depends upon a widespread acceptance of the "ought." What men and women believe to be worth while to themselves, to their children, to their nation, and even to the human race are potent factors, as the rise and fall of national morale all too clearly show. A faith can call forth energies which may be decisive in a world conflict or in the establishment of a new form of government, and a preoccupation with this problem might be as important in the release of national energies as a careful analysis of phenomena in the laboratory, which may be so subtly different as to escape the untrained eye but are ultimately so clear to the atomic physicist as to make the difference between uranium 235 and uranium 238. To refuse to look into the philosophical issues raised by the relation of power to justice, power to truth, sovereignty to welfare, and the nature of the individual and his relation to his group, the state, the human race, and the universe itself, may be to shut out such relevant evidence as may in the realm of morale be the deciding factor between the spiritual equivalents of uranium 235 and uranium 238. "Realism" which ignores these factors is only pseudo realism; it is philosophically shallow, and does not explain what it purports to explain; it is dangerous because it fails to carry its analysis far enough and prescribes what at best is only a palliative and at worst is nationally self-destructive.

COLLECTIVE SECURITY—THE LEAGUE OF NATIONS

The inability of prewar institutions to deal efficiently with the rapidly increasing number of international problems—security, communications, health, finance, intellectual co-operation—led to the establishment of the League of Nations. The League was to guarantee order and stability which the balance of power had failed to maintain; its economic and financial sections were to help national

governments collectively to draw up more extensive rules in all branches of economic life and its other sections were to fulfil the same task for other fields of human activity; the International Labor Organization was to specialize in labor relations; the World Court was to provide a more adequate instrument for interpreting international law. In so far as the failure of prewar society was to be traced to the lack of political institutions, it was to be remedied by the new order of the society of nations.

The movement did not stop with the League. Within the British Empire conferences and secretariats grew up in order to deal with problems, internal and external, which affected the welfare of one-fifth of the world. The countries of the American continent strengthened the Pan-American machinery; the Scandinavian countries adopted many measures of international co-operation; and the Little Entente and the Baltic and Balkan States built up regional organizations. The significance of these new rule-making, rule-enforcing, and rule-interpreting agencies must now be examined, particularly in relation to the problem of security. Other aspects will be dealt with later.

The Covenant of the League of Nations set forth the principles and instrumentalities of the new organization. Article 1 dealt with membership. The original members were named in the annex; other states, dominions, or colonies might be admitted by two-thirds vote of the Assembly after giving evidence of good faith and intention to observe the conditions laid down by the League relating to armaments. Three things may be noted: (1) The defeated powers, Germany, Austria, Bulgaria, and Turkey, the Soviet Union, and Mexico were not original members. Thus the League suffered from lack of universality at its very inception. (2) Provision was made for the entrance of self-governing dominions or colonies—a breach in the theory hitherto held that international relations are between "sovereign states." (3) The article contained an exception to the normal rule of unanimity, since a two-thirds vote of the Assembly was sufficient to admit new members.

Articles 2 to 7 dealt with the instruments of the League: The Assembly, the Council, and the Permanent Secretariat. The Assembly consisted of representatives of all the League members and was to meet "at stated intervals and from time to time as occasion may require"; it might deal with any matter within the sphere of action of the League or affecting the peace of the world. At its meetings each member had one vote and might not have more than

three representatives. The Council was to comprise representatives of the Principal Allied and Associated Powers (the United States, the British Empire, France, Italy, and Japan) and four other members selected by the Assembly "from time to time in its discretion." Each Council member had one representative and one vote. The Assembly was thus to be the less important body, meeting less frequently than the Council but able to deal with essentially the same matters as the Council. A majority of the Council was to have derived from the great powers; but, for reasons discussed later, this hope was not realized; the nonpermanent members outnumbered the permanent members, and the small powers were thereby enabled to occupy a stronger position in the League than had been intended.

Under Article 5, Council and Assembly decisions must be by unanimous vote "except where otherwise expressly provided." Matters of procedure were regulated by majority vote of members present at the meeting. Article 5 thus consecrated the principle of national sovereignty in matters of international policy.

The Secretariat was the civil service of the League. At its head was the Secretary-General, who, with the approval of the Council, appointed the secretaries and the staff.

Council, Assembly, and Secretariat comprised the rule-making agency and the civil service of the League. They were designed to provide a set of organs more adequate to the needs of the modern world—regularity of conferences, opportunity for both great and small powers to participate in rule-making, and a set of permanent officials whose duty it was to carry on correspondence, prepare the agenda, supervise finances, and prepare for conferences.

Article 8 dealt with the reduction of armaments. It reads: "Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." It may seem surprising that the first article concerned with policy should have had reference, not to legislative activity, but to the question of armaments. In reality the priority of this clause is quite natural: No society can hope to build a structure of law and order if the units that comprise it have great military, naval, and air forces. Until international society has more force at its disposal than the respective nations possess, peace must remain uncertain and fragile. Excessive armaments put force in the foreground of a dispute instead of keeping it in the background. In the attempt to restore a better balance in

the distribution of force within international society, the Council was to recommend plans for the reduction of armaments and League members promised to attempt to regulate the evils of the private manufacture of arms and to exchange full information on their armament programs. Under Article 9 the League was to set up a permanent commission to advise regarding the foregoing provisions.

A society's first concern is to control and direct force so that it may become the instrument of order and not of anarchy. Its next concern is to guarantee the security and property of its members. From this standpoint, Article 10 logically followed the article dealing with the reduction of armaments. The League "guarantees as against external aggression the territorial integrity and existing political independence of its members." In the event of aggression or threat of aggression, the League Council was to advise upon the manner in which the League should fulfill this obligation. Note that the Council could only "advise."

Here was a serious problem. What if the League members did not choose to accept the League's "advice"? What assurance would a threatened nation have that the League would live up to its guaranty? This question was asked during the drafting of the Covenant, but states would not surrender their sovereignty and agree in advance to place their military and naval forces at the disposal of the Council, should the latter decide to impose sanctions against the aggressor. Article 10 remained an uncertain guaranty, and did not supply the complete assurance of security desired by nations which stood in fear of attack by other nations. On the other hand, the obligation (incomplete though it was, at least in provision for practical application) to respect and defend the territorial integrity and existing political independence of member states proved too much for the United States, which rejected the League Covenant, largely because of its unwillingness to guarantee the permanency of the political situation created by the Peace Treaties.

Article 11 wrote into the law of nations a principle which challenged the traditional right of sovereign states. It asserted that war or threat of war between two nations, "whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League," which "shall take any action which it deems wise and effectual to safeguard the peace of nations." War was no longer a matter which sovereign nations had the right to claim as their exclusive prerogative: they were sovereign nations, but they must not abuse their sovereignty. War

concerned the greater society within the League, and that society now claimed the right to propose measures for its prevention.

Under Article 12 the members agreed to submit disputes "likely to lead to a rupture" to arbitrators whom the disputants themselves might appoint, to arbitrators provided for by a previous treaty arrangement between them, to judicial settlement by the Permanent Court of International Justice, or to inquiry by the League Council if the matter was primarily a political one. Members further agreed not to go to war until three months after the award was given. The award of the arbitrators or the judicial decision must be made "within a reasonable time," and the Council must give its report within six months. Thus in both legal and political disputes there was a definite promise to submit to the judgment of a third party.

Article 13 dealt with legal disputes more in detail. If League members had a dispute which they themselves recognized to be suitable for legal determination and which remained unsettled by the ordinary diplomatic methods, they agreed to appeal to suitable agencies—to the Permanent Court of International Justice (provided for in Article 14) or to any other tribunal. The article mentioned four types of legal disputes which admit of settlement by recourse to judicial decision.

The Permanent Court provided for in Article 14 might hear disputes submitted to it by states and give advisory opinions at the request of the League Assembly or Council. Some jurists wished to confer compulsory jurisdiction on the Court; but, after much discussion, the founders refused to take the step. The Covenant, therefore, contained no reference to compulsory settlement of legal disputes.

Article 15 provided that League members would submit to the Council any dispute likely to lead to a rupture provided that it had not already been submitted to arbitration or judicial settlement.

This article was most important. It provided for the compulsory arbitration of international disputes of a serious nature. And the disputants might not vote. A decision might be reached over their heads. But as a concession to the principle of sovereignty, it was agreed that unless the nondisputant Council members unanimously (all the Council members plus a majority of the other representatives of the League in the case of the Assembly) came to a decision, the disputants resumed their liberty of action. Here was a gap in the Covenant, for what assurance was there that unanim-

ity would prevail? What if a disputant had an ally who was a member of the Council?

Article 16 provided that if a member of the League resorted to war in disregard of the Covenant, it should be deemed to have committed an act of war against the other League members, who undertook "immediately" to sever trade and financial relations. The Council would have the duty of "recommending" to the governments "what effective military, naval or air force" League members should each contribute to assist in military sanctions. The League members also agreed to support each other in the financial and economic measures taken under the article in order to minimize the losses and inconveniences occasioned thereby. Note that the League members undertook immediately to impose economic sanctions but that only the League Council could recommend military sanctions. Here was another gap in the Convenant. There was no assurance that the Council's recommendations of military action against an aggressor would not be disregarded by the League members. It is clear that a nation relying for its security upon a mere recommendation of an international body would be running a great risk, and we have expected to see later efforts to strengthen this article. Note also that the Covenant-breaking member which resorted to war—a difficult word to define—was deemed to have committed an "act of war." The question arose as to whether or not an "act of war" against members of the League involved a "state of war," and upon the interpretation of these phrases a great deal depended.

Article 17 provided that the League would take cognizance of a dispute between a member of the League and a state not a member of the League, or between states not members of the League. The theory was that war was a matter of international concern, and that the League of Nations could not witness aggressive action by nonmembers without taking steps to prevent it and, if necessary, applying the sanctions provided for in Article 16.

Articles 11 to 17 constitute the part of the Covenant devoted to the settlement of disputes and the prevention of war. Article 18 provided that all treaties entered into by League members must be registered with the Secretariat and that no treaty or international engagement should be binding until so registered, a provision which looked straightforward enough but which contained many snares.

Article 19 read: "The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international

conditions whose continuance might endanger the peace of the world."

This article provided for peaceful change and should, in the opinion of many statesmen and scholars, have been included in Article 10, which guaranteed the security of nations, so that security and change could have been linked together. Obviously, in a changing world, security must be consistent with change; if no provision for change is made, an international guaranty of security will be no more than an international guaranty of the status quo. But postwar France, preoccupied with security and fearing change, insisted upon placing the two principles in separate articles instead of incorporating them in one article. Note the limited character of Article 19: The Assembly "may" advise, not "shall" advise; the Assembly may only "advise"; it may not "prescribe," and the members were to do no more than "reconsider." These words are very general, and did not foreshadow energetic action. Notwithstanding these defects, the principle of change was written into an international document of the first importance, and while no specific machinery was provided in Article 19, Articles 11 and 15 did make it possible for the League to consider disputes which might arise from the continuance of treaties which, in the opinion of one or more states, had become "inapplicable" or of conditions which were endangering the peace of the world. Article 19 provided a multilateral statement of general principles; given the will to make it work, it could become an instrument of great importance. It should not be considered in isolation but in conjunction with Articles 11 and 15, which contained provisions for procedures to consider means for peaceful change.

Article 20 provided that League members must abrogate obligations or understandings *inter se* which were inconsistent with the Covenant, an article of apparent simplicity but in reality of peculiar difficulty. Article 21 read: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace."

This is an incorrect definition of the Monroe Doctrine and was inserted primarily to secure acceptance of the Covenant by the United States.

The foregoing summary of the League Covenant shows that it contained six main principles: (1) war as a matter of international concern; (2) pacific settlement of disputes; (3) joint responsibility for preventing aggression; (4) general limitation

and reduction of armaments; (5) peaceful change of the status quo; (6) establishment of machinery for the prevention of social and economic ills and the promotion of social and intellectual and economic welfare. The successful working of the Covenant would demand advance on all six fronts. Failure to give effect to any one of the six principles would constitute a threat to the other five. In a word, the success of the Covenant depended upon comprehensiveness of policy in all fields, and the acceptance of the need of comprehensiveness by the majority if not, indeed, all the powers, and especially the great powers of the world. Its ultimate failure lay in the general ignoring of the third of these principles.

PRINCIPLES AND PROBLEMS OF COLLECTIVE SECURITY

The essence of a collective system is that no party shall be a final judge in its own cause. If this principle were carried to its full length nations would be finally bound by the decisions of other agencies and each would therefore definitely have submitted to a curtailment of its sovereignty. The governments and peoples of the world were not willing in 1919 (or in 1939) to accept so far-reaching a limitation. The doctrine of sovereignty was (and is) dominant, and some compromise had to be made. The original American plan at the Paris Peace Conference proposed a modification of the principle that only a unanimous decision of an International Conference could bind the participating states. Colonel House hoped that a three-quarters vote might suffice for a decision; General Smuts suggested that the League Council be enabled to make decisions if not more than two states opposed; President Wilson was also willing to see the unanimity rule set aside. National feeling proved to be too strong, and Article 5 of the Covenant embodied the general rule of unanimity. In case of disputes brought before the League Council under Article 11 decisions of the Council must be unanimous (including the votes of the disputants) in order to adjudge a nation guilty of having violated the Covenant by resort to war or unjustifiable aggression. It is clear that the evidence would have to be most convincing, especially in an age of political rivalries and alliances, to bring about a unanimous verdict under Article 11 or even under Article 15 (which excludes the vote of the disputants). Should the decision not be unanimous, the disputing nations would be free to resume their hostilities after a period of three months. The Covenant thus embodied a compromise system which was to suffer all the disad-

vantages of trying to mix two principles—national sovereignty, and third-party judgment.

The Covenant did not abolish all right to make war, but did attempt to establish a method of distinguishing between a defensive and an offensive war. Under Article 13 League members promised to submit disputes to arbitration, which "they recognize" as desirable; should "they" not agree, but only one nation desire to submit a dispute to arbitration or adjudication and its rival refuse, Article 15, paragraph 1, gave to the League Council compulsory jurisdiction. Not even reasons of self-defense and of sudden attack against it by an invading force permitted a League member to escape its obligation, under Articles 11, 12, and 15, to submit the dispute to the League Council.

The League system suffered from several other weaknesses. First, under Article 16 the League Council could only "advise" what military and naval forces might be used against the aggressor. But what guaranty was there that its "advice" would be accepted?

Another difficulty of a most serious character soon arose in connection with the application of the Covenant. Although international law has been classified under the headings of the law of war and the law of peace, the division between war and peace is not so sharp and well defined as the two titles might suggest. We have seen that international society recognized forcible measures short of war. Not only that, but it was difficult to decide when war actually existed. Some authors believed that it was necessary for a state to make an explicit declaration of war or to give an indication of an *animus belli gerendi.* Others believed that if a state committed an act of force without the *animus belli gerendi,* and the state against which the act was committed treated the act as initiating a state of war, then war would exist. In other words, did war exist when one of the states intended and declared it to exist or did it arise when certain things were done? And, if so, what were these certain things? Was war a legal condition, or merely the existence of the exercise of force?

These questions became even more urgent after the establishment of the League of Nations. Article 16 of the Covenant condemned "resort to war" and prescribed penalties if such war resulted from a violation of the Covenant itself. Italy in 1923, Greece in 1925, and Japan in 1931 declared that, although they exercised force, they did so without the intention of making war; and the Secretary-General of the League in 1927 reported

that war between two states depended upon their intention, and not upon the nature of their acts, however drastic they might be. But such a doctrine ran the danger of condemning merely the word "war" and permitting actions as cruel and extensive as war itself.

In 1921 the Blockade Committee reported to the League Council that the state which undertakes armed action against another state is regarded as having committed an act of war against all the Members of the League, but that this action could not create a state of war. The Second Assembly in 1921 resolved that the action of the defaulting state could not create a state of war but merely entitled the other League Members to resort to actual war or to declare themselves at actual war with a Covenant-breaking state.

In 1923 the Italian representative on the League Council claimed that the League Covenant did not forbid "peaceful means of repression" and that therefore the occupation of Corfu by Italy was a peaceful reprisal and a measure of guaranty permitted by international law. M. Branting claimed that this argument was not convincing and that there was a great difference in what states might do before and after signing the Covenant. A body of jurists was set up to deal with the question as to whether or not measures of coercion which were not meant to constitute acts of war were consistent with Articles 12–15 of the Covenant, if taken without recourse to the procedure laid down in those articles. The reply of the jurists was not conclusive. They said that such coercive measures might, or might not, be consistent with the Covenant; and it was for the Council, when the dispute had been submitted to it, "to decide immediately, having due regard to all the circumstances of the case, and to the nature of the measures adopted, whether it should recommend the maintenance or the withdrawal of such measures."

Many of the states were disappointed at the findings of the jurists, but one must note that they did suggest that forcible measures short of war might be incompatible with the Covenant, a question which was to assume increasing importance.

In 1932 the League Council solemnly reminded Bolivia and Paraguay that they were legally and morally bound by their obligations to the League not to have recourse to "armed force, but should refer the matter to arbitration, judicial settlement, or to the Council." Yet if a full declaration of war is not needed to bring a state of war, what will be the objective facts which will

produce such a condition? In a rapidly changing world perhaps one cannot define in advance what particular actions will have this result.[3] Presumably a third-party judgment must be given, as the jurists in 1924 decided.

The question also arose whether or not hostile measures short of war were contrary to the Kellogg Pact; and here, too, opinions differed. For if nations renounce war as an instrument of national policy, and agree to settle disputes only by pacific means, and yet continue to make use of armed force, on the ground that these are pacific means sanctioned by international law, then the Pact becomes almost useless. Obviously international society must expand the meaning of the word "war" and take over the authority to enforce peace in the larger sense, or else resign itself to witnessing all the essential miseries of war without their being so christened. Changing circumstances have permitted hostile acts to be so drastic and effective as to wipe out the independence of another state or to reduce it to impotence. Unless new methods could be devised to circumvent mere technicalities, international society will have done no more than create a verbal defense against war; and words are ineffective agents against determined leaders and armies. One can see why France and some other states wished to "close the gaps" in the Covenant, and why, in the early years of the postwar period, so much discussion took place to find means of overcoming the problems caused by the inadequacies of international law and defects within the Covenant itself.

Moreover, the League did not possess a force capable of immediately acting against an aggressor. The Covenant did not completely guarantee security; it contained "gaps," and under certain circumstances permitted war; in any case it was extremely doubtful if the League Council would come to a unanimous decision against an aggressor quickly enough to stop actual invasion (even if it were possible for it to come to a unanimous agreement at all); too, the League was a young and untried institution. For these reasons France demanded additional guaranties. At first, Great Britain and the United States promised to come to the aid of France in the event that she was attacked; but when the United States rejected the League, and the Anglo-American guaranty failed to materialize, the French hastened to gain security in other ways. They did so by a series of alliances with

[3] Sir John Fischer Williams, *Some Aspects of the Covenant of the League of Nations* (Oxford University Press, 1934), p. 310.

Poland and the Little Entente, and by attempting to strengthen the League of Nations.

The Covenant was, in theory, an admirable thing; it made war a matter of concern to all member states wherever they were. Unfortunately, numbers did not guarantee strength. Many of the nations were scattered and far distant, and their guaranty to uphold collective security promised to be of little practical value. If Germany should attack France, it would be important to know if Great Britain, Italy, and other nations near by would afford immediate assistance. It would be small comfort to know that Persia, Haiti, Chile, and other distant and militarily insignificant members of the League would send troops, who might (or might not) arrive many months later. The wide League membership did not of itself make for sufficient security. A general guaranty was inadequate; continents should be able to reach an agreement along the lines of regionalism to provide mutual help, immediate and certain, against an aggressor. Why should not the European nations bear the first responsibility for enforcing peace within Europe? Why should American lives be endangered every time a European crisis breaks out? The desire of apprehensive nations for immediate help from states near by; the reluctance of distant nations to be involved in "foreign" disputes, together led to attempts to harmonize extra commitments along regional lines with the general obligations already undertaken by members of the League of Nations.

ATTEMPTS TO STRENGTHEN THE LEAGUE SYSTEM

THE DRAFT TREATY OF MUTUAL ASSISTANCE

The first proposal, the Draft Treaty of Mutual Assistance, which was prepared during the years 1922–23, showed the influence of this regional idea: (1) In addition to the obligations which League members had already assumed under Article 16, the Draft Treaty provided for the possibility of "supplementary defensive agreements." For example, states A and B could work out plans to come to each other's aid immediately if another state attacked either one of them. The League Council would examine these agreements to make sure that they did not conflict with the League Covenant, and might, if necessary, suggest changes in the text. (2) The treaty went beyond the League Covenant, by providing that

if the League Council believed that there was reasonable ground for thinking that a menace of aggression had arisen, it could apply eco-

nomic sanctions against the aggressor State; call upon any of the contracting parties whose military assistance was required; determine the forces which each State furnishing assistance should place at its disposal; prescribe measures for the communications and transport connected with the operations; prepare a plan for financial co-operation so as to provide for the State attacked, and for the States furnishing assistance, the funds they required for the operations; appoint the higher command and establish the object and nature of its duties.

This measure was of extreme importance. Under the Covenant the League could take such action only after the outbreak of war; under the Draft Treaty it could take action before, in order to prevent war. Instead of waiting until the damage was done, it could take steps to prevent the infliction of damage. (3) The Draft Treaty made more precise the method of determining the aggressor. If actual hostilities had begun, the Council could decide which of the parties was the victim of aggression and whether or not it was entitled to the assistance of League members. The Treaty did not attempt the extremely difficult task of defining an act of aggression; it suggested that the Council might fix "neutral zones which the parties would be forbidden to cross." Should the armed forces of a state cross that neutral zone, such action would be one (and an important) factor in helping the Council to determine the aggressor. The Council might also propose an armistice and invite the disputants to put their claims before the League Council or the World Court, and refusal to accept this invitation would provide additional evidence of aggression. Had such a clause bound Japan and Italy in the Manchurian and Ethiopian crisis, the situations might have been considerably modified. (4) The Draft Treaty proposed that governments might agree with other governments to establish a number of demilitarized zones. (5) The Treaty provided that an aggressor must bear the whole cost of military, naval, or air operations undertaken by the powers to prevent aggression and all reparations for damage caused by its aggression; in this way it was hoped that a financial deterrent would be added to the fear of combined military action by the signatories. (6) The signatory powers were to co-operate in a general disarmament scheme which the Council might propose. It is interesting to note that a reduction of armaments was to have taken place within a period of two years! Mutual assistance "was to be given only to parties which had reduced their arms."

The Draft Treaty failed. Eighteen governments accepted it in principle; but the opposition of Great Britain and the unfavor-

able attitude of the United States and the Soviet Union sounded its doom. Great Britain asserted that the scheme was too complicated, and contained clauses the practical effect of which was extremely unpredictable. It claimed that "it was rarely possible for plans of assistance to be arranged in advance"—because situations changed so rapidly that detailed plans might soon be rendered out of date (although this difficulty does not seem to prevent close collaboration in military alliances). It criticized the clause dealing with special regional agreements. And here Great Britain was on solid ground. An agreement between two states to take precautions against a third might easily degenerate into little more than a military alliance of the old type. They might attack the third party, claiming self-defense. Subsequent inquiry by the League Council might prove that the attack was not justified. But a retrospective inquiry would not have stopped the war; nor might the Council thereafter be able to exact adequate reparation from the powers which were found to have wrongly used the plea of self-defense. Other critics added that the plan did not define the aggressor in sufficient detail, and advocated the adoption of more definite criteria by which to determine international aggression. Moreover, the Treaty required a unanimous vote of the Council before its judgment could go into effect, and unanimity would have been just as difficult to obtain in the case of the Draft Treaty as in the case of the Covenant.

Some governments criticized the scheme because it went too far and created too many obligations. Others claimed that the plan did not go far enough, and desired to strengthen still more the international guaranties of assistance. The first attempt to create a supplementary regional security plan in addition to the League Covenant thus met with defeat. The regional principle was, however, to reappear in the United Nations Charter.

THE GENEVA PROTOCOL

After much detailed consideration, the Procotol for the Pacific Settlement of International Disputes appeared in 1924. In some respects, it resembled the Treaty of Mutual Assistance; but its fundamental basis was different, for it returned to the theory of general or universal security, and rejected the principle of special regional pacts. The Procotol, like the Treaty of Mutual Assistance, denounced aggressive war, and declared that no signatory power should be entitled to make war against any state which had under-

taken the obligations laid down by the Protocol. It set forth a complete sytem of compulsory arbitration. Under the Covenant, it will be remembered, the disputants were to submit their quarrel to the Council but were not bound to keep the peace in case the Council failed to reach a unanimous decision: within three months they might have resort to war. The Protocol was designed to remedy this weakness by providing that should the Council fail to come to a unanimous decision, it was then to refer the matter to a Committee of Arbitration, "without any intervention" by the disputants. That is, once the matter had come before the Council, the contending parties under no circumstances would be permitted to resort to war. They must submit to a verdict of the World Court, or to a Council decision, or to an arbitral award. The dispute must be settled by peaceful means. This procedure was popularly known as "closing the gap" in the Covenant; it was designed definitely to limit the sovereign right of states to resort to war.

In the Protocol, the proposals adopted were five:

1. There would be a presumption of aggression until proved to the contrary by a decision of the Council. If a nation refused to accept the procedure of pacific settlement, or to accept a decision of a recognized third party, including the Council, or violated provisional measures laid down by the Council, it would be deemed the aggressor. Should the Council, however, not be unanimous, the Protocol provided that it could require an armistice of belligerents by a two-thirds' majority vote, and "the party which rejects the armistice or violates it is to be held" the aggressor. The rule of unanimity was therefore modified in order to require states to observe an armistice, during which discussions could be carried on. If this procedure had been in operation during the Sino-Japanese or the Italo-Ethiopian disputes, Japan and Italy would have been obligated to withhold their military movements in China and Ethiopia, respectively, and to observe the interim conditions imposed by the Council. This might have had important consequences.

2. After the Council had designated the aggressor, it might invite the signatory states to apply immediate economic and military sanctions. But, whereas the Treaty of Mutual Assistance provided that the Council should have a voice in directing these measures, the Protocol provided that each signatory power should remain in control of its own forces. The states, therefore, were to remain judges of the manner in which they were to carry out their obligations.

3. The Protocol defined in more detail the steps to be taken in imposing sanctions and in giving the economic and financial support outlined in Article 16 of the Covenant.

4. The Protocol, as already suggested, paid far less attention to special regional treaties, although they were not entirely ruled out.

5. It provided that the signatories were to take part in an international conference on June 15, 1925, for the reduction of armaments and the Protocol was to come into force only after the conclusion of a disarmament convention.

This far-reaching proposal came before the League Assembly on October 1, 1924, and was unanimously adopted. But the British Labor government went out of power, and the Conservative cabinet later announced that Britain must reject the scheme. First, Britain considered it unwise to erect an overambitious organization imposing obligations beyond those which nations would accept in practice. Better be content with modest workable schemes than indulge in pretentious paper constitutions which would be ignored when the test came. Better trust to the logic of experience than rush into methods which were the mere creations of theoretical reasoning and in advance of present public opinion. Second, Great Britain believed that it would be dangerous to adopt the sanctions contained in the Protocol without knowing in advance what the attitude of the United States would be. If Great Britain were called upon to put its fleet at the disposal of the League, and that fleet tried to shut off United States supplies from the aggressor, a serious controversy involving the United States and Great Britain, as well as the United States and the League, might develop. Until the United States made clear that it did not intend to defend its neutral rights in the event of the imposition of sanctions, British reluctance had at least some plausibility. Third, Britain argued that for the League to be preoccupied with penalties and sanctions would alter its character, transforming it from an institution of co-operation to one of coercion. International society must develop along other lines by taking disputes in hand before they had reached the breaking point; by promoting friendly cooperation it should seek to maintain a spirit of mutual adjustment rather than to bring force and restraint into the foreground and to encourage peaceful change by conciliation and compromise rather than to introduce legal and forceful methods.

The British Dominions—Canada, Australia, South Africa, and New Zealand—and India were largely responsible for the re-

jection of the Protocol. They feared two things: (1) that, under the Protocol, international authority might override their sovereignty (especially in the matter of immigration, about which they exhibited considerable concern); and (2) that they might again become involved in a European war. In this respect they reflected a New World attitude similar to that of the United States, whom they, with curious inconsistency, blamed for not joining the League.[4]

Despite the pleas of many continental nations, the Protocol was doomed. The British method of favoring one step at a time, its distrust of large general commitments, was successful in torpedoing a comprehensive and what may yet come to be regarded as a necessary plan. Indeed, some of the principles contained in the Protocol were to be included in the United Nations Charter.

THE LOCARNO AGREEMENTS, 1925

The next attempt at security was again regional in approach. Great Britain had advocated solving the more difficult immediate problems which threatened the peace of the world rather than attempting to draw universal blueprints. And of the immediate problems, none appeared more urgent than the relations between France and Germany. As long as the boundary between these two countries was not regarded as final, so long would security and peace remain unattainable. It was the great merit of the Locarno Pact that it embodied a declaration as to the finality of this boundary and thereby seemed to make a great contribution to European stability.

In the first place, Germany, Belgium, France, Britain, and Italy "collectively and severally guaranteed the maintenance of the territorial status quo" of the Rhineland. Germany and Belgium and Germany and France undertook "in no case to attack or invade each other or resort to war against each other" except (*a*) in resistance to a flagrant breach of Articles XLII and XLIII of the Versailles Treaty which would justify immediate action and unless (*b*) the signatories each agreed to "come immediately to the assistance of the Power against whom the act complained of is directed." In case of a flagrant breach, each party "hereby undertakes immediately to come to the help of the party against whom such a violation or breach has been directed as soon as the said

[4] See G. M. Gathorne-Hardy, *A Short History of International Affairs, 1920–1934* (Oxford University Press, London, 1934), p. 63.

Power has been able to satisfy itself that this violation constitutes an unprovoked act of aggression." The League Council, however, was later to decide whether such defensive, immediate action had been necessary; and the parties agreed to accept its view, provided that the decision was unanimous, the disputants having no vote. In this way the League's authority was maintained.

The other Locarno agreements comprised German arbitration conventions with Belgium and France which provided that all disputes not amenable to amicable settlement by normal methods of diplomacy should be submitted for decision either to an Arbitral Tribunal or to the World Court, and similar arbitration agreements between Germany and Poland and Germany and Czechoslovakia.

The Locarno agreements, which temporarily eased Europe's situation and opened the way for Germany's admission to the League, emphasized local and regional agreements instead of the general or universal commitments of the Geneva Protocol. Its proponents convincingly argued that states would accept the more limited but specific obligations of a regional pact. Unfortunately, the problem of peace was not as simple as that. The World War of 1914–1918 had its origin in Eastern Europe and in problems arising from outside Europe, as well as from the Alsace-Lorraine question. The Locarno agreements were of limited value, because the general diplomatic situation might so develop as to reduce the Rhineland problem to a secondary factor. Suppose that Germany joined Austria without getting the consent of the League Council, or made war on Poland? Would France be justified in invading Germany in order to fulfill its treaty obligations, despite its undertaking at Locarno not to attack, invade, or resort to war against Germany? If relations deteriorated, and the general framework of security were weakened, could the Locarno pacts be expected to survive? In reality was it more than a limited step, depending for its continual usefulness upon a strengthening of the wider foundations of international society? Could the whole be achieved by a successive solution of the parts? Or was a more organic and comprehensive answer necessary? Time was to provide an eloquent answer.[5]

[5] E. H. Carr (*op. cit.*, p. 136) emphasizes that power politics played a dominant part in the Locarno Treaty: "Ten years after its conclusion, the delicate balance on which it rested had disappeared." Carr fails to analyze the ultimate consequences of the balance-of-power system and the effects of the modern methods of waging war.

AFTER LOCARNO. FURTHER ATTEMPTS TO STRENGTHEN THE LEAGUE SYSTEM

For a time these questions remained dormant, and the Locarno agreements seemed to mark an important turning point. Between 1919 and 1925 nations had been concerned to erect a system of penalties against the aggressor. The World War of 1914–1918 had left men's minds preoccupied with the task of preventing a repetition of military invasion. The League Covenant had not been strong enough to satisfy the demand of states for security, and for six years attempts were made to strengthen the Covenant to close the gap, and to make provision for the more specific application of sanctions.

The years of 1925 to 1931 witnessed a remarkable change in emphasis. The idea of sanctions fell into the background, and less discussion took place concerning Article 16. Crises were less frequent. European hostilities seemed to be diminishing: Germany entered the League in 1926; Japan seemed loyally to be observing the Washington treaties of 1921–22. An era of good feeling appeared to be at hand. Statesmen emphasized Article 11, the article of conciliation, rather than Article 16, the article of threat and punishment. General Smuts announced that the League must not be made into a world policeman; the world must not use the method and temper of war to kill the institution of war. The whole spirit of the League was at stake—it must be a League of spiritual endeavor and not one besmirched by the war spirit. Common consent and not collective repression must be the dominant ideal.

The Seventh Assembly, in 1926, devoted much attention to extending the type of Locarno agreements to other regions and urged the Council to offer its good offices toward this end. The Eighth Assembly adopted a resolution that provided: "all wars of aggression are and shall be prohibited," and "Every pacific means must be employed to settle disputes of every description which may arise between states."

But how give effect to these ideals? Some delegates wished to revive the idea of the Protocol; but general sentiment went the other way, and finally the Assembly decided to recommend the appointment of a Committee of Arbitration and Security which should survey methods by which League Members could perform their obligations under the Covenant and take further steps to support the Council with military, naval, or air forces in stopping conflicts.

The Committee prepared a number of model conventions and treaties, which formed the basis of the "General Act for the Pacific Settlement of International Disputes," adopted by the Ninth Assembly in 1928. They provided for the establishment of conciliation committees, methods of judicial settlement, general procedures of arbitration. The Ninth Assembly also approved three model bilateral conventions dealing with conciliation, arbitration, and judicial settlement, and three model treaties of nonaggression and mutual assistance.[6]

In 1926 Finland had proposed a scheme by which states which were victims of aggression could receive financial assistance. It pointed out that small states which accepted disarmament proposals would be placed at a disadvantage in the event of being attacked; that their limited financial resources would make it difficult for them to make rapid purchases abroad; and that they should therefore receive the benefit of "special arrangements" in the form of financial assistance to enable them to withstand an aggressor nation.

After four and a half years of discussion the proposal became a convention.[7] The details may be omitted on account of their complexity; it is sufficient to note the general principle underlying the proposal, namely, that the collective guaranty of security to a state threatened by an aggressor should not be confined to measures provided in the Covenant but, in addition to penalizing the aggressor, the League members should grant financial help to the victim.

The convention did not come into effect; it was to wait upon the conclusion of a general Disarmament Convention. It therefore suffered the same fate as the Disarmament Conference itself.

The German representative on the Arbitration and Security Committee, appointed by the Eighth Assembly in 1927, urged that a treaty be drawn up by which states would promise in advance to accept as binding any recommendations which the Council might make in the event of an international dispute. The Committee accordingly framed a Model Treaty for Strengthening the Means to Prevent War. The 1928 Assembly submitted the text to the various governments for examination; and a draft

[6] *Documents on International Affairs*, 1928.

[7] *Annual Survey of International Affairs, 1930*, p. 84. It is interesting to speculate how much longer Ethiopia might have held out against Italy, if it had been able to receive help under this convention instead of having been deprived of arms.

general convention was drawn up in 1930, submitted to the Assembly, and signed at Geneva on September 26, 1931. It was to come into force on deposit of ten ratifications or accessions.

The signatories undertook to accept and apply any nonmilitary measures which the Council might recommend to prevent the aggravation of a dispute. The Council might prescribe the evacuation of a territory, or territorial waters, or of a demilitarized zone; and the signatories promised to carry out without delay the measures so prescribed. If circumstances should threaten war, the Council might "fix lines which must not be passed by . . . . land, naval, or air forces and, where necessary, in order to avoid incidents, by their civil air craft." The signatory states promised to accept these recommendations, and to give strict orders to their commanders, if the Council so recommended, to take all necessary precautions to avoid incidents. The Council might appoint commissioners to verify on the spot the execution of the measures it had prescribed; and resort to war in violation of the Council's recommendations was to be regarded as "prima facie" evidence "that the party guilty thereof has resorted to war within the meaning of Article 16 of the Covenant."

A convention by which contracting parties promised in advance to carry out the provisional recommendations of the Council, and to abstain from all measures which might aggravate or extend the scope of the dispute, might have had important results. Had it been accepted by Japan and by Italy, Japan, for example, would have been bound to accept the Council's recommendations of September 30, 1931. Failure to do this would have been interpreted as prima facie evidence of aggression. Perhaps strong collective pressure at this point would have made Japan desist from its forward policy in China. If the League had been successful then, perhaps the debacle of the following years could have been avoided. But the Convention was not accepted, and therefore failed to play any part in stopping aggression. The principle was adopted in the United Nations Charter in 1945.

THE KELLOGG-BRIAND PACT, 1928

A great event in the post-Locarno years was the signing of the Kellogg-Briand Pact on August 27, 1928; it gave hope to those whose trust lay in conciliation and moral suasion rather than in collective coercion. The text reads:

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the

solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

The Pact of Paris thus embodied an attempt to obtain peace by mobilizing world opinion (by "invocation," its critics argued); but it provided no machinery by which the renunciation of war as an instrument of national policy could be enforced against a violator, nor any method of determining whether or not a particular act was a violation of the Pact. Yet a solemn declaration accepted by the majority of states was not unimportant. Its success would depend almost entirely upon the good faith of the contracting parties. Unfortunately, too many suspicions remained abroad in the world, and almost immediately controversy arose as to the exact meaning of the two relatively short clauses of the Pact.

Even during negotiations, France made several reservations:

1. The Treaty should not become effective until "universal adherence" was given, unless special agreements provided to the contrary.
2. Each signatory should retain its right of legitimate self-defense.
3. If one signatory violated its pledge not to engage in war, all others would be automatically released.
4. The Treaty should not interfere with the previous obligations of France under the League of Nations, the Locarno Treaties, or her neutrality treaties.

Mr. Kellogg, on April 29, 1928, agreed that nothing in the American draft restricted or impaired the right of self-defense, that there was "no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war," or between the Locarno obligations and the Pact, and that if a state violated the Pact by going to war its action would "automatically release the other parties from their obligations to the treaty-breaking state." He was not willing to jeopardize the success of the proposal by making universality a condition of its coming into force.

What precisely is meant by the phrase "to renounce war as an instrument of national policy"? Suppose that a state is attacked and fights to defend its territory. Is that a war of national policy? Or is it only a defensive measure against a war of national policy undertaken by another nation? When Mr. Kellogg

pronounced that defensive wars were permissible under the Pact, critics said that this was to give the whole case away, since all nations have claimed that their wars have been wars of defense, and to reduce the Pact to a mere pretentious illusion.[8] Others feared that it would constitute a backward step because, in contrast to the League Covenant—under which nations cannot plead self-defense and take the law into their own hands, but must submit their disputes to international judgment—the Pact, according to Mr. Kellogg, would permit a defensive war; if this were so, it would tend to weaken the Covenant.

Great Britain added another reservation which caused additional misgivings. It proclaimed that "certain regions of the world the welfare and integrity of which constitute a special and vital interest" for its peace and safety must be exempted from the operations of the Treaty. The Soviet Union pungently observed that the British reservation carried "an invitation to another signatory to withdraw from its operation still other regions," and added that it would not recognize as binding a reservation which was nothing but an attempt to use the Pact "as an instrument of imperialistic policy."

After the Treaty had been signed, the United States Senate added another interpretation—that the United States included the maintenance of the Monroe Doctrine within the right of "national defense," which statement seemed still further to limit the scope of the Pact. In these ways, then, the Treaty became complicated and obscured by interpretation—an "Instrument of International Confusion," as some cynics designated it.

In 1929 came the first test of the Paris Pact. A dispute between China and the Soviet Union resulted in a movement of Soviet troops into Manchuria; fighting and loss of life occurred. Secretary of State Stimson appealed to both parties as signatories of the Pact to settle their differences by peaceful means. The Soviet replied with some asperity that it was strange that the United States, which had not recognized the Soviet Government, should address an appeal to it and strongly hinted that Mr. Stimson's action was dictated by other and less worthy motives than a single-minded desire to promote peace. The charge no doubt was unfair; but Mr. Stimson's attempt revealed the weaknesses of the Pact in several respects: (1) the disadvantage of having no recognized machinery and procedure for calling upon dispu-

[8] This is the basis of the charge that the Pact was designed to stop all wars except those which were likely to occur.

tants to desist from hostilities; (2) the danger of misunderstanding if any one government took the initiative in reminding states of their obligations, the Treaty having conferred upon no government the explicit right to do so; (3) the lack of recognized procedures of investigating the causes of the dispute and of proposing remedies. The Kellogg Pact as it then existed seemed to lack "teeth"; it had stated principles, but did not contain machinery for putting those principles into operation; it required "implementation."

Mr. Stimson took a step in this direction when on January 7, 1932, some months after the outbreak of Sino-Japanese hostilities in Manchuria, he sent a note to the Chinese and Japanese governments containing the famous nonrecognition doctrine. The United States, he wrote,

> does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of the 27th of August, 1928, to which treaty both China and Japan, as well as the United States, are parties.

Mr. Stimson reaffirmed the doctrine in a letter to Senator Borah on February 23, 1932, in which he suggested that similar action by other governments would "effectively bar the legality of any title or right sought to be obtained by pressure or treaty violation." On March 11, 1932, the Assembly of the League voted a resolution declaring that "it is incumbent upon the members of the League of Nations not to recognize any situation, treaty, or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris."

Mr. Stimson declared the next day: "This action will go far toward developing into terms of international law the principles of order and justice which underlie those treaties . . . ." and on August 8, 1932, in an address to the Council of Foreign Relations he made a lengthy analysis of the implications of the Pact and the significance of the nonrecognition doctrine:

> . . . . Under the former concepts of international law, when a conflict occurred it was usually deemed the concern only of the parties to the conflict. The others could only exercise and express a strict neutrality alike towards the injured and the aggressor. If they took any action or even expressed an opinion, it was likely to be deemed a hostile act towards the nation against which it was directed. . . . . But now under the covenants of the Briand-Kellogg Pact such a con-

flict becomes of legal concern to everybody connected with the Treaty. . . . . Moral disapproval, when it becomes the disapproval of the whole world, takes on a significance hitherto unknown in international law. For never before has international opinion been so organized and mobilized.

Mr. Stimson's interpretation failed to win general acceptance. It was, however, invoked at the Nuremberg trials when the Nazis were accused of the crime of waging aggressive war, and it thus played an important role in developing new concepts of international law.

SANCTIONS

The idea of sanctions, "measures for securing obedience to law," is not new. Law must be obeyed, and means to that end have been sought and adopted by national authorities for many years. Two things are necessary: (1) The police whose duty it is to suppress disorder must use only that amount of force required to preserve the peace; their action "must not be indiscriminate . . . . punitive . . . . vindictive"; and (2) they must not assume the right to "punish the criminal, or to settle disputes that may arise," for these functions belong to the courts. Within the international sphere the difficulties are greater. There law is less developed and police power is practically nonexistent. However, collective, if not international, measures to enforce peace are not unprecedented. In the Middle Ages, under the influence of the Church, there grew up the Truce of God, "la trève de Dieu," and the Peace of God, "la paix de Dieu." The Church also arbitrated differences, and promoted the law of nations. These "sanctions ecclésiastiques" comprised maledictions, excommunications, and the interdict, the last involving refusal of the Church's holy offices: christenings, marriage ceremonies, and funeral services might not be held.

Unfortunately these measures also proved ineffective. They encouraged the formation of "associations for peace," whose duty it was to punish those who had violated their oath or had refused to accept the decisions of the "judges of peace." The system had many successes, but only too often its efforts failed against the great barons and states.[9]

With the development of the modern state and the doctrine of sovereignty, the international doctrines of the Church became a

[9] See Frederic Duval, *De la Paix de Dieu à la Paix de Fer* (Paillard, Paris, 1923), p. 34.

thing of the past. Grotius tried to maintain the distinction between just and unjust wars, but even that disappeared, and in the eighteenth and nineteenth centuries international law accepted the doctrine that sovereign states have the legal right to make war, and that other nations, except in so far as war affects their vital interests, should observe neutrality as a legal right and duty.

The establishment of the League of Nations reintroduced the idea of just and unjust wars: war was declared to be a matter of concern to the whole of the international society organized in the League. Under Article 16 members of the League were immediately to apply economic sanctions against a state which violated the Covenant, and the Council was to recommend "what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." Members were to support each other in order to minimize the loss resulting from the imposition of sanctions.

Almost immediately the nations began to weaken the effect of their obligations by a series of resolutions. In February 1920 the League Council appointed an International Blockade Commission to consider the application of sanctions under Article 16, since the article itself provided no machinery to apply the sanctions which it enumerated. The Committee concluded that because "the League of Nations had not yet attained a world-wide or nearly world-wide character, a rigid application of Article 16 might not only meet with very great obstacles, but might also place the States Members . . . . in very difficult situations." It was therefore desirable to "make allowance for the facts as they are." The Assembly was guided by the Report and drew up four amendments to Article 16, and a number of interpretative resolutions which were to serve as "rules of guidance."

The amendments and resolutions incorporated the principle of progressive sanctions—just sufficient force was to be used to prevent an aggressor from efficiently waging war. (1) Unnecessary sacrifice on the part of both the boycotting and the aggressor state should be avoided. The purpose being to prevent, and not to punish an aggressor, diplomatic sanctions should first be tried, then economic measures of a restricted nature; if necessary, these could be "gradually increased and intensified, culminating in cutting off food supplies in obstinate cases." (2) In order that sacrifices should not bear more unfairly on some states than on others, Resolution 9 provided that "it may be necessary to recommend the

execution of special measures by certain States," and to postpone, wholly or in part in the case of certain states, the effective application of the economic sanctions in order "to reduce to a minimum the losses and embarrassment which may be entailed." (3) A resolution made it clear that it was for "each member of the League to decide for itself whether a breach of the Covenant had been committed." (4) Resolution 3 weakened the effect of the phrase in Article 16 that a League member which resorted to war in disregard of its covenants under Articles 12, 13, or 15 "shall *ipso facto* be deemed to have committed an act of war against all other Members of the League" by stating that "the unilateral action of the defaulting State cannot create a state of war." League members could now avoid the inconveniences of a state of war if they so wished.[10]

The 1921 amendments remained unratified but were generally, although not universally, regarded as an authoritative interpretation of Article 16. The League made no attempt to apply economic or military sanctions during the next decade; especially after 1925 did it place its trust in collective moral suasion and appeal to world opinion. The hope that these methods would suffice to prevent aggression received a severe setback in the Sino-Japanese crisis over Manchuria, which broke out on September 18, 1931. The Lytton Report and the League Assembly (on February 24, 1933) judged that Japan had violated its obligations under the Covenant. Conciliation had failed to stop Japan's aggression; but the next step, the application of sanctions, was opposed by the great powers and especially Britain, acting upon the nineteenth-century practice of trying to localize hostilities and claiming that the moral and diplomatic influence of neutral powers to induce the disputants to humanize and limit the extent of the conflict would be more effective than to make a quarrel in Asia into a war of world-wide magnitude. Such a view, of course, denied the very foundations of collective security and constituted a disregard of obligations under the Covenant. The active sin of commission by Japan was different only in degree and not in kind from the sin of omission by Great Britain, France, Italy, Germany, and other League members.

In the war between Bolivia and Paraguay over the Chaco region the League Council belatedly, on May 19, 1934, recommended an arms embargo against both powers; after a ruinous delay, twenty-eight governments acted upon the recommendation. Later

[10] See Bruce Williams, *State Security and the League of Nations* (The Johns Hopkins Press, 1927), pp. 120–50.

twenty-one countries lifted the embargo against Bolivia. The League Assembly did not take stronger action because of the opposition of the South American countries, Argentina, Chile, Peru, and Uruguay, and later handed over the problem to the nations of that continent for solution. The danger of conflicting with the Pan-American peace machinery led to caution on the part of the League, a caution which doubtless fitted into the lukewarm attitude of several of the member states.

The Italo-Ethiopian crisis witnessed the first (and thus far only) attempt by the League to impose a superficially impressive but actually not comprehensive system of sanctions. The Council adopted committee reports to the effect that Italy had violated the Covenant without determining whether or not "war" in a strictly legal sense had begun. No declaration of war had been made; but the Council and later the Assembly took action on the ground that Italy had sent troops into Ethiopia and commenced hostilities before the Council had issued its final recommendations. In thus establishing the existence of war on the basis of objective facts and without reference to any preliminary declarations of war, the League created an important precedent. Henceforth, any form of organized hostilities or invasion of a country might be regarded as war within the meaning of the Covenant.

The Co-ordination Committee, a Committee of Eighteen, and several subcommittees by October 19, 1935, had considered the following sanctions: (1) an arms embargo; (2) financial measures; (3) prohibiting the importation of goods from Italy; (4) an embargo on certain exports to Italy; and (5) the organization of mutual support. The detailed consideration and adoption of these measures within a period of nine days (October 11–19) was a remarkable international achievement. The Italian representative complained that the League revealed lamentable inconsistency in taking action against Italy when it had applied sanctions to only a limited degree in the Bolivia-Paraguay dispute and not at all to Japan. "Why two weights and two measures?" he asked. The reply was that many states members feared that the League system of collective security could not withstand a second blow; it "had barely survived the Japanese breach of the Covenant and the Italian breach was still more flagrant." Great Britain realized that its imperial interests coincided (temporarily and selfishly, as events showed) with its obligations under the Covenant, and for a time acted firmly.

The sanctions were accepted by approximately fifty govern-

ments in each case (numbers 1–5) and were put into force by over forty. They included embargoes: on the shipments of arms, ammunition, and implements of war to Italy and its possessions; on direct loans and credits (though not the transfer of funds, as for example, remittances by Italian emigrants, payments of Italian shipping services, and proceeds from Italian holdings of foreign securities and the foreign assets); on imports from Italy and the colonies (except gold and silver bullion and coin, printed matter, maps, and sheet music); on exports to Italy of goods which the League members controlled or supplied wholly or in part, together with measures to insure that "these articles, which were exported to a country other than Italy, would not be re-exported directly or indirectly to Italy."

The sanctions failed; and with the Italian victory over Abyssinia the League of Nations and the whole policy of penalties collectively imposed against an aggressor received a deadly blow. The reasons are clear: (1) The League refused to adopt a complete economic embargo. Toynbee and others have shown that an oil embargo adopted in November 1935, especially if the United States had co-operated, would have sufficed to cripple the Italian campaign. Other important raw materials were not included. (2) The United States and Germany were not in the League; Austria and Hungary refused to join in sanctions; Albania and Paraguay took no action. (3) Some of the League members claimed that their special position entitled them to be freed from the obligation to assist in imposing sanctions upon Italy. Switzerland, especially, pleaded its traditional neutrality and its Italian-speaking population as an excuse. Its refusal to act enabled Italy to maintain a market which accounted for 8.1 per cent of its exports in 1933. (4) Other League members, particularly those from Latin America, made reservations: Argentina pleaded constitutional difficulties in the way of prohibiting imports from Italy. Venezuela, Uruguay, and Peru failed to take measures. And Litvinoff, speaking for the Soviet Union, said that twenty-five per cent of the League members did not apply one or more of the sanctions. (5) Behind the scenes many controversies raged among the sanctionist powers concerning the compensation due some of them (especially Jugoslavia, Greece, and Rumania which suffered severe economic repercussions because of the interruption of their extensive normal trade with Italy); Great Britain opposed the idea of financially compensating these powers unless commercial negotiations and adjustments proved insufficient. Their losses, dis-

proportionately heavy in their eyes, must have dampened their enthusiasm for collective security, especially in view of the miserable diplomatic double-dealings of France and Great Britain. They might well ask why the small countries should again undertake economic sacrifices only to be betrayed by the great powers whose resources could have enabled them to bear much heavier burdens had they so desired.

Another factor in the failure of sanctions was not the principle underlying them but a fundamental error in their application. It will be recalled that in 1921 the Assembly, basing its action upon a report of the International Blockade Commission, adopted the theory of progressive sanctions: They should be preventive and not punitive in character. Restraining measures should be just strong enough to keep the aggressively minded government from gaining its object of conquest. This method, to be successful, required an accurate estimate of the total situation; a miscalculation of the resources and temper of the aggressor and of the ability of the invaded nation to defend itself might result in failure. It rested upon the mistaken theory that the threat of progressive sanctions would suffice to prevent the aggressor from taking steps. Nor was this all. Instead of warning Mussolini before his preparations had gone very far, neither the League nor its individual members took any steps until he had committed himself so deeply that he could not stop without loss of prestige.

Progressive sanctions completely overlooked the factor of national feeling. They were psychologically unsound. They merely served to strengthen Mussolini's determination and to arouse in his followers a persecution complex. The only justification of sanctions was a successful vindication of a third-party judgment; anything short of that was stupidity. If sanctions are to be employed in the future, they must be ready for application at the very moment the aggressor moves troops, planes, or warships beyond his boundaries and refuses to immobilize his forces pending international investigation. Halfway sanctions have failed. The failure has not proved the unsoundness of a more efficient application or of the general theory of sanctions.

Underlying these causes of failure were others. As Toynbee pointed out, many English, French, Americans, Scandinavians, Austrians, Poles, Turks, Czechs, and others assisted Italy to overthrow Ethiopia. They did not merely not stop Italy; they actively assisted that nation to violate the League Covenant. Glasgow supplied a large distillation plant for drinking-water supply; the

United States sent scrap iron; Northamptonshire sold boots for the Italian soldiers; Poland shipped blankets and coal; cereals, coal, oil, and timber came from Russia, cereals, dried fruits, and olive oil, coal, and cattle from Turkey, and dozens of articles from other countries. Commenting upon these and other illustrations which he has collected, Toynbee adds:

At the scent of war-profits, men of business had lifted up their hearts, all over the world. The random illustrations of this war profit-making that have been given above are sufficient to show how widely "the civilized world" of the day had implicated itself in advance in the blood-guiltiness for the innocent blood that Italian hands were to shed. The Italian military campaign in East Africa could be described in economic terms as a world-wide business transaction.[10a]

Forces were at work in the sanctionist countries, which were legally bound by solemn obligation to restrain aggression, actively to help Italy to violate the Covenant and destroy its victim. They assisted in destroying a system which otherwise might have worked successfully.

A fatal confusion of the processes of conciliation and sanctions persisted. It is true that conciliation should be used as far as possible; when, however, it has failed, and definite action has been deemed necessary against an aggressor whose troops continue to pour into the territory of its opponents and whose behavior gives no evidence of desiring genuine conciliation but only evidence of playing for time, it is the height of folly to continue to revert to conciliatory processes.

The confusion can be traced to a still more deep-seated cause, namely, the unwillingness or inability of France and Britain to realize that peace is indivisible. Hitler knew how to profit from this attitude of mind. As he wrote:

A shrewd victor will, if possible, keep imposing his demands on the conquered by degrees. He can then, in dealing with a nation that has lost its character—and this means every one that submits voluntarily—count on its never finding in any particular act of oppression a sufficient excuse for taking up arms once more. On the contrary, the more the exactions that have been willingly endured, the less justifiable does it seem to resist at last on account of a new and apparently isolated (though to be sure constantly recurring) imposition.[11]

[10a] Arnold J. Toynbee, *Survey of International Affairs, 1935*, II, 220–21.

[11] Adolf Hitler, *Mein Kampf* (181st German edition), p. 759, R. C. K. Ensor has a slightly different version in *Mein Kampf*, Pamphlet on World Affairs (Farrar & Rinehart, New York, 1939), p. 27.

The problem may be expressed in another way. Theoretically Article 11, under which every war or threat of war in any part of the world was to be deemed a threat to all members of the International Society, is open to criticism. If states must take collective action every time a dispute breaks out, especially if the aggressor is determined and angry, the world will be in constant turmoil and nations will be continually sending troops abroad in quarrels which seem to be no concern of theirs. To Great Britain and France and the other powers it did not seem a matter of urgency to risk a war to save Lithuania from being attacked by Poland in 1923—why should they be interested in so unimportant a country? Or to save Greece from being attacked by Italy in 1923—why make a world crisis out of a local incident? Or to protect China from being invaded by Japan in 1931—why defend a weak, disunited, Oriental people, far distant and hostile to foreigners? Why save Ethiopia from Italian aggression—a colored people, backward, who still indulged in slavery and were uncivilized? To save Spain from the intervention, cynical and boastful, of Mussolini and Hitler—why should Britain or France risk her safety for the sake of a scrap of paper, the Covenant, and to save "Reds"? Better keep the peace by a compromise between the great powers, by appeasement, which, although involving a sacrifice of other people, would prevent a major catastrophe. As to the seizure of Austria by Germany—again, what interest did Great Britain have in Central Europe? Did not the Germans and Austrians wish to come together in 1920? Why keep them apart? The surrender of the Sudetenland in Czechoslovakia to Germany under threat of war—was it worth drenching Europe in blood for the sake of three million people, many of whom wanted to join the Reich?

Why did not the League intervene? Because some of the great powers which are now most threatened did not, in the early days, lead the nations of the world in insisting upon respect for the rights of the small nations. In turn, the small nations which joined in sanctions against Italy (and they comprise the majority of the European nations) deserted the ideal of collective security which the major countries had already betrayed. Their desertion, entirely natural under the circumstances, took two forms: (1) They reasserted their neutrality. Belgium, Holland, and the Scandinavian countries gave notice that they intended no longer to join in sanctions against an aggressor and run risks and undertake burdens for international society; they would attend to their own houses and keep them in order. The more they did this, the more the

aggressors were strengthened in their policy of peace "piece by piece": the disunity of the small powers was now added to the disunity of the great powers. (2) The smaller powers climbed on the bandwagon. When France failed to take an effective lead in the application of League sanctions, and showed itself unwilling to keep Hitler out of the Rhineland and Austria, the nations of southeastern Europe knew or believed that they could expect no assistance either from France as an ally or from the League as a collective institution. They, therefore, being unable to stand alone, made arrangements with Germany and Italy, preferring to run the risk of being satellites to strong powers of imperialist tendencies rather than to be "allies" and "friends" of France and/or the League powers whose defense of small nations was confined to brave words and pious gestures.

Thus the basis of collective action grew narrower and narrower until, when the Czech crisis broke out in 1938, only a few nations were ranged up on either side. Nevertheless, despite a superiority in resources (whatever the military situation), Britain and France preferred to give way and follow a policy of appeasement.

It may be objected that Austria should have been joined to Germany and that the Sudetenland should not have been given to Czechoslovakia. The objection may well be sound. In that case the powers should have remedied the situation earlier by a policy of peaceful change and not later at the point of the pistol. The method of change was fundamental. If it was right, it should have been done in an orderly manner; if wrong, the powers should not have given way. This question opens up a wider issue which must be treated later.

When all is said and done, one fact stands out clearly, that the prime cause of breakdown of collective security and the peace of the world lies in the attitude of the great powers. The problem of international peace is the problem raised by the rivalries of Great Britain, the United States, Japan, Italy, Germany, France, and the Soviet Union. None of these powers has genuinely and consistently supported the principles of collective security. The evidence is clear enough; and, to repeat, the active sin of commission by Italy and by Japan and to a degree that by Germany is different only in degree and not in kind from the sins of omission of the other great powers. All in some degree are responsible for the tragedy of the war of 1939–45. And every government by misreading the nature of its national self-interest has suffered.

THE UNITED NATIONS

A NEW WORLD ORGANIZATION

Once again, during World War II, men raised their voices against war and discussed methods by which a world organization might succeed where the League of Nations had failed. The first conference to deal primarily with the question of security was held at Dumbarton Oaks, August 21 to October 7, 1944. In the first phase the United States, Britain, and the Soviet Union considered the problem; and in the second phase the United States, Britain, and China adopted proposals to establish an international organization to be known as the United Nations, with a General Assembly, a Security Council, an International Court of Justice, and a Secretariat. Members of the proposed organization were to agree to make armed forces available to the Security Council in accordance with special arrangements. The Security Council with the assistance of a military staff committee was to decide upon the use of such forces. In addition the member states were to hold air-force contingents for immediate use by the Council for urgent military tasks. Regional arrangements were to be permitted. These proposals were then submitted to the governments and peoples of many nations for discussion.

At the Yalta Conference, February 4 to 12, 1945, President Roosevelt, Prime Minister Churchill, and Marshal Stalin discussed many questions such as the future of Germany, the future of liberated Europe, Poland, and Yugoslavia; they also agreed on a Conference to be called at San Francisco on April 25, 1945, to prepare the Charter of a world organization along the lines of the Dumbarton Oaks proposals. The subsequently much-debated issue of "votes" was decided by the Big Three. Marshal Stalin requested three votes in the General Assembly, one for the USSR, one for the Bielorussian (White Russian) SSR, and one for the Ukranian SSR, a request to which President Roosevelt agreed in return for a possible demand in turn by the United States for three votes. This demand, however, was not pressed. The Mexico City Conference, meeting from February 1 to March 8, 1945, dealt with inter-American affairs;[11a] and the San Francisco Conference meeting between April 25 and June 26, 1945, drew up the United Nations Charter, which was later ratified by the appropriate authorities of the participating governments.[12]

[11a] See chapter on Regionalism, pp. 189–90.

[12] For a description of the Conferences, see Vera Micheles Dean, *The Four Cornerstones of Peace* (McGraw-Hill Book Company, New York, 1946).

THE UNITED NATIONS CHARTER

The United Nations, like the old League of Nations, is based upon the associative principle. Its structure is substantially the same, in that the sovereign member states have not created a superstructure, and while the United Nations is stronger in some respects than the League, in other respects it seems to have lost ground. Indeed in Article 2 of the Charter, it is explicitly stated that "the Organization is based on the principle of the sovereign equality of all its Members." Such an explicit declaration did not appear in the League Covenant. The organs of the United Nations are more numerous than those of the League. The principal agencies of the UN are a General Assembly, a Security Council, an Economic and Social Council, a Trustee Council, an International Court of Justice, and a Secretariat. This contrasts with the Assembly, the Council, and the Secretariat of the League, and the two associated but autonomous agencies, the Permanent Court of International Justice, and the International Labour Organization.

Before comparing the general significance of the two bodies, the League and the United Nations, we must set forth the structure and powers of the organs. The General Assembly consists of members of the United Nations, each of which is to have not more than five representatives in the General Assembly. This body may consider general principles of co-operation in maintaining peace and security, and in promoting disarmament and regulation of armaments, and may make recommendations to the members of the United Nations or to the Security Council or to both.[13] It may discuss questions concerning the maintenance of international peace and security which any member of the Security Council or even a nonmember under certain circumstances may bring before it, except that if the Security Council is dealing with a dispute or situation, the Assembly may not make any recommendations on that matter in the absence of a request by the Security Council.[14] The Assembly, however, may call to the attention of the Security Council situations likely to endanger international co-operation in political, legal, economic, social, cultural, educational, and health fields[14a] and has a certain authority, discussed elsewhere, over some of the agencies of the United Nations. It is to receive and consider annual and special

[13] See *Charter of the United Nations*, Article 11.

[14] *Ibid.*, Article 12. [14a] *Ibid.*, Article 13.

reports from the Security Council and from other organs of the United Nations. The General Assembly, like the League Assembly, before it considers and approves the budget of the organization apportions the expenses among the members; it also approves finance and budget rearrangements, a question of growing importance as the scope of international administration broadens.[15] Each member of the Assembly has one vote. Decision on important matters are made by a two-thirds majority of members present and voting. Decisions on other questions are to be made by a majority of members present and voting.[16] The Assembly is to meet in regular annual sessions and in special sessions as necessity arises.[17]

The Security Council has a more specialized function than the old League Council. Its main business is to attempt to prevent aggression. It comprises eleven members, five permanent and six elected by the General Assembly for a term of two years, three members retiring each year. The Security Council is to submit annual and if necessary special reports to the General Assembly, and under Article 25 of the Charter, the members of the United Nations agreed to accept and carry out the decisions of the Security Council, a somewhat more precise statement of obligation than is found in the League Covenant. Each member of the Security Council has one vote. Procedural matters are to be decided by a vote of seven of the eleven members, permanent or nonpermanent. On other matters decisions are reached by a vote of seven members, including the votes of all the permanent members, except that, under Article 32, a party to a dispute may take part in the discussion, but may not vote.

The Security Council is to function continuously, and each member of the Council is therefore to be represented at all times at the seat of the organization,[18] an advantage over the League Council which met three or four times a year and also in special sessions. The Security Council has extensive powers in the pacific settlement of disputes and in taking action with respect to threats to peace, breaches of the peace, and acts of aggression. It may call upon the two disputing nations to comply with any provisional measures it deems necessary in order to prevent an aggravation of a situation.[19] It may call upon the members of the United Nations to take necessary steps not involving the use of armed force, such as complete or partial interruption of eco-

[15] Article 17. [16] Article 18.
[17] Article 20. [18] Article 28. [19] Article 40.

nomic relations and various forms of communications, and severing diplomatic relations.[20] If these measures prove insufficient, the Security Council is to consider further steps, such as action by air, sea, or land forces necessary "to maintain or restore international peace and security."[21] The members undertake, in accordance with special agreements, to make available on its call "armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."[22] And the Security Council is to take the initiative in negotiating these agreements which, however, are to be "subject to ratification by the signatory states in accordance with their respective constitutional processes."

Member states undertake to hold immediately available national air-force contingents for combined international enforcement action.[23] The Security Council, with the assistance of a Military Staff Committee, is to determine the nature of these contingents and the plans for their combined action.[24] This Military Staff Committee, which is to advise and assist the Security Council, is to consist of the chiefs of staff of the permanent members of the Security Council or their representatives and is to have responsibility under the Council "for the strategic direction of any armed forces placed at the disposal of the Security Council."[25] It may, if it deems desirable, establish regional subcommittees. The Security Council, therefore is to have the primary responsibility for maintaining international peace and security and is in a much stronger constitutional position relative to the Assembly in this matter than was the League Council in relation to the League Assembly.

Article 48 provides that the Security Council decisions "shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine," and the members undertake to afford mutual assistance in carrying out such measures.[26] In order to provide against the possibility of failure on the part of the Security Council and the United Nations to afford protection to a member state in the event of an attack by an aggressor the Charter lays down that the inherent right of individual or collective self-defense shall remain unimpaired "until the Security Council has taken the measures necessary to maintain international peace and security." Members must immediately report to the Council the measures they have taken in self-defense

[20] Article 41. [21] Article 42. [22] Article 43.
[23] Article 45. [24] Article 46. [25] Article 47. [26] Article 49.

and such action "shall in not any way affect the authority and responsibility of the Security Council" to take the steps it deems necessary to maintain or restore international peace and security. In these matters the United Nations goes beyond the League.

The Charter makes more extended reference to regional arrangements than did the League Covenant. Three long articles, 52, 53, and 54, deal with the conditions under which such regional arrangement may be effected; whatever is done must be "consistent with the Purposes and Principles of the United Nations."[27] The Security Council will encourage the basic settlement of local disputes through regional arrangements and "where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority." No regional enforcement action may be taken without the authorization of the Security Council except under most limited conditions including the right of self-defense permitted under Article 51. Moreover, the Security Council is to be kept fully informed of regional arrangements undertaken or contemplated.

As pointed out in the chapter on colonies, the powers which acted as mandatories under the League of Nations urged at San Francisco the right to arm territories which might be assigned to them in trusteeship. In addition the United States pressed strongly for a dominant military control in those Japanese islands which it had conquered in the war against Japan. Out of these demands grew Articles 82 and 83, which prescribe that in any trusteeship agreement there may be designated a strategic area or areas and that all functions of the United Nations relating to such areas shall be exercised by the Security Council. To this degree the administration of certain colonies comes directly under the heading of security.

The provisions of the Charter which refer to economic and social co-operation, the Economic and Social Council, the international trusteeship system and the trusteeship Council, and the International Court of Justice will be dealt with in their appropriate chapters for, although they have a bearing on the problem of security, they more properly belong elsewhere.

We may now ask whether the United Nations represent any fundamental advance over the League of Nations as an instrument of security or whether it is sufficiently similar to represent no more than an association of sovereign states in which the balance-of-

[27] Article 52.

power system analyzed above will remain as substantially unchecked as it was under the League.

The name United Nations[27a] at first sight would suggest something more organic than a League of Nations but in reality the name is somewhat misleading, since, as we have noted above, the principle of sovereignty is retained in the Charter. The term United Nations does not mean at all what is connoted by the term United States. That it may later become a genuine United Nations is possible, but to bracket the terms United Nations and United States as at present implying the same kind of unity would be highly misleading and dangerous. The United Nations has an advantage over the League of Nations in that the League Covenant was incorporated into the Peace Treaty at the end of World War I. Such separation of Charter from peace treaties, some of which by mid-1947 had not yet been signed, reduces complications and, above all, may remove from it the criticism, justified or not, leveled against the League of Nations that it represents a league of victor states. There is a real gain in separating an international instrument for future international organization from an instrument designed to terminate a war.

An examination of the Preamble of the Charter will show that it sets forth the desirable objects of international association more precisely and comprehensively than did the Preamble to the Covenant. After considerable discussion, it was agreed that the opening words of the Charter should be: "We the Peoples of the United Nations . . . . ," whereas the Dumbarton Oaks proposals began with the words "The High Contracting Parties . . . . ." It may be that in years to come these opening words, "We the Peoples . . . . ," will have great significance in the event that the United Nations becomes stronger and the Charter has to be interpreted to ascertain whether in a given situation authority exists for stronger international action. Can it be that at some time the term "We the Peoples" may be invoked to urge the primacy of the world community as against the claims of sovereignty of one or more of the respective member states? At present, there is little ground for such an assumption. In the first place, a Preamble does not usually constitute an operative part of a treaty but represents "a declaration of intention . . . . rather than an expression of League obligation." In the second place, the Charter explicitly states that the

[27a] The word "Organization" was dropped from the name in 1946 by common consent of the press and the Secretariat.

organization is based on the principle of the sovereign equality of peace-loving states.

But one may well ask why the term sovereign equality rather than the term sovereignty was used and whether perhaps in years to come sovereign equality will be interpreted to mean not the absolute equality postulated by Austinian jurists but the kind of sovereign equality which today exists among the states of the American union. We shall see later that the term sovereignty has not invariably meant the same thing but that its meaning has changed with changing times; and it may be that in the sphere of international relations the word will undergo a progressive change just as many other words have changed their meaning in the course of history.

Such reasoning may be wishful thinking for unless the rapid extension of power politics can be prevented the whole structure stands in danger of collapse; on the other hand, if the power politics is to be definitely limited it must be by some strengthening of the United Nations through a significant modification of the meaning of the term sovereign equality compared with the meaning generally assigned to it in popular thinking today.

The organization of the United Nations represents a temporary triumph, at least, for the Big Powers. Under the League new members were to be admitted by vote of the Assembly; under the Charter the Security Council's consent must be obtained and if the admission of new members is regarded as a matter of principle and not of procedure the veto right of one great Power may constitute an obstacle much greater than was the case under the League of Nations. If there is any doubt about the qualifications of such countries as Switzerland, Portugal, and Spain as to fitness for membership, should not this question have been a matter for the Assembly of the United Nations?

Under the League, it will be recalled, the Assembly and the Council had much the same general powers except for a few special matters primarily reserved for the Council in the liquidation of the peace treaties. On fundamental questions affecting world peace an appeal could be carried to the Assembly when the action of the Council did not seem to promise an energetic enough treatment of a dispute, as was seen in both the Sino-Japanese crisis of 1931 and the Italian-Ethiopian dispute of 1935. Under the Charter the Assembly has a wide range of recommending power in various fields—political, economic, and social. Its decisions will be by two-thirds vote on matters of policy and by simple majority on

procedural questions. Compared with the League of Nations this represents an advance in that Assembly (and Council) decisions of the League had to be unanimous except for disputes considered under Article 15 of the Covenant and unless otherwise expressly provided, and procedural questions were to be decided by two-thirds vote. We have noted above the methods by which the League overcame the limitations of the unanimity rule strictly construed; nevertheless, the theoretical advance indicated in the Charter is definite and represents a distinct gain in possibility of reaching decisions on an international level.

The Assembly may "discuss" and "make recommendations" in matters concerning peace but wherever action is required the matter must be considered by the Security Council. A critic may well ask whether an Assembly discussion under these circumstances will serve a very useful purpose; on the other hand, the discussion even without the power of decision may influence the Big Powers on the Council who, despite their power, may find it expedient to give heed to the thoughts, feelings, and aspirations of some fifty smaller nations whose combined voice even in an atomic age perhaps cannot be lightly disregarded. However, the Security Council alone has power under the Charter to decide whether a state has been guilty of aggression, or even of threatening the use of force.

If one reads the Charter carefully he will find that the word war is not used. In our analysis above, we have shown how difficult it was to define the word war and how desirable it was for an international organization to be able to take effective steps before actual hostilities broke out. It would appear that the delegates at San Francisco realized this fact and inserted into the Charter the obligation that member states will not use force or the threat of force. The United Nations has the power to intervene decisively in the early stages of a dispute and will not be confined (as was the League) to action after war has begun, a power which was sought and in principle agreed to in the early discussions on the Geneva Protocol in 1924, but was later rejected by Great Britain and other powers. It remains to be seen whether the international community can devise methods of decisively intervening against subtle peaceful penetration which may be a prelude to conquest.

Several critics have strongly opposed the weakened position of the General Assembly compared with that of the Security Council in the Charter. They believe that it represents a setback; and that it is not consistent with the avowed principle in the Charter

of "the sovereign equality of all peace-loving states." They point out that in 1931 and 1935 it was the Assembly that was ready to take stronger action against the aggressors, Japan and Italy, and not the League Council. Those who have defended the Charter provisions claim that on the principle of linking responsibility with power, the great powers should have the decisive voice. It is relatively easy for those who do not have to carry out the major tasks of international policing to urge strong action; it is another thing to have to foot the bill. There is a measure of truth in this assertion, but critics reply with a considerable show of reason that the small powers did not act unreasonably in the League, that in any case relative to their resources they suffer as much from a war as do the big powers and, above all, that it is not the small nations which constitute a threat to world peace but the big powers themselves which have the major responsibility for preserving the peace. Paradoxically, therefore, we have the position that the Big Five and especially the Big Three have claimed the right of veto on the Council at a time when, as pointed out above, their own rivalry constitutes the greatest threat to peace. Under these circumstances, the proposal that, if the Security Council is unable to reach a decision within a certain time owing to the veto, the matter should be referred to the General Assembly seems reasonable. The proposal was based not only upon the principle of finding a solution in case of a deadlock between the great powers but also upon the still more fundamental principle that the great powers as well as the small powers should be subject to law and that little would be gained by having an effective system of collective security for the small powers and in effect a balance of power system for the big powers.

We have analyzed above the relations of the Big Three within the last few years, and the evidence seems conclusive that if there is a sincere desire on the part of the great powers to keep the peace this desire should have been translated into more binding form in the United Nations Charter. The Munich crisis of 1938 was only the last of many which was settled by great powers, not on the principle of law and justice but on a horse-trading compromise at the expense of smaller nations. Such compromises, however, do not represent a fundamental contribution to peace but only the postponement of a breakdown which seems to be inherent in the balance-of-power system.

At San Francisco considerable discussion took place upon the voting procedure in the Security Council, and the veto power of

the Big Five was incorporated into the Charter. At the Yalta Conference the Soviet Union agreed to a compromise under which a matter could be discussed despite the veto of a great power but no action could be taken without the unanimous approval of the Big Five. Thus, under the Charter no possibility exists of joint action against a big power determined to pursue an aggressive policy; nor does effective action seem possible to arrest the rapidly mounting tide of armaments which in an atomic age (when recuperation from the World War II has taken place) may constitute a hair-trigger invitation to an "offensive defense" due itself to fear or as an excuse for an offensive offense. We, therefore, seem to be in a vicious circle. Until a more comprehensive form of security is attained, it is doubtful whether substantial disarmament will be effected, but the rapid growth of armaments will make still more difficult an agreement on security. And without such an agreement it seems futile to hope for a maintenance of armaments at a given level. They will tend to increase unless they are limited or reduced under a general plan which will guarantee security to all.

In view of these serious handicaps arising out of the veto power it is interesting to note that the provisions for sanctions against the aggressor are stronger than those provided for under the League Covenant. The Charter prescribes that member states obligate themselves to accept and carry out the decisions of the Security Council and to comply with the demand of the Security Council to provide armed forces and especially national air-force contingents, which are to be made immediately available for emergency measures. Not only that, the Charter provides for a Military Staff Committee to advise and assist the Security Council on matters relating to the Council's military requirements for enforcing the peace and on methods by which national contingents for combined international enforcement action can be raised and apportioned At the moment of writing the Committee is holding secret meetings to discuss the many technical problems that are involved.

The beginnings of such an international force may betoken a future international organization with adequate power over all member states, but for the immediate future two difficult questions arise. First, if enforcement action is to be taken against the small powers only, then it may well be argued that no special international contingent will be required, but that the unanimous understanding of the five great powers whose representatives sit continuously in the Security Council would be sufficient. Second,

if the international force is to be used against great powers then it must be on a vast scale, beyond the present armament strength of the Big Three; if not, the small token international force will have no deterrent effect upon the great power bent on war. If the international force is to be effective the national forces of the big member states must be limited to practically local police strength; unless this step is taken the United Nations military force would seem to be little more than an empty gesture. A way out of this dilemma may have been provided by the discovery of the atomic bomb(and the reported use of cosmic rays) for, as analyzed above, proposals contained in the Acheson Report released March 16, 1946, provide for the establishment of an international atomic development authority to have sole control over the mining, manufacturing, research, licensing, selling, and other necessary operations of fissionable material. If such a step is taken, it will logically lead to similar steps in the control of rocket bombs and would also imply the futility of an armament race between the great powers in the other military and naval weapons of war.

However, whereas under the League Covenant the question of the reduction of armaments was included in one of the first of the operating clauses of the Covenant (Article 8), only a very general statement concerning the limitation of armaments is found in the Charter. For some time statesmen had proclaimed that the failure of the League was due in part to the reduction of armaments on the part of the peace-loving powers which when war came found themselves at a grave disadvantage by reason of the overwhelming strength which the aggressor nations had built up through their armament programs. This reasoning is fallacious, for the basic cause of World War II lay in the inability of the so-called peace-loving nations to unite early enough to prevent aggression. Even by 1935 they could have prevented Germany, Italy, and Japan from pursuing their attempted and almost successful plans of conquest.

One cannot emphasize too strongly that the Charter contains two contrasting and indeed contradictory principles—that of collective security and that of power politics. A serious danger exists that nations will be deluded into thinking that by increasing their national armaments they will not be primarily engaged in an armaments race with other nations but that they will be strengthening themselves for the service of the United Nations. This ambiguity of appeal which the British conservative government used

in 1936 will have disastrous consequences if for example the people of the United States believe that increased American power is designed primarily to strengthen the United Nations; that will not be the interpretation placed upon such increases by the Soviet Union. And if the Soviet Union increases its power saying that it is loyal to the United Nations as it conceives it, the increased Russian armaments will be regarded by people of the United States not as a strengthening of the United Nations but as a threat to American security. There can be no greater importance to clear thinking than to expose the dangers in the line of reasoning that increased national armaments unilaterally carried out can strengthen the United Nations more than a strengthening of the security arrangements.

If it be replied that the Soviet Union or any other power will not consent to a modification of the veto, the answer in theory is twofold: first, we must make quite sure that every avenue of approach has been tried and that Soviet or British or American obstreperousness is not due to a legitimate fear of the motives of other powers; and second, if the evidence become incontrovertible that a particular nation is determined to play a lone hand because of undeniably aggressive intentions, only one way is left and that is to modify the United Nations procedures by inviting all other nations that will do so to agree to a strengthening of the Charter by a sufficient modification of sovereignty. If it is necessary to have another war in order to preserve the union of the world (with all the disastrous consequences of atomic war) as a civil war was necessary to maintain the union in the United States, then this struggle should be in the name of a genuine United Nations and not in the name of a United Nations attempting to conceal the power politics of the three major powers.

This judgment is strengthened by the outcome of the events which took place early in 1947. The Soviet Union had frequently invoked the veto, had refused to join the United Nations Education, Scientific, and Cultural Organization, the Food and Agricultural Organization, the Bank for Reconstruction, the International Monetary Fund, the International Civil Aeronautic Organization, the International Labour Organization, the International Refugee Organization, the International Trade Conference, and had also refused to take its seat on the Trusteeship Council of the United Nations. We have described elsewhere the Soviet expansion and infiltration into various countries of Europe. These factors led to President Truman's dramatic appeal to Con-

gress on March 12, in which he urged a $400,000,000 United States loan to Greece and Turkey for military equipment and economic aid. The President's clear-cut statement roused much controversy. Some felt that such a step was necessary in order to call a halt to the Russian methods which bore a suspicious resemblance to those of Hitler a decade earlier and if allowed to continue might produce another Munich. Others believed, however, that the United States appeared to by-pass the United Nations and the President's statement seemed to give color to this charge. Second, the statement did not make a clear distinction between supporting possible reactionary and genuinely democratic movements, and, third, not a few smaller nations in view of United States dollar diplomacy in the earlier part of the century might understandably, though not necessarily correctly, interpret the President's speech as a manifestation of American imperialism.

Constructive criticism therefore suggested the importance of clarifying the implications of the "Truman Doctrine" and public opinion both within and outside the United States rallied to the defense of the United Nations. It was not sufficient to say that the United Nations was not ready for the assumption of this responsibility without any organization with punitive powers to implement its control, the United Nations was not yet in position to act effectively. The United States, as the strongest power, should go on record in this specific instance of wishing to work within the principles of the United Nations. The United Nations, it might be said, had no money, but the United States could have offered to spend some of the reconstruction money at least through the United Nations agencies. Fortunately, the United States representative on the Security Council two weeks later helped to restore the prestige of the United Nations by energetically denying that his country was attempting to by-pass that body, by supporting the continuance of the special commission's investigation on the northern border of Greece, by suggesting the establishment of a permanent United Nations Commission in the Balkans to supervise border-control relations between Greece, Yugoslavia, Bulgaria, and Albania, by suggesting that Greece apply to the International Bank for Reconstruction and Development for a loan of at least $100,000,000 as proposed by the Food and Agricultural Organization, and finally by urging that the Economic and Security Council might keep a continuing United Nations advisory mission in Greece.

The statement might not be completely reassuring as indicating

that the United States was ready to merge its power in that of a strengthened United Nations, but at least the forms had been observed, though belatedly, and time was still to write its fuller answer.

The Charter represents an advance over the League Covenant in that it provides that each member state of the Security Council shall be permanently represented at the capital of the United Nations. Perhaps the League would have functioned better if the League Council had been in continuous session; perhaps not. But in theory no adequate system of world organization can be effected without the same kind of continuous organized debate and policy-making on a world level as that which obtains *mutatis mutandis* within nations themselves. Nations realize the necessity of having legislatures in session for extended periods for the purpose of carrying out necessary national business and it is idle to think that a United Nations can carry on without similar continuous consultation and "legislation."

The Charter contains no article similar to Article 10 of the Covenant guaranteeing "as against external aggression the territorial integrity and existing political independence" of its member states. This omission may have been due to the fact that the peace treaties following World War II had not yet been signed and could not have been since the war had not ended when the San Francisco Conference concluded its labors. Since, however, the Charter does provide against changes imposed by force, it will serve the same purpose as that designed by Article 10 of the Covenant; and possibly in the long run provide for peaceful change in a more adequate manner. The Charter also contains no article comparable with that of Article 19 of the Covenant which (ineffectively as pointed out elsewhere), dealt with the problem of treaties which had become inapplicable or the continuance of which might endanger the peace of the world. Nevertheless, the Charter does recommend the consideration of situations which are likely to impair the general welfare of the world. Finally, the Charter, as distinct from the League Covenant, contains no provision permitting member states to withdraw from the United Nations. States which persistently violate the Charter may be expelled. Or if its action is not so serious as to warrant so drastic a course such a state may have its privileges suspended without ceasing to be a member of the organization. One may question the wisdom of either the expulsion or the suspension procedure in view of the experience of the League of Nations.

We have now to examine some proposals put forward by those who would go beyond the associative principle embodied in the League and the United Nations.

AN INTERNATIONAL POLICE POWER AND AN INTERNATIONAL EQUITY TRIBUNAL

The principle of collective security had to confront a stubborn fact, namely, that under Article 16 of the Covenant the League Council could only "advise" what military sanctions were to be applied. It rested with the member states individually to decide whether or not they would accept the Council's recommendation. Clearly a law-enforcing agency which is at the mercy of units free to help enforce a decision or not according to their pleasure is an unsound one, because the states will be more than tempted to apply sanctions only when and in so far as they coincide with what they believe to be their immediate interest. Therefore they will be less likely to consider the essential justice of the case than the effect of proposed sanctions upon their own political power.[28]

Because national sovereignty was not seriously challenged in the League it appeared that collective security did not greatly differ from the old alliance system. League members still trusted primarily to their national forces, and the more they relied upon themselves the more they moved away from the fundamental requirements of genuine international security. Moreover, each of them was able to justify its rearmament program, saying that it was "in defense of loyalty to the League."

These considerations led the New Commonwealth Institute to the judgment that security can come only when the world is willing to establish two important organizations—an international police force and an equity tribunal. The group led by Lord Davies claims that there can be no rapidity of preventive action while world society depends upon separate and independent national forces. Only a supra-national force which can be brought into action quickly against an aggressor can prevent the type of thing which happened in Manchuria and in Ethiopia.

But why an equity tribunal? For the simple reason that international law has accepted the fruits of conquest. If Hitler asks for the return of the German colonies, he is told that according to international law Germany gave up those colonies and that the Treaty of Versailles must be held sacred. It follows that there may

[28] See Introduction to C. van Vollenhoven, *The Law of Peace* (Macmillan & Co., London, 1936), pp. xi–xii.

be a great gap between international law and international justice; but until there is international justice there can be no hope of international peace. It follows, therefore, that until international disputes are solved along the lines of equity rather than of legality, especially a legality based upon conquest, we must expect a continuation of strife.

Undoubtedly until international society can command more force at the disposal of law and command it more rapidly than governments which would make war, there can be no guaranty of stability. Without doubt, too, there must be provision for change. The question arises as to whether an international force is desirable and feasible. The history of the Disarmament Conference would suggest that the ideal, though difficult, is not impossible and that international society will not find stability or security until the modern state gives up its armies and navies and air forces.

Whether or not an equity tribunal is sound in principle is also open to question. By what rules would such a tribunal be guided? Would it have power to alter boundary lines, modify tariffs, dispose of colonies, or take any other major step to remove the fundamental causes of war? If the world ever reaches the condition of being willing to hand over to international organization powers of this nature, it will be ready to go much farther and entrust these things to more representative and widespread institutions. The Lytton Commission made recommendations along the lines that one imagines an equity tribunal might have followed; but other institutions will be required, and it seems correct to point out that the complexities of international change will require more representative and diversified organs than the equity tribunal envisioned by the New Commonwealth group. Carr well writes that equity tribunals must base their decisions on well-defined political presumptions if they are not to be capricious. Within national communities such presumptions may exist: in international society they do not. There is no political agreement even of the vaguest kind as to what equity and common sense mean in relation to such questions as Britain's interest in Egypt, the problem of Danzig, etc. Carr adds that "no responsible tribunal cares to commit itself on any important issue of an authoritative pronouncement as to what is 'suitable' or 'just' in international relations."[29] The problem will involve legislative action rather than action by such tribunal. But who will be the legislators? Representatives of sover-

[29] E. H. Carr, *The Twenty Years' Crisis, 1919–1939*, pp. 262–63.

eign nations, or of regional or world units of government? The New Commonwealth later accepted the logic of the situation and came out in favor of federation as a necessary condition of world peace.

FEDERATION PROPOSALS

Much of mankind's judgment upon the future form of society will depend upon whether it believes that we have or that we have not reached a turning point in world history comparable in significance to the breakdown of the Roman Empire, or the emergence of the modern state system at the end of the Middle Ages, or the foundation of the American federal form of government replacing the system established by the Articles of Confederation. If we accept the principle that political institutions are primarily made for men, and not men for political institutions, we must fearlessly face the question whether or not the sovereign state has already outlived its usefulness. The evidence brought forward in this volume seems to point conclusively to the fact that it can no longer defend itself or feed itself or keep itself in health or be an extensive agency of cultural and religious excellence.

Without question, new political institutions of a more comprehensive character are required, and the failure of international cooperation to overcome the struggles of the balance-of-power system suggests that the power system can be remedied only by being absorbed by something more adequate to human needs. This something an increasing number of scholars, statesmen, religious leaders, industrial and labor representatives, and average citizens believe must be nothing less than federalism. It will be impossible to refer here to the many plans and the large number of writers. All that can be done is to suggest the main lines of thought and the bases of the proposals.

FROM THE LEAGUE TO FEDERALISM

Oscar Newfang[80] noted that a successful government guarantees security and peace, maintains order, keeps the area of unrestricted trade free and open, and promotes social welfare. Tested by these standards both the League of Nations and its member states failed. International conferences were not able to prevent a staggering increase in armaments and a catastrophic breakdown in currency standards and trade. Yet have the sov-

[80] Oscar Newfang, *World Federation* (A. F. Barnes, New York, 1939).

ereign states by their own efforts done any better? Their attempts to gain security, political and economic, by building up their own national military strength and by adopting economic autarchy have led to increased confusion, to war and to anarchy. The League of Nations failed because the member states insisted upon retaining their sovereignty. The Disarmament Conference failed; collective security broke down because the sovereign states could not or would not co-operate quickly enough; consultation consumed too much time; and the great powers would not submit their quarrels to the League. Nor would they accept a compulsory jurisdiction for the Permanent Court. The League was unable to reconsider treaties which had become inapplicable to present conditions. The Covenant under certain circumstances recognized the existence of legal war. The unanimity rule made the League cumbrous and unworkable. Sanctions could not be applied efficiently because the procedure was too complicated and because they were not compulsory. And delegates to the League, the Assembly, or the Council had no authority to act, but had to refer matters back to their governments. Further, the League had no independent financial resources; and it was unable to impose freedom of commerce.

In order to make the League work, Newfang suggested that it must be transformed into a world federation, possessing a legislature able to make laws, a court to interpret laws, an executive to carry them out. In order to do this, he further proposed: that Article 5 be expanded to permit the League instead of the member states to pay the Assembly members; that Article 8 be revised to permit the gradual transfer of armed forces to the League; that every decade one-tenth of the military, naval, and air forces of each member state shall be handed to the League of Nations and the military budget of each state reduced by one-tenth; that Article 10 should be strengthened to make an explicit guaranty to preserve the independence of the members; and that the League as a whole and not the member states should give the guaranty. He would revise Articles 14 and 15 to give the Permanent Court of International Justice compulsory jurisdiction in the event that the League Council fails to reach a unanimous decision. He would eliminate Articles 16 and 17, providing for sanctions and for action against any power outside the federation, because sanctions will not be required in a federation. He would amend Article 19 to give the Assembly authority to take action upon and not merely to advise upon treaties which have become inapplicable and inter-

national conditions which threaten the peace of the world. He would amend Article 20 to make the Covenant and the laws of the Assembly and the decisions of the Permanent Court of International Justice the supreme law of the world, and would insert a new paragraph providing that every executive officer of a member state must take an oath of allegiance to the League. He would strengthen Article 23 in order to give the League power to regulate labor conditions, to tax individual citizens of member states, to maintain armed forces on land, sea, and air, to establish a world monetary or banking system, and by a two-thirds vote to take over any other subject which it considered desirable.

This ambitious program, which many people regarded as utterly unrealized in practice, to Newfang was the minimum condition of peace and security throughout the world. In his final chapter, he puts the alternatives without qualification: Either transfer the armed forces to the League or continue the armaments race until war and collapse result. Either give power to a world federation to remove tariff barriers and remove the main economic cause of war, and thereby make possible a rise in the standard of living, or permit economic barriers to continue to increase with a resultant decline in the standard of living and insecurity. Either establish a world monetary or banking system or have a continuance of increasing currency wars and mounting national debts.

Newfang's analysis is challenging because it reminds us that within the national communities political order and economic security depend upon power of taxation, control of armed forces, and authority to limit internal tariff barriers. In many respects the countries of the world are economically closer than districts within the present nations were one to three hundred years ago. Materially Newfang's world federation is not impossible; psychologically, it may be impossible. We should realize, however, the clear distinction between the material conditions which may or may not make possible a political order and the mental attitudes which may or may not prevent the adoption of a new political system.

Newfang might agree that the world will not take this step. He does not necessarily claim that the method will be adopted. He does say that it is necessary, and that it is a minimum condition. Nothing less than this will work. This new division of powers between world authority and national units is indispensable for orderly and efficient government. But mankind may prefer to re-

tain its political myths rather than face social realities. It may not be prepared to do the necessary thing. Newfang describes what he thinks mankind must do for its political health; he does not claim that mankind will do it. It is interesting to note that very similar proposals are now being made relative to the United Nations.

TOWARD WORLD GOVERNMENT?

All advocates of federalism agree that the fundamental obstacle which stands in the way of peace is the sovereign state.[31] In opposition to those philosophers who have spoken of the state as the highest expression of law and of spiritual values, many thinkers, including Clarence Streit, maintain that the state in its external relations lacks the elements of a moral being: it has no sense of moral obligation to the great majority of mankind, but only to the few million people within its borders; even to its own subjects, the fulfillment of its obligations is too often a matter of caprice or arbitrariness. Consequently, the world cannot hope to survive in an age of increasing interdependence if sixty or more states are to continue to confront each other in a condition of nonmoral relationship. The only solution then is to abolish the nonmoral state and replace it by a more comprehensive form of society in which political organization does express moral obligation to the people of other states as well as of one's own state.

The problem goes even deeper. The state has not merely been endangering the peace of the world by virtue of its nonmoral external relations; it has been sacrificing the freedom and welfare of its own subjects. Streit is outspoken on this point on his book, *Union Now*. We should, he says, cease sacrificing the freedom of individuals to the freedom of sovereign states. Democracy has waned because states have grown in power and pretension and have become absolute, and democracy is incompatible with the absolute state. Only by eliminating the state which has enslaved the individual can the latter find again his true self. Only in such manner can he, in the words of Berdyaef, cease from becoming dehumanized and being sacrificed to an impersonal thing.

To those who believed that a strengthened League could work while at the same time "leaving the states in possession of their sovereignty," Streit answers that patching simply will not work.

[31] W. B. Curry, *The Case for Federal Union* (Penguin Books, Ltd., Harmondsworth, England), especially chapter iv, "Does Nationalism Make Sense?"

We have tried to patch the world's currency system and failed. Big collective alliances and small regional pacts have failed. World wheat, sugar, and textile conferences have failed. Disarmament conferences have broken down. Nor can organizations halfway between sovereign states and universalism such as Pan-Americanism and the British Empire solve the problem. Leagues, whether universal or regional, cannot work. They cannot act quickly enough. The unanimity rule despite some minor modifications in practice still prevents them from becoming efficient international legislative bodies. They cannot enforce the law. First, they lack coercive power. Second, the attempts to apply sanctions must fail because the state (or nation) is an immortal body and one cannot punish a people in the same way as an individual or a corporation: "It is one thing for the immortal state to brand as a criminal one of its millions of mortals, and quite another for a few moral statesmen to attach the stigma of guilt to an immortal nation. It is an appalling blunder, a monstrous thing, inherently indefensible."[32] Third, whereas one can lock a person up pending trial, he cannot do so to a nation. "What law and order would any nation enjoy if the police could not arrest even a flagrant offender before they had convicted him in court? Yet this is just what any league must do."

The result is that a league cannot provide the essentials of order. It is a hybrid product and must give way to a much more comprehensive form of society. In Streit's view, this society must be nothing less than a union of peoples, a union which will absorb states, "put individuality back on the throne that nationality has usurped,"[33] eliminate excessive government, and enforce the law upon the individuals and groups within its boundaries because of its overwhelming power.

But how step from national sovereignties to Union? Both Curtis[34] and Streit advocate the method of growth around a political nucleus. Nations with the greatest common interests and the greatest devotion to the principle of human freedom must recognize the need of surrendering sovereignty and must combine to form a new unit. These nations, Streit suggested, to begin with, will be the fifteen democracies which he named: the United

[32] Clarence Streit, *Union Now* (Harper & Bros., New York, 1939), p. 145.

[33] *Ibid.*, p. 12. The same arguments which Streit made against the League he has repeated against the United Nations.

[34] Lionel Curtis, *Civitas Dei* (Macmillan & Co., London, 1937), Volume Three, pp. 77–81.

States, the United Kingdom, Canada, Australia, New Zealand, South Africa, Eire, France, Belgium, the Netherlands, Switzerland, Denmark, Norway, Sweden, and Finland. The number is not final and no country should be excluded which wishes to join. These are the nations which should lead the way to form the new Union.

The Union should have the sole right to grant citizenship and admit new states to control all foreign affairs and defense measures, to regulate commerce within and without the Union, to control all monetary matters, and to own and operate communication services. It should guarantee a democratic form of government to each of its component parts. It should work through a bicameral legislature: a House of Deputies based upon population, and a Senate to which each state of less than twenty-five million should elect two senators and those above twenty-five million two extra senators for every additional twenty-five million people. The executive power should be vested in a board composed of five citizens—three elected directly by the Union, one by the House, and one by the Senate. And the judicial power of the Union should be vested in a High Court.

This barest of summaries will indicate the line upon which Streit would proceed to a world government. It is based upon two fundamental ideas: (1) the conviction that international legislation and the prevention of war are both impossible under present world conditions, in which the modern state is a fatal obstacle; and (2) a belief that the League of Nations and regional organizations do not provide an adequate modification of the sovereign state.

That new political institutions are required to serve the means of modern mankind must be obvious. That some form of world government is necessary in the interests of legislative efficiency and national security must undoubtedly be granted. That a state or nation is a society which exists for certain purposes and should be modified in response to new conditions is undeniable; and that no progress can be made until the modern state relinquishes its sovereignty is evident from the survey made in this volume. The modern state can no longer efficiently serve its own interests in health, security, communications, prevention of crime, intellectual development, and economic amelioration. It must give way to institutions more appropriate to modern world needs.

Streit asserts that people must again enthrone liberty and democracy and that we must begin with the peoples who are most

given to liberty. The United States founded a remarkable and a new principle of government when it subordinated the state to the welfare of its people and discovered the device of federalism to serve the cause of freedom in a modern world. This form of government, Streit says, permitted the expansion of the United States from 3,000,000 to 130,000,000, from thirteen to forty-eight states, embracing many different kinds of people. And yet this United States was near bankruptcy and ruin when it changed its political organization and adopted federation. Critics of Streit say that his use of historical analogy is faulty. They point out that the thirteen states had been British colonies and subjects of the same king for about one hundred and fifty years; they had had a common culture and language, and enjoyed much the same conditions of life. But the nations which Streit suggests should federate have had (in some cases, at least) histories reaching back hundreds of years; they have lived under different rulers, speak different languages, and exhibit cultural and other values marked by great variety.

We must leave it to historians to decide whether or not American history presents sufficient parallel to justify the strong claims made on behalf of a world federal union beginning with the fifteen democracies. Critics of Streit say that the American Civil War involved sanctions of the most complete kind, and that President Lincoln not only called out the state militia and proclaimed a blockade of Southern ports but appealed for volunteers, suspended the writ of habeas corpus in certain areas, and thereby coerced not merely a number of people but a number of states. For it was primarily states and not individuals which fought the American Civil War. And, despite the bitter feeling which remained in the South against the Yankees, the Confederate States again took an honored place in a united America.

With the end of World War II and especially after the publication of the Charter of the United Nations the writings on the need for some kind of world government grew in volume and intensity. Ely Culbertson had advocated a world federation which should have the duty of maintaining peace, arbitrating international controversies, and promoting economic and cultural welfare. It was to consist of a world supreme court, a president selected for a six-year term, a world court of equity, a world vocational senate with six representatives from each of eleven regions. The regions were to have a similar form of organization and the peace was to be guaranteed by a world police force based upon a quota force prin-

ciple.[35] Emery Reves produced an almost best-seller, *The Anatomy of Peace*,[36] in which he argued on theoretical grounds for world government; in energetic prose he followed the general line laid down by Streit and in his later writings rightly urged that men must keep their eye on the problem to be solved rather than be hypnotized with the difficulties ahead. Raymond Swing, an authoritative radio commentator, became president of Americans United for World Government and in his weekly broadcasts consistently advocated world government for the control of the atomic bomb and other dangerous weapons.[37]

An influential group of American citizens adopted a declaration at Dublin, New Hampshire, October 11–16, 1945, out of which came on February 1, 1946, its "Proposal for Amendment of United Nations Charter." These proposals were forwarded in a petition to the General Assembly of the United Nations and included: (1) changing Article 9 of the Charter to permit the General Assembly to be composed of representatives chosen for terms of four years by the members of the United Nations according to a formula for the apportionment of representatives to be agreed upon; (2) Article 18 to be amended to permit each representative to have one vote and to vote as an individual; (3) Article 12 to confer on the General Assembly the prime responsibility for maintaining international peace and security; (4) Article 23 to be changed to make the Security Council an executive committee chosen by and responsible to the General Assembly. On March 11–16, 1946, the Rollins College Conference on world government issued an appeal to the peoples of the world. Outstanding citizens drew up a statement of principles and objectives which included: (1) the transformation of the United Nations from a league of sovereign states into a government deriving specific powers from the peoples of the world; (2) the General Assembly to be reconstituted as the legislative branch of the world government; (3) that independent judicial tribunals be created "with jurisdiction of cases and controversies arising under laws enacted by the General Assembly . . . . "; (4) an international bill of rights; (5) Security Council to be reconstituted as the executive branch of the world government.

Supporters of these provisions argued that a world government of limited but enforceable powers acting under the law was a mini-

[35] Ely Culbertson, *Total Peace* (Doubleday-Doran, 1943).

[36] Emery Reves, *The Anatomy of Peace* (Harper & Bros., New York, 1945).

[37] Raymond Swing, *In the Name of Sanity* (Harper & Bros., 1945).

mum condition of maintaining peace. It was important not to confuse the issue by faulty methodology. The correct approach is not to ask whether people will agree to world government any more than it is scientific first to ask whether a patient is likely to submit to an operation prescribed by his physician. The first essential is a correct analysis of the problem. The second step then may be taken, namely, to estimate the difficulties in the way of solving the problem; but to confuse an objective analysis of a situation with what people are likely to do is to be guilty of unscientific procedure. One must separate the problems involved so that a clear-cut choice can be made on the basis of the evidence presented. Similarly, it is no contribution merely to assert that progress must be gradual. A gradual approach may be fatal in the case of acute appendicitis. Clearly, the remedy must be adequate to the problem. There is nothing universally binding about the principle of gradualism. Anglo-Saxons especially must be on their guard lest they assume that other nations must go through the candle, gaslight, and electricity stage or proceed from horseback to horse and buggy to automobile to airplane. It may be that some countries will skip certain stages. Gradualism as Thomas K. Finletter puts it may be "just another way of avoiding the issue."[38] "The fallacy of the gradualist notion lies, I think, in its failure to recognize that the first step must necessarily be the final one."[39]

Thus the world was confronted with the need of making unprecedented choices. Would the objectivity necessary remain the psychologically unanswerable? Would the peoples of the world continue to be so blinded by the concepts of sovereignty that they fail to see the revolution wrought by science under their very eyes?

Many statements far too general in character to be particularly useful have been made about world government. "Most of those who are opposed to world government, and most of those who support it, have no clear idea of what they are opposing or supporting."[39a] In order to examine the practical difficulties, a powerful committee has been set up which for several months will be engaged in the task of attempting to draft a world constitution. Members of the committee include Dean Richard P. McKeon, Professors G. A. Borgese, Mortimer Adler, and Robert Redfield

[38] Thomas K. Finletter, "The Table for World Government," *Atlantic Monthly* (1946), p. 57.

[39] *Ibid.*, p. 57.

[39a] Robert M. Hutchins, *The Alumni Bulletin: A Report to the Alumni of the University of Chicago,* November 25, 1946, p. 8.

of the University of Chicago, President Stringfellow Barr of St. Johns College, Professor Albert Guérard of Stanford University, Professor Harold Innis of the University of Toronto, Dean Wilber G. Katz of the Chicago Law School, J. M. Landis, former Dean of the Harvard Law School, Charles Howard McIlwain, Professor Emeritus of Harvard, Erich Kahler of the New School for Social Research, and R. G. Tugwell and Robert M. Hutchins.

NUREMBERG TRIALS

The trial of the Nazi leaders for the crime of waging aggressive warfare constitutes a potential step toward world government, for an international tribunal has solemnly tried and condemned the leaders of the German nation in a trial which was without precedent. Mr. Justice Jackson, Chief of the Counsel for the United States, in the prosecution of the Axis war criminals enunciated a most challenging doctrine.[40]

The learned judge pointed out that "international law as taught in the nineteenth and the early part of the twentieth century generally declared that war-making was not illegal and is no crime at law," but went on to say that, unless "we are prepared to abandon every principle of growth for international law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law." Since there is no continuously sitting international legislature, innovations and revisions

[40] See Linden A. Mander, "The Immediate Tasks of International Law and Organization," *Washington Law Review,* Vol. XXI (No. 1, January 1946), pp. 19–20.

See 91 *Congressional Record,* June 14, 1945, A 3089–3092. Mr. Jackson, while Attorney General of the United States, foreshadowed the philosophy contained in this report of the President in his address to the Inter-American Bar Association meeting at Havana, March 27, 1941. See (1941) 35 *American Journal of International Law,* pp. 348–59. See also, "The Law Above Nations," an address by the Hon. Robert H. Jackson, before the Inter-American Bar Association, Washington, D.C., November 20, 1942, (1943) 37 *American Journal of International Law,* 297–305.

See also Max Radin, "Justice at Nuremberg," *Foreign Affairs,* April 1946. A. O. Goodhart, "The Legality of the Nuremberg Trials," *The Juridical Review.* Henry L. Stimson, "The Nuremberg Trial: Landmark in Law," *Foreign Affairs,* January 1947. Peter de Mendelssohn, *Design for Aggression: The Inside Story of Hitler's War Plans* (Harper & Bros., New York, 1946) has assembled evidence from documents produced at the Nuremberg trials to show, without any shadow of doubt, the range and thoroughness of the Nazi aggressive plans. What is at question, however, is not the enormity of the crime, but the adequacy of international law and tribunals to deal with the case of waging aggressive war.

come about by the action of independent governments designed to meet a change in circumstances. And Mr. Justice Jackson confesses that he is "not disturbed by the lack of precedent for the inquiry we propose to conduct," since when the Nazis came to power "it was thoroughly established that launching an aggressive war or the institution of war by treachery was illegal, and that the defense of legitimate warfare was no longer available to those who engaged in such an enterprise." He concluded "it is high time that we act on the juridical principle that aggressive war making is illegal and criminal."

He then proceeds to argue that, under the Kellogg Pact, states renounced war as an instrument of national policy and undertook to settle disputes only by pacific means and condemned recourse to war for the solution of international controversies. He quotes Mr. Stimson, who in 1932 argued that the Briand-Kellogg Pact meant that war had become illegal throughout practically the whole world and is no longer to be the source and subject of rights. "It is an illegal thing." Mr. Justice Jackson further cites the Geneva Protocol of 1924 in which forty-eight governments declared "that a war of aggression constitutes . . . . an international crime" and the League of Nations resolution of 1927 that a war of aggression constitutes an international crime, and a similar resolution passed at the Pan-American Conference in 1928.

One need not go into an elaborate discussion here to set forth the arguments of those who may dispute Justice Jackson's interpretations or who may argue that the above-mentioned treaties did not supplant the power of national governments under their own sovereignty to wage war. Japan, and indeed several experts, disputed Mr. Stimson's interpretation of the Briand-Kellogg Pact. The Geneva Protocol of 1924 was adopted but Great Britain took the lead in rejecting it. Neither does Mr. Justice Jackson deal with the extraordinarily difficult problem of whether a Pan-American or a League resolution constituted a binding obligation; whether sovereign states, by agreeing in principle that aggression constitutes an international crime, explicitly agree to renounce their sovereign right of waging war; or whether any war which they might wage under a balance-of-power system could be regarded as a war of aggression. By interpretation it was agreed that the Briand-Kellogg Pact did not apply to wars waged in self-defense, and attempts in the United States to implement the Pact by authorizing the government to discriminate between aggressors

and victims failed; the United States remained neutral in the Ethiopian crisis and in the European war until early 1941.

Kenneth C. Cole in reviewing Sheldon Glueck's *The Nuremberg Trial and Aggressive War*, well points out:

> The laws of war assume the legality of war. The international criminal law which the author urges assumes the illegality of war. Enforcement of the laws of war thus bespeaks a general attitude distinctly unfavorable to recognition of war itself as a crime. . . . .
>
> No doubt it would be going too far to say that reliance upon the laws of war is logically inconsistent with the outlawry of war. The New York Boxing Commission might, for example, be authorized to enforce rules of fair competition for illegal prize fights. The point remains that we do not normally outlaw enterprizes which we are busy regulating.[41]

Cole further pertinently suggests that the author might be "confusing punishment according to one's desserts with due process of law . . . . Why do defenders of the legality of the Nuremberg proceedings pay so little attention to the character of the tribunal involved? After all, the legality of a situation depends quite as much upon the existence of what a recent writer has called the litigious equation as upon the existence of rules covering the conduct of the defenders."[41a]

Now that the Allied powers have tried the responsible authorities of Germany and Japan for waging aggressive war on the ground that sufficient international law existed to justify this action, even though the United States did not join a League of Nations and even though the League of Nations failed to take adequate action against Japan in 1931 and 1937, and Italy in 1935, they must erect machinery and systematize procedures and develop substantive law to make it clear that this is the newly established international order and that every future aggressor will be regarded not as having made war as a sovereign state but as having broken the peace of the world community. If they do less than this, they will run the risk of merely cloaking political vengeance with a thinly disguised veil of psuedo-legality. It will be worse than tragic if these trials are in the future to be followed by uncertainty on the questions just raised. If this is to be nothing but legalized vengeance, we shall be back to the seventeenth-century

[41] Kenneth C. Cole, reviewing Sheldon Glueck, *The Nuremberg Trial and Aggressive War* (A. A. Knopf, New York, 1946), in *The American Political Science Review*, December 1946, pp. 1208–9.

[41a] *Ibid.*, p. 1209. For further reference see p. 796.

days when the English political statesmen lost their heads as well as their political offices and we shall approximate the unfortunate tradition of "ins and outs" in Latin America.

The profoundly significant question, however, is whether, if the Allied powers have deliberately chosen to adopt new standards by which to judge aggression, they will so organize international society that those standards will continue to apply. Justice Jackson's statement reveals perhaps the most potentially far-reaching political mutation of modern history, but mankind must give long and earnest thought to the full implications of the step and to the methods by which the new United Nations will insure an efficient form of government to carry out the necessary functions of rule making, rule administering, rule interpreting, and the maximum of order which may be described as a police function on an international scale.

THE LIMITATION AND REDUCTION OF ARMAMENTS

The problem of armaments in its present acute form is of relatively recent origin. Until the last hundred years or so the progress of invention had not reached such a stage as to make the instruments and the institution of war the overwhelming factors which they now are. The terrible destruction of life and the financial burdens imposed by the preparation for and the conduct of modern war mean that there is no longer any reasonable relation between the matter of dispute and the method of settling it. War has become the most inefficient method of international change; the continuous preparation for it threatens to ruin the foundations of modern life. Some method of lightening the burden is urgently needed. Limitation and reduction of arms seemed an obvious remedy, and millions of people have had high hopes in this direction. The experience of the interwar years 1919–1939 may be valuable now that the United Nations has come to grips with the problem.

The whole question, unfortunately, bristles with difficulties.[42] There are baffling technical problems; but, before even considering them, one must take into account certain more general factors: (1) Nations differ considerably in their attitude toward life; some have a martial tradition and glorify war; others preach the virtue of peace. What can disarmament mean to a Mussolini or a Hitler

[42] See S. de Madariaga, *Disarmament* (Coward-McCann, Inc., New York, 1929), chapters i–iii.

who proclaims the cleansing power of war and its role in producing heroes and rousing peoples to noble and glorious action? (2) The lag of social thought makes nations reluctant to put aside armaments which they imagine constitute their only means of defense; they do not realize the changing nature of the international world; their "stereotypes" prevent them from seeing the growing strain and the ultimate impossibility of gaining security by separate national action. (3) Democratic national governments change. Elections upset cabinets; and an incoming Prime Minister and his colleagues may introduce a foreign policy with an emphasis very different from that of their predecessors. International agreement is thus frequently at the mercy of domestic political instability. (4) The rapidity of modern invention brings the danger that the discovery of new weapons will render a disarmament agreement useless, for how can armaments not yet invented be limited by treaties in advance?[42a] (5) A nation's fighting strength rests not merely in its men and war materials, but in its total economic and military power, its resources, manufactures, geographical position, communications, constituting its "war potential"; one may limit guns and men, but how measure the compensation which a country should receive in the form of armaments to offset its poverty of raw materials, or its unfavorable geographic situation? (6) A question which has handicapped every postwar disarmament conference is whether security or disarmament should come first. On the one hand, the French argued that it is dangerous for any people to lay down their arms until the total police power of the world is sufficient to guarantee the safety of individual countries; within nations, the willingness of private citizens to forego guns and pistols in daily life has followed and not preceded the establishment of an adequate judicial and police system. On the other hand, governments which are unwilling to commit their countries to further international security arrangements claim that a general reduction of arms of itself will serve to increase the general feeling of security: the less the armaments, the less the damage that can be done; people cannot create such havoc with pickaxes as with bombs. (7) The atomic bomb has revolutionized war.

Four problems arise at the outset in discussing the more technical problems of disarmament.

1. Should limitation be direct or indirect, by reducing the

[42a] See P. J. Noel Baker, *Disarmament* (Harcourt, Brace & Company, New York, 1926), pp. 37–47.

number and amount of men and materials or by reducing the amount of money which each nation may spend on its armaments? Advocates of the latter method claim for it the merit of simplicity—reduction of military and naval budgets would effect far-reaching economies, deliver the world from staggering expenditures, give relief to taxpayers of all nations, and free economic life from ominously increasing burdens. Budgetary limitation, it is asserted, would involve few if any of the technical difficulties connected with the attempt directly to limit men and material in land, naval, and air services. Opponents of budgetary limitations argue that differences in national systems of accounting and standards of living make adequate comparisons between nations impossible, and that it is not easy to decide whether certain roads, bridges, and harbor works within a country are primarily of civil or of military importance.[43] League of Nations experts attempted to meet some of these objections by drawing up a uniform method of accounting. Undoubtedly a successful disarmament scheme should contain provisions for budgetary limitation; but it would also have to contain detailed technical plans and to exist within a framework of general political agreements providing for security as well as disarmament. Budgetary limitation alone, unless extremely far-reaching, would not suffice.[43a]

2. Governments became involved in protracted controversy over another general question of method. Should disarmament be effected separately for land, naval, and air forces, or must a successful scheme embrace all three services? The French and others held that it would be impossible to make progress by limitation or reduction in one service only: an agreement to reduce air forces alone would lead to intensification of rivalry in land forces; naval limitation alone would result in greater competition in the air. Great Britain and the United States claimed that the problems of the three services were distinct enough to warrant separate consideration, and that less complication and delay would result from considering them separately. The Washington Naval Conference, they said, had been successful, and the outlook for further naval reduction was not unpromising. If navies were susceptible of such treatment, why not armies and air forces?

3. If a Disarmament Conference were successful in reaching

[43] Baker, *op. cit.*, pp. 66–73.

[43a] Paul Molden-Hauer, "The Budgetary Limitation of Armament Expenditures," in *Disarmament and Equal Rights* (Carl Heymans Verlag, Berlin, 1934), by Schmidt and Grabowsky (editors).

a comprehensive agreement, should each government be trusted to carry out the provisions, or would it be dangerous to rely upon its good faith? If a government should break its word and secretly arm, or skillfully conceal weapons which it had promised to destroy, the security of states which had honestly fulfilled their obligations would be endangered. France therefore advocated a Permanent International Commission with power to make investigations within the boundaries of the signatory powers, just as, after 1918, the Allies set up an Inter-Allied Commission to supervise the disarmament of Germany. If international inspections were required at that time for the few defeated and relatively helpless countries, similar methods would be necessary for the heavily armed great powers with their huge armament factories and highly integrated politico-economic arrangements. Great Britain and the United States took the opposite view. They believed that a Permanent International Commission would involve an excessive interference in national affairs, and that unless the world could trust to the good faith of the signatory powers no disarmament agreement would succeed.[44]

4. The danger of having heavily armed forces confronting each other with only a boundary line to separate them must be obvious. Enemy troops can strike immediately, and the smallest border incidents may provoke hostilities. It is natural, therefore, to ask whether it would not be possible to lessen the chances of war by providing demilitarized or neutralized zones which could act as "insulators" or "cushions."[45]

The experiment of neutralized territories has often been tried. Witness the neutrality of Switzerland, Belgium, and Luxemburg, and, although less known, Cracow (neutralized in 1815) and Albania (neutralized in 1913). A similar role was played by buffer states in Asia and in Africa. They were somewhat useful in preventing hostile powers from coming into close contact; but without a definite guaranty they were likely to become objects of intrigue by neighboring great powers, as the British wars with Afghanistan and the British expeditions into Tibet attested.

In addition to neutralized and buffer states it may be possible to establish demilitarized zones within sovereign states. In these zones military preparations may be prohibited in times of peace

[44] Major General A. C. Temperley, *The Whispering Gallery of Europe* (Collins, London, 1938), pp. 65–66.

[45] J. H. Marshall Cornwall, *Geographic Disarmament* (Oxford University Press, London, 1935).

and the powers may agree not to fight within them in time of war. The former conception, i.e., restrictions upon fortifications and maintenance of troops, involves a restriction on the sovereignty of the state. Some international lawyers believe that they would approximate international servitude; but this last term is a highly disputed one. The demilitarized zone, to be effective, might be the result of voluntary agreement by all powers, and in this case the limitation on national sovereignty would not be externally imposed.

After 1918, the Rhineland was demilitarized, Czechoslovakia agreed not to erect military works on the right bank of the Danube to the south of Bratislava, Danzig was not to serve as a military base or erect fortifications or manufacture munitions, and the Soviet Union signed demilitarization agreements with Esthonia and Finland in the Baltic, and with Turkey in Transcaucasia. By the Washington Treaty in 1922 five naval powers agreed to refrain from increasing their fortifications and naval bases in the Pacific Ocean; and in the same year Iraq and the Nejd agreed to establish a neutral zone between their territories. By a 1923 agreement the Tangier zone was placed under a regime of permanent neutrality. And in 1921 the Aaland Islands in the Baltic Sea were demilitarized and placed under the supervision of the League of Nations.[46]

At the Lausanne Conference, 1922–23, the frontier zone of Thrace was demilitarized to a depth of thirty kilometers along certain sections of the Turkish, Greek, and Bulgarian boundaries. Greece undertook not to establish a naval base at or to erect fortifications on or to permit military aircraft to fly over the islands of Mytilene, Chios, Samos, and Nikaria. The Conference agreed to demilitarize certain defined areas on both shores of the Straits of the Dardanelles and the Bosporus and certain islands in the Sea of Marmora and in the Aegean Sea.

These examples and others which might be quoted indicate that demilitarization and neutralization of specific areas have been frequently tried. Within certain limits the experiment has been successful. But the facts that within the last few years the Rhineland has been reoccupied and fortified, the Turkish Straits have been remilitarized, and permission has been granted to fortify the

[46] For the demilitarization of the Aaland Islands in 1856, and the subsequent history of attempts to obtain disarmament in the Baltic, see C. R. Pusta, *Le Statut juridique de la Mer Baltique à partir du XIX^e siècle* (Librarie du Recueil Sirey, Paris, 1936).

Aaland Islands show that regional demilitarization is a subsidiary solution depending for its effectiveness upon peace within the larger framework of international society. As a method of reducing the possibilities of war in minor disputes it is invaluable; but it does not touch the root of major differences between the great powers. If war between the latter is to be stopped, the solution must be of a more extensive and far-reaching kind.

Discussion of geographic disarmament brings out one fundamental truth—the concept of a frontier as a line is an anachronism. The basic interests of a country are so many-sided as perhaps to demand different frontiers. Why should there be but one frontier for customs, trading, military, and maritime purposes? The majority of countries have extended their frontiers for purposes of crime prevention, and there is no valid reason why in a highly integrated world nations should not have a number of frontiers, each serving its own purpose. Marshall-Cornwall makes a noteworthy suggestion: "In future we must think of frontiers, not as lines, but as zones, which, in effect, they really are."[47] If this is done, national frontiers will cease to inconvenience travelers, traders, and others, and may come to resemble the boundary lines between the states of the American Union.

In the light of the more general considerations just outlined we turn to consider the special problems of reduction of armaments on land, on the sea, and in the air.

Practically no steps were taken toward reduction of armaments after the adoption of the United Nations Charter and many observers grew apprehensive at the rapidly mounting expenditures by Great Britain, the Soviet Union, and the United States and questioned the soundness of this development from the point of view of the United Nations. The advent of the atomic bomb convinced many people that international control would be the minimum requirement for saving mankind from disaster, but such international control if effected would probably render huge armies and navies and air forces out of date as well as threaten the existence of the peoples of the world.

Under these circumstances Senator Millard Tydings of Maryland, a member of the Joint Committee on Atomic Energy, intro-

[47] J. H. Marshall-Cornwall, *op. cit.*, p. 175. The author quotes (p. 174) from Paul de Lapradelle: "Le phénomène politique de la frontière n'est pas un phénomène simple ... C'est une zone de services publics, distincts des services de l'intérieur, et dont chacun porte le nom de frontière. La frontière douanière, la frontière militaire, la frontière maritime, sont autant de services dont l'organisation et le fonctionnement ressortissent au droit administratif interne."

duced a resolution into the United States Senate[48] requesting the President to "invite governments of all nations to send representatives to a conference which shall be charged with a single duty" of effecting world disarmament on land, on sea, and in the air by January 1, 1950. A few exceptions were to be permitted for temporary policing of defeated powers and for armed forces under the jurisdiction of the Security Council of the United Nations and also for limited forces equipped with small arms to keep law and order in each country. An international inspection force would be provided to insure the rigid adherence to the terms of the agreement. Representative Clare Booth Luce introduced House and Concurrent Resolution 101 favoring the creation of appropriate international machinery within the United Nations for international control and reduction of armaments and weapons, especially those involving atomic power. At the time of writing this chapter no specific steps had been taken other than the first meeting of the United Nations Atomic Energy Commission. The technical problems which will be met in any extensive reduction of armaments may be gathered from a survey of the efforts made between 1920 and 1939. One must realize that many of the matters discussed in this period have been rendered out of date by the extraordinary developments in the weapons of war. Perhaps one will obtain the impression that such questions as seemed vital ten or fifteen years ago are now of little or no technical significance. Any attempt in the future merely to "limit" armaments would be doomed to failure in view of the unprecedentedly rapid discoveries of science. Perhaps Senator Tydings' Resolution is the only sensible approach after all!

LAND ARMAMENTS

The Preparatory Commission of the League of Nations held its first session in May 1926.

The first difficulty concerned the length of military service for land forces. The Peace Treaty had prescribed a twelve-year period for private soldiers in the German army. The French, however, had a conscription system which applied to all men for one and one-half or two years. In attempting to effect a disarmament plan the experts had to consider how far they could compare the military value of a German professional soldier and a short-term

[48] Senate Resolution 219, *Congressional Record*, Vol. 92, Pt. 1, p. 426. For the Senate discussion see pp. 422–39.

French conscript. Unless they could reach some agreement on this matter it might be necessary for Europe to agree to a general reorganization of the various national armies along lines of greater uniformity by reducing the German and lengthening the French period of military service.

The question of reserves proved to be the next stumbling block. Should only the military forces on a war basis be reduced in number, or should those in reserve but still subject to a short period of annual training be included? The Treaty of Versailles had forbidden reserves to Germany; now, Germany in turn demanded that France and the other powers limit their reserves. The French objected; whereupon the German representatives pointed out that reserve forces could for some years at least be rapidly transformed into first-class fighting troops and that a scheme without a limitation of reserves would favor France and penalize Germany.

The problem of colonial troops aroused prolonged controversy. Germany had been deprived of its colonies and therefore no longer possessed colonial troops; consequently it advocated restrictions upon nations which could draw upon their colonies for manpower. France asserted that it needed large numbers of soldiers for local defense purposes in North and West Africa and in the Far East. Germany replied with much force that to limit peace-time effectives and leave to nations which possessed colonies an unrestricted number of colonial troops would place Germany in an unfair and unfavorable position in the event of a European War. It did not wish a repetition of the Black Troops on the Rhine.[49]

No clear-cut line separates military from non-military organizations. Boy scouts, civil air pilots, youth camps, and other organizations give training in discipline. The question of this type of training came before the Preparatory Commission. Some governments claimed that the Fascist and Nazi youth organizations received instruction which served military as well as civil purposes and should therefore be limited in numbers.

After four years the Preparatory Commission produced the Draft Convention of 1930. This document revealed how basic were the differences of principle (apart from the baffling problem of application, once the principles had been agreed upon) which separated the governments. The items which met with general agreement included budgetary limitation of war material, a limit

[49] Dr. Karl Megerle, in *The Problem of the Native Soldier in Disarmament and Equal Rights* (C. Hymans, Berlin, 1934), by R. Schmidt and A. Grabowsky (editors), pp. 119–29.

to the period of active military service, the establishment of a Permanent Disarmament Commission, limitation of land, sea, and air effectives, acceptance of naval limitation by categories as exemplified in the 1930 London Naval Treaty, and renunciation of chemical and bacteriological warfare. Unfortunately, the omissions were more noticeable than the inclusions. The Convention failed to abolish conscription, to provide a solution to the problem of trained reserves, and directly to limit and reduce war materials. A state would therefore be free to supply its limited army and trained reserves with an unlimited amount of war material. The Convention was thus of little worth and the few principles embodied within it were hedged about with enfeebling reservations.

Despite the high hopes of the people of the world, the Disarmament Conference, which met in Geneva on February 2, 1932, was soon in difficulties. So great was the pessimism in certain official quarters over the atmosphere resulting from the economic collapse of 1931, the abandonment of the gold standard, the Japanese invasion of Manchuria, and other matters that some officials believed that the Conference should be postponed.[50] Indeed, its opening was delayed owing to the League preoccupation with the Sino-Japanese dispute.

Three major methods were proposed in the opening week, the French plan for internationalization and security, the British plan (later elaborated by President Hoover in June 1932) for qualitative disarmament, and the German demand for equality. We need not follow the melancholy story of the next two years. The French increased their demands for security as the Germans the more loudly proclaimed their need of equality. Especially after the advent of Hitler to power did France insist upon more absolute guaranties of international security. Proposals and counterproposals followed in dreary succession. They served to change the emphasis from disarmament to rearmament. On June 11, 1934, the General Commissions of the Conference adjourned sine die. Thus

after two and a half years of discussion the disarmament problem was as barren of solution as it had been at the opening of the Disarmament Conference in February, 1932. By the summer of 1934 the deadlock was complete. All hope of disarmament had vanished, that of limitation of armaments had grown tarnished and faded, and the fear of

[50] Temperley, *op. cit.*, pp. 188–89.

general rearmament and its possible ghastly results had become a threat and a nightmare before the mind of the world.[51]

AERIAL DISARMAMENT

Four schools of thought appeared at the Preparatory Commission of the Disarmament Conference. The United States and Great Britain advocated the abolition of the bomber only. The delegates from Denmark, Norway, and Sweden urged total prohibition of military aviation and of the manufacture of military planes and the internationalization or strict control of civil aviation—the abolition of military planes alone would cause an increase in the construction of commercial planes, which could in turn be used for aggression. Germany, Hungary, and Turkey, forbidden by the Peace treaties to possess military planes, favored abolition of military aviation for all nations but would have left civil aviation unregulated. France, Belgium, Czechoslovakia, and Poland urged the establishment of an international air force equipped with bombing apparatus and proposed the internationalization of civil air forces.

Is it possible to measure the offensive and defensive qualities of a military plane? Those who answered in the affirmative proposed to limit the size of the plane. Some authorities suggested two tons, without fuel and other load. Great Britain proposed a maximum of three tons. Critics said that these figures were too high. They proposed to limit engine horsepower to, say, four hundred (as suggested by the Soviet Union), and to limit the wing space to, say, two hundred square feet. The last two proposals brought to light differences between governments. Several years ago the German and Dutch machines possessed less wing area than those belonging to other nations. Germany and Holland therefore urged limitation by wing-area measurement! Great Britain used a lower horsepower in the engines, and naturally preferred limitation by horsepower! Others proposed to limit planes to single-seaters. It was claimed that a large plane required more than one person for effective observation and bombing purposes, and that the single-seater would therefore be essentially a defensive machine—a view which meets with much criticism from pilots. Still others would build sufficient single-seated planes to resist any attack by the civil aircraft of another country. Some proposed to prohibit government subsidies to commercial aircraft on such conditions as would

[51] John W. Wheeler-Bennett, *The Pipe Dream of Peace* (W. Morrow & Co., New York, 1935), p. 238.

permit them to be used easily for military purposes and also wished to prohibit military training of pilots engaged in commercial aviation, and to limit the money to be spent each year for military aircraft construction and possibly to limit the total budget for the whole air service.

Some years ago, E. P. Warner suggested that it was possible, by limiting the weight, the horsepower, the wing area, the seating capacity, and the number of military planes, to effect a substantial reduction (up to 80 per cent) in aerial armaments. Since that time the progress of invention, the rapidity of building, and the very close integration of military and civil aviation seem to have made these proposals seem quaint and antiquated.

The Draft Convention prepared for the Disarmament Conference had provided for the limitation of effectives in air forces but not for any direct limitation of air material. France early in the Conference submitted proposals which closely resembled the fundamental ideas presented to the Paris Conference in 1919 and the Geneva Protocol Conference in 1924, i.e., the internationalization of civil aviation. These provided that nationals belonging to signatory powers might build nonmilitary planes below a prescribed tonnage, but machines above that figure would be assigned to organizations—continental, intercontinental, and intercolonial—under the authority of the League of Nations. Only the League should possess heavy bombing machines, which should form part of an international police force. Unfortunately, no agreement was reached, and another failure had to be recorded.

The Air Commission appropriately, and most unfortunately, found itself unable to take off, and in consequence never did more than bump about the ground. It became involved in a discussion as to whether the control of military aviation or the internationalization of civilian aircraft should be dealt with first. Spain proposed a scheme for the international organization of civilian aviation on the lines of the Universal Postal Union, which proposal received a certain amount of support from France and Sweden. The Germans wished to see military aircraft abolished entirely, but this received only the votes of Italy and the U.S.S.R. The British were concerned in trying to devise a plan which would prevent the use of civil aircraft for military purposes. The United States delegates were of opinion that the problem was an exclusively European one, and were prepared to agree to any scheme which was adopted.[52]

World War II would seem to show beyond doubt that Eu-

[52] John W. Wheeler-Bennett, *op. cit.*, p. 37.

rope is too small to permit the existence of national air forces. The destruction wreaked upon cities bears eloquent testimony to the fact that, although a country may not be conquered by air power alone, the effects of air bombardment upon civil life and upon the possibilities of postwar reconstruction are so great that we are justified in asserting that modern nations are as inefficient instruments of defense against present-day weapons as the feudal castles became after the discovery of gunpowder, and that a new unit of government to guarantee peace and order is urgently required.

NAVAL DISARMAMENT

Theoretically, naval disarmament should be easier to accomplish than military disarmament. Warships can use only a certain number of men; their weapons are in definite locations (i.e., in the ships themselves) and cannot be concealed; governments cannot maintain as much secrecy in building ships as in manufacturing armaments for land warfare. Naval forces cannot be used in peace time as freely as army units for civil purposes; nor is it possible to train as many men for supporting duty in the navy as in the army. Naval disarmament, though not a simple technical matter, is thus by no means as complicated as land disarmament; and one might expect it to have a better record.[53]

Under the Treaty of Versailles, Germany had to destroy all vessels under construction, disarm or destroy her cruisers and fleet auxiliaries, refrain from building submarines and naval aircraft, and destroy the fortifications and the naval bases by which she had dominated the sea routes. Very little replacement was permitted—a serious restriction because of the rapid obsolescence of modern ships of war. Germany was also forbidden to have naval conscription, and was therefore unable to build up a naval reserve. The Allies had effectually crippled German sea power.

Meanwhile two new forces had emerged—the United States and Japan. The United States had embarked on a great naval building program in 1916, partly because Great Britain had interfered with what America considered to be its legitimate neutral trading rights and because during the war Japan had extended its influence on the mainland of Asia and threatened European and American interests in China. Moreover, the Anglo-Japanese Alliance, formed in 1902 and renewed in 1911, was due to expire.

[53] A. Engeley, *The Politics of Naval Disarmament* (Williams & Norgate, London, 1932), has a good general discussion of the question; also, Benjamin H. Williams, *The United States and Disarmament* (McGraw-Hill Book Co., 1931).

Some parts of the British Empire were in favor of its renewal; other parts, especially Canada, believed that to continue the Alliance would seriously injure Anglo-American relations. The new situation which had arisen in the Pacific, as well as a possible naval rivalry resulting from the Anglo-American controversy over neutral rights, induced the Secretary of State to summon the Washington Conference, which met on November 12, 1921.

After considerable discussion the Conference agreed to limit capital ships to 35,000 tons and guns to 16 inches (with two exceptions); aircraft carriers (limited in most cases to eight-inch guns) were not to exceed 27,000 tons. It drew up rules for the replacement of these types of vessels; these rules were important in limiting naval expenditure, because the rapidity of inventions threatened to render warships quickly obsolete. The control of the rate of replacement was, therefore, a success of the first order.[54]

The attempt to abolish the submarine failed. Japan was willing (reluctantly, it is true) to accept the ratio for submarines which had been adopted for capital ships, i.e., Great Britain, 5; United States, 5; Japan, 3; France, 1.75; Italy, 1.75. But the French refused. They realized that during the World War of 1914–1918 the submarine had challenged the battleship and that "auxiliary craft" were no longer merely auxiliary but were "vitally important." Had not the German submarine campaign brought Great Britain, despite its superiority in capital ships, almost to defeat? Moreover, France expected a *quid pro quo* in the form of a security arrangement for Europe, in return for its participation in naval limitation plans. But Mr. Hughes refused to link naval questions with the European problem. France therefore would not agree to accept an inferior position in submarines, and failure to limit submarines ended the hope of limiting destroyers and cruisers.

The Treaty also provided that no new fortifications and naval bases were to be established in the Pacific (excluding Hawaii and Singapore); it prohibited any increase in facilities for the repair and maintenance of naval forces; and it forbade any increase in coastal defenses. Japan would accept the 5 : 5 : 3 ratio only on condition that Great Britain and the United States agreed "not to add to their existing fortifications and naval bases in those areas in the Pacific in which they might have constituted threats to Japan's existing spheres of influence."[55]

The Treaty was to last for ten years. At the same time the

[54] Hugh Latimer, *Naval Disarmament* (Royal Institute of International Affairs, London, 1930).

[55] Latimer, *op. cit.*, p. 8.

Nine-Power pact, a political agreement in which the powers agreed on policies relating to China, and the Four-Power pact, in which Great Britain, France, the United States, and Japan agreed to consult each other in the event of a crisis in the Pacific, were signed. Most authorities agree that the success of the naval limitation program at Washington was closely connected with the successful political agreement; limitation of battleships and aircraft carriers bore a close relation to political stabilization in the Far East. Failure of limitation in submarines, destroyers, and cruisers was not unrelated to the failure to provide security guaranties for France. In so far as the powers agreed upon the fundamentals of policy, they surmounted the technical obstacles which confronted the naval experts; but where they could not agree upon policy, they reached no technical agreement.

By failing to limit *all* categories of vessels, the Conference left the way open for an Anglo-American "cruiser race," which began to strain relations between the two countries, especially by the year 1926. To remedy the situation, President Coolidge invited the Five Powers to a conference at Geneva in 1927. At the outset France wished to discuss security, but the Anglo-Saxon powers insisted upon confining the Conference to technical problems of reduction and limitation. The French therefore refused to take part; Italy, which was demanding Franco-Italian naval equality, also absented itself. Only three powers therefore attended the Conference, which opened in an unfortunate atmosphere and soon was in difficulties over cruisers.

The United States desired to keep the 10,000-ton cruisers with eight-inch guns in order to offset the disadvantage under which it labored by reason of its small number of naval bases. Britain was anxious to limit the number of 10,000-ton cruisers with six-inch guns. The United States delegates opposed the British proposal because the six-inch gun would permit Britain to arm its merchant vessels by strengthening their decks—merchantmen could take six-inch but not the larger guns. Because Britain had the largest merchant marine, both the United States and Japan felt that the abolition of the larger cruisers in favor of smaller type would give Britain the advantage of being able to utilize merchant vessels for war purposes. Great Britain denied that "converted" merchant ships would give any great advantage in "combatant effectiveness."

The British then argued that because the British Empire was so widespread, and its lines of communications were so extensive,

it would need at least seventy cruisers in order to safeguard its essential sea routes in time of war, whatever the number possessed by the other powers. The United States replied that if Britain insisted upon this figure, the other two powers must arm accordingly and the result of a Conference called to limit armaments would be to increase them. The only way to effect a genuine limitation was to set a maximum total tonnage in auxiliary vessels (cruisers, destroyers, and submarines) of 400,000; otherwise, there would be no point in signing a treaty.

The failure of the Conference was occasioned by the following: (1) the cruiser problem, (2) the Anglo-American difference over six- and eight-inch guns, (3) the propaganda of large sections of the press and the activities of the armament firms, as revealed by William B. Shearer, who confessed his part in attempting to wreck the Conference, and (4) the inadequacy of diplomatic preparation. There had been little or no prior discussion of political objectives, and the experts who attempted to find a basis of technical parity were unable to do so. The difficulties confronting the Conference were, as the French had insisted, primarily political, and not technical and arithmetical. The real aim was security; and mathematical ratio alone bears no necessary relation to the needs of national security. The experts tried in vain to match a cruiser with eight-inch guns against a cruiser with six-inch guns. Preoccupation with "mathematical parity" necessarily led to disappointment—the world could not be saved by "faith, hope, and parity," because total resources and political objectives and alliances had to be taken into account. Norman Angell pertinently commented:

> I am rather less interested in the caliber of guns than in the direction in which they are finally going to shoot . . . . it really makes a difference . . . . who is going to be with us and who against us is important, and that depends upon policy. Merely to equate weapons, and to leave undecided the question of their use, does not solve the problem.

The failure of the Geneva Conference induced, as a natural reaction, the reassertion of the political factor. The French view that security must precede disarmament had been in large measure vindicated. The wide acceptance of the Kellogg Pact in 1928 provided a more hopeful political atmosphere and encouraged a new move for disarmament, despite a serious complication which arose out of the Anglo-French Naval Compromise of 1928.

The London Naval Conference opened on January 21, 1930. France almost immediately demanded a total of 724,479 tons, and would lower its level only provided that it could obtain added political guaranties of security. The 1929 Sino-Russian crisis had revealed the inadequacy of the Kellogg Pact and the need of further machinery. France accordingly asked Britain if it would clarify its obligations under Article 16 of the Covenant and be willing to use the British fleet against an aggressor named by the League. The British would make no commitments until they knew that the United States would modify its neutrality policy or, at least, join in consultation in the event of a crisis. Secretary Stimson would not bind his country to a consultative pact, and his stand seemed to preclude any possibility of a political agreement which would induce France to join in further disarmament plans. A breakdown occurred: France and Italy withdrew, leaving the three major naval powers once more to wrestle with the problem of cruisers, destroyers, and submarines.

The Treaty as finally adopted provided, first, for no new battleship construction before 1936; the signatories agreed to extend their "capital-ship holiday" for another six years. Certain battleships were to be scrapped, so as to enable the three nations to reduce the number and tonnage of ships of the line. Great Britain undertook to scrap five ships, the United States three, and Japan one; this step would bring the three navies nearer to the 5 : 5 : 3 ratio provided for in the Washington Conference of 1921. Secondly, the Treaty provided for maintenance of the Washington Treaty arrangements concerning the tonnage level of aircraft carriers in opposition to a British proposal to modify them, and a redefinition of the aircraft carriers to include ships under 10,000 tons. It also provided for limitation of the other categories in large and small cruisers, destroyers, and submarines. The United States received a larger tonnage in large-gun cruisers, Britain a greater tonnage in smaller-gun cruisers. In this manner, the obstacle which had wrecked the Geneva Conference in 1927 was surmounted. The United States in agreeing to a 150,000-tonnage in cruisers accepted a considerable reduction, having over 290,000 tons when the Conference met. Great Britain and the United States had favored the abolition of the submarine on the plea that it was essentially a weapon of aggression. The French and Japanese delegates claimed that it was a defensive instrument and far less costly than the battleship, which Japan proposed should be abolished. The Treaty gave Japan equality with Britain and the

United States in submarines. Japan, in return, accepted an unequal position in cruisers and destroyers but obtained a modification of the 5:5:3 ratio (applied to capital ships) to 10:10:7 for cruisers and destroyers. The ratio was not to constitute a binding precedent, and Japan's action was to be "entirely without prejudice to our attitude at the Conference to follow." Finally, the Treaty contained the so-called "escape clause," by which a signatory power, if it deemed its security threatened by the naval construction of a nonsignatory power, could give notice of the increase that it would require in its own tonnage.

The events after 1930—Japan's invasion of Manchuria, the breakdown of the World Economic Conference, the failure of the Disarmament Conference, the economic crisis and its accompanying emotional stresses and strains, the Italian aggression in Ethiopia—together chilled the political climate in which the London Naval Conference of 1935 had to meet. At the preliminary conversations in 1934 Japan demanded naval equality, and thereafter refused to modify its position.

The Japanese viewpoint was that (1) Japan did not accept the 5:5:3 ratio as final at Washington in 1921; the ratio had been modified in 1930, and Japan had served notice that it would reserve the right to re-open the question; (2) the progress of naval science had altered the situation in the Pacific by increasing the radius of action of naval vessels; Japan therefore had to strengthen her defensive equipment; (3) Japan had to reckon with the growing power of the Soviet Union, which had submarines and fighting planes concentrated in Vladivostok only 500 miles from Tokyo and Osaka; and (4) prestige and national honor required that Japan enjoy naval equality.

The American viewpoint was that Japan's claim to naval equality was inadmissible because (1) Japan did not have the length of sealanes to defend that Great Britain did, nor two ocean fronts to guard as did the United States; (2) no nation could successfully blockade Japan; (3) there had been no example of aggressive naval action against Japan in the last half-century; and (4) Japan's national income did not justify naval parity.[56]

The London Naval Conference which met in December 1935 thus had little hope of success from the beginning. No new arguments were brought forward during the ten days of discussion, and no amount of effort on the part of the other nations could

[56] Admiral William V. Pratt, *Foreign Affairs*, July 1934.

persuade Japan to modify her position. On January 15, 1936, the die was cast: France, Great Britain, Italy, and the United States rejected the Japanese claim for equality, whereupon Japan withdrew from the Conference.

On March 25, the British, French, and United States delegates signed a Treaty which reflected the growing anarchy in international relations. Compared with the Washington (1921) and London (1930) treaties it appears as a pale, ineffectual ghost. Although it provided for a measure of qualitative limitation, it omitted the most important matters. No limitation remained on the number of battleships, aircraft-carriers, cruisers, destroyers, and submarines which the nations might build and no mention was made of ratios. Nor was that all. The few agreements which the Conference had been able to reach were weakened by an "escape clause." Any signatory on grounds of national security requirements might notify other parties that it would no longer observe the restrictions imposed by the Treaty. This step was taken by Great Britain on September 3, 1939, when it informed the United States that in consequence of the war with Germany it suspended "all of the obligations of the said treaty."

ATTEMPTS TO LIMIT THE PRIVATE MANUFACTURE OF ARMAMENTS

Many people believed that the private manufacture of armaments has been and is an outstanding cause of wars, and that international security might be strengthened if the munitions industries were nationalized or their profits drastically reduced. Undoubtedly armament firms have materially added to the world's fear and unrest, and it is significant that the statesmen and experts who drew up the League Covenant included in this document Article 8, which reads: "The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections." And the Temporary Mixed Commission in its 1921 report condemned the system of private manufacture of arms because firms had been active in fomenting war scares, had attempted to bribe government officials at home and abroad, had disseminated false reports concerning military and naval expenditures of different countries so as to stimulate further armament expenditure, had sought to influence public opinion through control of the press, had organized international armament rings to play off one country against another, and had created international armament trusts to increase the price

of armaments sold to governments. Ample evidence exists to support these charges,[57] but unless one remembers that armament firms are government-sponsored and government-encouraged he will misunderstand the basic problems.[58] As far back as 1887 a British cabinet minister had claimed that armament firms were an important element in the nation's defense. Nearly sixty years later the Minister of War said substantially the same thing—that these private firms were part of Great Britain's reserves and to abolish them would be to deal a fatal blow to British security. The United States War Department has defended the private system and has opposed the nationalization of manufacture of armaments. And governments permit private firms to fill orders for foreign governments, even though the guns, ships, airplanes, and munitions which they make may later be turned against the manufacturing country and thousands of men may be killed by the armaments made in their own land by their fellow nationals. War departments justify the system by saying that national security requires that private firms keep operating, which they can do only by also catering to foreign markets.

Governments award honors and titles to important persons in the armament business. They grant direct and indirect subsidies. They give contracts to different firms and not necessarily to those who produce most cheaply, so that in wartime they may have a sufficient number of producing units to take care of the tremendous expansion in output required. They give private firms the results of their research into complicated and technical problems of armament and munition manufacture. They even encourage banks of their own country to finance orders abroad, and have gone so far as to provide guaranties from national treasuries. For example, the French government supported loans to Russia, Bulgaria, Poland, Yugoslavia, and other countries in order to enable these nations to buy munitions from French firms.

Governments have assisted private companies by releasing the latest designs of war materials in order that firms may supply foreign countries with the most up-to-date products. In April 1934 an American firm wrote to the government of Peru that it could furnish "the most modern fighting unit of its type ever developed—a type furnished only to the United States Army Air corps. . . . . Provided that we have a contract for at least ten

[57] Details are necessarily omitted from this volume.

[58] P. J. Noel Baker, *The Private Manufacture of Armaments* (Oxford University Press, 1937, New York), pp. 56–81.

planes we will be able to secure permission from the United States government to build for Peru."

The Nye Commission found that the United States War and Navy departments permitted private companies to sell to foreign countries planes and engines which were being constructed for the United States government so that the American manufacturers could "make prompt delivery" and thus keep their factories in operation. It is charged that some companies "may have supplied military secrets in order to secure foreign orders." Governments lend their experts to foreign governments in order to enable the latter to modernize their navy, army, and air forces. They permit private firms to make use of their own army and navy officers or ex-officers to serve as agents. We have the curious spectacle of men who as high military and naval officials have been entrusted with important military secrets later serving as commercial agents to sell armaments to foreign markets. The United States government even permitted some of its vessels to demonstrate the guns of the Driggs Company to the Turkish government. The private manufacturers of armaments therefore have grounds for grievance when public opinion accuses them of being villains, profiteers, and traitors. However unethical and corrupt many of their practices may be, they can claim that governments regard them as important and even indispensable elements in national security. Yet there must be something fundamentally wrong in the world when governments defend an armaments system which national and international commissions and responsible statesmen have condemned.

ATTEMPTS TO LIMIT THE PROFITS OF ARMAMENT FIRMS

If it is necessary to use private firms for national defense, may not some of the evils be overcome by taxing excessive profits made from the expansion of industry in war time? Unfortunately, the problem is simpler to answer in theory than to remedy in practice. Take for example the bill introduced into Congress to take away supernormal profits by a 95 per cent tax on the difference between war-time and peace-time profits. Critics claimed that taxing war profits would not prevent war booms, and that there was no evidence to show that any such taxation could be effective. They pointed out that after the last war interminable controversy developed over "valuations." If a company valued its plant at one million dollars, and the Bureau of Internal Revenue valued the plant at $400,000, there was endless controversy. Com-

panies increased their depreciation figures in order to avoid paying taxes, and probably exaggerated their overhead costs and padded their estimates. Tax evasion seems to have been comparatively easy. Some companies increased their costs by paying extra salaries and even by making extraordinary allowances for such pleasantries as cigars, liquors, and "entertainments." For these and other reasons the Senate Munitions Committee reported: "We must guard against a blind belief that all profiteering can be ended by proposals for wartime taxes and industrial control."[59]

Finally, as the War Department had emphasized, it is more important to win a war than to save money, and unless a country is prepared to accept wholesale regimentation, it must resign itself to permitting wars with profits to war industries or boldly face the alternative of nationalization. World War II proved the truth of this assertion.

NATIONALIZATION OF MUNITIONS INDUSTRIES

Proponents of nationalization of munitions plants claim that governmental control would eliminate the undesirable activities—bribery, propaganda, false rumors, international trusts, high costs and excessive profits—associated with private manufacture, decrease the international traffic in arms, and reduce lobbying for heavier armament expenditure. Most of them admit that the government-owned plants could supply the military and naval requirements in peace time but that it would be uneconomical to have "publicly-owned establishments adequate for war-time needs." They add that nationalization would materially reduce the causes of war, especially if shipment of arms to belligerents were forbidden.

Critics of nationalization proposals assert: (1) Group pressures would not be eliminated, because the communities in which government plants were situated would resort to lobbying in order to maintain the establishments at full capacity. (2) Governments could not expect the close co-operation of private industry which it now enjoys if it turned away from private firms and, unless the government is prepared to regiment most if not all of the hundreds and thousands of processes which are involved, it must to a considerable degree depend upon the goodwill and co-operation of private enterprise. (3) The record of countries in which the

[59] Quoted in Stephen and Joan Raushenbush, *War Madness* (National Home Library Foundation, Washington, D.C., 1937), p. 148.

government maintains control over the armament industry—Japan, Soviet Union, Germany, and Italy—does not support the view that the private control of arms is a major factor in promoting wars. As Shepardson and Scroggs put it, "the totalitarian states of Europe . . . . were closing in on the private profits of war industry, and at the same time they were making themselves the greatest known threat to the peace of the world." (4) Most nations do not produce their armaments but depend for their supplies upon ten manufacturing countries, and any step which deprived them of the right to buy armaments would constitute a serious threat to their security. The problem of nationalization thus merges into the problem of controlling the international traffic in arms.

ATTEMPTS TO CONTROL THE INTERNATIONAL TRAFFIC IN ARMS

Benjamin Williams lists three main reasons for attempting to meet this evil: (1) Means must be provided to safeguard colonies, mandates, and other possessions from disorder and revolution. (2) A successful disarmament treaty will require measures to limit and supervise the amount of war material in each country, involving a supervisory body to see that governments fulfill their obligations and do not obtain munitions from other countries. (3) Shipment of arms from neutral countries in war time must be controlled. The important question is whether neutrals should refrain from sending arms to both belligerents or should shut off supplies for the aggressor nation only.

The international conventions signed at Brussels in 1890 and at St. Germain in 1919 need not be reviewed here. The 1925 Convention, signed by forty-four governments, designated five categories of arms: "(1) arms, ammunition, and implements of war exclusively designed for warfare; (2) arms and ammunition capable of use for both military and other purposes; (3) war vessels and their armaments; (4) aircraft and aircraft engines; and (5) gunpowder and explosives, except common black gunpowder; arms and ammunition without military value."[60] Under it, government licenses were necessary for exports; normally shipment might be made only to governments, though in certain cases they might go to private manufacturers; and the government of

[60] B. H. Williams, *The United States and Disarmament* (McGraw-Hill Book Co., 1931), p. 378.

the importing state must give its consent in a signed order. A special regulation was adopted for particular zones in Africa and in the Near East; and more technical matters were included in the Convention.

For several years the United States held aloof, the Senate refusing to consider the Convention until 1934, when it voted a conditional ratification. In the same year the American government proposed a far-reaching Draft Convention which provided for: (1) strict inspection and supervision of manufacture and trade; (2) licenses, renewable every five years, for private manufacture; (3) licenses, for export and import of arms; (4) a Permanent Disarmament Commission at Geneva, which should receive from the signatory powers lists of state armament factories, copies of licenses to private manufacturers, lists of orders received by the state and licensed factories, information as to manufactures and copies of all import and export licenses issued; (5) empowering the Commission to examine the information, set up a publicity system, make special investigations, and establish a permanent and automatic system of inspection within the boundaries of the signatory powers. The Nye Committee also made several far-reaching recommendations to prevent companies from shipping arms in violation of national embargoes and treaty obligations.

It should be obvious that little success will attend efforts to reduce the international traffic in or the private manufacture of arms while the danger of war still exists. The traffic and the manufacture, attended though they are by heartless greed and callous indifference to human suffering, are the outcome of the prevailing international anarchy. It betrays a poor sense of proportion to condemn the armament firms and at the same time permit governments to organize for and to precipitate war. Until the political conditions of the world improve, talk of controlling traffic in arms will remain ineffective.[60a]

PROPAGANDA

Because of the growing importance of propaganda in modern society, and especially in international relations, another urgent question must be answered if men are to have peace. James P. Warburg puts the matter thus: We need freedom of information if the nations of the world are to understand one another, and

[60a] Engelbrecht and Hanighen, *Merchants of Death* (Dodd, Mead & Company, New York, 1934), p. 8.

yet we need to prevent this freedom from providing the means of waging "wars of nerves."

What international agreement is necessary in order that freedom of information may become a reality and provide the basis for enduring peace? And what sort of disarmament treaty can be drawn to make sure that psychological warfare aggression shall not menace the peace?[61]

He proposes first an affirmative agreement on freedom of information,[62] which is along the same general lines as the proposals made by White and Leigh which we will examine in the chapter on Communications. This agreement, for example, would enable Americans and Russians each to send news, reports, pictures, motion pictures, radio broadcasts, etc., to the other country. Of American policy toward Russia, he asks

Are we willing to give free entry to Soviet motion pictures . . . . , or are we afraid to let the Soviet Union tell its story to the American people? If we are, then we cannot expect the Soviet Union to let us tell our story in Russia.[63]

In order to prevent the abuse of this freedom, Warburg proposes a supplementary disarmament agreement, in which the signatories shall agree to outlaw the following acts which are specifically defined thus:

Acts of psychological aggression.

a) Discrediting, or attempting to discredit, the government of another signatory nation, especially among its own citizens;

b) Dividing, or attempting to divide, the people of another signatory nation among themselves;

c) Discrediting, or attempting to discredit, the structure and philosophy of government, or the social or economic way of life of the people of any other signatory nation;

e) Stimulating, or attempting to stimulate, prejudice, hate, and discrimination, or any of them, against any racial, social, economic, political, or religious group anywhere in the world. . . . .

Each signatory will pledge itself not to employ secret agents of any sort whatsoever within the territory of another signatory.[64]

[61] James P. Warburg, *Unwritten Treaty* (Harcourt, Brace & Company, New York, 1946), p. 150. During the war Mr. Warburg was for a time Deputy Director of Propaganda Policy in the Office of War Information.

[62] *Ibid.*, pp. 152–54. [63] *Ibid.*, p. 155. [64] *Ibid.*, pp. 158–59.

Warburg admits that such an agreement will not be easy to attain or to enforce! In countries which permit freedom of the press it may be unconstitutional for governments to take any "preventive" action, but such a country could take any number of several steps to "correct misrepresentations of fact and dissociate itself from the campaign." And governments which do not permit internal criticism at home may well hesitate to permit the kind of news exchange here recommended. Nevertheless, the attempt should be made, for its principles seem to be sound, difficult though they may be to apply.

We must thoroughly realize, however, the secondary or derivative nature of Warburg's plan. If disarmament is effected in the military, naval and air branches of armaments, and, of course, above all in the field of atomic energy, by means of adequate security arrangements discussed above, we may expect to have considerable success in the province of psychological disarmament. But if the world fails in the former task it will surely fail in the latter. The reason is clear. Ideas may be instruments of truth, or they may be weapons of war. Under the balance-of-power system which now obtains in practice it is often difficult to know whether a group is sincerely working to ameliorate social conditions in the United States or is engaged in subtle subversive propaganda. Race prejudice may be the home-grown variety of the South (or the North or the West) or it may be deliberately fostered by disaffected agents. In other words one cannot be sure where constructive criticism of a society and/or its government ends and destructively designed criticism begins.[65]

The problem then reveals itself thus—to make certain that ideas cannot be used to further military conquest, to insure that freedom of ideas does not endanger national security, and to restore ideas to their major function—namely, to serve as a means of finding truth and thereby promote human welfare. If fifth-column agents have no prospect of being followed by the armed forces of their government bent upon aggression or of being sucked into the vicious arena of competitive armaments, physical and psychological, they will soon cease to play their unsavory role, and will become as rare as fifth columnists from New York operating in Connecticut or secret agents from Texas plotting in Illinois to overthrow these two states!

[65] I have dealt with this question at some length in "Civil Liberty after the War," *American Political Science Review,* February 1946, pp. 70–79.

INTERNATIONAL CONTROL OF ATOMIC ENERGY

The first step beyond purely national control, as embodied in the May-Johnson Bill, was contained in a report by President Truman, which announced that the atomic bomb was too dangerous to be let loose in a lawless world and that Great Britain, Canada, and the United States, which possessed the secret of its production, intended to retain control of the secret "until means have been found to control the bomb so as to protect ourselves and the rest of the world from danger of total destruction." This announcement followed a conference of Prime Minister Attlee, Prime Minister Mackenzie King, and President Truman during the week of November 26, 1945. The four-point program announced by the three heads of the governments called for the establishment of a special commission of the United Nations to investigate the international implications of the atomic bomb, intellectual co-operation on an international scale to enable friendly exchange of basic scientific information, to promote a convention to eliminate atomic energy and other mass-destructive weapons from the arsenals of nations, and to propose safeguards to insure the observance of such international agreement.

Many critics claimed that this program, built upon the hypothesis that Russia must be excluded until its government had given clearer evidences of peaceful intentions, was based upon the fallacy that the three countries in question did hold the secret and also that in some way or other the Russians could be scared into "respectability."

Others proposed that the secret of the bomb and/or the manufacture of the bomb be handed over to the Security Council of the United Nations, but the existence of the veto power and the weakness of the United Nations from the point of view of security made this proposal unacceptable.

Governor Stassen suggested that the United States propose an amendment to Article 43 of the United Nations Charter which would give the Security Council "the right and duty to establish and maintain a small United Nations Air Force of five bomber squadrons and ten fighter squadrons . . . . manned by volunteers from the various member nations, with no more than one-fifth of the personnel of any squadron to be of any one national background." These squadrons were to be located at five different suitable bases around the world and would be financed by a small tax on all international travel. An amendment to Article 26 of the

Charter would forbid further manufacture of the atomic bomb after the required number had been taken over by the World Stabilization Force. An atomic commission established by the Security Council would have the power of inspection and of enforcing the Charter provisions. No person or body could engage in atomic research without first registering with this Commission.

A further proposal centered around an adequate international inspection coupled with an agreement to limit the number of bombs which might be made by the contracting governments. This proposal was criticized by scientists on the ground that the inspection of itself would not under present circumstances solve the problem. Raymond Swing urged that during the period of discussion the United States should clearly indicate its desire for peace by declaring that it would hereafter use the atomic bomb only under the authority and the strength of the Security Council, and it should also call a conference of United Nations members for the purpose of reviewing the San Francisco Charter in order to give the Council powers commensurate with such responsibility. Others suggested that the United States should discontinue the manufacture of all atomic bombs until the United Nations Atomic Energy Commission, established on January 24, 1946, had made its recommendations for control. Many people were coming to the conclusion that the only safe solution was to abolish the production of atomic weapons rather than keep them even for a strengthened world Security Council to use. The bomb is "too indiscriminating and destructive a weapon" to use against a small nation and too terrible to be used on a wide-scale basis against great nations, in view of the high degree of industrial concentration now characteristic of the leading powers. If complete discontinuance of making the bomb seemed unacceptable, a monopoly of the manufacture and use of the bomb in strictly limited quantities should be put in the hands of a world authority.

These conclusions found expression in the now famous Acheson Report released on March 16, 1946, by the Department of State. The Report was drawn up by a board of five experts, David E. Lilienthal of the Tennessee Valley Authority, J. R. Oppenheimer, the outstanding physicist, and three important industrial authorities. They proposed an international agency which should have exclusive authority to conduct all intrinsically dangerous operations in a nuclear field. This international agency might take the form of a United Nations Commission or an international corporation or authority, referred to in the report as the Atomic

Development Authority, which would own and lease property and carry on mining, manufacturing, research, licensing, inspecting, selling, and any other necessary operations. It would have control over all activities relating to raw materials, the construction and operation of production plants, and the conduct of research. It would conduct continuous research so as to have the most up-to-date knowledge of new deposits of uranium and thorium. It would explore new methods of recovering these materials and in so doing would eliminate rivalry between nations for these vital raw materials.

The Committee found itself, despite its initial predilections, forced to the view that direct international authority was required. Some of its members at least had at first believed that a system of international agreements to eliminate atomic warfare would be sufficient, but concluded that the problem of providing a sufficient force of inspectors was too complex to admit a satisfactory solution. This type of agreement would not eliminate competition for raw materials or atomic energy, and the presence of many "foreigners" with their "special privileges and immunities inquiring specifically and generally into industrial and mining industries" would give rise to serious friction.[66]

THE BARUCH PROPOSAL

On June 14, 1946, Mr. Bernard Baruch, on behalf of the United States government at the first meeting of the United Nations Atomic Energy Commission made a number of important proposals which were designed to afford a solution of the grave problem. They included:

1. The creation of an international atomic-development authority, to which should be entrusted all phases of the development and use of atomic energy.
2. Adequate system for control of atomic energy, including the renunciation of the bomb as a weapon.
3. Adequate punishment for the violations of the rules of control. These violations must be stigmatized as international crimes.
4. Cessation of manufacture of atomic bombs.

[66] See *A Report on the International Control of Atomic Energy*, Department of State Publication 2498, March 16, 1946; also published by Doubleday & Company, Inc., New York, 1946. For discussion of the far-reaching consequences of atomic energy see chapter i, pp. 19–23.

5. Existing bombs to be disposed of pursuant to the terms of the treaty.
6. The authority to have possession of full information as to the "know-how" for the production of atomic energy.

In his opening statement Mr. Baruch emphasized that punishment for violation of the rules of control "lies at the very heart of our security system," and that this subject in turn "goes straight to the veto power contained in the charter of the United Nations so far as it relates to the field of atomic energy." And in words which admit of no misunderstanding he made the vital point that there "must be no veto to protect those who violate their solemn agreements not to develop or use atomic energy for destructive purposes." This modification was, under the Baruch plan, to be confiffined to the atomic-energy problem, and had no reference to the wider aspects of the veto power.

He developed some implications of the proposal to give full authority to an international atomic-energy authority. This body should have

1. Managerial control and ownership of all atomic-energy activities potentially dangerous to world security.
2. Power to control, inspect, and license all other atomic activities.
3. The duty of fostering the beneficial uses of atomic energy.
4. Responsibility for research and development.[67]

The nations should define violation of the proposed international agreement to include

1. Illegal possession or use of an atomic bomb.
2. Illegal possession or separation of atomic material suitable for use in an atomic bomb.
3. Seizure of any plant or other property belonging to or licensed by the authority.
4. Willful interference with the activities of the authority.
5. Creation or operation of dangerous projects in a manner contrary to, or in the absence of a license granted by, the international control body.

[67] For the text of the Baruch proposals, see *The First Report of the United Nations Atomic Energy Commission of the Security Council,* December 31, 1946, Appendix I. (The United States and the United Nations Report Series 8, Department of State.)

The Baruch Report also set forth the procedure for setting up the new authority. The Atomic Energy Commission would recommend the plan as adopted by the Commission to the Security Council. The Council would then refer it to the General Assembly. The General Assembly in turn would pass it on to the member states of the United Nations in the form of treaties to be ratified by them according to their respective constitutional procedures.

If and when these steps shall have been taken, the United States

will join the other Nations in making available the further information essential to that organization for the performance of its functions. As the successive stages of international control are reached, the United States will be prepared to yield, to the extent required by each stage, national control of activities in this field of authority.

Mr. Baruch admitted the revolutionary implications of an atomic-control system which would transcend national sovereignty rights, but added that the democratic peoples of the world "are not afraid of an internationalism that protects" and are "unwilling to be fobbed off by mouthings about narrow sovereignty, which is today's phrase for yesterday's isolation." The case for international government for specifically defined purposes could not have been more strongly urged. And the following words showed the wide implications possible:

Before a country is ready to relinquish any winning weapons it must have more than words to reassure it. It must have a guarantee of safety, not only against the offenders in the atomic area, but against the illegal users of other weapons—bacteriological, biological, gas—perhaps, why not?—against war itself.

This wise and statemanlike document may be destined to take its place among the classics in the literature of political science. It owes much to the scientists themselves, who have done an incalulable service in helping to educate public opinion, to the Acheson Committee, and to many hundreds of unnamed people who debated the matter with the great seriousness occasioned by the gravity of the challenge. The proposal marks a watershed in modern international relations. If adopted, it will usher in the beginnings of international government; if rejected, the world will have chosen to hug its political superstitions to its own inevitable disaster.

The Soviet Union opposed the abolition of the veto in atomic-

energy control, and it was supported in its stand by the Polish delegate, Dr. Oscar Lange. Russia suggested an international convention outlawing atomic weapons and providing that existing stocks of bombs be destroyed within three months after the convention becomes effective.

The Soviet and American positions were clearly far apart and the Atomic Energy Commission thereupon set up a Scientific and Technical Committee to study the scientific and technical aspects of the problem of control. The Committee's report on safeguards contained in Part V of the first report of the Atomic Energy Commission to the Security Council which appeared on December 31, 1946, was agreed to by all of the members except Russia and Poland, which abstained from voting. Its main recommendations were: (1) a United Nations agency with power to inspect mines, plants, and research laboratories, (2) international supervision over mines and plants owned and operated by sovereign states, (3) international management of atomic plants, (4) international monopoly of all atomic weapons and of research, (5) punishment by a world force of any state willfully violating the atomic treaty, (6) periodical reports from every member state giving information of the location and output of every mine producing uranium or thorium, (7) flying inspectors to be permitted to cross any frontiers and United Nations air surveys must be built up, (8) ground surveys to be made in order to "check on output of mines and large industrial layouts and to conduct geologic surveys," (9) inspection must take into account mining operations, industrial installations, power supplies, water supplies, and radio-active wastes.[68]

Well might *World Report* write that "radical measures of a sort never seriously proposed or even contemplated in the past, are presented to a world conference with the full weight of the United States, Great Britain, France, China, and a majority of other nations behind them.[69]

On February 18, 1947, Mr. Gromyko submitted twelve amendments. The USSR agreed that international control of both military and nonmilitary developments of atomic energy were technically feasible and should be controlled by a single agency. It agreed that United Nations inspectors must have the right of inspection not hindered by national or local authorities "on the basis of their own rules, which should provide for the adop-

[68] *Ibid.*, pp. 45–71.
[69] *World Report*, January 14, 1947, p. 10.

tion of decisions, in appropriate cases, by a majority vote." It agreed that violations of atomic controls could be treated as international crimes and Article 51 of the United Nations Charter could be applied to them, thereby providing for the right of individual and collective self-defense. However, the phrase "in appropriate cases" seemed to leave a loophole and the Soviet Union still insisted upon retaining the veto in the Security Council for purposes of enforcement.

The British representative suggested that three fundamental differences of view remained: (1) The Soviet claim that atomic weapons must be destroyed before international control was established; (2) that the proposed international body be not given research and development functions; and (3) that no abolition of the veto be permitted.

While discussion was still continuing, Mr. Gromyko delivered another speech before the Security Council on March 5 in which he charged that certain governments had been guilty of deliberate delay, that it was necessary to prohibit the use of the bomb before international control and inspection could be set up. He urged that the United Nations should not have the right of control and inspection in those branches of industry not connected with the production of atomic energy for this would mean unlimited interference in national economic life. "In reality to grant to the control organ unlimited right and possession and management of the atomic establishments cannot be looked upon as anything but an attempt by the United States to secure for itself world monopoly in the field of atomic energy." This statement represented a serious blow, but the United States, late in March 1947 submitted a "working paper" to the twelve-man commission in an attempt to reach an accord with Russia on this vital problem. It suggested that probably only 200 technicians would be required to make geological surveys of thorium and uranium resources throughout the world and that inspection would therefore be confined to fairly well-designated regions. The "working paper" contained other highly technical material and was being studied by the Soviet Union at the latest date of information.

CONCLUSION

At the United Nations Security Council's Commission on Conventional Armaments in March 1947, the United States and Great Britain supported the policy which, as we have seen above, they rejected twenty years earlier. Sir Alexander Cadogan out-

lined three principles which he said were necessary for the successful progress of regulating armaments: (1) The need of international confidence; (2) the completion of international arrangements for collective security contemplated under Article 43 of the Charter wherein the United Nations members undertake to provide armed forces and other facilities to maintain international peace and security; and (3) the establishment of an effective system of international control and verification. In other words, security must precede disarmament.

Sir Alexander stated that the League of Nations had failed in its disarmament attempts because it was unable to guarantee collective security, and this error the United Nations must not repeat. Both the British and the American delegates urged the importance of quickly reaching special agreements referred to in Article 43 so as to make an adequate military force available to the United Nations.

Had the two Anglo-Saxon powers taken this stand in the early 1920's when France so clearly demonstrated the need for security before disarmament, perhaps the history of the world would have been different. And it is discouraging to find that the Soviet Union in 1947 has assumed the philosophy of the Anglo-Saxon governments of a generation ago, namely, that disarmament need not depend upon the establishment of a security system. It appeared as if this problem would have to be argued through all over again at a time when urgency was of the essence. Clearly, the establishment of an adequate system of security will demand a strengthening of the United Nations, and the question arises whether this step can be accomplished.

Those who believe that the United Nations Charter may become an effective instrument for the preservation of world peace point out that the Security Council has the primary but not the sole responsibility in this task. For example, under Article 11 the General Assembly has the power to recommend both to the Security Council and to individual member states immediate collective action in defense of the peace. Also Article 51 reads:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense, if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. . . . ." If, therefore, the rest of the member states were determined to bypass an unreasonable use of the veto it is argued that they could do so under terms of Article 51.

Senator Austin has claimed that if a nation possessed the atomic bomb in violation of an agreement for the control of atomic energy it could be regarded as the equivalent of an armed attack upon the other signatories; the treaty could also indicate other types of violation as within the meaning of the term "armed attack"; thus the members of the United Nations could take collective action despite the veto. The Charter also proclaims that members of the United Nations must settle their international disputes by peaceful means and that they shall refrain from the threat or use of force against the territorial integrity or political independence of any state. If, in the judgment of other members, a veto was used for the purpose of permitting a member state to threaten the independence of another state, these basic purposes could be invoked as against the persistent and unreasonable use of the veto.[70]

[70] See Clark L. Eichelberger, editorial in *Changing World*, February 1947, p 2.

Chapter III

REGIONAL INTERNATIONAL ORGANIZATION

UNCERTAINTY exists, as stated above, as to whether the enforcement of security in a particular area should be a matter of equal concern for all members of the League, irrespective of their geographical setting, or should be subject to special regional agreements by which the countries most immediately affected would assume major responsibility in maintaining peace. The Draft Treaty of Mutual Assistance and the Locarno Pact were based upon the latter idea. A series of graded obligations has been suggested:[1] the countries nearest the area of aggression would undertake the heaviest responsibilities, and those in outlying parts would assist by renouncing their neutral rights of trading with an aggressor nation.

In 1933 an attempt was made to save the Disarmament Conference by working out a plan of concentric circles, as it were, of forceful opposition to aggressor countries. It was suggested that in the event of a successful Disarmament Conference the United States would not insist upon its neutral rights with an aggressor; in continental Europe the land-powers would immediately use armed force against the aggressor; Great Britain, occupying an intermediate position between the outermost and innermost areas, could impose economic sanctions without sending men to fight; and the United States, by surrendering its freedom of the seas in the interests of world peace, would enable Great Britain to place its blockading power at the disposal of the defenders of peace on the European continent without becoming involved in the thorny question of neutral rights. Unfortunately, the Senate rejected the proposal.

In 1934 the French government proposed what might be called

[1] James T. Shotwell, *On the Rim of the Abyss* (The Macmillan Company, New York, 1936), chapters vii and xii; see also Eduard Beneš, *Democracy Today and Tomorrow* (The Macmillan Company, New York, 1939), pp. 126–27.

a refined system of regional security pacts. The weakness of the universal system of guaranties lay in the fact that distant members could not be expected to undertake the same burdens as near-by nations in stopping an aggressor. American countries might well ask that European governments accept the first major responsibility in preventing aggression in Europe. The French plan provided for regional agreements within Europe: the Locarno Pact would take care of Western Europe; certain nations were to sign a Mediterranean pact; others would join in a Central European pact; and some would accede to an Eastern European agreement. That there would be overlapping is obvious. But the French hoped that these subcontinental schemes would be sufficient to prevent aggression.

These attempts were not successful; but the future may yet see the adoption of some such plan.

During the postwar period other attempts were made to form regional organizations within Europe. Most, if not all of them, were designed to supplement and not compete with the League of Nations; they included the Little Entente, the steps toward a Balkan Union, the co-operation of the Scandinavian countries, and the Baltic Pact.

THE LITTLE ENTENTE

The Little Entente was formed in order that Czechoslovakia, Rumania, and Yugoslavia might co-operate to retain what they had won in the World War of 1914–1918 and to safeguard themselves against the domination and encroachment of the great powers.[2] At the Peace Conference the three nations were referred to as "Powers with limited interests," a disagreeable reminder of their dependent position, and later were told to "reach no decision" and "undertake no action" before consulting the Conference of Ambassadors. Accordingly, the three governments during the next few years worked out methods of co-operation. At Genoa in 1922 they agreed upon a common policy and joined with Poland in order that one of their representatives might sit on all the commissions which were considering different aspects of the European economic problem. They gained here the right of continuous representation on the Council, and thereafter continued the method of rotating representation at the Hague Conference. They began

[2] See John O. Crane, *The Little Entente* (The Macmillan Company, New York, 1931), pp. 3–15.

periodic meetings of their foreign ministers, and thereby introduced a measure of routine into co-ordinating their foreign policies.

The advent of Hitler to power in 1933 caused the Little Entente to enter into still closer relations. The members signed a new pact of organization on February 16, 1933, the object of which was "the complete unification of their general policies" and the "establishment of an organization by which this common policy shall be directed." This organization comprised a Permanent Council of Foreign Ministers, a Permanent Secretariat at Geneva, and an Economic Council. Politically the Little Entente thus showed a remarkable degree of international co-operation for several years. But political co-operation was only one side of the picture; the question arose how effective could they make economic co-operation in the face of the extraordinarily complicated problems which confronted them.

The three partners inherited a terrible economic situation after the collapse of the Austro-Hungarian Empire, which in prewar days had formed an extensive economic unit. After the Peace of 1919 this economic unity had given way to a number of passionately self-conscious national groups; the lines of international trade were broken, and the desire for national self-sufficiency and national security caused the nations of southern and eastern Europe to build many uneconomic industries.

The difficulty of putting the economic "humpty dumpty" together again may be seen from the fact that Czechoslovakia had no tariff treaty with either of the other members of the Little Entente until 1930, almost a decade after the political agreement had been signed. The reason is clear. The Little Entente powers formed an ellipse-shaped group partly surrounding Austria and Hungary, which separated them; and Austria and Hungary were a necessary element in any real economic integration of the Little Entente.

The Little Entente found that it could not solve its economic problems in regional isolation because they extended beyond the territories of its component parts to embrace central and eastern Europe. In turn the economic problem of central and eastern Europe formed part of the general European question, which was linked up with the economic situation of the whole world. Such are the limits of regionalism: it may solve certain problems both political and economic; but when more fundamental questions are involved, a solution upon a wider basis becomes indispensable and

without such a solution the achievements of regional co-operation rest upon precarious foundations and may collapse at any moment.

Recent history has confirmed the truth of this judgment. For the Little Entente collapsed when the League of Nations and Great Britain and France failed to check the onward march of Hitler's Germany and Mussolini's Italy.

THE BALKAN CONFERENCES

The Balkan peninsula has an area equal to the combined area of France and Germany and contains between fifty and sixty million people. The six nations within its confines have likewise attempted to build a regional organization in order to gain political security and promote economic and social well-being.

The idea of a Balkan Union is not new. It had been suggested as early as the latter part of the eighteenth century, and proposals along the same general line were made in 1888, 1905, and 1910. Several events subsequent to 1918 helped to advance the idea of a Balkan regional organization: the example of the Little Entente; the 1925 Locarno Pact; the settlement of the Greco-Yugoslavic dispute in 1929 over the Yugoslavic demand for an enlarged free zone at Salonika; the pact of Greco-Turkish friendship signed in the same year which ended the long and bitter rivalry between those two countries; the general influence of the League of Nations in the Balkans; M. Briand's plan for the United States of Europe; and several bilateral Balkan agreements. Individuals threw their energies into the Balkan movement. The most prominent was M. Papanastassiou, a former prime minister of Greece, who did a great deal to bring about the first Balkan Conference.[3]

At the twenty-seventh Universal Congress of Peace held at Athens in October 1929 representatives of the Balkan countries prepared the ground for later developments. At this Congress arose the major difficulties which were to confront the conference during the next five years. The Greek group advocated a confederation and a Balkan pact to outlaw war. Yugoslavian representatives were not enthusiastic about the political approach, which, they felt, would bring up the awkward question of minorities and lead to serious disputes concerning sovereignty over internal affairs. They wished to consider matters which promised the maximum amount of immediate co-operation, and therefore urged the

[3] A. P. Papanastassiou, *Vers l'Union Balkanique* (Centre Européen de la Dotation Carnegie, Paris, 1934).

consideration of economic questions, arguing that if the Balkan countries attempted to raise the standard of living by economic means the political questions would become less acute. The Bulgarian representatives insisted upon considering the problem of minorities, saying that no real progress could come in inter-Balkan relations until the several million Bulgarians who were living under the rule of other governments obtained more humane and just treatment and respect for their political and economic and social rights.

The Congress drew up an agenda for the next year and proposed the organization of a Balkan Union, the holding of conferences, and the adoption of particular measures to promote political, economic, and intellectual co-operation of the Balkan countries.

The need for economic co-operation stood out in clear relief. A committee report showed that inter-Balkan commerce amounted to only 9 per cent of the total foreign commerce of the member states. High tariffs blocked trade between the Balkan countries, and communication facilities were poor and travel was difficult.[4] Unofficial conferences between 1930 and 1934 made many recommendations, which dealt with a customs union, the unification of tariff nomenclature so that exporters could more easily calculate duties payable on imported goods, agricultural credit societies, the encouragement of co-operatives, the creation of a Balkan Chamber of Commerce, and a Balkan Tourist Federation, the establishment of a Balkan Bank, and measures to improve the cultivation of cereals and tobacco.

Other proposals included the building of railways, motor roads, telegraph lines between the capitals, the "construction of two main trunk lines (rail and road) through the Balkans," the building of bridges over the Danube, and improvement of existing railroad lines. Without doubt many of these recommendations were sound, but since the Balkan countries were all agricultural in character, produced much the same commodities, and had relatively little to export to each other, the question arose as to the fundamental basis of economic co-operation. Nevertheless tobacco conferences and conferences of co-operative societies were held. It was hoped that relations between capital and labor might be improved by extending the methods of conciliation and arbitration to industrial disputes. The proposal to set up a regional customs union met

[4] See N. J. Padelford, *Peace in the Balkans* (Oxford University Press, New York, 1935), p. 19.

with serious difficulties, for Bulgaria preferred to sign bilateral commercial treaties. Many of the recommendations remained recommendations only, and constructive action failed to materialize, owing in part to the fact that the proposals would involve the expenditure of money, which in turn would necessitate the imposition of more taxes—not an easy thing to do in a time of economic depression.

In what might be called the social and intellectual arena of human life, the conferences made many recommendations. Members realized the importance of attempting to lessen the amount of international friction caused by the teaching of a kind of history which often served merely to confirm national prejudices. They therefore proposed that a Balkan historical institute be formed which might assist in a revision of history textbooks and emphasize the common heritage of the countries in the Balkan peninsula. The conferences drew attention to the desirability of reaching a greater measure of uniformity in the laws of the respective Balkan states and reducing the element of conflict in them. Other proposals looked to the exchange of teachers, professors, and students, the establishment of a Balkan press association, the adoption of a children's charter based upon the model charter of the League of Nations, the development of inter-Balkan athletic contests, the translation of the finest works of Balkan literature, and the inauguration of "Balkan Weeks." In November 1932 a free dispensary was founded in Athens "for the treatment of nationals of any Balkan state who suffered from tuberculosis."[5]

Moreover, a number of important measures were undertaken, including the establishment of the Balkan Chamber of Commerce and Industry, a Balkan co-operative office, the Oriental Tobacco Office, the Balkan Tourist Federation, and the maritime section of the Balkan Chamber of Commerce and Industry. These, it is suggested, are not negligible achievements if one considers the short period of time which elapsed before the collapse of Europe took place. The general deterioration in the European situation was to make any further progress impossible. As with the Little Entente, so with the Balkans. It was clear that regional co-operation could play a limited part, but, if the wider foundations of society were unsound, no amount of effort on the part of a few nations, especially small nations, to strengthen their own portion of the edifice of human association could hope to succeed.

[5] A. J. Toynbee, *Annual Survey of International Affairs*, 1934, p. 509.

SCANDINAVIAN CO-OPERATION

The Scandinavian countries—Denmark, Norway, Sweden, Iceland, and Finland—developed a fine regional international co-operation, and their experiment is one of considerable interest. These nations in past centuries fought one another about as frequently as other independent powers. Their close cultural relationship did not prevent bitter national wars. Norway was arrayed against Sweden and against Denmark, and the Swedes fought the Danes. Norway and Sweden were united from 1814 to 1905; but after their separation they maintained a cool and critical attitude toward each other.

The World War of 1914–1918 forced upon the Scandinavian countries the realization of the advantages of closer co-operation. During it the King of Sweden invited the King of Denmark and the King of Norway, and their foreign ministers, to meet him to consider problems arising out of the war and affecting the three countries in their neutral status.[6] The statesmen accordingly met in frequent consultation. Especially notable was the meeting in Oslo in 1917 when King Gustav at a banquet remarked that the Scandinavian countries were realizing a new unity and extended his right hand to the King of Norway, and his left hand to the King of Denmark in a gesture which made a lasting impression.

The political co-operation begun during the war was continued in the postwar period. When the Scandinavian representatives came to Geneva they held joint meetings to consider their mutual problems and invited neighboring countries to join in a frank interchange of views; and Dutch, Luxemburgian, Belgian, Swiss, and (before the civil war in Spain) Spanish delegations frequently met with them. Belgian and Dutch foreign ministers were invited to attend the meeting of Scandinavian foreign ministers to explore the possibilities of further political co-operation. Especially after the depression in 1931 co-operation became more intimate. For some years the meetings of foreign ministers had been discontinued; but they were revived in 1932 and in 1934 Finland entered the group and Iceland followed.

Co-operation went beyond political consultation. The countries attempted to unify their legal systems, with the result that there are probably more difficulties confronting the several states of the United States in legal co-operation than there are between

[6] C. J. Hambro, "When Kings and Foreign Ministers Meet," *Le Nord*, 1938, pp. 9–28.

the five Scandinavian countries. In matters of trade, banking, bankruptcy, divorce and marriage, insurance, minority protection, joint-stock companies, the recognition and enforcement of legal judgments and award of damages, the laws are identical in the five countries. Thus, a bankrupt cannot cross a border and create extradition difficulties.[7]

The unification of national laws did not depend entirely upon official action. Bar associations, judges, and committees of experts met and framed their recommendations. What were called neighborland committees, or executives in industry, trade unions, fishing, and farming, met to discuss practical matters and to prepare identical laws. These neighborland committees appointed their permanent secretaries. Teachers and even political parties had similar organizations and methods.

Expert committees met and analyzed the raw materials and natural resources of the Scandinavian countries and exchanged information and worked out plans, so that in case a European war might again subject the northern countries to blockade they would be able to stand the siege for at least two years.[8] In social questions, co-operation went far. If a Norwegian laborer in Sweden became unemployed, he received the same unemployment assistance that a Swedish worker would enjoy; and this mutual treatment held good throughout the countries—at the end of the year the amounts were totaled up and a country out of pocket for the support of unemployed nonnationals within its borders was reimbursed by the benefited countries.

Intellectual co-operation was not lacking. The governments took a forward step in the matter of school textbooks by appointing a committee from the five countries to examine the whole problem. As a result of their report the authorities undertook to eliminate from the textbooks expressions which might hurt the feelings of neighboring countries, and to present historical facts in the same way to the children of all the Scandinavian countries. The experiment aroused the interest of the International Institute of Intellectual Co-operation at Paris.

In economic and political matters the Scandinavian countries

[7] Birger Ekeberg, "Die Nordische Zusammenarbeit auf dem Gebiete der Gesetzgebung," *Le Nord*, 1938, pp. 82–91. Also, *The Northern Countries in World Economy*, published by the Delegations for the Promotion of Economic Co-operation between the Northern Countries (Johan Grundt Tanum, Oslo, 1937), chapters xiii and xiv.

[8] H. J. Procopé, "Economic Co-operation between the Northern Countries," *Le Nord*, 1938, pp. 48–58.

tried to fit their regional organization into the wider world society. Regionalism was not an exclusive matter. They co-operated with the League of Nations and were members of the Permanent Court of International Justice, by which the important eastern Greenland controversy between Denmark and Norway was peacefully determined in 1933. The relations of the northern countries to the League of Nations and their attempts to stem the rising tide of tariffs have been dealt with elsewhere.[9]

The Scandinavian regional organization did splendid work in matters affecting the everyday life of its inhabitants. But like the Little Entente, the Balkan Union, and the Baltic Pact, it was confronted with problems too great for it. The organization was not powerful enough to be an efficient instrument of defense against the great powers; and the greater the spread of disorder and insecurity in Europe after 1935, the greater were the obstacles placed in the way of peaceful co-operation for economic and social welfare in the Scandinavian countries. When Russia invaded Finland, it confronted the other members of the region with a tragic conflict of loyalties. They saw one of their number ruthlessly treated, but nevertheless each felt constrained to consult what seemed to be its own immediate interest. They could not have both peace and continued co-operation with Finland.

THE BALTIC PACT

In 1918, M. M. Piip and C. R. Pusta published a plan for a Baltic League which was to embrace three groups—the Scandinavian, the East Baltic, and the South Baltic (Lithuania and Poland)—for the purpose of safeguarding the freedom of the Baltic Sea. A number of conferences, beginning with one at Riga-Bulduri in 1920, were subsequently held and several treaties of political accord, conciliation, and arbitration were signed.[10] The attempt to develop a regional organization did not meet with much success in those early years, partly because of the bitter dispute between Poland and Lithuania. Nor could the position of the smaller nations be entirely independent of the balance-of-power struggle among the great powers which were interested in the Baltic. The neutralization of the Aaland Islands, and of the islands in the Gulf of Finland, the grant to Danzig of the status of a free city, the award of autonomy to Memel, and the opening of the Kiel Canal

[9] See above, pp. 211–13.

[10] See C. R. Pusta, *Le Statut juridique de la Mer Baltique à partir du XIX siècle* (Librairie du Recueil Sirey, Paris, 1936).

as a result of the Peace treaties and subsequent settlements were too much intertwined with the position of Germany to enable the Baltic countries to do more than play a minor role; an attempt at closer relations would not make a major contribution without a settlement of international relations on a wider basis. The history of the years 1934–1940 was to illustrate the truth of this statement.

In 1934, after extensive negotiations, Estonia, Latvia, and Lithuania signed the Baltic Pact. This experiment in regional co-operation was designed to enable the three countries more confidently to meet the troubled situation in Europe created by the development of German military power under Hitler. The dictator in *Mein Kampf* had written of attacking Russia; and, unless he were to go through Poland, he must go by way of the Baltic. Moreover, the three countries possessed an influential German minority, among whom were descendants of the Baltic baron-landlord class which had suffered from the land reforms after 1919. The 1934 treaty between Poland and Germany made the three countries realize the need for common action. In February 1934, Latvia and Esthonia signed a close agreement by which they were to be represented at international conferences by common delegations. They were to meet at conferences at regular intervals, and a permanent joint council was to be set up in order to co-ordinate legislation and, it was hoped, political and economic action as well.

Overtures were made to Lithuania; but Estonia and Latvia were anxious not to become involved in Lithuania's quarrel with Poland over Vilna and in its quarrel with Germany over Memel. Accordingly the threefold pact signed in August and ratified in November 1934 excluded a united front on these two questions. The three powers, however, agreed that their foreign policies were to be a matter of common concern, and their foreign ministers were to confer at least twice a year. The first conference was held at Tallanin (Reval), November 30–December 1, and in January 1935 a bureau for the promotion of co-operation in economic and cultural matters met at Riga and drew up a program. The Union was to be open to other states, if the three parties agreed, and the treaty was to last for ten years.[11]

This regional experiment, like the others already surveyed, was of only limited importance. For their successful development

[11] *Annual Survey of International Affairs, 1934,* pp. 404–15.

regional agreements require a stable continental community. In so far as they attempt to combine military force against the great powers, they must fail. They can succeed as regional groups only in the economic and cultural fields; they cannot be effective instruments of defense and security. This truth was clearly revealed when Russia, which in 1934 had unsuccessfully proposed to Germany to give a joint guaranty to Finland, Lithuania, Latvia, and Estonia, forced Estonia to grant it facilities for naval and military action in the Baltic, undertook military operations against Finland, and finally absorbed the Baltic countries. The major problem of security can be settled only in the wider framework, because the major problems, although they may be touched off to war in the Balkans or the Baltic, in reality exist between the great powers. Regional agreements, to be successful, must be secondary; they must follow substantial agreement within the wider international community before they can play their subordinate, but not on that account unimportant, and creative part.

EUROPEAN UNION

The spectacle of a divided Europe with more than thirty customs barriers and twenty monetary systems, several thousand kilometers of boundaries, fragmented economic life, political rivalries, and accumulated national hatreds has caused political scientists, philosophers, and statesmen to ask whether this division is inevitable or whether the separate national groups have not been the result of mere political events. Geographically the great European plains offer few obstacles to communication and to concerted economic efforts; race differences are small; and Europe's natural wealth is great. Nevertheless Europe has lost its commanding position as the world's financial center and as the dominating political and cultural influence of the world. It has lost a large part of the world's markets, not merely because of the rise of manufactures elsewhere (involving a permanent loss) but also because its internecine struggles are ruining its economic efficiency. Culturally Europe is threatened by a submergence of the intellect and the subordination of the scientific spirit to political doctrines and warfare. The question is whether or not Europe can now preserve its finest political, economic, and cultural achievements without a transformation of its political institutions.

The Church, the Holy Roman Empire, and the scholars of the modern period have striven to maintain an adequate European unity. In 1464 King George de Podiebrady of Bohemia proposed

to Louis XI of France an alliance of all Christian nations against Turkey; and, as M. Herriot writes, one cannot help asking if the course of history would not have been completely changed if the French king had accepted the invitation to join in forming the first federation of Europe. In 1593 Sully sent his Grand Design to King Henry IV. In 1716 l'Abbé Saint-Pierre published his Plan of Perpetual Peace. In the eighteenth century Voltaire wrote on the subject, proposing a European diet and a code for the settlement of disputes. The French financier, Necker, in 1784, criticized the balance-of-power system. Eleven years later, Immanuel Kant wrote his *Perpetual Peace,* in which he described the futility of treaties between independent nations. Kant criticized the idea of a Europe with small and great states and emphasized the need for abolishing permanent armies and for establishing a federation of free nations. Spiritual ideals he regarded as most important—the moral imperative must hold sway.

The French writers, Lamartine, Michelet, and Victor Hugo, wrote on the problem of Europe. Hugo in 1869 claimed that the idea of the frontier is the first of the enslaving conceptions.

> Qui dit frontière, dit ligature. Coupez la ligature, effacez la frontière, ôtez le douanier, ôtez le soldat; en d'autres termes, soyez libres; la paix suit.[12]

Godin saw the need of extending European organization to economic problems and suggested that the kind of international organization set up to supervise the navigation of the Danube should be applied to all kinds of transportation, and proposed a treaty of peace in a document of forty-six articles.

The World War of 1914–1918, Europe's civil war in the eyes of many people, did not kill the idea of unity. In 1923, Count Coudenhove-Kalergi began preaching Pan-Europa: Europe's ills were political and not biological in nature, and could therefore be remedied by political means—by a European Federation. Under his plan England would not be included because of its overseas empire and its world interests—a Pan-Europe including England would "gain in power but lose in cohesion." The Soviet Union was not to be eligible because it was not democratic. Kalergi did not regard the League of Nations as a satisfactory instrument for European unity because in his opinion it was inorganic and was joined together "mechanically like bricks, large and small states,

[12] Quoted in E. Herriot, *Europe* (Les Editions Rieder, Paris, 1930), p. 34.

Asiatic and European, neighboring and distant, without regard to geography, history, culture, or economics." In 1925 the French Prime Minister, Herriot, announced, "If I have devoted my energies . . . . to the League of Nations, I have done so because in this great institution I have seen the first rough draft of the United States of Europe." And in his book published in 1930 he analyzed the political, economic, health, and intellectual needs of Europe, and concluded, at the end of a study, *"simplement préliminaire,"* with a number of principles: (1) The European union could be realized only within the framework of the League of Nations. (2) It should respect both the national and the international framework of society. (3) It should be open to all the European nations, including Great Britain, which had interests at the same time universal and European. (4) It should have representation of the nations on the basis of absolute equality. (5) It should work through periodic conferences and a permanent secretariat. (6) It should strive for the eradication of customs barriers and the establishment of a European credit organization. It could endure only under a régime of arbitration, disarmament, and security.

Other proposals have included those of M. Loucheur, who was particularly concerned with Europe's economic problem and analyzed European federation from the point of view of nationalization of production and the formation of cartels. But it was M. Briand's plan which aroused the greatest interest. On May 17, 1930, he sent a memorandum to the governments of Europe, proposing "some kind of a federal bond," some system which would permit Europe to "study, discuss, and settle problems likely to be of common interest." The new institution should operate within the League of Nations and be subordinate to it. There should be a regular European conference, a permanent political committee, special technical committees, and a secretariat. Nevertheless the union was not to infringe upon national sovereignty.

He proposed nine questions for discussion: (1) European economic reconstruction, through the development of cartels and the reduction of tariffs; (2) co-ordination of motor roads and canals; (3) improvement of intra-European traffic; (4) establishment of international financial credit for certain areas in Europe; (5) European labor problems, including migratory labor; (6) special application to Europe of the Health Organization methods developed by the League; (7) intellectual co-operation; (8) utilization of the Inter-Parliamentary Union; (9) the development

of European sections within the more general international bureaus.

The replies to Briand's proposal, as one would expect, were by no means unanimous. All states agreed that a greater amount of European co-operation was desirable; but they differed in their views as to the methods to be pursued. First, what was Europe? Could one say that Russia and Turkey were within Europe or within Europe and Asia? And if within Europe, why should M. Briand propose to exclude them just because they were not members of the League of Nations? Some feared that the proposed organization would weaken the League of Nations by duplicating its machinery at a time when Geneva was endeavoring to establish itself on firm foundations. They denied that security was so exclusively a European problem that it could be settled purely along European lines. British interests in the Far East and its naval relations with the United States obviously prevented Great Britain from ignoring the armament strength of America and Japan; and Britain's military and naval strength would influence the policy of France, Italy, Germany, and Poland. The development of Russian military power would influence armament and security arrangements within the framework of M. Briand's new organization. Clearly if the United States were a member of the League of Nations, Europe's security would be increased.

Subsequent events have shown that the fundamental basis of security and disarmament is world-wide and not continental, and that European union is therefore a secondary, although not necessarily on that account an unimportant, problem.

Nor were economists satisfied that Europe possessed such a degree of economic interdependence and independence as to be able to dispense with the great amount of trade which had grown up with the rest of the world.[18] Mere contiguity, it was said, counts less for economic purposes now that sea traffic and air traffic have become so important.

Still other critics questioned whether one could speak of European union and national political sovereignty in the same breath: The terms seemed to be incompatible; it would be possible to have one or the other, but not both. Finally, Briand's proposal aroused the suspicion that France was exploiting the concept of European unity in order to maintain the status quo, and with it, French supremacy. Was the European Union to be used as the League of

[18] F. M. Russell, *Theories of International Relations* (D. Appleton-Century Co., 1936), p. 469.

Nations had been, to perpetuate the disabilities of the powers defeated in 1918? So asked Germany, Bulgaria, Italy, and Hungary.

Several committees were established and proceeded to conduct inquiries into European needs. A League Committee presented a report to the Stresa Conference on the agricultural situation in Europe and the proposal to establish a system of European credit. Investigation into transportation and other phases of life might have led to useful results had it not been for the fatal obstacle imposed by political rivalries. For the proposals for a United States of Europe failed primarily because of the foreign policies of the great powers, which preferred to trust to their own armed might, despite the fatal flaws which time was to reveal in that choice, rather than subordinate their traditional methods to a more comprehensive organization. They continued to act as if they could still perform the tasks which they had been able to fulfill in the nineteenth century, and refused to adapt themselves to new conditions. Consequently they all were to stagger under overwhelming burdens imposed by another war which broke out in 1939 and which threatened not only their national welfare but all European civilization.

A EUROPEAN FEDERATION?

One cannot too strongly insist that the development of new methods of waging war makes urgent the task of uniting Europe. The restoration of smaller sovereign states would be sheer folly in the face of modern problems. But the difficulties which were pointed out in connection with Briand's plan of European union will still remain: What shall be the scope of this federation? What nations will it include? What will be the relation of the European federation to other larger units? What will be Britain's position? Can the Soviet Union be admitted? Would it agree?

However, it is not sufficient merely to point out the difficulties, for difficulties have confronted every attempt to reorganize society. What must be emphasized is the absence of any genuine alternative. The extent of the new European unity now that war has ended will depend upon circumstances; but, whatever area it embraces, the new federation must be very closely connected with other larger units of government if a further armament race and economic and propaganda rivalry are not to take place. It may be well argued that undue attention has been paid to nomenclature in recent discussions and that, whether the United Nations be so strengthened as to guarantee an international force or

whether a new series of continental units closely linked will emerge, the outcome must be more international or supra-national government, whatever its name may be.

One cannot ignore the problem of what units should comprise any proposed European or World Federation. At first sight the question seems simple—the existing nations should form the basis for the new political organization. But are they to be the nations which existed as of 1921, or those of 1940, or are they to be states which give a full independence within the new scheme to minorities which have been part of multi-national states? For example, will Czechoslovakia be a unit, or will Bohemia and Slovakia be separate political individualities? If we give separate representation in the federal system to Bohemia and Slovakia, will these two be joined in a Czechoslovakia as an intermediate agency? If Czechoslovakia is retained, we will have a three-dimensional federalism, as it were. If Czechoslovakia disappears, we will then have an independent Bohemia and an independent Slovakia. So with Poland. Shall the reconstituted Poland be the same as it was in 1921 when it had about one-half of its population consisting of non-Poles? In the new federation, should Ruthenia have an independent status or representation both in the federal system and a new or reconstructed Poland? So with Yugoslavia. Are the Croats to have direct representation in the federal system or to be part of a Yugoslavia in which Serbia, Croatia, and the other units are primarily a part of a multi-national state, which in turn will be a part of a European federal state? Macedonia has been clamoring for independence for many years. Will the European state declare an independent Macedonia? The Catalonian autonomous movement in Spain may demand direct representation in the new federal Europe and not be satisfied with being merely part of Spain, even if granted considerable regional autonomy. We can see that nationalism provides a very uncertain basis for units in the new federal government. Indeed, one can see that a federated Europe based upon states as they existed, say in 1930, would be a very different affair from a federated Europe based upon wholehearted acceptance of the theory of nationalism. One may go even farther and say that it may well be impossible to devise a federated Europe based upon the extreme theory of nationalism, because this theory carries the logical conclusion resulting in groupism. Who is to say whether the Bretons are really part of France, or whether the Flemish or Walloons are integrally part of Belgium? Mommsen

was right when he said that the history of every nation is a vast history of amalgamations. On this basis, there is nothing final in the theory of nationality to provide a clear-cut basis for a reconstituted and federal Europe.

Ultimately the question comes down to this—whether the individual owes prime allegiance to his nation or to a larger unit. In the present deadlocked condition of the world it may be that both the ideas of a strengthened United Nations and a "Union Now" labor under the difficulty that any immediate application of them would appear to be only a manifestation of power politics in another guise. So it must have appeared centuries ago to many feudal knights who saw one of their number talking in terms of himself as national king. To them the aspirant to royal honors must have seemed to be only a pretentious feudal knight trying to subordinate others to his power. The test was, and still must be, whether or not power is to be used in the service of law and order. Ultimately a strengthened United Nations able to apply sanctions against an aggressor must lead to a form of society wherein currency, raw materials, tariffs, security and armaments, and the prevention of crime on an international scale must be looked at alike as problems involving world organization. The fundamental question is whether Streit is correct in saying that this condition cannot be realized by a gradual and progressive modification of the modern state but must come through a definite and drastic transformation of political institutions.

These speculations appeared in 1947 to be somewhat remote from reality. During World War II several bilateral treaties were signed by European powers and proposals for subregional arrangements were elaborated; the British government gave general support to the idea of a western-European regional group but all these proposals seem to have remained in the paper stage in view of the emergence of the Soviet Union as the undisputed dominant power in Europe. The Soviet Government looked with profound suspicion on any attempts at a European confederation, seeing in it a possible means of rallying Europe against Russian influence, and at the time of writing the prospects of a European regional arrangement of the kind urged by Briand appeared to be bleak indeed.

Security has become a world problem more than ever, and whatever inter-European agreements are reached must be confined to subordinate economic and cultural matters. For the feeding and rehabilitation of Europe are at the moment beyond its power; and

the restoration of full economic activity will wait upon the successful functioning of such bodies as the International Bank for Reconstruction and Development, the International Monetary Fund, and others.

This judgment is confirmed by recent events. An agreement concerning the establishment of a European Central Inland Transport Organization, drawn up at London September 27, 1945, was signed by several nations, including the United States. And the United Nations early in 1947 established an Economic Commission for Europe to study ways of raising the level of economic activity to serve as co-ordinating agencies for economic projects involving more than one nation, and to bring within the framework of the United Nations certain emergency functions performed thus far by the Emergency Economic Committee for Europe, the European Coal Organization, and the European Central Inland Transport Organization already referred to. The over-all European Commission is composed of all European states which are members of the United Nations, plus the United States.

THE PACIFIC

During the eighteenth and nineteenth centuries the Western powers strove to gain a status of equality with China in their dealings with that country and to force it to give up its pretensions of superiority. Singly and in co-operation they imposed the so-called unequal treaties upon China and made a united stand when the Boxer Rebellion broke out against the hated foreigner. There was little genuine regional co-operation in these actions, rather, a struggle of one set of powers against another power. Their common action did not prevent a great deal of rivalry among their members. For a time, at the close of the century, compromise won the day and provided a temporary breathing spell; Germany, Russia, Great Britain, and France mapped out spheres of influence, and divided China into areas of economic exploitation. This action also was not an example of regional co-operation but a type of power politics which was soon to create many difficulties.

The Open-Door policy, implied in principle by the United States as early as 1843, was reasserted by John Hay at the end of the century, and superficially suggested the principle of international co-operation. But it clashed with the growing Japanese policy which became more pronounced after the Russo-Japanese

War of 1904–05, presaging Japan's insistence upon a special position in eastern Asia. The proposal of Secretary Knox in 1909 that the Manchurian railroads be neutralized had a flavor of regional co-operation; but Russia and Japan chose to see in it a method of blocking legitimate Russian and Japanese interests. A similar objection was raised to the proposal for an international consortium made just before August 1914.

In none of these proposals did China appear as a partner. The arrangements which were suggested came from foreign powers alone, and therefore lacked the fundamental requirement of a genuine regional policy which would have included China.

Between 1914 and 1920 Japan made considerable advance on the mainland. The Twenty-one Demands of 1915, the campaign in Siberia, the many loans to China during 1917–18, and Japan's further attempts to obtain acceptance of her special position in China—witness the Lansing-Ishii conversations of 1917—caused the Allies to take steps to protect their interests, which they believed to be endangered. Moreover, the threat of an Anglo-American naval race was creating considerable anxiety.

Such, in brief, is the background of the 1921–22 Washington Conference, which for some time appeared as an effort to substitute regional agreement and consultation for the prewar system of the balance of power. We have now to see whether it did substantially modify the balance-of-power system in the Orient or whether the new institutions were, in reality, a new expression of old forces at work.

The Conference adopted a four-power pact (by which Great Britain, France, the United States, and Japan agreed to maintain the status quo in the Pacific), a five-power naval pact limiting battleships and aircraft carriers, and a nine-power treaty (February 6, 1922), which dealt with the position of China. The signatory powers agreed to respect China's sovereignty, independence, and territorial integrity and not to support their respective nationals in seeking special commercial or economic rights or any monopoly or preference which would "frustrate the practical application of the principle of equal opportunity." China agreed not to permit unfair discrimination on her railroads, and the other powers undertook to respect China's rights as a neutral in case of a war "to which China is not a party." The treaty was designed to prevent any country from making any future claims to a monopolistic economic position in China; any "general superiority of rights" was forbidden.

It was the first international treaty recognizing the Open Door, which as originally conceived was limited to trade and did not apply to concessions. The effect was substantially to offset the advantages which Japan had obtained in the years 1914 to 1922; but in so far as it concerned itself only with the future and did not modify the position of existing interests, it may now be regarded as having been less far-reaching than at first sight appeared.

The Washington Conference attempted to solve two sets of problems: (1) that of naval limitation and the maintenance of the status quo as to naval bases in the Pacific; and (2) that of giving China an opportunity to achieve a national unity uninterrupted by the imperialistic rivalries of the great powers. The Nine-Power Treaty[14] was intended to remove the fear of territorial aggression from China and to give to the Open Door doctrine — essentially a doctrine of fair competition — the added strength of a formal treaty. It placed a limit upon Japan's action in China, and to that extent must have appeared to the more forward-looking group in that country as an irksome restraint. But the naval agreement gave Japan a large measure of political security in return for its acceptance of a co-operative policy in China. The 5-5-3 arrangement in battleships and aircraft and the promise not to construct naval bases in the Pacific removed the fear of a successful naval attack upon her. Moreover Japan, being close to the Chinese market, had a substantial advantage in developing its economic interests in Manchuria and the rest of China. The Naval Treaty and the Nine-Power Treaty were therefore interrelated documents. The Japanese later denied this contention, and claimed that the Five-Power and the Nine-Power conferences were entirely separate and the Five-Power and the Nine-Power treaties not interdependent. The consequence of these divergent interpretations was seen in the troublous times after 1931.

The Washington treaties seemed to be an important addition to the peace machinery of the world. The United States had not joined the League of Nations, and the League Covenant therefore did not adequately cover the Pacific area. It was hoped that the new agreements would fill the gap. Undoubtedly they worked well for almost a decade; but they were subjected to increasing strain in three ways. First, the treaties were based upon the

[14] Y. Ichihashi, *The Washington Conference and After,* pp. 196–201.

assumption that China, once freed from aggression, would turn its energies to internal construction and would continue to observe and respect the remaining foreign privileges, which had been obtained, by force, the Chinese insisted, from former Chinese governments, and which the Washington Conference had only modified in some respects. But the promise to give China an unembarrassed opportunity to set its house in order implied at least enough political stability to enable foreigners to continue there and to develop their business relations with substantial guaranties of safety and justice.[15] Unfortunately, disorder within China continued on a large scale, and in order to protect their own interests the foreign governments disregarded, or at least appeared to disregard, China's integrity, and by so doing produced an intense nationalist reaction which took an aggressive form in a determined campaign against the so-called unequal treaties.[16]

For a time the United States joined in forceful demonstrations against the Chinese; but during 1926 and 1927 American public opinion grew more unfavorable to the policy of dispatching warships to protect the commercial and economic interests of foreigners which had been erected under the so-called "unequal treaties." The Porter Resolution in favor of treaty revision passed the House of Representatives, although it was lost in the Senate Committee on Foreign Relations. The United States therefore found itself in the position of being unable to co-operate with the other powers in a repressive policy, but equally it could not neglect its own nationals in China. It tended to adopt an independent line by giving to its naval officers on the spot considerable discretion in deciding whether or not force was required to protect the interests of American citizens and if so how much. Even this type of action provoked criticism at home, with the result that the United States was the first to conclude an agreement, in July 1928, which acknowledged "the principle of complete national tariff autonomy." In a sense, this action revealed the weakening of the united foreign front postulated at Washington in 1921 and 1922. Japan and Great Britain now had to face serious disorders in China, and the two governments came to an understanding to the effect that inasmuch as they had much greater interests in China than the other powers they would co-operate

[15] See George E. Taylor, *The Struggle for North China* (Institute of Pacific Relations, New York, 1940), p. 8.

[16] G. F. Hudson, *The Far East in World Politics* (Oxford University Press, London, 1939), p. 204.

as far as possible to defend those interests. Already by 1928–29 the unity had been, if not broken, at least badly impaired. After long negotiations the Chinese Nationalist government gained control of its own tariff, and by 1930 the new trade treaties based upon the principles of equality and reciprocity were in operation. Nevertheless the numerous incidents and the tensions which had been created proved to be a powerful factor in strengthening the hand of the militaristic and expansionistic party in Japan, which demanded stern measures in China in order to protect Japanese rights and which for a time under the Tanaka government adopted a more "positive policy," a policy which was to be resumed in 1932. And Great Britain found that its agreement with Japan in 1928 was to interfere with its support of strong League action. The Chinese Nationalist movement had borne undesired and complicating fruit.

The second factor which led to increasing strain upon the peace machinery set up by the Washington Conference was the rise of the Soviet Union to power. In 1922 that government was a relatively negligible factor in Far Eastern politics and did not even take part in the Nine-Power Treaty negotiations. Soon afterward Communist activities developed apace, and for five years the Chinese Nationalist movement owed much to the technical assistance and emotional driving power of Soviet emissaries. Not only that; the Bolshevist government resumed its railroad rights in Manchuria and, in contrast to its assistance to China in other directions, resorted to coercion in 1929 in maintaining the status quo on the Chinese Eastern Railway. The failure of the Kellogg Pact in this connection showed that at least one of the peace instruments could not be relied upon in the event of an international crisis; the lesson was not lost upon the leaders of Japan, who from 1931 challenged both regional and universal organization.

The third force disintegrating the Pacific situation was the growing economic difficulty of Japan after 1929. Its rapidly mounting population and its industrial program necessitated a ready access to the raw materials and markets of the world. Yet the economic depression in the United States lessened the American demand for Japanese silk, the growth of tariffs everywhere seriously damaged the export trade, and the collapse of the silver market lessened Chinese buying power. The Chinese boycott and China's demand for tariff autonomy combined to subject Japan to increasing economic pressure. The Washington treaties had afforded Japan political security against Great Britain and the

United States but not economic security in a world of economic nationalism.

Meanwhile, conditions in China had become more unsettled, and a series of incidents culminated in the explosion on the railroad near Mukden on September 18, 1931. Japan immediately moved its troops, and within a few days had seized a considerable area of Manchuria.

We need not survey the course of events in China which took place in the following years before the outbreak of World War II in 1939 and the entry of the United States into the conflict in 1941, other than to refer to the Lytton Commission Report to the League of Nations in October 1932 and the reaction of the Japanese government in view of the bearing of these matters upon the situation in 1946 and later. In the judgment of the Commission the solution should: (1) serve the interests of China and Japan; (2) take into account the interests of the Soviet Union; (3) be consistent with the existing multilateral treaties (the Covenant of the League, the Nine-Power Treaty, and the Kellogg Pact); (4) recognize Japan's interests in Manchuria; (5) establish a new set of treaty relations between China and Japan; (6) provide for the effective settlement of future disputes; (7) provide for a large measure of Manchurian autonomy consistent with the sovereignty and administrative integrity of China; (8) provide for the internal order of Manchuria and its security against external aggression, and to this end there should be established an effective local gendarmerie, other armed forces having been withdrawn, and a treaty of nonaggression between the interested countries should be signed; (9) encourage close economic relations between China and Japan; and (10) promote international cooperation in the reconstruction of China, pending a strong central government there. In Manchuria the principle of the open door should be maintained, "not only from the legal point of view, but also in the actual practice of trade, industry, and banking."

The Lytton Commission and the Assembly thus denied Japan's claim that her action in Manchuria was one of national self-defense and asserted that in their judgment the amount of force which Japan had used in defending its alleged rights was out of all proportion to the injuries it had received. True, there had been bandits, and Japan had suffered from the delay in the settlement of disputes; but these things, however exasperating, could not possibly justify the military occupation of so extensive a territory.

Japan had claimed that the new Manchukuo government was

a spontaneous movement of the people of Manchuria. This claim was unqualifiedly rejected by the Commission and the Assembly. In their opinion Japan had created a puppet state and the new regime owed its existence to Japanese military initiative and military support. The League of Nations, therefore, had no difficulty in following the lead of the United States in the "nonrecognition" of a situation which had been brought about by the use of force.

The Japanese representatives had argued that Article 10 of the Covenant (i.e., that League members undertake to preserve as against external aggression the territorial integrity of members of the League) did not apply to Manchuria, because Manchukuo had arisen as a result of a purely internal movement within China itself and Japan, therefore, had no obligation to defend China against what was essentially a secessionist movement. The Lytton Commission and the League Assembly, having denied that Manchukuo was the result of a spontaneous movement within China, could not accept the Japanese view that Article 10 of the Covenant did not apply in this instance.

These differences proved to be insurmountable, and in March 1933 Japan gave notice of its intention to withdraw from the League, having been led, to quote its own words, "to realize the existence of an irreconcilable divergence of views dividing Japan and the League on policies of peace and especially as regards the fundamental principles to be followed in the establishment of a durable peace in the Far East." Japan complained of the "exasperating" inability of the League to understand its views and its problems; the League found itself equally unable to appreciate Japan's attitude and reasoning. Both regional and universal organizations had failed to keep the peace in Asia.

Japan's forward policy continued, and in its efforts it was supported by its adherence to the Italo-German Axis. This partnership gave further evidence of the supra-regional character of the problem of military and political relations.

In 1936 Japan and Germany signed the Anti-Comintern Pact, and from that time Japan was able to exercise an increasing pressure upon the democratic powers of Europe by threatening their possessions in Asia. As Germany and Italy advanced in Europe, so did Japan attempt to advance in Asia. Demands upon France increased throughout 1940, culminating in the Vichy-Tokyo Pact of September 22, under which Japan was permitted to establish three air bases in northern Indo-China and to send troops to the French colonies. The United States replied to

the attempt to upset the status quo by President Roosevelt's proclamations in July licensing exports of various products useful for war and embargoing exports of aviation gasoline to countries outside the Western Hemisphere. The Axis counter-reply came on September 27, 1940, with the signature of the Triple Alliance under which Japan recognized the leadership of Germany and Italy in establishing a new order in Europe, and Germany and Italy recognized Japan's leadership in establishing a new order in Greater Asia. The three partners agreed "to assist one another with all political, economic and military means when one of the three contracting powers is attacked by a power at present not involved in the European war or in the Chinese-Japanese conflict."

The year 1941 was to provide additional evidence of the world implications of events in Asia. Japan moved south, occupying Indo-China and threatening the Dutch East Indies and British Malaya. The United States realized, late in the day perhaps, that Japanese control over these areas would place the American defense program in extreme danger, in view of the fact that the greater part of two essential elements—rubber and tin—are obtained from Southeastern Asia. The national security of the United States and the possibility of a British victory in Europe might well turn upon events many thousands of miles away from either country.

The attack on Pearl Harbor on December 7, 1941, proved the truth of this judgment, and the sharp, bitter war for almost four years clearly revealed that the re-establishment of peace and order in the Pacific would have to be a subordinate part of a peace system which embraces the whole world.

The months immediately following the close of hostilities were to provide additional evidence of the world implications of the problems in Asia. It is true that a Commission was set up under General MacArthur which later took on the complexion of a Pacific regional body for the purpose of administering Japan. But inasmuch as the Big Three and China were more intimately affected, and the Big Three had world-wide interests, the term regional implied something different from that of the days of the Washington Conference, which set up a body distinct from the League of Nations.

China continued to pose a grave problem by reason of its internal disunity. This factor alone caused the Pacific problem to be different in degree from those created in Europe by internal national divisions. However, the same Big Three Powers were

exercised over free elections in Bulgaria as were concerned over the quarrel between the Kuomintang and the Communists in China.

The colonial problem in southeast Asia and the complex question of India showed the limitations of the regional principle. The reoccupation of their former colonies by Great Britain, Holland, and France, and the deliverance of the Philippines brought into this area at least four non-Asiatic powers anxious over their vital interests. The rapid emergence of nationalism among the peoples of southeast Asia, the energetic discussion of colonial problems at San Francisco in 1945 at the time of the Conference held to adopt the United Nations Charter, the United States demand for a special position in the former Japanese-mandated islands in the Pacific must have made clear to any impartial observer that no autonomous regime for the Pacific was possible in the postwar world. Hence it is not surprising to observe that opinion has undergone a substantial change in the last few years concerning the possibility of establishing a regional security system in the Pacific. At the Institute of Pacific Relations Conference at Mont Tremblant in 1942, for example, the idea of a regional Pacific council with power to settle disputes at their source by means of conciliation and arbitration and with an armed force at its disposal comprising part of a global force under world security organization was favored. In 1945 at Hot Springs the ninth conference of the Institute of Pacific Relations accorded a much more modest role to regional arrangements. It was realized that security was a world problem, that since the Big Three powers were situated in Europe, Asia, and America and had world-wide interests they could not be pressed into any regional organization. The Conference agreed that a pan-Pacific security organization

> would endanger the speed and directness of action essential to the successful operation of any system of collective security. . . . . If it were to be given "political" functions in the handling of security questions, it would duplicate, or possibly rival the World Council. If, on the other hand, it were limited to the purely executive or administrative function of carrying out defense arrangements, it could not do so as effectively as sub-regional agencies operating more directly within the actual areas of tension.[17]

[17] Preliminary Report of the Ninth Conference of the Institute of Pacific Relations, *Security in the Pacific* (Institute of the Pacific Relations, New York, 1945), pp. 113–14.

There seems to be little or no hope that any attempt will be made to deal with regional security along the lines attempted (unsuccessfully) at the Washington Conference of 1921–22.

This judgment does not imply that subregional arrangements may not profitably be made. The 1944 agreement between Australia and New Zealand, for example, looking toward co-operation between the powers with colonial possessions in the South Pacific has resulted in the same kind of progressive actions the beginnings of which are now being seen in the work of the Caribbean Commission referred to elsewhere in this volume.[17a] The International Labor Organization has considered the desirability of establishing a regional office in the Far East. The United Nations Relief and Rehabilitation Administration has placed special representatives at Sydney, Australia, and at Chungking. The Pan-Pacific Health Conferences will doubtless resume their activities.

There is much to be done in the Pacific regions with its several subregions and its variety of problems. But as already emphasized the machinery which is established will not be able to handle the problem of security which now has become a world problem. It will be subordinate to the United Nations in some matters and independent in others. Variety will be its characteristic. By 1947 this truth was being realized by the decision of the United Nations to establish an Economic Commission for Asia for the purpose of studying methods of improving economic conditions and raising productivity in the Far East; in order to assemble the preparatory information for the Commission a special group of experts was to investigate conditions on the spot. The program of the economic and social work of the United Nations illustrates the close connection between regional and global economic factors and policies.

PAN-AMERICANISM

After the Central and South American peoples had obtained their independence from Spain, a number of thinkers hoped that they would form an organization for mutual assistance and welfare. The Monroe Doctrine of 1823 served notice that the New World was to be free from the historic disputes, accumulated passions, and political struggles of Europe. It was natural for the Americas to wish to do more than live upon a somewhat nega-

[17a] See Emil J. Sady, *Report on South Seas Conference: with Analysis of Agreement Establishing South Pacific Commission,* The Department of State Bulletin, March 16, 1947, pp. 459–65.

tive policy of keeping other people away. A positive policy of building a nobler society through the co-operative efforts of the newly liberated American nations—was such a dream to be only an illusion?

There was ground for believing that Pan-American ideals might succeed. The Americas had a common heritage of political freedom gained by casting off the restraints and restrictions of European empires. North and South America are on the same continent, and people assumed that this geographical factor would prove to be a unifying force, forgetting that distances between many American states are greater than those which separate some of them from Europe, and that the sea may provide fewer obstacles to trade than a difficult terrain. It was hoped that devotion to democratic ideals would promote unity; unfortunately, democracy was not to prevent sovereign nations from fighting, and many of the Central and South American countries, though democratic in name, were ruled by oligarchic and military dictatorships. Nationalism of a jealous kind soon reared its head, and in 1839 the Central American Federal Republic, established in 1821, broke down. Many of the state governors had refused to obey federal officials, and civil war broke out, resulting in the substitution of five independent states for one larger unit. In later days many of the Central and South American peoples feared that a Pan-American ideal was but another name for North American imperialism. The United States had enunciated the Monroe Doctrine, and for a time the Latin-American nations were grateful. Later they suspected the expansion of the Doctrine in every United States advance into the Caribbean and elsewhere. First there was the "Manifest Destiny" period; then the United States undertook military intervention in Nicaragua, Haiti, and the Dominican Republic, imposed the Platt Amendment upon Cuba, and adopted a nonrecognition policy toward revolutionary governments. President Theodore Roosevelt's "big stick" and Secretary Knox's dollar diplomacy were poor instruments with which to promote a genuine Pan-Americanism. Until the Americas could find some means of eradicating the fear of the great northern power, and until the United States would consent to modify its forward policy, the outlook for continental solidarity did not appear bright. A United States Monroe Doctrine and its extension could not easily harmonize with a Pan-Americanism based upon essential equality of states.

Nor was that all. The United States was a creditor country,

and most of the Latin-American states were debtors. The former desired to strengthen compulsory arbitration for the settlement of claims; the latter were unwilling. The United States adopted a high-tariff policy and shut out goods from abroad, and the greater the consequences of the postwar economic depression the more resentful grew the Central and South Americas against a policy of commercial exclusion. They in turn adopted policies of economic nationalism, making Pan-American international co-operation still more difficult.

Finally there were profound cultural differences. Many of the peoples to the south regarded North American civilization as materialistic, sacrificing spiritual values to the acquisition of economic wealth and power. North Americans tended to regard their southern neighbors as backward, inefficient, and unsanitary, and lumped them together in one confused category, not realizing the growing national differentiation that was taking place.

For these reasons the Pan-American ideal did not make great headway. In the early nineteenth century Bolívar had preached it with noble eloquence, and in 1826 inspired a Pan-American Conference, at which, unfortunately, the United States delegates arrived late and exercised little influence. The next sixty years witnessed scant progress, until in 1889 the first of the modern Pan-American conferences took place; and from that time meetings have been held periodically.

In the meantime other difficulties arose in the form of rival schemes for the wider allegiance of the Central and South American peoples. There was the Pan-Hispanic movement. After the bitterness of the revolution against Spain had died down, the new nations began to revise their attitudes toward their former mother country. New histories appeared which reinterpreted the old Spanish colonial policy in a more favorable light. Newspapers and books preached the value of maintaining, instead of excluding, what was precious in the Spanish heritage. As early as 1856 the Spanish minister at Washington held conferences with diplomats from Latin America and discussed Pan-Hispanic projects, but with limited immediate results. At the turn of the century a new spirit appeared. In 1910 the Hispanic-American Congress met at Barcelona; historic and geographic congresses were held, and numerous institutions came into existence for the purpose of promoting Pan-Hispanic friendship and unity. After the revolution of 1931 Spain incorporated in its constitution a clause permitting double citizenship for people coming from Latin America on con-

dition of reciprocity. No great practical results have come and no great increase in trade between Spain and the Americas.

A movement known as Latin-Americanism also arose. In some respects it was a negative force, deriving strength from a consciousness of the need of defense against North America. Intellectuals who regarded Paris as their spiritual home and others preached that their Latin culture must be preserved at all costs. A number of conferences were held, visits from Europe were arranged, and a committee on co-operation in Latin-American universities and colleges arranged special university courses. Recently President Cardenas of Mexico made an appeal for Latin-American economic solidarity, and the labor groups in some of the countries have taken up the cry.

INQUIRY AND CONCILIATION

In spite of the obstacles mentioned above, and the competing regional, political, and cultural organizations, Pan-Americanism has made headway. The main achievements between 1881 and 1938 may be summarized as follows:

The first logical step in the development of peace machinery is to strengthen the means of inquiry and conciliation to deal with more general questions. In many international disputes it is difficult to know just what the facts are. If both sides will agree to a commission of inquiry and thereby obtain fuller evidence, a more accurate appraisal of rights and wrongs is possible. In 1923 the Gondra Treaty provided that controversies which cannot be settled by diplomacy or by arbitration means shall be submitted to inquiry, and set up two permanent commissions of diplomats to be situated at Washington and at Montevideo, which can set the machinery of inquiry in motion. Either party to a dispute can request an inquiry, and the commission must immediately notify the other disputant. The Commission of Five must report its findings within a year, and the parties undertake not to mobilize their troops near the frontier until six months after the report has been issued. The Commission in its report of the facts may propose a settlement, but its proposals are merely advisory and do not bind the respective governments.

The Gondra Treaty thus follows the Bryan Peace Treaties of 1913–14, which included an undertaking to submit all disputes to inquiry and conciliation and made provision for a "breathing spell" during which the disputants promised not to resort to force,

pending the report of the Commission. Its weaknesses are obvious: the treaty excepted disputes which affect constitutional provisions; the machinery was clumsy and slow to put in motion; it assumed that the publication of facts would suffice to establish clearly the rights and wrongs of a dispute, whereas such is often not the case; it presupposed that an aggressive-minded government would wait and would not use propaganda and other methods to rouse its own people; it even minimized the importance of conciliation.

In 1929 the general convention of inter-American conciliation marked a step forward "by specifically adding conciliation to inquiry"; the persuasion of other governments was to be added to the "logic of facts." The permanent commissions of diplomats at Washington and Montevideo, provided for in the Gondra Treaty, were empowered to act as commissions of conciliation, and might even on their own motion take action when it appeared that there was "a prospect of disturbance of peaceful relations." But the proposals of a conciliation committee are not binding: no judgment is given; the parties do not have to be "persuaded"; they retain full liberty of action; no legal judgment restrains them. The aim of the 1929 Convention was "to amplify rather than to replace the Gondra Treaty." It added to the functions of the Permanent Commissions, and did away with the cases which under the 1923 treaty were excepted from the process of peaceful settlement. Nevertheless the commissions were still to be *ad hoc* bodies, of which there would be 210 in existence! Truly a clumsy arrangement. A further advance in Pan-American organization had been theoretically made when several American states had signed the Kellogg Pact renouncing war as an instrument of national policy, and later when nineteen governments on August 3, 1932, by adopting the "nonrecognition" principle agreed not to recognize the fruits of aggression. Several American states signed the Argentine Anti-War Pact of nonaggression and conciliation at Montevideo, October 10, 1933, under which they agreed to submit their differences to a conciliation commission of five members comprising one national from each country and three nonnationals, or else to a court of justice. *Ad hoc* commissions were to be replaced by "permanent, but dormant commissions"—a theoretically important advantage.

Such a commission's report is to have only an advisory force, and parties may reject the proposed solution; nevertheless they must observe the breathing spell. Two types of disputes are ex-

cepted, those arising from purely domestic questions and those which affect "constitutional precepts." The first two articles of the Pact condemn wars of aggression and pledge the states to settle disputes by pacific means. By Article 3 the states undertake, should a signatory fail to live up to the above-named obligations, to exercise the political, juridical, and economic means authorized by international law and to adopt as neutrals "a calm and solidary attitude," also to bring the influence of public opinion to bear upon the disputants; but in no case will they resort to intervention, either diplomatic or armed, "subject to the attitude that may be incumbent upon them by virtue of other collective treaties to which such states are signatories."

The 1936 Buenos Aires Conference adopted a convention to co-ordinate, extend, and assure the fulfillment of the existing treaties among the American states. The convention standardizes the procedure to be adopted but does not set up "any important new devices"; it reiterates obligations rather than creates new ones. The existence of several treaties tends to produce confusion, especially as many of the countries have not ratified all of them. Despite the increase in the number of ratifications, the situation is not yet satisfactory; moreover, only a few of the signatory powers have nominated the permanent conciliation commissions provided for by the Montevideo Conference.

There is some reason, therefore, for the proposal of the Mexican government of a code of peace under which the American states would undertake to refer all disputes to permanent commissions of conciliation or arbitration or to an Inter-American Court of Justice. The plan is that, unless an appeal is made to either of the other bodies, the commissions of conciliation will function. The sole advantage is that it would establish a body with more explicit power to initiate conciliation proceedings than the present diplomatic commissions now possess.

In two recent international disputes mediation has had some success. Honduras and Nicaragua in 1937 quarreled over a region of land bordering the Caribbean. The United States government sent a telegram to the disputants and notified the other American republics. Fortunately, Nicaragua and Honduras accepted the tender of good offices; but it would appear that the dispute has not yet been finally settled. The United States acted in accordance with the normal procedure of diplomacy, in that the treaty did not provide methods by which third parties could set the conciliation machinery into motion, although it did not exclude such procedure.

The dangerous crisis occasioned by the massacre of many Haitian people at the hands of some Dominican soldiers in 1937 tested the Pan-American conciliation machinery much more severely. After an anxious period the matter was referred to the permanent diplomatic commission at Washington. Happily an agreement was reached; the Dominican government expressed regret and paid an indemnity of $750,000; and other outstanding issues were settled. The Pan-American peace machinery had rendered fine service in preventing what undoubtedly would have developed into a bitter war.

ARBITRATION

The next step in advance of mediation or conciliation is that of arbitration; in this case the disputants undertake to accept the award of a third party. The United States had submitted many particular disputes to arbitration during the nineteenth century; but the Senate refused to consider adopting general treaties of arbitration providing in advance for the submission of agreed-upon classes of disputes to third-party determination. The Central and South American states signed over two hundred arbitration treaties by 1910, and negotiated over one hundred in the next decade, of which many remained unratified. In 1902 Argentina and Chile signed an agreement providing for compulsory arbitration of all disputes except those dealing with constitutional questions.

In 1907 the five states of Central America established a Court of Justice with jurisdiction over all disputes without exception which might arise among the five states concerned. Individuals might bring suit against a state. The Court was given power to determine its own jurisdiction and might even hand down a judgment in the face of a refusal by one party to appear. In the ten years of its existence it rendered eight decisions, some of them involving political issues; unfortunately, in attempting to decide upon the action of Nicaragua in granting certain privileges to the United States under the 1913 Bryan-Chamorro Treaty, it ran into difficulties: Nicaragua refused to recognize the decision, which had gone against it, and in 1917 denounced the Court, which ceased to exist.

Several American states signed a claims convention in 1910 and thereby took an important step in developing continental machinery to deal with an extensive set of international problems. The United States had advocated compulsory arbitration of dis-

putes arising from pecuniary claims, and at the Second Pan-American Conference a treaty to this effect was signed and ratified by nine governments. Further action was taken at the Rio de Janeiro Conference in 1906; but the 1910 convention replaced the earlier treaties. Under its terms the signatories agreed to submit to the Permanent Court of Arbitration at The Hague or to a special tribunal all claims for pecuniary loss or damage that could not be adjusted by diplomacy and were sufficiently large to justify the expense of recourse to arbitration.

For several years nothing worthy of note was done to further inter-American arbitration until the Treaty of Inter-American Arbitration was adopted in 1929. Under this instrument the signatories agreed to submit to arbitration juridical disputes such as the interpretation of a treaty, any question of international law, the existence of any fact which if established would constitute a breach of international obligation, and the nature and extent of the reparations to be made for the breach of such an international obligation. There were two exceptions: the parties were not obliged to arbitrate domestic questions or questions affecting the interests of or referring to a state not a party to the treaty. If the disputants are unable to agree as to the arbitrator, a procedure is available to overcome the difficulty. If within three months of the establishment of such a tribunal the disputants have been unable to formulate the special terms of the controversy, the tribunal itself may take action.

In addition to the 1929 treaty the Conciliation and Arbitration Conference of 1929 drafted a Protocol of Progressive Arbitration, Article I of which reads: "Any party to the general treaty of Inter-American Arbitration . . . . may deposit at any time with the Department of State of the United States of America an appropriate instrument evidencing that it has abandoned in whole or in part the exceptions from arbitration stipulated in the said treaty or the reservations attached by it thereto." In effect, the Protocol of Progressive Arbitration resembles the Optional Clause of the Permanent Court of International Justice.

The General Arbitration Treaty has been ratified by all American states except Argentina, Bolivia, Paraguay, and Uruguay. The United States Senate ratified the Protocol of Progressive Arbitration in 1935, but that measure has thus far been ratified by only eleven of the twenty-one republics. Some questions have been dealt with under the arbitration treaties; but the most serious of them, the dispute between Mexico and the United States over the

expropriation of American property, still remains within the realm of diplomatic negotiation, Mexico having rejected Secretary Hull's proposal that the matter be referred to arbitration.

ADJUDICATION

The advantages of having a permanent court to which judicial matters can be referred are obvious; and several American states have felt that the arbitration process, while commendable, does not go far enough but that efforts should be made to build up a consciousness of the need for institutions which by their permanency can create a consistent and extensive body of international legal decisions. All of the twenty-one American republics with the exception of the United States joined the World Court at The Hague; but it was felt that steps should be taken to set up a similar court for the American continent. In 1923 Costa Rica made such a proposal, and five years later at the Havana Conference Colombia submitted a similar plan. The Mexican Code of Peace, considered at Montevideo in 1933, had a chapter dealing with an American Court of Justice comprising one member from each state and a Canadian member as well. The Court would have compulsory jurisdiction over the so-called legal or justiciable disputes and general jurisdiction over others. The Court would act as a court of first instance and also as a court of appeal in certain defined cases. And it would also be empowered to give advisory opinions.

At Buenos Aires in 1936 Panama and Peru again broached the subject and Costa Rica, Salvador, Guatemala, and Nicaragua reported favorably upon the proposal. Thus far no practical steps have been taken and it is difficult at this point to see clearly whether the project will go beyond the realm of theory for some time. It would be unfortunate if such a court operated to weaken the World Court at The Hague; on the other hand, it can be reasonably asserted that if the habit of submitting international disputes to judicial settlement is to become sufficiently widespread we shall need the services of several international courts of a permanent character.

CONSULTATION

The theory of consultation is that, if disputes of an international character arise, the interested states by meeting together to discuss problems and difficulties may be able to find a peaceful solution. Informal consultation dates from prewar days, but there

were few provisions pledging states in advance to take concerted action of this character. Consultation was rather of an *ad hoc* kind. The Washington Conference in 1921 provided for "joint conference" in the event of a dispute arising over the insular possessions of the United States, the British Empire, France, and Japan with which the Four-Power Treaty was concerned. The Nine-Power Treaty dealing with China also made provision for "full and frank communication between the Contracting Powers," but neither instrument outlined the procedure to be followed; and procedure is an important thing.

Consultation among the states of the American continent was not emphasized until the Montevideo Conference in 1933, and the prolonged and bitter dispute between Bolivia and Paraguay over the Chaco region was well under way before the Saavedra Lamas Anti-War Treaty of Non-Aggression and Conciliation was adopted at Montevideo. This instrument provided for consultation in the event of disputes, condemned wars of aggression, approved the nonrecognition of territorial gains obtained by use of force, provided for a "common and solidary attitude by the neutrals," and proclaimed that intervention would not be resorted to. The treaty "implied rather than stated" the use of consultation.

The ominous situation in Europe and the Far East and the breakdown of the peace machinery of the League of Nations led the American states to consider whether they should not strengthen the Pan-American organization and thereby save themselves from the anarchy which was spreading elsewhere in the world. A special conference called at Buenos Aires in 1936 at the suggestion of President Roosevelt considered the whole problem of peace not merely in relation to the American continent but "against a background of world affairs." The United States took the initiative, and because of the popularity of Mr. Roosevelt and the influence of Mr. Hull the North American delegation possessed a strong advantage.

Out of a sharp clash of ideas came the convention for the maintenance, preservation, and re-establishment of peace, which explicitly provided for consultation when the peace of the American republics is menaced. Consultation is also to take place in case of war in another part of the world, should that conflict threaten the peace and security of the American continent.

The members of the Conference agreed to file with the Pan-American Union the names of eminent jurists from whom mediators could be selected in case of an inter-American dispute, to set

up a permanent commission to study plans for the elimination of the causes of war, and to take steps to put the existing inter-American agreements into effect. At Lima in 1938 the Eighth Pan-American Conference specified more definitely that in order to facilitate consultation the foreign ministers of the republics or their representatives at the initiative of any one of them will meet in the various capitals "by rotation."

MODIFICATION OF THE UNITED STATES FOREIGN POLICY

During this period Pan-Americanism made considerable headway by reason of a threefold change of emphasis in the policy of the United States affecting the Monroe Doctrine, the right of intervention, and the scope of Pan-American co-operation. During the course of one hundred years the Monroe Doctrine had been variously interpreted, but by the twentieth century it had been given an expanded meaning. Originally it was designed to prevent political penetration by European powers, and then to prevent European economic expansion from being converted into political control. But the United States found itself in the position of having to guarantee the economic stability of Central American republics in order to insure that American nations fulfill their obligations to their European creditors. The policy of supplying financial advisers, of limiting borrowing, and of interfering in elections aroused resentment in Latin America, and charges were made that the United States was using the Monroe Doctrine as an instrument of expansion. Critics pointed out that Pan-Americanism could not flourish as long as the United States took it upon itself to define the Monroe Doctrine and to apply it without consulting its southern neighbors. A unilateral Monroe Doctrine seemed to be inconsistent with genuine Pan-Americanism. Nevertheless, in 1923, Secretary of State Hughes adhered to the old position; and it was not until President Roosevelt had enunciated the good-neighbor policy and the United States government accepted the principle of continentalizing the Monroe Doctrine that the way was clear for further progress in Pan-Americanism.

For many years the United States clung to the doctrine that under international law it had the right of intervening in countries to the south of its borders in order to protect its own citizens. We have discussed the general problem of protection of national interests abroad in another chapter. Here it is sufficient to point

out that the right of intervention was strenuously opposed by the Latin-American states, and only after Secretary Hull informed the Montevideo Conference in 1933 that his government renounced the right of intervention did the full possibilities of Pan-American co-operation open up.

For a long time after the first Pan-American Conference in 1889 the United States attempted to restrict the scope of discussion in these gatherings to nonpolitical objectives, and its insistence in this matter also hindered the development of Pan-American relations. As political conditions grew worse throughout the world following the economic crisis of 1931, the invasion of Manchuria by Japan in the same year, and the breakdown of the Disarmament Conference by 1933, the United States realized the necessity of expanding the scope of Pan-American activity; and at Montevideo in 1933 it consented to discuss political questions, which, indeed, had now come to the front and within a few years were to dominate the scene.

PAN-AMERICANISM AFTER 1933–36

During the period following the advent of Hitler to power the whole question of inter-American relations became complicated by the rise of new and the intensification of older methods of penetration on the part of Germany, Italy, and Japan. Not only the interests of the United States but also the future of Pan-Americanism stood in jeopardy, and considerable thought was given to the problem of how to meet policies which seemed to menace the security of the Western Hemisphere.

At the Eighth Pan-American Conference held at Lima in 1938 the governments discussed in considerable detail what should be done to meet any attack on American security. The League of Nations had broken down, and it was generally realized that some stronger steps would have to be taken on the American continent to meet the dangers which were rapidly growing more obvious. Secretary Hull urged biennial meetings of the foreign ministers of all the American nations; but Argentina, suspicious of the United States, would not agree to a permanent consultative machinery. Consequently the Declaration of Lima provided only for consultation by foreign ministers when they deemed it desirable. The "Declaration of American Principles" also adopted at Lima, while general in character, was of great importance psychologically, and gave assurance to the Latin-American states that their northern neighbor had accepted the three principles of

equality, independence, and voluntary co-operation. The way was clear to further common action should events abroad dictate its necessity.

In September 1939 an Inter-American Consultative Conference was held at Panama in accordance with resolutions passed at Buenos Aires in 1936 and at Lima in 1938. It was designed to discuss the situation brought about by the outbreak of war in Europe. The meeting was attended by the foreign ministers (or their representatives) of twenty-one American states. The Conference drew up measures designed to increase economic co-operation by the creation of an inter-American financial and economic advisory committee. It made a general declaration of continental solidarity and reaffirmed the resolutions of Lima. It reasserted the doctrine of neutrality and emphasized the rights and status of neutrals, and declared that the participants would prevent their territories from being utilized as bases of belligerent operations, would prevent their subjects from engaging in unneutral acts, and in other ways would uphold the general principles of neutrality as prescribed by international law. The declaration of Panama read in part as follows: "There can be no justification for the interests of the belligerents to prevail over the rights of neutrals causing disturbances and sufferings to nations which, by their neutrality in a conflict and their distance from the scene of events, should not be burdened with fatal and painful consequences." The European war, it went on, "would not justify any destruction to inter-American communications." The Conference then declared that the waters adjacent to the American continent must be free from the commission of any hostile act by a non-American belligerent and defined the geographical limits of the zone of security. The governments also agreed to consult together if necessary in order to determine the measures to be taken to secure the observance of the provisions of this declaration and, if the need existed, to patrol, either individually or collectively, the waters within the defined zone adjacent to their respective territories.

The twelfth resolution suggested that there should be a second meeting of the foreign ministers at Havana on October 1, 1940, unless special circumstances demanded another meeting in the meantime. Another section provided for consultation in the event that it was necessary to determine what measures should be taken to secure the observance of the provisions of the declaration; still another resolution provided for consultation in case any region within the American continent at present a colony or dependency

of a non-American state "should be obliged to change its sovereignty" and if from this action "there should result therefrom a danger to the security of the American continent." For example, should Germany defeat Great Britain in the present war and demand the cession of Jamaica or Trinidad, it would seem likely that the American states would meet in consultation under the provisions of the above-mentioned section.

In claiming a zone of security the American republics asserted "what is intended to be a new rule of international law"; the "inherent right," according to Fenwick, should be taken as meaning not a rule of law already in existence but "that the American Republics believed that the new rule they were announcing was inherently reasonable and should be accepted by the belligerents."[18] The governments did not announce that they would use force to secure the immunity of the zone from warlike operations, but the suggestion that the American states deny the use of their ports to the vessels of any warring power which violated the zone was frequently made. Britain, France, and Germany, however, each made objections based upon its self-interest as a belligerent; each was anxious lest the security zone would afford a greater advantage to its opponents than to itself. And in the last resort it appeared the American republics might even have to go to war to protect their neutrality!

The Inter-American Neutrality Committee, which met January 15, 1940, at Rio de Janeiro, soon confronted a number of problems relating to the maintenance of neutrality—the activities of the German merchant ship "Tacoma," which had helped to scuttle the "Graf Spee"; the desirability of excluding submarines from ports and territorial waters; the use of belligerent merchant vessels; the use and abuse of postal correspondence (a question which involved the question of inviolability of mails); the use of automatic contact mines; the control of radio broadcasting; and the blockade of foodstuffs and clothing intended for civilian populations within belligerent countries. The Committee had been asked to formulate a codification of the law of neutrality "which would seek to unify the practice of the American States in many matters which, for lack of a clear rule of international law, had hitherto been left to the decision of the individual state."[19] The task in itself would have been very great if indeed

[18] Charles G. Fenwick, *American Neutrality: Trial and Failure* (New York University Press, 1940), pp. 130–31.

[19] Charles G. Fenwick, "The Inter-American Neutrality Committee," *The American Journal of International Law*, January 1941, p. 38.

not overwhelming, but even more serious was the implication "that the mere acceptance of such an objective for the proposed code involved acceptance of the legality of war in the framework of international law." To attempt to codify the law of neutrality "was an implied recognition that international law was unequal to the task of distinguishing between right and wrong, between good faith in the observance of treaty obligations of peaceful procedure and the recourse to violence for the attainment of national objectives."

Events in 1940 rapidly revealed the inadequacy of the neutrality policies adopted in the Pan-American conferences at Buenos Aires, Lima, and Panama. The German invasion of Norway, Holland, and Belgium, the fall of France, the Italian attack on Greece, and the desperate position of Great Britain brought out clearly that a new problem had arisen. Before June 1940 most of the American nations believed that "this was the war of 1914 over again . . . . and there was little need to take positive and drastic action."[20] Now, with Hitler the conqueror of Europe, and in view of his ambitions set forth in *Mein Kampf*, the New World realized that something new had entered the stage and that organization for neutrality was not enough; organization for defense had become vital. The foreign ministers of the American republics who met at Havana in June 1940 decided (1) to put under an Inter-American Commission on Territorial Administration any territory which one non-American state should directly or indirectly seize from another non-American state; (2) to cooperate in preventing subversive activities of foreign agents who had been encouraged and abetted by diplomatic and consular officials of certain European countries; and (3) to adopt a policy of special economic co-operation to meet the disruption of world trade created by the European war and to prevent the possibility that totalitarian governments in the postwar period might attempt to use commerce as an instrument of political penetration. The Emergency Committee for the Provisional Administration of European Colonies and Possessions in the Americas was to be set up as soon as two-thirds of the American republics had appointed their members. Fifteen American states also signed a coffee agreement to regulate the export and import of that commodity and established an Inter-American Coffee Board with headquarters at Washington, D.C., to regulate quotas for the United

[20] W. Stull Holt, "United States and Western Hemispheric Defense," *Pacific Historical Review*, March 1941, p. 36.

States market. The agreement was to last from October 1, 1940, to October 1, 1943, and was designed to steady the market and to prevent the serious disorganization of prices which undoubtedly would arise if any large part of the ten million bags normally consumed by, but now shut off from, Europe were dumped on the world market.

In September 1940 President Roosevelt announced the destroyer deal under which the United States acquired the right to lease naval and air bases in Newfoundland, Bermuda, the Bahamas, Jamaica, Santa Lucia, Trinidad, Antigua, and British Guiana. Whatever be the correct view of the legality of the step (if indeed events had not made the concept of neutrality almost meaningless), it met with general approval in Latin America. Similar approval greeted the passage of the Lend-Lease Bill by the United States Congress in March 1941, although unofficially some Latin-American countries criticized the provision which authorized the United States to open its ports to the war vessels of Great Britain, a step which some writers believed conflicted with the inter-American agreement made at Panama in October 1939, and which in their view called for further consultation with representatives of other American republics.[21]

The deepening crisis in Europe led to further steps in continental American co-operation. Panama announced that it would permit the United States to erect defenses in Panama outside the Canal Zone: Panama was to retain jurisdiction over civilians within the area and would receive compensation for the land occupied; and the United States agreed to vacate the region at the end of the war emergency. Equally important was the United States–Mexican agreement by which the two countries undertook a joint program for common defense in accordance with the resolutions drawn up at the Havana Conference of foreign ministers in 1940. The plans included the development of naval bases in Mexico and the improvement and use of Mexican airports by the armed forces of the United States. Suggestions were also made for the establishment of a permanent joint board similar to that set up by Canada and the United States.

The growing unity of hemispheric policy expressed itself in dramatic fashion when the United States seized German and Italian merchant vessels anchored in its ports. Several of the other American republics followed suit, thereby giving evidence of a determination to prevent sabotage by the totalitarian powers.

[21] W. T. Stone, in *Foreign Policy Bulletin*, February 7, 1941, p. 4.

THE MEXICO CITY CONFERENCE

At the Mexico City Conference, February 21 to March 8, 1945, the twenty members of the Pan-American Union (Argentina was not present) drew up a Declaration on Reciprocal Assistance and American Solidarity, commonly known as the Act of Chapultepec, in which certain general principles long recognized, were reaffirmed. The Act stated that an act of aggression against any of the American states by a non-American state affected the security and solidarity of the American continent and that in case of aggression or danger of aggression the American states would consult upon measures that might be desirable. Some of the delegates wished to set up definite machinery for collective action against an aggressor but the United States was reluctant to take this step in view of the coming United Nations Conference at San Francisco. The formula finally adopted called for nonmilitary measures against an aggressor and even the use of armed force during the period of the war, "inasmuch as any act of aggression or threat of aggression during the present war interferes with the war effort of the United Nations to obtain victory." The signatories undertook following the end of the war to consider the conclusion of a permanent treaty along similar lines.

A great deal of discussion took place as to whether the inter-American arrangement was consistent with the needs of a world security system, whether, for example, the American nations might take collective action that would not meet with the approval of a world security council. At San Francisco a formula was adopted which has been analyzed elsewhere. Nations have the right of self-defense until the United Nations Security Council can provide effective collective action and in the judgment of some writers the inter-American organization can take independent action to maintain peace or punish an aggressor if the United Nations Security Council, for whatever reason, failed to act.[22] Senator Vandenberg's letter to Secretary of State Byrnes early in August 1945 created widespread apprehension in that he appeared to suggest that the policing of the Western Hemisphere should remain the exclusive responsibility of the Americas. In reply to anxious questions Senator Vandenberg disclaimed any intention of weakening the position of the Security Council of the United Nations. The question may yet become important, particularly if

[22] Ezequiel Padilla, "The American System and the World Organization," *Foreign Affairs* (October 1945), pp. 99–107.

the veto power in the General Security Council proves to be an insuperable obstacle to the effective development of universal measures against aggression. Moreover, under Article 47 of the Charter the Military Staff Committee of the United Nations with the authorization of the Security Council may establish regional subcommittees. Dr. Helen Dwight Reid stated that this may lead to the formal recognition by the United Nations of the Inter-American Defense Board established in January 1942.[23]

In the case of the Americas, as in that of the Arab League or any other regional organization, it is difficult to decide how far such regional arrangements may constitute genuine systems of regional security and how far they may be utilized as more or less military understandings in a balance-of-power system. Until the United Nations Security Council is placed on a much stronger basis regional arrangements may take on this dual and incompatible set of characteristics, as perhaps may be seen in President Truman's announcement in the spring of 1946 of the desirability of closer defense arrangements with the Latin-American republics and the later announcements of moves to standardize military equipment of several countries. Such actions conceivably were designed to facilitate joint action in case one of the American governments undertook a policy of war or aggression, but they might equally well have been interpreted as a part of the power-politics struggle which threatened to complete or at least reflect the disunity of the three Big Powers.

ECONOMIC AND CULTURAL CO-OPERATION

Political and military co-operation alone cannot insure safety, and the American republics have realized the great importance of working out an adequate economic policy. As the years have rolled by, the scope of economic co-operation has widened, and only after some time has the pattern become clear. From earlier *ad hoc* measures, the American nations have proceeded to long-term objectives, and while realizing the importance of dealing with emergencies they have attempted to see beyond the immediate needs of the moment.[24]

[23] Helen D. Reid, *Regionalism Under the United Nations Charter* (International Conciliation, Carnegie Endowment for International Peace, New York, March 1946), p. 123. See also comment in Leland M. Goodrich, Edward Hambro, *Charter of the United Nations—Commentary and Documents* (World Peace Foundation, 1946), pp. 182–88.

[24] For a competent study which appeared during the war see M. Margaret Ball, *The Problem of Inter-American Organization* (Stanford University Press, 1944).

Between 1937 and 1939 the United States and Brazil set up two joint committees, one at Rio de Janeiro, the other at New York, to study the best means of encouraging trade between the two countries. The members were to serve for two years and to report on the operation of the United States–Brazil trade agreement. The Secretary of the United States Treasury and the Minister of Brazil signed an agreement by which the United States undertook to sell gold up to $60,000,000 to Brazil, and make available to it dollar exchange for the purpose of promoting exchange equilibrium. Brazil was to free the exchange market for commercial transactions which would permit transfer of funds to repay obligations due to United States citizens who had made investments in Brazil; and, in order to help eliminate exchange fluctuations and remove restrictions on foreign trade, the United States in March 1939 agreed to assist Brazil in establishing a central reserve bank. It also announced that the Export-Import Bank had agreed to consider the arrangement of suitable longer-term credit to finance Brazilian purchases of economic equipment in the United States. The latter would co-operate with Brazil in studying and developing the agricultural products which would complement production in the United States.

The interdepartmental committee on co-operation between the American republics in November 1938 reported that there was a wide range of activity in which the governments of these republics could co-operate. Thirteen departments and agencies were already at work and the committee approved projects from every agency: public health, public administration, economic, commercial, and fiscal matters, labor, agriculture, etc. In May 1939, Congress enlarged the scope of an Act of May 1936, to enable governments of the American republics to obtain the services of experts "in such matters as highway construction, public health, control of plant and animal contagious diseases, fisheries, and other technical or scientific problems." United States experts have since then aided in Brazil, Colombia, Argentina, Nicaragua, and Paraguay.

On August 16, 1940, the President of the United States approved an order issued under the authority of a 1916 Act establishing the office for co-ordination of commercial and cultural relations between the American republics and appointing Nelson A. Rockefeller as Co-ordinator.[25] Mr. Rockefeller's duties

[25] The following sections are based upon publications of the Co-ordination Office.

were to establish and maintain liaison between the advisory commission and the several departments of the government interested in inter-American relations, to be a member and chairman of the inter-departmental committee on inter-American affairs, and to formulate and carry out the policy of co-operation in the fields of "the arts and sciences, education and travel, the radio, the press and the cinema," with the end, it is interesting to note, of furthering national defense and of strengthening the bonds between the nations of the Western Hemisphere.

On November 14, Mr. Rockefeller announced the appointment of several advisers for the cultural program of the Co-ordination Office, which was a subsidiary of the Council of National Defense. The advisers who acted in a voluntary capacity served on the following committees: Policy, Scholarship, Literary, Publications, Music, Art.

Meanwhile the Inter-American Development Commission had been established on June 3, 1940, "as a working unit of the Inter-American Financial and Economic Advisory Committee organized following the Conference of Foreign Ministers called at Panama in 1939. While the parent body is composed of representatives of the 21 American Republics, the Commission consisted of only five members," whose duties were to compile basic information, to establish contacts between interested parties especially in the fields of Latin-American mineral resources and agricultural and forest products and to encourage the establishment and development of industrial plants. On December 30, 1940, it was announced that Brazil had established the first of the twenty-one national councils which were to be set up by the Inter-American Development Commission, and it was hoped that at a later date similar groups would be formed in the other American republics. This step has since been taken.

The European War had confronted the United States with several emergency problems in its attempt to build a continental solidarity. The closing of the European markets involved an annual loss of six hundred million dollars to the Latin-American countries, and the necessities of war forced the United Kingdom to adopt clearing arrangements which in turn resulted in a further loss to them of three hundred million dollars of exchange. The combination of loss of markets and serious restriction of free exchange with which to buy manufactured articles threatened to produce a catastrophic decline in the standard of living and hence the possibility of economic crises and political upheavals in

Central and South America. Both short-term and long-term policy therefore indicated the desirability of exploring means of alleviating the present distress and of building the foundations of wider inter-American political and economic co-operation. The United States took the lead in the following activities.

1. It made loans to Latin-American Central Banks in relation to surplus commodities as well as loans direct to governments.

2. It made large purchases of strategic materials for defense purposes.

3. It led in loans to Latin America for the development of basic industries of a noncompetitive nature such as rubber, hemp, chromium, and asbestos, and a loan of twenty million dollars was made by the Export-Import Bank to Brazil to produce simpler steel articles formerly purchased from Europe.

4. The development of better business relations was attempted by (*a*) an investigation as to whether or not American business firms were too frequently represented in Latin America "by firms and individuals now known to support objectives contrary to the best interests of the American Republics," a mission which made an extensive tour having found that there were a sufficient number of cases to arouse "a serious concern from a defense point of view" but that many of the businesses were co-operating in order to remedy the situation; and (*b*) the creation of a merchant advisory service with headquarters in New York to give expert advice on merchandising to exporters of products from Central and South America and thereby "to broaden the United States market for products from these nations."

5. Co-operation in broadcasting was realized to be of great importance, and two systems planned to inaugurate programs dedicated to inter-American understanding. It is interesting to note that the recent (1941) change in wave lengths which affected more than eight hundred stations in the United States resulted from an agreement between the United States, Canada, Mexico, and Cuba.

6. Improved news distribution was offered. In an endeavor to strengthen American press relations several of the important newspapers including the *Herald-Tribune* opened new offices in South America, the *Reader's Digest* issued a special edition in Spanish at low cost, and *Time* now offers South American subscribers the service of air-mail distribution.

7. The Motion Picture Producers and Distributors of America have appointed an expert on Latin-American customs and

languages to guarantee authenticity in films and "to advise on language and historical problems." A number of companies plan to send outstanding actors and actresses to South America to appear in person. The industry also proposes to increase the amount of news reels and short subjects dealing with Central and South America and has appointed a number of committees to consider such questions as visits to South America, South American film facilities, short subjects, art direction, and story material.

8. Athletic relations have been established. Mr. Rockefeller in an address delivered before the *New York Herald-Tribune* Forum on October 23, 1940, announced that his office planned to increase the number of athletic interchanges between the American republics, and mentioned specifically baseball and soccer teams. One wonders if a type of pan-American Olympic games and Davis Cup contests may not develop.

9. Tourist facilities have been enlarged. The authorities are also hoping to stimulate tourist traffic and are being helped by the fact that the war in the Far East and in Europe is making travel in those continents impossible. Already many thousands of tourists are visiting Mexico and other parts of the American continents.

10. Better transportation is being developed. A Committee for Co-ordination of Inter-American Shipping, created early in 1941, proposed to co-operate with shipping companies to ensure adequate transportation facilities for inter-American trade during 1941.

In developing its policy of extending loans, the United States has been confronted with over three thousand million dollars of Latin-American loans which were outstanding on December 31, 1939. A considerable proportion of these loans were in default, either by abrogation of the gold clause or by reduction of the whole or part of the interest and sinking-fund payments. The development of the international crisis in Europe, however, caused economic security to take precedence over the debt adjustment.

The Inter-American Financial and Economic Advisory Commission established by the Pan American Union first met in November 1939 and was entrusted with the formulation of a general plan for hemispheric economic mobilization, the improvement and expansion of inter-American communication facilities, the strengthening of the Inter-American Development Commission, and the encouragement of inter-American capital investment. It made extensive studies in many fields of economic endeavor

and served as an important instrument in protecting the inter-American economic structure during World War II.

The large number of arrangements made between 1939 and 1947 cannot be listed here on account of their variety. A few typical examples will be given by way of illustrating the scope and complexity of the agreements. The United States made agreements with Bolivia to assist in improving its communications, increasing its production of agricultural products for export, and in developing its mining and petroleum industry. Similar agreements followed with Brazil, Mexico, Haiti, and other countries. An Inter-American Coffee Agreement in 1942 was extended in the following year. A convention of the Inter-American Institute of Agricultural Sciences was opened for signature early in 1944, and in the war years several agreements were signed dealing with the production and procurement of rubber, the disposal of sugar crops, and other foodstuffs. So with automotive, shipping, newsprint production, and many other items.[26]

While some economists warn that Pan-American economic co-operation cannot proceed far independent of the restoration of world trade, other scholars urge that a considerable amount of multilateral trade is possible within the Americas, and that many countries on the American continent produce raw materials and handicraft goods which could find markets within neighboring states if adequate commercial and advertising facilities were developed.[27]

Successful inter-American economic co-operation must take into account the growth of economic nationalism and the reaction against economic colonialism in the countries to the south of the United States. Any policy which aims to maintain the nineteenth-century status of these countries in the sphere of international trade will be doomed to failure, and the measures just outlined would seem to indicate that the United States has accepted a modified economic nationalism on the part of Latin-American countries as a permanent factor in its future relations. Also the United States must accept the existence of a social-reform move-

[26] For an excellent source of information see The Department of State Bulletin. Several of the agreements are reproduced in *Documents on American Foreign Relations*, edited by Leland M. Goodrich and Marie J. Carroll, and published annually by the World Peace Foundation.

[27] See Frank Henius, *Latin-American Trade* (Harper & Brothers, 1941–; also, M. Ezekiel, "Economic Relations between the Americas," *International Conciliation*, February 1941, No. 367.

ment in the other American states, a movement which finds expression in a desire to improve the condition of the poor and dispossessed and to curb the wealth and profits of the rich. Because most of the important companies in Central and South America have a considerable amount of foreign capital invested in them, a movement of social reform in those parts inevitably involves international considerations. Upon the restraint of the United States and its sympathetic understanding will depend a great deal of the future development. If foreign investors in Latin America show too conservative an attitude they may do much harm to inter-American relations, and if Latin-American countries are unreasonable in their policy toward property rights it cannot be expected that Pan-American harmony will be easily maintained.

The American countries to the south have emerged from a colonial status and from their subordination to Spain only to go into a semicolonial economic status due to the penetration of the United States and Europe with their capital investments, their search for concessions, and other activities. In their reaction against that economic imperialism the new nationalism has attempted to take strong measures against foreign economic interests. As we have pointed out elsewhere, the foreign interests demand that at least a minimum international standard of justice be meted out to their citizens in Latin America, whereas Latin-Americans talk in terms of national sovereignty and of putting foreigners upon the same legal status as their own people.[28]

The Latin-American people have a keen sense of injustice arising out of a hundred years of struggle against the dominance of the European powers and the United States, and the present attempt at Pan-Americanism must take this deep-seated suspicion into account. The recent new Good Neighbor policy is only a few years old and must bear itself with considerable restraint and patience if it is to offset the feelings aroused by the preceding century when the power, political and economic, of the United States was much in evidence. Nationalism and socialist criticism of imperialism combine to render precarious the continuance of international trade along the lines suggested by Mr. Hull. If the United States takes strong steps to protect what it believes to be the fair rights of its citizens in Mexico in connection with the oil problem, the cry will be raised in Latin America that United States imperialism is showing itself in its true light and that the

[28] See chapter x, dealing with the protection of nationals, their property, and investments abroad.

Good Neighbor policy is merely a cloak. If the United States does not protect its interests against national emotion and Marxist doctrines which are in intimate alliance in Mexico, other South American countries may be tempted to follow the same pin-pricking policies, and the cumulative effect of such actions may be to destroy much of the spirit and method of the Good Neighbor policy. If the State Department tries to escape from these dilemmas by offering to submit economic disputes to arbitration, Latin-Americans may reply that this is a matter involving national sovereignty. In reality the attempt to transform Pan-American relations from a condition in which the United States was the dominant force, using its power to forward policies not always distinguished for their tact and understanding, to one of genuine co-operation, will require extraordinary skill, a rare quality of patience, a willingness to take several rebuffs, and, at the same time, a clear demonstration that patience and restraint connote strength and not weakness.

Intellectual co-operation will be a matter of the utmost importance, for Latin-American scholars value culture for its own sake and welcome the fellowship of those devoted to the ideals of culture and truth. Without close-knit intellectual interchange and friendship, the purely political understandings will have but limited success. But the utmost care must be taken to avoid giving the impression that intellectual co-operation is merely a device to serve the purposes of continental defense and international power politics. Pan-American intellectual co-operation cannot be exclusively continental; to be really successful it must be part of the larger world system.

A warning should be sounded against the optimistic belief that American trade can be switched from Europe so as to make this continent relatively independent of the Old World. The idea sounds reasonable and in these days of European anarchy has a certain attraction. Closer examination reveals that it will be impossible to build up anything like a closed Pan-American economy, because the major exports of countries of the south compete with many of the products raised in the United States. Argentinian beef and cattle, Cuban sugar, many of the tropical fruits, South American wheat, and other items can in normal times find markets more readily in Europe than in the United States. On the other hand, if multilateral trading arrangements can be re-established, the products mentioned above may go to various European countries which in turn can send other goods to the United States, and

the United States in its turn can export its manufactures to Central and South America. We should by all means encourage the greatest amount of regional international trade, not at the expense of and as a rival to world trade, but rather as a factor supplementary to it.

THE ARAB LEAGUE

Another regional organization—the Arab League—was recently set up. In March 1945, the governments of Syria, Trans-Jordan, Iraq, Saudi Arabia, Lebanon, Egypt, and Yemen concluded a pact for the purpose "of strengthening the close relations and numerous ties which link the Arab states." Article 2[29] of the pact set forth the special areas of co-operation—economic and financial affairs, communications, cultural matters, nationality, passports, etc., social affairs, and health problems. The Arab League possesses a council on which sit representatives of the member states, each state having one vote. The signatories agree that any resort to force in order to solve disputes is prohibited (Article 5). Difficulties are to be submitted to the Council whose decision shall be "enforceable and obligatory." Under Article 6 the Council must come to unanimous decision in determining measures necessary to repulse aggression; the vote of the aggressor is not to count. Each member state is to respect the systems of governments established in other member states. The permanent seat of the League is to be at Cairo. The Council will meet in ordinary session twice a year and is to have the assistance of a permanent Secretariat General which is to be responsible for carrying on the routine matters. A member may withdraw from the League on giving one year's notice and the pact may be amended with the consent of two-thirds of the member states.

The League expresses the desire of the Arab world for a closer unity and also reflects the fact of twenty years independence of the member states. The forty million Arabs who might have been welded into one state at the end of World War I have in the meantime developed "local interests and local allegiances

[29] See Majid Khadduri "Towards an Arab Union," *The American Political Science Review*, February 1946, pp. 90–100; Vernon McKay, *The Arab League in World Politics*, Foreign Policy Reports, November 15, 1946. Majid Khadduri, "The Arab League as a Regional Arrangement," *The American Journal of International Law*, October 1946, pp. 756–77; Alfred Bonné, *The Economic Development of the Middle East* (Oxford University Press, New York, 1945); Keith A. H. Murray, "Some Regional Economic Problems of the Middle East," *International Affairs*, January 1947.

which could not now be immediately submerged in a complete union." The Arab office in Washington, D.C., likens the new Arab League to the British Commonwealth of Nations, animated as it is by a strong feeling of unity consistent with diversity of governments. The League is taking a definite stand against the introduction of Jews into Palestine but this relatively negative function does not exhaust its activities. Plans are being developed for constructing a broadcasting station to be operated by the League, for an Arab Olympic Games to be held each year in one of the capitals of the Arab states, and for a union of Arab pharmacists (a board has been appointed to translate technical and chemical terms into Arabic). An all-Arab trade convention is being planned, and six hundred doctors from Arab countries have attended an Arab medical convention at Cairo.

In some respects this League will undoubtedly help to improve conditions of life in the Middle East by means of their co-operative efforts. It may be that it, too, will illustrate the drawbacks of certain regional associations, namely, the difficulty of deciding where regional organization as a subordinate part of a world organization to keep the peace and to promote welfare begins and a regional organization for power politics purposes ends.

SUMMARY

We may now summarize the general principles of regionalism. It should be clear that a region is not merely a geographical unit. A region for purposes of government comprises an area plus function. The mere existence of a continent or an island or a peninsula may or may not provide an adequate basis for government. A region is a region for certain purposes, as for example, the North Pacific for certain fisheries, the Pacific Northwest for lumber or perhaps for trade, the Great Lakes for fisheries, the Caribbean area for colonial administration. A region may lie within the boundaries of a nation; the United States has regional divisions which by no means coincide with those for Army, for the Department of Justice, for the War Labor Board, and other purposes. The region may comprise territory belonging to two or more nations, the Pacific Northwest, for example. We must therefore first inquire what the functional aspect is and then we shall be able to estimate whether a regional organization will be adequate for the task.

Take the problem of security. Can regionalism provide a

satisfactory answer? At present the danger of another war arises out of the rivalries of the three so-called super-powers, the United States, the Soviet Union, and Great Britain. We must therefore find a region which will include these three powers, and the smallest region is clearly the world itself. Any attempt to solve the major problem of security on less than a world basis, particularly in an atomic age, must be doomed to failure. The United States is claiming the right to discuss questions arising in Europe and in Asia as well as in Latin America; Great Britain does not limit itself to European affairs; and obviously the Soviet Union lies athwart Europe and Asia and is claiming an interest in the ex-Italian colonies in Africa. It may then be asked why, at the Mexico City Conference in 1946, the American states drew up the Act of Chapultepec and endeavored to work out a system of regional security. The answer is to be found partly in the earlier Pan-American movements beginning with the Gondra Treaty in 1923 to devise inter-American methods of preventing the war. These attempts, which antedated the United Nations if not the League of Nations, stemmed from a period in which the United States attitude at least was regionally determined by a desire to keep out of European quarrels, and indeed in the first part of World War II, United States policy was directed toward attempting to effect an all-American policy designed to keep the continent neutral. A historical hangover, therefore, is partly responsible for the United States–South American Act of Chapultepec.

Further, the veto power in the United Nations could conceivably be used by, say, the Soviet Union to block an otherwise unanimous inter-American desire to reach a settlement of a purely inter-American dispute, and several Latin-American states, being largely Roman Catholic and perhaps somewhat critical of the Soviet Union's general philosophy, might have desired to work out a system which would not be unduly dependent upon a wider system where the veto power could, if arbitrarily used, work to the disadvantages of the American countries.

From the point of view of military functions then we may not expect any worth-while contribution from regionalism. But in many other fields regionalism will have a constructive role to play. Even though there be world agreements on, say, air transportation, labor standards (International Labour Organization), health matters (sanitary conventions, standards of nutrition, etc.), commodity agreements, tariffs, intellectual co-operation, etc., much

can be done on a regional basis. For example, while there could conceivably be a world fisheries board, there is everything to be gained from an efficient use of regional commissions such as the Pacific Halibut and Sockeye Salmon Commissions. Regional co-operation for health purposes may do much for the Middle East, for Latin America, and for the Far East. A Danubian Valley Authority might help to raise the standards of living in southeastern Europe.

We therefore conclude that the question is not regionalism versus universalism, but one of harmonizing the contributions which national, regional, and universal agencies may make. The matter has been well stated:

> The principle of administration at the grass roots should be encouraged where possible, but regional agencies related to subjects of concern to extra-regional States or to the world at large should be supervised by a universal organization. The degree of supervision should vary as the exigencies of each case demand. The purposes of regional agencies must be consistent with the general principles of the larger body. In respect to those matters immediately affecting security, action in the region should be subject to authorization in advance or directed by the central organization. As activities are more remotely related to security, greater freedom of action, subject to review by the central body, may become the pattern of supervision. Regional commissions should include representatives of the central body as well as the territory in which they operate. Technical experts should be utilized without reference to boundaries or organization. Centralization should not go so far as to destroy the interests in, or knowledge of, local problems; decentralization should not preclude the utilization of the technical and correlative services the universal body is in a better position to render.[30]

An attempt to push the principle of regionalism too far in the postwar restoration of trade with the Latin-American countries would have serious repercussions. Before 1939 Britain surpassed the United States in Latin-American trade and investments, but World War II resulted in an alarming drop in British exports to that region; the United States, on the contrary, increased its markets and largely supplanted Europe as the outstanding exporter of manufactured goods. Great Britain is deeply concerned about restoring its position in the Latin-American market, for it must

[30] Kline Swygard, chapter on "Regional Organization," *If Men Want Peace*, J. B. Harrison, L. A. Mander, N. H. Engle (editors), (The Macmillan Company, New York, 1946), p. 46.

increase its international trade if it is to survive. If Latin America can build up an expanding economy, as suggested elsewhere in this volume, opportunities for increased exports from Britain and the United States will emerge. But, as Crane Brinton Well points out,

there will be a time of transition, during which the United States would be wise not to press in Latin America, certainly not by Government action, the very real trade advantages over Britain it has gained in this war. Until there is enough to go around, we shall be wise to share what there is—a formula which holds true for Anglo-American economic relations all over the world.[31]

[31] Crane Brinton, *The United States and Britain* (Harvard University Press, 1945), p. 206. For a somewhat general discussion of regionalism in world economics see *World Economics,* Vol. III, Nos. 11–12, October–December, 1945, pp. 49–132.

Chapter IV

HEALTH AS AN INTERNATIONAL AND WORLD PROBLEM

MANY people underestimate the part played by nonpolitical forces in the development of the human race. A glance at history, however, will show the vast suffering and ruin caused by disease which has frequently modified, and even destroyed, the social and political institutions of great civilizations.

In 430 B.C., plague attacked Athens; the population died by hundreds, and the Athenian armies were unable to drive out the forces of Sparta. The disease not only weakened Athens as a political power but demoralized and debased the very character of the people. Not forty years later, the Carthaginian army which was invading Sicily had to withdraw because of an epidemic of disease which devastated its ranks, and, as Zissner in his *Rats, Lice, and History* (from which much of the material of the next few paragraphs is borrowed), points out, was thereby prevented from establishing control over Sicily. Had Carthage been able to accomplish this end, it is possible that Rome would not have gained the victory which finally eliminated Carthage and its "commercial, Semitic culture," and that Roman military power, organizing ability, and legal methods would not have become a decisive influence in the future development of Europe.

The Roman Empire in turn became the victim of several devastating epidemics. The causes of the decline of Rome are many; but among them disease must rank as one of the most powerful. In the second and third centuries, A.D., plague swept the Roman world intermittently and took the lives of scores of thousands, weakened still more the political authority of the government, and disintegrated an economic life which was already manifesting symptoms of decay. The very efficiency of communications in the Empire made the spread of the disease all the easier, with the result that even faraway Scotland did not escape its ravages, which

depopulated large areas and added to the ruin of civic and rural life.

The fifth century witnessed an intensification of the barbarian invasions; they undoubtedly helped to spread disease throughout Europe. Britain experienced a plague during the Saxon invasion between 440 and 450. Vienna also suffered heavily from the outbreak of disease. Within a decade Rome fell victim, then Gaul, then North Africa. These visitations formed the prelude to the most disastrous "pandemic" of all, the great plague of Justinian, which began in Egypt in A.D. 450. At its height the plague took more than 10,000 people a day in Byzantium; corpses were emptied into the towers of forts and were placed on ships which were then abandoned. Gibbon notes that Justinian's reign was marked by a heavy decline of population and without question the plague, which lasted for half a century, weakened the rule of Byzantium in Italy and in Africa and diminished its power of resistance against Persian and Arabic invasions.

The consequences of the Black Death which broke out in Europe about 1350 are well known. Probably over twenty-five million people (about one-quarter of the whole population) died; historians say that the breakdown of the feudal system was hastened by its ravages. For over thirty years the disease spread in epidemics which were calamitous to European society. Writers state that forces already at work modifying the feudal structure of England were "strengthened by the Pestilence"; the labor legislation required to cope with the new situation led to important constitutional changes, including the appointment of "Justices of Laborers." In the next century England and France suffered epidemics of sweating sickness. In 1456 the Turks had to lift the siege of Belgrade and relax their hold upon Hungary because of the spread of typhus, a disease which showed its indifference to both armies by killing the Hungarian deliverer, Hunyadi. For the next hundred years and more, typhus decimated the armies which moved into Hungary and the Balkan States, regions which are still the home stations from which typhus may spread across Europe.

The Thirty Years War (1618–48) decisively altered the map of Europe, and is commonly regarded as marking the beginning of the modern period. Yet its outcome depended more upon disease than upon military factors. Time after time the prospects of victory on the field of battle faded and the whole situation was transformed by the appearance of an invisible enemy, hostile alike to

both of the armed adversaries. Likewise in the late eighteenth century, the Prussian forces which marched against the French Revolutionary armies had to retreat because of dysentery.[1] Moreover, Napoleon's campaign into Russia ended disastrously, not only because of distance and Russian military resistance but also because of the ravages of typhus and dysentery. And the Crimean War provides eloquent evidence of the relative destructive power of disease and armaments; in the French, English, and Russian armies the number of sick far outstripped the number of wounded, and, except in the case of the Russians, more men died of disease than of wounds.

Disease and epidemics have taken their toll of millions; they have killed them directly and left society impoverished, disorganized, or at least weakened and with resistance lowered. But disease has also controlled the destinies of mankind by affecting rulers and others "whose physical frailties and moral delinquencies" have profundly influenced the course of human events. MacLaurin writes, "when we consider that the destinies of nations are commonly held in the hands of elderly gentlemen whose blood-pressures tend to be too high owing to their fierce political activities, it is not too much to say that arteriosclerosis is one of the greatest tragedies that afflict the human race."[2] Nor is it unreasonable to assume that, despite the discoveries of medical science, illness and disease may be playing their part among the modern political leaders of the world with disastrous consequences to their subjects.

Nineteenth-century Europe, which witnessed a decline in the virulence of some epidemics, had to face a new scourge—cholera. Duget writes, "Le choléra a toujours eu son berceau dans l'Inde, où les plus anciens textes signalent sa présence. Il y resta cantonné jusqu'au début du XIX^{e} siècle . . . . En 1830, 1837, c'est la première invasion européenne." In 1831, *"année fatale,"* cholera appeared at Mecca and introduced a new problem for the European nations. They had long known of the danger of disease spreading from the Orient to the West—Venice, in 1328, had created the first *"organisation quarantenaire,"* an example followed later by Genoa and Marseilles. But the Italian cities had no co-ordinated plans; a disease which one government thought

[1] H. W. Haggard's *Devils, Drugs, and Doctors*, Part IV, "The Passing of Plague and Pestilence" (Halcyon House, New York, 1929), gives a vivid description of the effects of disease in the centuries prior to 1800.

[2] C. MacLaurin, *Post Mortems of Mere Mortals* (Doubleday, Doran and Company, New York, 1935), p. 159.

dangerous enough to necessitate quarantine efforts another government lightly ignored; some imposed burdensome periods of observation, which caused much hardship to navigation interests. Duguet observes: "En somme, défense incohérente, contradictoire, et ce qui est aussi grave, fort onéreuse pour le trafic maritime, réelement victime de cet arbitraire."[3]

The appearance of cholera at Mecca made Europe realize that the thousands of Moslems who made their holy pilgrimages from Asia, North Africa, and southeastern Europe, and traveled and lived under most unsanitary conditions, constituted a major threat to its health. Readers of Richard Burton's *Pilgrimage to Meccah*, which appeared in 1855, will recall the vivid description of the effects of the overcrowding and the dirty habits of the pilgrims, and especially of the shocking conditions under which thousands of sacrificial animals were slaughtered under the tropical sun.

In 1847 France created medical posts in the Near East—in Constantinople, Beyrouth, Damascus, Alexandria, and Cairo and later at Suez, Teheran, and Smyrna. Such individual efforts were inadequate: "Mais il fallait faire plus, introduire dans la lutte contre les épidémies le principe de la solidarité et de la collaboration entre États."[4] Otherwise Europe ran the risk of illustrating Carlyle's dictum that, while the rich might deny their brotherhood with the poor in life, they might experience it in a death spread by the diseased and the outcasts whom they had shunned.

In 1838 some of the European nations compelled Turkey to establish a Superior Health Council comprising four Turkish representatives and one representative from each major power. The committee adopted measures to prevent the spread of epidemics into Turkey and supervised quarantine service at the Turkish ports and elsewhere. (The Council was abolished in 1923, owing to the desire of Turkey to enjoy complete independence.)

In 1851, twelve powers attended the first International Health Conference at Paris, and signed a Treaty.[5] The terrible cholera epidemic of 1865 induced the powers to meet at Constantinople in the following year, and at Vienna in 1874. In 1881 a council

[3] F. Duguet. *Le Pilgrimage de la Mecque au point de vue religieux, social et sanitaire* (Rieder, Paris, 1932), p. 120.

[4] *Ibid.*, p. 121.

[5] Only three nations ratified the Convention, and of these Portugal and Sardinia denounced it a few years later. C. Vitta, "Le Droit Sanitaire International," in *Académie de Droit International* (Recueil des Cours, 1930), XXXIII, 565.

was set up at Alexandria for the purpose of preventing epidemics spreading from Egypt. Four Egyptian and fourteen non-Egyptian representatives met in regular monthly meetings, examined suspected ships, set up quarantine stations in the Red Sea, and assisted in developing special health measures for Egypt.

An International Sanitary Council was established also at Teheran in order to prevent the spread of epidemics from the Orient to Europe by way of Persia. And by an additional provision of the Act of Navigation of the Danube, of May 28, 1881, an International Sanitary Council was stationed at Bucharest to act in co-operation with the European Commission of the Danube to guard against the introduction of diseases by way of that river.[6]

Meanwhile, health and sanitation had become an important problem at Tangier.[7] In 1792, foreign consuls met, thereafter collectively made representations to the Sultan of Morocco, and were at length empowered to take measures to safeguard the public health of the port. In 1892 the Sanitary Council, which comprised the members of the diplomatic corps, acquired increased authority from the Sultan to clean the streets, pave the roads, improve means of sewage disposal, build slaughterhouses (with three divisions, for Jews, Moslems, and Christians), and make provision for a pure water supply.

The Washington Convention of 1881 marked an outstanding achievement in international co-operation for health. Delegates realized that they must attempt to reconcile two things—the maximum guaranty against the spread of disease, and the minimum delay to shipping and commerce. They agreed that nations had the sovereign right to prevent the introduction of diseases by ships coming from other countries, and therefore their representatives could rightly claim to inspect the ship before it left the foreign port. Such inspection, however, might be regarded as a limitation upon the sovereignty of the country from whose port the ship would sail.

Another question arose; suppose that a vessel were sailing from a country with a low, to a country with a high, standard of public health; ought the latter to insist that its medical representatives give a bill of clearance to the ship in question? The United States wished to adopt the principle that its consuls and medical experts should be empowered to inspect ships destined for United

[6] C. Vitta, *op. cit.*, pp. 589–90.

[7] G. H. Stuart. *The International City of Tangier* (Stanford University Press, California, 1931), pp. 31–39.

States ports and not merely accept a bill of health granted by local authorities. But the proposal encountered resistance. The delegates also realized that, however important political organization might be, the fundamental need was for further scientific knowledge concerning the nature and course of some of the major diseases, especially (for the Americas) yellow fever.

Thus the task of preventing the spread of disease carried with it a greater need than international co-operation in the political field: it involved more than common action against disease after its appearance; it meant striking at the source, co-operating in the realm of prevention as well as in the realm of quarantine.

The governments of the New World decided to set up an international sanitary bureau with headquarters at Washington, D.C., and, in 1902, adopted the first Pan-American sanitary convention. By this time medical knowledge had advanced considerably, and the conference was able to adopt more specific measures dealing with yellow fever, extermination of mosquitoes, control of plague, destruction of rodents which carried the plague, and purification of water and food so as to minimize the danger of cholera and typhus.

Meanwhile Europe found itself compelled to take further action because the Moslem pilgrimages to Mecca continued to spread disease. At first Great Britain appeared to be unsympathetic toward international health co-operation in Egypt, the Red Sea, and the Suez Canal. Other countries, jealous of their sovereignty, or suspicious of co-operation, also held back. It was not until thousands of lives had been sacrificed that the European states realized the folly of pitting a political theory against the grim realities of epidemics and recognized that more far-reaching international efforts were necessary if each country was to escape the ravages of disease. Cholera epidemics afflicted Europe almost every year between 1880 and 1892. In the last-named year, 157,000 perished in European Russia, 70,000 in the Caucasus, 4,500 in France; in Hamburg shops and hotels were closed, trains ceased to run, and hundreds of people died. And yet Turkey protested, at the 1894 Paris Conference, that an international attempt to improve conditions at Djeddah constituted *"une ingérence dans les affaires intérieures de la Turquie."* Add to these political obstinacies the religious fanaticisms of pilgrims, and one has some idea of the irrational obstacles to human progress.

The 1892 Conference at Venice realized the need for sanitary supervision at Suez and adopted regulations reorganizing the

council at Alexandria and reapportioned European representation there. The Conference at Dresden in 1893 and those at Paris in 1894 and at Venice adopted further measures, including provision for medical inspection of ships from the Far East, the establishment of sanitary police in ports of debarkation, and the extension of these controls to countries on the Persian Gulf. In 1903 the International Sanitary Convention at Paris made more definite rules for the quarantine and disinfecting of ships. Steamship companies and captains of the vessels faced severe penalties for violation of the rules. The establishment of sanitary stations at various ports in the Middle East, combined with the general policy adopted at Paris, did much to lessen the danger of plague and cholera to Europe.

At Washington, D.C., in 1905 the American states decided to hold periodic health conferences and to permit only medical and sanitary officers to attend as delegates. This step showed the increasingly specialist nature of the problem of public health: no longer would the vague generalities of diplomatists suffice; with the progress of science, experts were needed; the problem was fundamentally a scientific, and only secondarily a political, one.

Such were the main "legislative achievements" of the international conferences. They had been important, but it now became necessary to provide permanent machinery in order to insure continuity of effort. Progress in governmental efficiency has increasingly depended upon the unostentatious daily routine of administrative officials. In international affairs, also, the importance of a "civil service" was gradually recognized, and the sanitary convention of 1903 provided for the establishment of an International Office of Public Health. The office was set up in 1907 with headquarters in Paris. The main duty of the new organization was to collect information relative to public health matters, to keep nations informed of recent developments, and to act as a co-ordinating agency. The participating governments, of whom there were thirty-seven in 1920, jointly bore the expenses and provided a committee of officials to supervise the work of the office. One writer notes that the French delegate cast "the suspicious eye of sovereignty on the new organization. No single one of its powers may be allowed to interfere with the right of sovereignty of which every state is so jealous." The Office International d'Hygiène Publique was to exercise only an "exclusive moral" influence!

This brief historical survey should make clear the persistent

problem of disease and how long mankind has battled its uncompromising and inveterate enemy. The nineteenth century marked the beginnings of international effort. The twentieth century was to witness its extension. The World War of 1914–1918 revealed the necessity of close co-operation between the Allied armies, and during it an Inter-Allied Sanitary Commission met frequently at Paris. The specialists on the Commission did a great amount of policy making, and successfully provided an object lesson in international health co-operation.

LEAGUE OF NATIONS HEALTH ORGANIZATION

During the Paris Peace Conference the International Red Cross Society urged the necessity of further permanent international action and a conference in 1920 drew up a scheme for the League of Nations Health Organization, which was adopted by the 1923 League Assembly in a lengthy resolution. The Organization comprised: (1) A General Advisory Health Council, which contained representatives of more than fifty governments and of the standing committee of the International Public Health Office. (2) A standing Health Committee of twelve medical experts who were appointed in their capacities as individual scientists, and not as governmental representatives. (3) The Permanent Secretariat of the Health Organization, which consisted of a number of medical men and their assistants and formed part of the general League Secretariat.

The Health Organization of the League aimed primarily to co-ordinate the governmental and other organized health activities of the world. It did not pretend to be a superstate health agency. Its work was extraordinarily diversified and far-reaching, in contrast to the achievements of international health organization in prewar days, which did little more than co-ordinate efforts against the most serious epidemic and diseases. Since World War I postwar health work has been more positive, more continuous, and more effective. It may be summarized under several headings:

The battle against epidemics.—Early in 1920 Eastern Europe was in the grip of terrible epidemic conditions; typhus and relapsing fever, originating in Russia, were attacking millions of people. The League Council requested the London Health Conference to take action. A few weeks later the League Epidemic Commission began its work. Within fifteen months it had spent about one million dollars in co-ordinating remedial measures, and

succeeded in preventing the Russian danger from spreading. The commission then proceeded to Greece, where it organized a staff of nearly eighty medical officers, who set up vaccination stations and took other measures to combat smallpox, cholera, and typhoid. The 1922 Russian famine sent scores of thousands of people fleeing in desperation toward Western Europe carrying with them the further danger of disease. Poland appealed to the League for assistance, and requested that a European health conference be held to consider measures to stay the menace. The League responded, and at Warsaw in March 1922 the first all-European conference of the postwar period was held. Representatives of twenty-seven governments attended and agreed upon methods of strengthening the health defenses of countries bordering on Russia. Special sanitary-training conferences were held, provisions were made for adequate inspection and examination, and special regimes were set up in frontier zones extending five kilometers each side of the boundary. The threat of epidemics set aside theoretical discussions of sovereignty, and human political pretensions paled into insignificance in the face of the microbic enemies of all mankind.

The Health Committee in 1923 appointed a malaria subcommittee, which in 1924 became the Malaria Commission.[8] This disease is endemic in areas inhabited by six hundred and fifty million people, approximately one-third of the world's population. Malaria is not only widespread but is extremely difficult to control. In postwar years it spread with renewed activity in Russia, Albania, Greece, Yugoslavia, and Bulgaria. A special subcommittee investigated these and other areas and prepared a report in 1927. It found that measures which were successful in one country might not prove effective elsewhere. Many costly methods were found to be useless, and resulted in discrediting the work of health services in less medically minded countries. The organization therefore established special courses in malariology in London, Paris, and Hamburg, after attending which health officers took practical work in malaria districts in different areas. League officers visited the Mississippi, the Danube, and other rivers to see what relations might exist between conditions on these rivers and malaria itself. They investigated the effects of rice fields, of animals, and drainage measures and considered a number of other highly technical subjects. In 1928 the Malaria

[8] Valuable material may be found in the Minutes of the Various Sessions of the Health Committee.

Commission issued its further findings and in 1929 visited India to report on the methods of stamping out the disease there. Close co-operation between the League and national government health officials has been maintained. Moreover, the Commission has been investigating the world's quinine needs, and hopes to discover some remedy which will be as effective as but less expensive than quinine.

Millions of people have died or have suffered blindness and deformity from smallpox. League experts began working on this problem. The League Health Organization also turned its attention to leprosy. The three million or more lepers in the world, especially in India, China, and Japan, and also in South America, and elsewhere, constitute a challenge to the co-operative work of the world. Dr. Carlos Chargas in 1925 asked that the Health Organization take up the problem of leprosy, and himself became chairman of a special committee. At Rio de Janeiro an international center under the auspices of the League was established to study this disease. The Health Organization, in paying tribute to Chargas at the time of his death, rejoiced that the American continent possessed a leprosy institute as well equipped as that which exists in the Far East, and the government of Brazil has placed this institute at the disposal of the League.

The spread of syphilis constitutes a serious problem. In 1928 the League Health Organization began a detailed study. Over 25,000 cases were analyzed, and the findings were embodied in a long report in 1934. The Health Committee responded to a request from Bulgaria to co-operate in anti-syphilis measures in that country.

Any person who has watched ships unloading and has seen rats scurrying along the ropes can appreciate the importance of adequate measures to prevent infected rats from carrying disease into port cities. Buell writes that "a rat infected with the bubonic plague which climbs on board a ship at Calcutta may carry the disease to Liverpool." It was an important step for the Health Organization Commission on ship fumigation to make a tour of leading ports of the world in order to study the most effective methods of disinfection and of quarantine. Visits of these medical officers have enabled co-operation to develop among the directors of port health services.

The Annual Report of the Public Health Commissioner of India contains information which reveals the growing importance of international quarantine and sanitary provisions in an age of

aerial navigation.' The health authorities of India have been concerned over the danger of the introduction of yellow fever, and, the report suggests, "With the development of air traffic the question has become one of urgent importance." Now that an airline is operating between Lagos in West Africa and Khartoum, where it joins the Cape-Cairo line, it is possible for infected persons and mosquitoes to be carried "from endemically infected areas in West and Central Africa to India within the incubation period of the disease." A new kind of "jungle yellow fever," which chiefly affects land workers, has been recognized; the virus can be transmitted from monkey to monkey by the *Aedes Aegypti* mosquito, and Indian authorities realize the extreme consequences which would follow for millions of people if the disease obtained a hold in India, the home of millions of monkeys "which could by no practical means be eliminated or controlled."

In September 1936 the Indian government issued orders forbidding the entry into India "of any aircraft which has started from or alighted in a yellow fever endemic or 'silent' area, except such aircraft which have obtained at Alexandria or Cairo a certificate of disinsectisation with 'Pyrocide 20' in the manner prescribed." Nor may a passenger or member of the crew enter India within nine days of having been in an endemic or "silent" area unless protected by inoculation or by a previous attack of yellow fever. Most significant is the fact that India was represented at a Pan-African Health Conference held at Johannesburg in November 1935. For health purposes it may be truly said that India is part of Africa; for the mosquito makes the two continents members one of another, and national sovereignty in the popular sense becomes little more than a grim jest in the presence of the threat of yellow fever.

Lack of space prevents more than a passing reference to the Health Committee's work on sleeping sickness, tuberculosis, cancer, infant mortality, rabies, and welfare of the blind. No one who reads the official documents can help being impressed by the great amount of intergovernmental and privately endowed effort which is being made in these fields of public health.

Although attention has been primarily directed to the work of the League, it would be an error to underestimate the part played by the countries of the American continent (some of which have also signed the more universal international sanitary conventions), or to fail to emphasize the excellent work of the Pan-American Sanitary Bureau established at Washington. In 1924

at Havana another Pan-American Sanitary convention was signed; it is a document of sixty-three articles, which can only briefly be summarized here: The objects of the code are to prevent spread of disease, to promote co-operative measures, to standardize the collection of statistics, to encourage interchange of information, and as far as possible to standardize preventive methods. Each signatory agrees to notify the other parties and the Pan-American Sanitary Bureau, at intervals of not over two weeks, of its position with reference to public health; and it undertakes obligatorily to report on twelve specified diseases and upon such other diseases as the Pan-American Sanitary Bureau may add to the list. Each government will publish immediately the measures which it regards as necessary to prevent the spread of diseases, and to establish a central statistical office and regional statistical offices as soon as possible. Detailed provisions follow, dealing with bills of health and other sanitary documents which ships must carry, and with the treatment of vessels suspected of and those infected with diseases.

In June 1926 a sanitary convention was signed at Paris; it came into force in March 1928. Under it the signatory governments undertake to notify the International Office of Public Hygiene of the first cases of plague, cholera, or yellow fever and the existence of an epidemic of typhus or smallpox. The list of communicable diseases is not as extensive as that contained in the Pan-American Sanitary Convention, the reason apparently being that authorities consider that insufficient uniformity and efficacy of preventive measures have been attained.[9] The notifying telegrams are to have precedence over ordinary telegrams, and provision is made for notification of all bureaus connected with public health and not merely those connected with the League. Detailed measures provide for inspection of vessels, the condition of drinking water, the disinfection of apparel and bedding, special arrangements for emigrants, the issuance of certificates, etc. No fewer than forty-four articles refer to this phase of the problem. Several articles deal with measures at land frontiers, in railroad frontier zones, and on river ways. Special provisions for the Suez Canal and the neighboring countries occupy over twenty articles, and a lengthy section of seventy-one articles deals with the health problem raised by pilgrims entering and leaving the Hedjaz, where the holy cities of the Moslem world are situated.

[9] C. Vitta, *op. cit.*, p. 606.

A short section deals with modification in the position of the Sanitary, Maritime, and Quarantine Board of Egypt.

A number of powers signed an international convention for their mutual protection against dengue fever at Athens, July 25, 1934.[10] The instrument came into force March 25, 1935. The signatories agreed to notify the sanitary authorities of the other powers on the appearance of dengue fever in epidemic form and to keep the International Office of Public Hygiene informed of the course of the epidemic.

One may briefly note the international character of the efforts made toward finding remedies against influenza. Two German physicians, Hirsch in 1888, and Pfeiffer in 1892, made initial discoveries; but only within the last few years has substantial advance been made. During this period, an extraordinary amount of experimental work has gone on. Drs. Wilson Smith, Andrewes, and Laidlaw in 1933 at the British Medical Research Council at Hampstead found that the ferret was useful for experimental purposes. Dr. Shope at the Princeton Laboratory of the Rockefeller Foundation in New York carried the work further, and in 1936 the Rockefeller Foundation set up a special laboratory in New York for the study of influenza. One of its members, Dr. R. M. Taylor, studied the disease in Budapest in 1939. Medical investigations have proceeded in Canada, Australia, and elsewhere. "Thus the research front against the disease is truly international and worldwide."[11]

Epidemiological intelligence service.—Epidemics spread so quickly that the ordinary official channels of information may be too slow to enable countries to put their health defenses into emergency operation with sufficient rapidity to safeguard themselves in the event of disease breaking out elsewhere. Effective action along the Russo-Polish frontier depended on quick and adequate information. Hence the importance of the League of Nations Health Organization Intelligence Service, organized in 1921, which made special reports on the disease situation in Eastern Europe, with special reference to typhus, relapsing fever, and cholera. After 1922 the publications took the form of a periodical, which appeared in July 1923 as the first monthly *Epidemiological Report*. The step was made possible by the help of an annual grant of $32,840 from the Rockefeller Foundation. The

[10] *League of Nations Treaty Series*, Vol. 197 (1937), No. 4080, p. 59.

[11] George W. Gray, "The Problem of Influenza," *Harper's Magazine*, January 1940, p. 169.

Report, which has increased in value and accuracy, has been bound into annual volumes, and has provided medical statistics and information to the profession throughout the world.

In 1922 the Japanese member of the Health Committee asked the Organization to consider the establishment of a center in the Far East, an area which is liable to frequent and severe epidemics. In 1925 a conference of Far Eastern health administrators agreed to set up a bureau in Singapore; it began operations during the same year, assisted by a five-year grant of $25,000 from the Rockefeller Foundation. The Bureau in its early period distributed telegraphic information from thirty-five ports, but its service rapidly increased; and in 1928 it received information from 140 ports, and broadcast in code each Friday from a number of wireless stations in the East, and by telegraph from Geneva, to more than 124 public health administrations. Many technical radio difficulties had to be overcome before the service reached its admittedly high level of efficiency. Governments were warned in advance of epidemics and can take precautions against ships coming from infected areas. "They know, too, that they can dispense with such measures for shipping from non-infected areas. The feeling of security is thus increased and unnecessary quarantine restrictions are eliminated."[12]

EDUCATIONAL ACTIVITIES

Science has flourished in proportion to the co-operative efforts of scientists. It knows no national boundaries, and health promotion and disease prevention depend largely upon effective interchange of the results of research. The Health Committee, quick to appreciate this truth, first published monographs dealing with public health organization and activity in European countries. The publications developed into the *International Health Yearbook,* which contains information on statistics, legislation, administrative regulations, and the general health policy of various countries. Special studies dealing with particular disease were printed and, as Heiser suggested, the League of Nations' library became a great international storehouse of useful scientific information, accessible to all who might be interested, regardless of nationality or race.

The Health Organization did much more; it supplemented statistical and academic research with collective study tours during

[12] V. Heiser, *Millions of Patients* (League of Nations Association, Chicago, 1937), p. 14.

which health officials met their co-workers from other countries. Collective interchange began in 1922; and again the Rockefeller Foundation showed its wise generosity by subsidizing the project. Up to 1930, 600 officials had participated in these interchanges. In addition, many independent tours were organized which resulted in strengthening the "scientific ties between Europe and the distant countries like Japan, India, and South America." The Health Committee also appointed a commission to collect information on courses in public health given in various countries, and about ten years ago began sessions which were really conferences between directors of schools of public health. It can be appreciated that the dissemination of information and the interchange of officers have helped to raise the prestige of the local services and to induce governments to improve their own public health work.

BIOLOGICAL STANDARDIZATION

The use of sera against disease[13] has greatly increased throughout the world; it is therefore important to have international agreement on "methods for measuring the anti-toxic strength of such sera." Heiser points out that during the World War of 1914–1918 English and American doctors in France often had to use French anti-tetanus serum which differed widely from their own products. "Counting the German unit as one, it required sixty-seven units of American, or 2,500 units of French serum to equal it." Sometimes doctors injected quantities of serum which they believed adequate but which were in fact insufficient, "since the assay had been effected in terms of a unit of lesser potency than that to which they were accustomed." Gautier asserts that many deaths might have been averted if the sera then used had been assayed in relation to a single standard. The League Health Committee, in 1921, decided to undertake the study of biological standardization. Between then and 1935, no fewer than ten international standardization conferences were held, and in 1924 a Permanent Commission on Biological Standardization was established.

The Commission, if it believed that conditions were ready for

[13] The September 1935 issue of the *Quarterly Bulletin* of the League of Nations Health Organization contains a lengthy article written by Dr. R. Gautier, then secretary of the Permanent Commission on Biological Standardization; from it much of the following material is drawn.

the standardization of a serum, requested some national or private laboratories of outstanding reputation to conduct a preliminary investigation. The results were co-ordinated at the Copenhagen Institute in Denmark or the Hampstead Institute in England.[14] The experimenters met in conference, adjusted their findings, and the Commission made its recommendations. The technical problems involved, and the extraordinary amount of scientific knowledge which was thus brought together, lie far beyond the province of this work. It is impossible, however, even for one with no knowledge of medicine to read through the *Quarterly Bulletin* of the Health Organization without being deeply impressed by the remarkable results of international co-operation in this branch of science. Outstanding authorities known to medical circles the world over had together been able to render an immeasurable service to mankind. So great and so rapid had been the achievements that Dr. Gautier suggests that many medical authorities were unaware of the progress that had been made.

The International Conference on Biological Standardization, which met at Geneva, October 1–4, 1935, to review the results obtained and discuss steps which might be taken to insure the wider utilization of the standard units recommended by the Permanent Commission on Biological Standardization, set up two technical committees to consider (*a*) the standards adopted for sera and bacterial products, and (*b*) the standards for certain therapeutic substances, vitamins, and hormones.

The National Institute for Medical Research at Hampstead, London, acted on behalf of the Health Organization in distributing international standards for various products and in maintaining a Biological Standards Department which sends free samples of international standards to any public health service or scientific institute which makes application.

Dr. Madsen, President of the Permanent Commission of the League of Biological Standardization, writes:

> . . . l'œuvre de standardisation est une des fonctions permanentes de la Société des Nations. Tandis que d'autres tâches que l'Organisation d'hygiène de la Société des Nations a assumées peuvent être plus ou moins occasionnelles. . . , ce travail de standardisation revêt un caractère différent: celui d'un centre international et d'autorité internationale.[15]

[14] This work was interrupted by World War II.

[15] *Le Nord,* II (1939), 193.

NUTRITION

In recent years medical discoveries have revealed the great importance of diet in promoting and maintaining health. Carbohydrates, proteins, minerals, and vitamins are essential to normal physical well-being. Foods are classified as energy-producing and protective. The latter contain much protein, minerals, and vitamins, without which people suffer from scurvy, beriberi, pellagra, and similar diseases. Recent investigations have shown that different groups of people require different types of diet, and careful calculations have been made in order to ascertain the needs of children, mothers, men in heavy and light industry, and other special groups.

From the point of view of adequate nutrition, most countries have a poor record. In Great Britain one-half the people, and in the United States almost 75 per cent of the city population, are below the minimum standard of health and fitness. Almost everyone in China and India is undernourished, and it is probable that Central and Southeastern Europe suffer heavily from malnutrition.

The causes of this unfortunate condition have been traced to bad food habits and economic conditions. Political rivalry and the growth of armaments have recently deflected expenditure from protective and energy foods to fighting materials. "Guns for butter" is a bad dietary program. Lack of purchasing power, due to economic maladjustment, and the commercial policies adopted by national governments during the last twenty years have operated to accentuate the difficulty. Under the influence of economic nationalism, tariff barriers have mounted. Many nations have turned to the production of wheat and other energy-producing foods at the expense of the protective foods; they have sacrificed their dietary needs, with the result that their standard of health is falling. Further, agricultural conservatism and ignorance of physiology and dietetics have caused farmers in many places to cling to old methods and to traditional crops. Even if they wished to adopt new agricultural habits, the people of Central and Eastern Europe and in Asia lack necessary capital and credit and suffer from difficulties of marketing their products. They do not possess adequate refrigeration facilities; and their cost of getting products from producer to consumer is too high to permit purchases on a mass scale.

The economic policies of many governments have increased

the evil for another reason. Because the so-called energy foods, such as bread, possess relatively little elasticity of demand, the rise and fall in their price has no appreciable effect upon the demand for them. The demand for protective foods, on the other hand, is very elastic. People buy less milk, butter, and citrus fruits when prices rise. Consequently, any tariff measure which increases the price of bread does not lower the consumption of that article to any great degree but does reduce the amount of purchasing power available for the protective foods; the dietary condition of the population therefore suffers.

These considerations suggest why the League Health Organization conducted investigations into the question of nutrition and standards of living.[16] Most people readily appreciate the importance of economic forces in international affairs; they may not see that a movement to improve nutrition carries economic analysis one step farther, to the point of inquiring what is the ultimate purpose of economic activity. For what end does mankind produce unless, as John Ruskin eloquently asserted many years ago, it is to produce better men and women and not merely to produce "an endless series of inanimate objects"?

Two members of the Health Section of the League, Drs. Burnet and Aykroid, published a report, "Nutrition and Public Health," in the *Health Quarterly,* in 1935. In the same year delegates from Australia and New Zealand to the International Labor Conference proposed that an inquiry be made into the nutrition of workers. This inquiry the Labor Office undertook, and published in 1936 *Workers' Nutrition and Social Policy.* In 1935 the League Assembly urged a more active policy, and the Health Committee thereupon appointed a technical commission of authorities on physiology and biochemistry, which later issued a report, *The Physiological Bases of Nutrition.*

An adequate standard of nutrition depends upon a sufficiency of both protective and energy foods, but this in turn depends upon the agricultural system. The League Council therefore set up a mixed committee comprising experts in medical science, economics, agriculture, and public welfare, which issued five reports dealing with the problem of nutrition and the physiological bases of nutrition, the standard of nutrition in various countries, the statistics of food production, consumption, and prices, and the relation of nutrition to agricultural and economic policy. Because

[16] See F. L. McDougall, *Food and Welfare* (Geneva Studies, Geneva Research Centre), Vol. IX, No. 5, November 1938.

the problem is related to that of rural hygiene, the League sponsored a European conference on rural life to be held in 1939.[17]

We describe elsewhere[18] how in the government of dependencies the dietary needs of native people have become an important question. The *International Labor Review* of September 1936 contains an article, "Workers' Nutrition in Africa," which outlines the factors involved in providing adequate diet facilities for dependent peoples whose civilization is being profoundly modified by contact with the Western World.

Sufficient time has not yet elapsed for international co-operation to do more than initiate measures which are designed to improve the diet of the peoples of all nations. Obviously, while governments spend so much on armaments, the physical well-being of individuals must suffer; consequently a fundamental requirement for better health is the establishment of political institutions fitted to modern world needs. Even if this problem were settled, there would remain many difficult questions—the provision of adequate capital and credit for agricultural producers, more efficient marketing schemes on a continental scale, the eradication of antiquated methods of farming, the promotion of rural life in its wider aspects, the encouragement of co-operative movements, and the breaking down of tariff barriers, quotas, and other restrictive schemes. These measures all require international effort. Even if they in turn were adopted, the educational task of awakening the millions of people of all lands to a consciousness of the importance of diet and of its place in the promotion of human welfare would tax the abilities of leaders. But if nations would consider life in terms of national and international health instead of national power, if they would think less in terms of politics and more in terms of welfare, the whole emphasis of international politics might be changed. Instead of forcing industrial and agricultural policies to fit the requirements of military security and making each country, in a futile attempt to become self-sufficient, sacrifice its protective foods with disastrous consequences to health, the world would so organize itself that (1) the industrial areas would concentrate upon the production of industrial goods for which they are best fitted, (2) the New World with its great spaces and opportunities for large-scale agriculture would specialize in wheat and other energy-producing foods, and (3) the small countries of Europe would devote more

[17] Canceled on account of the war.

[18] See below, pp 449–52, 641–58.

attention to market-garden products which could be sent to the neighboring industrial countries in return for industrial or grain products. In such a vast multilateral system of international trade, a consideration of the dietary needs of the modern world would carry still farther the ideal of production by countries according to the economic law of comparative advantage.

HOUSING

The problem of housing provides a meeting ground for the economist and the public health official. The building trade is among the most important in a country's economy, in that its prosperity promotes the prosperity of many other industries—electric light, gas, lumber, painting, water supply, etc. Experience has so clearly demonstrated the economic role of housing that no further comment is necessary here. Nor need we do more than state in general terms the vital importance of housing to national health. Dr. O. E. W. Olsen, upon whose study, *Post-War Housing Problems,*[19] the following section is largely based, points out that adequate housing demands sufficient protection of people against heat and cold (a matter upon which considerable research has been conducted in recent years), sufficient air space, sunshine, and light, community recreational areas, protection against noise, the abatement of air pollution, and satisfactory disposal of sewage and refuse. Further, wise policy will make provision for public loans and subsidies, differential rents, and slum clearance so as to overcome present evils and implement a comprehensive welfare program for the future.

In what way does international co-operation come into the picture? We might assume at first sight that, inasmuch as houses constitute immovable property, little or nothing can be done by the League of Nations or any other international authority to promote improved housing conditions. Such a view would be mistaken; for one of the most important elements in any policy is the collection of evidence and the utilization of the experience gained by the people of other countries. It was because of this and because the housing question so intimately affects the position of workers that the International Labor Office in 1922 began an investigation of governmental policies relating to workers' houses and later published three studies: *The Housing Problem in Europe*

[19] O. E. W. Olsen, *Post-War Housing Problems* (Geneva Studies, Geneva Research Centre), Vol. XI, No. 6, October 1940.

since the War (1924), *The Housing Problem in the United States of America* (1925), and *The Housing Policy in Europe; Cheap Home Building* (1930). It conducted inquiries into rent paid by workers, and brought together a vast mass of statistics dealing with housing matters. It gave considerable attention to the question of public works as a factor in mitigating economic depressions and advocated an energetic housing policy toward this end; and it made surveys of the lodging and sleeping accommodations of agricultural workers. The Economic and Financial Organization of the League undertook studies of the financial aspects of housing. M. Helger, of Sweden, carried out an inquiry into the housing policies of ten countries—Belgium, Great Britain, Denmark, Finland, France, the Netherlands, Norway, Sweden, the United States, and Canada—and endeavored "on the basis of a comparison of national expenditures, to derive general principles for application according to different national and local conditions."[20] The special committee of statistical experts then communicated its conclusions to the national governments.

Meanwhile the Health Organization of the League was doing valuable work. In addition to its technical inquiries, it associated itself with the European Conference on Rural Hygiene held in 1931, with similar conferences in Africa and the Far East, and with the important Housing Exhibition at the International Paris Exhibition in 1937. It established a special Housing Commission in 1935 which began planning types of houses based upon the necessary hygienic conditions of light, sunshine, population density, air sufficiency, water supply, and general community planning. It is difficult to convey an adequate sense of the importance of these meetings of the Housing Commission because so little of the dramatic and sensational can be reported. However, those with even the minimum of appreciation of public health policy will see the significance of this work. In 1937 the Commission planned a three-year program, which, unfortunately, was interrupted by World War II. Its activities were enjoying the co-operation of national committees in Great Britain, Czechoslovakia, France, Mexico, the Netherlands, Poland, and the United States. Although no regular channels of co-operation had been established by 1941, methods of co-ordination will at length undoubtedly be facilitated by the existence of these national committees.

It is not too much to believe that international co-operation

[20] O. E. W. Olsen, *op. cit.*, p. 49.

in housing may yet play a great role. As a result of bombing from the air and other military activities, following World War II, many cities were partially, and some largely, destroyed. Consequently Europe will require the services of its best town-planning and architectural experts and its economists and financial organizations, if it is to rebuild the most suitable houses in the most desirable surroundings at the cheapest possible cost for the greatest number of people. Whether Europe soon adopts a federal union or not, considerable scope will be left for international co-operation, in large-scale production, prefabricated houses, sound financing, and modern town planning.

Fortunately, the tradition of co-operation in these matters had not been confined to the League of Nations. Between July 27 and August 1, 1914, the first International Congress of Towns was held at Ghent; and, if the first World War had not intervened, the International Union of Local Authorities would have been set up shortly afterward. As it was, the International Congresses were not resumed until 1924. Since then six conferences were held, and the International Union published several volumes dealing with matters of local government. In June 1935 the first issue of its *International Quarterly Review*, "*Local Government Administration*," appeared. Increasingly the Union has become a central clearinghouse of information upon many questions, not a few of which deal with public health and housing.

A glance at the *International Quarterly Review* shows that articles have appeared and conferences have been held dealing with such subjects as town planning for both cities and rural areas, municipal swimming baths, surfaces of school playgrounds, methods of street lighting, central heating for city buildings, playgrounds, and recreational parks, control of smoke and dust, the planning of slaughterhouses and sewage disposal for small and large communities, the treatment of trade-waste waters and the prevention of river pollution, the planning and control of camping as a means of promoting and insuring public health, and many other matters relating to general welfare.

The existence of vigorous local governments and their organization into an International Union for purposes of exchanging information and arranging conferences should facilitate the co-operation of national governments, for local authorities may continue to act as valuable sources of local information and supply the local initiative which is so important if centralization of decision is not to produce bureaucratic domination. Close consulta-

tion between local and national authorities should continue, and the international affiliations of local bodies and professional associations should be encouraged. In this way vocational education and rich local community life can make possible a large degree of creativeness and local freedom which must form the more intimate bases of a widespread international co-operation.

The widespread destruction of homes in the course of World War II has given a new urgency to this question, and accounts for the early actions of the joint committee of the second and third committees of the Economic and Social Council of United Nations, which adopted a resolution pointing out the "magnitude and gravity" of the housing problem in many parts of the world and recommended that appropriate commissions be instructed to expedite their studies on world-housing problems. The resolution emphasized the importance of technical research on materials and methods, prefabrication, the organization and unification of international exchange of information on town planning, building techniques, and other technical questions.[20a]

The League and national health authorities.—National governments also requested the Health Organization to send experts to help them in problems of a specialized character. In 1928 Greece wished to reorganize its sanitary services. The League's Health Committee toured the country and drew up a report which recommended unification of public health services, the establishment of a central sanitary administration and a school of hygiene, and the development of certain technical services. Following these recommendations the Greek government drew up new legislation, and several of its public health officials received assistance from the Health Organization to study abroad what other governments were doing.

The League was able to do much to assist China in building up its public health organization. In 1929 the national government requested the medical director of the League Health Organization to become a member of its advisory council. A few months later it asked that a commission of experts survey the conditions of Chinese port, health, and maritime quarantine. In 1930 the experts presented a series of recommendations, including the organization of a central health station which should become the nucleus of a national health service, the establishment of a national institute of medical training for undergraduates and postgraduates, special measures to deal with the problems of smallpox and cholera in

[20a] *United Nations Weekly Bulletin*, December 17, 1946, Vol. I, No. 20, p. 50.

Shanghai, and methods of improving port health administration.

Although civil war and Japanese aggression interposed many obstacles, the Chinese government was beginning to take important steps. It set up a provisional central health station which for two years worked in temporary premises and then moved into a new modern building. The station began a course of training for sanitary inspectors and hospital internes, and some postgraduate courses for doctors. Its malariology section organized study centers for malaria in the Yangtze valley; and the field station, fearing that the vast road-construction program would facilitate the spread of malaria into other areas, took various preventive measures. The station distributes sera of international standards and vitamin and medicinal substances to substations. Provincial authorities, realizing its great value, are increasingly requesting the central health station for advice and for health programs. The national quarantine service has made excellent progress, and health supervision of Chinese rivers and maritime ports has "already inspired with confidence the officers of vessels of many countries entering Chinese waters." The three sections of Shanghai—Greater Shanghai, the French Concession, and the International Concession—although independent, also co-operated closely in health matters.[21]

The League Health Organization rendered special service to Latin America, in many parts of which health conditions have been extremely bad. In 1927 the League sponsored a conference of South American experts on child welfare at Montevideo, and arranged for investigations in Argentina, Brazil, and Uruguay. It suggested that an international school for infant and child welfare be established at Buenos Aires, and an international school of public health at Rio de Janeiro (which later added leprosy to its work). In August 1929, in response to a request from Bolivia, the Health Organization sent two experts to help the government in reorganizing its health service. In March 1932 Chile asked the League for assistance in its technical organization, particularly to study nutrition.

After the 1931 International Conference on Rural Hygiene, Czechoslovakia requested the League Health Organization to cooperate with it by placing a member of the Health Section at the disposal of its own Institute of Hygiene for two years, so as to enable special commissions to work with the Czechoslovakian

[21] Sino-Japanese hostilities of course affected this policy.

Ministry of Health and to arrange for health experts to visit Slovakia where rural health conditions were especially poor. The health survey undertaken by various authorities resulted in three public health reforms. Outstanding foreign medical authorities, including Dr. Stampar, ex-director of the Public Health Service in Jugoslavia, co-operated with the government, and the League Health Organization granted scholarships to several Czechoslovakian officials.

In February 1932 South Africa requested the League Committee to call a regional health conference to discuss health problems confronting Africa. The most serious diseases in that continent are yellow fever and sleeping sickness. The automobile, the railroad, and the airplane have rendered liable to infection many regions of Central, East, and South Africa which until now have been free from these diseases. Yellow fever is disseminated from human cases in the first three days of the attack; the incubation period does not go beyond six days, and the mosquito which carries the disease is a domestic variety which remains in or near the house where it has fed. After twelve days it can transmit the virus to another person. The conference so arranged discussed methods of preventing the spread of yellow fever, and to that end suggested setting up laboratories at places where immunization tests and vaccination could be carried out; it emphasized the need for pipe-drawn water supplies and other local measures, and commended the International Sanitary Convention for Aerial Navigation of 1932, the acceptance of which "would form an invaluable safeguard against the spread of yellow fever to other countries when air trunk routes were established."

The regional conference also considered the fact that plague was spreading with alarming rapidity in South Africa; the spread was due not to infection through ports but to the action of wild rodents inland. The rodents infected domestic species of mice, which transmitted the disease to man. Governments to the north of South Africa feared the spread of the disease and recognized the need of co-operation to meet the menace. Smallpox next received attention. The medical authorities realized the disadvantages resulting from the different requirements of the East and South African government in the vaccination of immigrants from India, and after long discussion they agreed on a procedure which would provide adequate protection. Rural hygiene found a place on the agenda, and recommendations were made. The delegates realized the value of interchange of views, and suggested that the

League Health Organization consult the governments in Africa with a view to calling further conferences.

The foregoing survey indicates the importance of the League of Nations and of intergovernmental co-operation in health matters; but the record would be incomplete without reference to the remarkable services rendered by nonofficial organizations such as the International Red Cross, medical schools and research foundations, and welfare and charitable societies. International progress depends upon the ability, the disinterestedness, and the vision of nongovernmental agencies as well as upon the efficiency of governments. Frequently the great stimulus for social advance has come from a private group or organization, and only after long effort has its work been taken over by or co-ordinated with governmental institutions. This truth is well illustrated by the work of the Rockefeller Foundation, which has rendered invaluable service to the health of the world. It has truly been an international institution ministering, in the words of its motto, to "the wellbeing of mankind throughout the world." In this respect, it is typical of many other organizations whose work cannot be summarized here.

THE ROCKEFELLER FOUNDATION

In 1909 Mr. John D. Rockefeller established a commission[22] for the purpose of controlling hookworm disease. In 1913 the Foundation was enlarged and received a new endowment of one hundred million dollars. Soon afterward its Sanitary Commission was reorganized as the International Health Board, and a subsidiary, the China Medical Board, was set up five years later. The trustees also established a division of medical education to aid medical schools throughout the world.

The outbreak of the war of 1914–1918 interrupted the major objectives, and for some time the Foundation had to devote itself to emergency war work. It gave financial assistance to the American Red Cross, administered anti-tuberculosis campaigns in France, provided funds for military hospitals, supported the Carrel-Dakin method of sterilizing wounds (a treatment which healed injured tissues much more rapidly than previous methods), and prepared and distributed sera to government hospitals.

Important as its war work was, the major contributions of the Foundation were made in the postwar period. In 1913–1914

[22] The material in this section is adapted from the *Annual Review* published by the Foundation.

the officials outlined the scope of its work: (*a*) to assist in the relief and control of hookworm disease and other controllable diseases; (*b*) to aid in following up such treatment and to cure controllable diseases by promoting the establishment and development of agencies to promote sanitation and public health; and (*c*) to spread knowledge of scientific medicine. It proposed to carry out its program by inviting the co-operation of governmental and other agencies, as far as possible working through existing public health agencies so as to avoid duplication, grafting new agencies wherever possible upon existing agencies, and undertaking work on the assumption that governments would ultimately take over the burden of responsibility; the Foundation would limit itself to setting forces in motion and leave the permanent work in the hands of the governments concerned.

When Mr. Rockefeller died in 1937 his gifts to mankind had totaled 530 million dollars; 446 million went to four funds, of which the medical research was one. In 1938 the Foundation medical staff comprised 60 doctors, 5 sanitary engineers, 2 public health nurses, 2 entomologists, a biochemist, a psychiatrist, and a zoölogist—72 people in all. Of these officials 29 were in the United States, Canada, and Mexico, 16 in Europe, 12 in South America, and the rest in other parts of the world. A director-general and twenty-one departmental directors formulate the general policy.

The Foundation realized that medicine was an international agency—that no one country had produced the great surgeons, doctors, and medical scientists throughout the centuries. It saw the importance of maintaining communication of ideas between medical specialists, and attempted to meet the serious interruption caused by the World War by distributing medical periodicals in Europe and sending aid to European medical scientists who were deprived of journals and reviews in the tragic postwar years. Library funds were provided, journals were supplied, and emergency laboratory aid was given to medical schools at Vienna, Gratz, Budapest, and other places. The Foundation took steps to minimize the losses sustained through the interruption of training of medical men during the War, and provided fellowships for foreign study.

Impressed with the need of developing more uniform standards of medicine throughout the world, it encouraged international co-operation among medical schools and gave generously to them in all countries. It emphasized the need of training public health

officers. Its grants helped to establish in 1921 the London School of Hygiene, an institution which by reason of its important position wields a great influence within and beyond the British Empire. It has maintained a world-wide research staff which has investigated diseases in all countries and has assisted governments to assume responsibility for controlling various diseases, stating that otherwise its own work would at best "be palliative, ephemeral, and in the end futile." It has co-operated with nongovernmental agencies in the five continents in an endeavor to realize the ideal enunciated by Dr. Wickliffe Rose, a generation ago, that "unless public health is conceived in international terms, the strategic opportunity of our generation will be lost."

The Foundation attacked hookworm by encouraging research and by making communities "public-health-conscious." It spent millions of dollars in fighting yellow fever. The heroic conduct of great scientists like Noguchi, Stokes, and Young, who laid down their lives in the cause of science, provides a thrilling chapter in medical history. The Foundation believed that victory had been won; but the jungle "struck back in the late twenties, and a new and more deadly type of yellow fever appeared as a threat to the world." The Foundation established laboratories in Bahia, Rio de Janeiro, New York, and Lagos, which made remarkable experiments and did extraordinary preventive work. It fought influenza, scarlet fever (one report makes special reference to Rumania), yaws, rabies, diphtheria, cancer, and especially malaria; gave assistance to institutions in the United States, Central America, Europe, South America, Asia, Puerto Rico, Jamaica, and the Philippines; and granted aid to the malaria experiment station in Rome with its branches all over Italy. In 1936 it ended seven years' work in Greece and planned to adopt the same policy in other countries.

In the field of public health the Foundation has studied specific diseases, given fellowships for the training of public health doctors, established training centers, carried out demonstrations to ascertain the best methods to be followed by governments, and undertaken intensive research in a limited number of fields by public health laboratories. It has supported public health nursing, given financial assistance for the establishment of health centers, buildings, equipment, maintenance, and personnel of nursing schools, aided nursing schools in Prague, East Holland, Brussels, and many other places, encouraged public health centers to improve village life (for instance, in Jugoslavia), and supported

a state hygienic institute in Budapest and a co-operative health center in Athens.

All public health depends upon the progress of medicine. The Foundation has been active in assisting medical schools throughout the world, and has given special attention to psychiatry. The 1934 annual report lists such activities as: granting money to universities and other institutions for research and teaching in psychiatry and associated subjects; granting money for individual research in mind diseases; giving fellowships for advanced training; support for the study of neurology and related subjects (including the growing and regeneration of the peripheral nerves and virus diseases of the nerve system); a grant to the Lister Institute of Medicine in London for an instrument with which to study the biophysical aspects of body fluids; and a grant to the State Institute of Public Health in Stockholm for biochemical research.

Mental behavior is closely associated with physiological conditions, and the Foundation has made grants for the study of biochemistry, the biology of sex, embryology, general physiology, genetics, internal secretions, and nutrition, to many institutions throughout the world. Space does not permit discussion of the wider fields of the Foundation's work in social science and the humanities which are related to the major problem of health here discussed.

In 1937 the president of the Foundation, Raymond B. Fosdick, told the following story:

> Some twenty years ago in a Central American city a revolution developed while the Foundation was engaged in a study of yellow fever control measures. Dr. Emmett Vaughn, who was in charge of the work, determined to continue his research. Every morning with a flag of truce he crawled through the barricades to collect mosquitoes on one side of the fighting line, and in the afternoon he crawled back again to gather up his specimens on the other side. He was molested by neither army. Both sides thought him somewhat crazy—a man who, when great issues of human destiny were being fought out, spent his time catching mosquitoes. Today in that Central American country the revolution has been largely forgotten, but Dr. Vaughn is remembered as the man who helped to stamp out an age-long pestilence.

This incident not only illustrates the close connection between international health and international relations but also shows how unsound is the habit of drawing too hard and fast a line

between national and international affairs. Certain important phases of human life apply to all nations, and their effective regulation requires an appreciation of the scope of the problem and also the need of institutions adequate to cope with it—institutions which can facilitate co-operation of governments, specialists, and other interested parties and which can speak and act with authority. History strengthens the belief that persons with ability and enthusiasm can set in motion forces which will ultimately influence the widest policies of governments and international organizations.

The Rockefeller Foundation after 1939 attempted to maintain contact with scholars and institutions in countries ravaged by war. It supported research in natural sciences in Europe at a time when scholars, where they could carry on their work at all, labored under the gravest disadvantages. It purchased scholarly journals in the United States and stored them in order to effect a distribution to libraries of Europe and Asia as soon as possible after the war. "Approximately 350 journals are included in this arrangement, covering the fields of medical, natural and social science and the humanities."[23]

It continued its work in the investigation of specific diseases and promoted public health publication. It organized its health commission in 1940 as an emergency body and during 1944 this commission undertook "louse control studies in Mexico City, typhus and malaria control in Italy, malaria work in Egypt, the study of infective jaundice and other infectious diseases, nutrition studies in England, and the manufacture and distribution of yellow fever vaccine."[24] It continued its policy of concentrating effort in fighting diseases. In 1944 it dealt with twelve specific diseases of which yellow fever, malaria, typhus, influenza, and nutrition deficiencies were the most important.

One of the most dramatic stories appears in the battle against typhus in Naples, which was threatened by a serious epidemic at the end of 1943 shortly after the Allied armies had effected its capture. Forty delousing stations were established and by means of a new method of dusting with white DDT powder, without having to disrobe the patients, up to 66,000 persons a day could be treated. More than one million three hundred thousand were treated in January alone, and the epidemic "which might have taken thousands of lives collapsed with astonishing rapidity." Raymond Fosdick gives generous praise to the many agencies and

[23] Raymond B. Fosdick, *The Rockefeller Foundation: Review for 1944*, p. 16.
[24] *Ibid.*, p. 30.

officials and civilian helpers who assisted in the work, but the Foundation itself deserves the highest praise for its work.

It continued research in yellow fever in seven areas outside the United States, and carried on the search for wild animals that might be yellow-fever carriers. It assisted the Egyptian government in working out a campaign against the mosquito *anopheles gambiae*, carrier of a serious and often fatal type of malaria. Under its general auspices an army of more than 4,000 men took part in the campaign of exterminating the *gambiae* in the infested areas by means of Paris green applied to "marshy regions, water holes and other potential breeding places." In Egypt as in Brazil it seems as if the battle against the *gambiae* has been won and Fosdick well remarks that this kind of activity may be a rallying point of unity in a world "haunted by fear and torn by hate. Health is something that all nations desire and no nation by the process of gaining it takes it away from another. There is not a limited supply of health for which nations can compete . . . . Public health work, therefore, becomes one of the techniques of international cohesion. It provides a new language by which Brazil can speak to Egypt and the knowledge and experience of one nation can be available to all."[25]

Nor should one fail to draw attention to the splendid work of the National Public Health Services of many of the governments of the world.[26] An appreciation of what is done by them is necessary in order to obtain a full view of the many-sided political aspects of the problem of health and the prevention of disease. All units of government—local, county, state, national, and international—doctors, Red Cross societies, the Universities, the great Foundations and other organizations too numerous to mention here[27]—can co-operate in building a highly integrated and healthy

[25] Raymond B. Fosdick, *The Rockefeller Foundation: A Review for 1945*, p. 26. Dr. Fosdick's Annual Reports contain some of the most inspiring literature and show a breadth of vision and familiarity with the importance of both the arts and the sciences which, unfortunately, is all too rare.

[26] See *Fortune*, May, 1941, for a description of the United States Public Health Service.

[27] The work of the Rockefeller Foundation is typical of the work done by many other splendid organizations. It is to be hoped that one of these institutions will publish a volume which will give a vivid yet accurate account of health as an international problem. Such a volume written by medical experts in co-operation with authorities or governments would prove of great value not only to the general public but also to those who are concerned with the changing relations between governments and professional, social, and economic associations. One excellent volume has appeared. See William Hay Taliaferro (ed.), *Medicine and the War* (University of Chicago, 1944).

world, combining co-operation in the larger aspects of research and administration with national and local initiative in spheres in which such initiative can best function.[28]

PREVENTION OF PLANT AND ANIMAL DISEASES

Disease attacks not merely human beings but also animals and plants upon which human welfare so largely depends, and nations have therefore recognized the advantage of co-operation in the realm of entomology and mycology.

Within the British Empire a substantial amount of joint action has been undertaken by the British and the Dominion governments. Two examples may be given.

The Imperial Bureau of Entomology was reorganized in 1913 to encourage and co-ordinate throughout the Empire work on human and animal diseases. To its upkeep the Imperial Government, the governments of the self-governing Dominions, India, the Colonies and other Dependencies, the Sudan, and the North Borneo Company contribute. The Bureau publishes a monthly and a quarterly review, identifies insects for official entomologists all over the Empire, and has set up a laboratory for the purpose of breeding beneficial parasites for export to the overseas Empire.

The Imperial Bureau of Mycology, founded in 1920, encourages and co-ordinates Empire research concerning plant diseases. It is supported by Great Britain, the Dominions, India, the Sudan, and the non-self-governing colonies and Protectorates. Its functions are similar to those of the Bureau of Entomology, "distributing information in all matters connected with plant diseases, and undertaking the identification of specimens." That the battle is by no means a light one is evident from the fact that something like ten per cent of the world's crops are destroyed every year by insects.

It was inevitable that wider international measures would be necessary for effective action. As early as 1878 a convention was signed at Berne concerning measures to be taken against the plant lice, *Phylloxera vastatrix*. Modifications were made in 1881 and 1889. In 1929 a convention for the protection of plants was signed

[28] To take but one example: The Commonwealth Fund in New York has published a series of volumes—*Mosquito Control, Public Health Law, Ways to Community Health Education, Recording of Local Health Work, Community Health Organization, Rural Health Practice*—which should prove valuable to health officials all over the world.

at Rome and came into force in January 1932. The signatory powers, "having recognized the usefulness of international regulation and co-operation in the control of plant diseases and pests, and of closer collaboration to this end," undertook to supervise areas within their jurisdiction which supplied plants, to report the appearance of plant diseases in those areas, to take measures to prevent such diseases and pests, and to regulate all transport and packing of plants and plant parts. They each agreed to establish an official organization for plant protection with scientific, technical, and applied research branches and with a service responsible for inspection of areas and consignments of plants. They undertook to issue health certificates (which would conform to a model certificate annexed to the convention), to accompany exported plants. The contracting parties were requested to supply the International Institute of Agriculture at Rome[29] with a list of the plant diseases and pests against which they particularly desired to protect themselves.

After considerable preparatory work by the Institute of Agriculture at Rome a convention on the organization of the fight against locusts was signed at Rome in October 1920 and came into effect April 3, 1922. The contracting parties undertook to adopt necessary measures to prevent by the most rapid means the movement of locusts across national borders and especially to conclude particular agreements with neighboring countries to facilitate common measures. They agreed to furnish to the Institute at Rome at least once a year, and more often if necessary, all information of technical, scientific, legislative, and administrative character in order that the Institute might give it the widest publicity. In 1926 the governments of Palestine, Transjordania, Iraq, Turkey, and Syria, "having considered it advantageous to institute an International Bureau of Intelligence on Locusts," agreed to maintain, at common expense and on equal shares, an office at Damascus. The agreement was to last for three years, and would be renewed automatically for an equal period, unless notification to the contrary was delivered at least one year in advance. The organic statute of the International Bureau of Intelligence on

[29] This institute was established by the International Convention of June 7, 1905, for the purpose of collecting statistical, technical, and economic information concerning agriculture, "to record any new diseases of crops which may have appeared in any part of the world, showing the countries affected by such diseases, their progress and, where possible, any effective measures for their control," and to study questions concerning agricultural co-operation and insurance and many other matters.

Locusts went into effect at the same time. Under Article 4 the main objects of the Bureau were to receive and register information received concerning the area and locality of breeding grounds, the known or probable movements of locusts, and the methods of controlling and combating them, to furnish any information of a special nature which might be called for, and to try to obtain exemption from post and telegraphic charges for communications so made. The Bureau was to be placed under the authority of an international committee of technical representatives, one for each state.

In 1935 a number of governments signed an international convention[30] concerning the transit of animals, meats, and other products of animal origin, in order to establish a fair balance between the health interests of transit countries and the legitimate interests of international trade. They recognized the need of affording the transit the fullest measure of freedom consistent with the requirements of veterinary health inspections and of public health. The parties agree that the existence of cattle plague justifies absolute refusal of transit, and that swine fever, foot-and-mouth disease, sheep pox, or contagious peri-pneumonia will justify refusal of transit. Certificates of origin and health drawn up in accordance with principles issued by the International Office for Contagious Diseases of Animals will be sufficient to permit transit of animals. Signatories agree that twenty-four hours' notice should be given to competent veterinary authorities for frontier inspection, except where there is a permanent inspection service. The contracting parties agree to take all measures necessary to prevent overloading, and, if diseases are found, the transit countries may at the forwarder's expense slaughter the infected assignments.

The convention was to last for two years and for subsequent periods of four years, unless denounced at least six months before the expiration of the period. It came into force December 6, 1938.

An international convention[31] concerning the export and import of animal products (other than meat preparations, fresh animal. milk and milk products) which had been signed in 1935 also came into force at the same time.

Within the last few years the locust menace in Africa has reached alarming proportions. In 1928 the so-called desert locust swarmed over Kenya; within three years East Africa suffered

[30] *League of Nations Treaty Series*, 1938–39, Vol. 193, No. 4486, p. 37.
[31] *Ibid.*, No. 4487, p. 59.

from a devastating invasion of the tropical migratory locust, until by 1932 all this region was overrun. In 1930 the red locust appeared in Northern Rhodesia and soon spread over the area to the south and east, reaching the Union of South Africa. An official report describes the great losses sustained by the territories and emphasizes that international measures alone can suffice to overcome the evil. Since 1931 the Imperial Institute of Entomology has been acting as a center for anti-locust research, and periodic international conferences, notably those at Rome (1931), Paris (1932), and London (1934), have brought together eminent specialists to discuss their results and plan further work. Representatives of thirteen countries have united to fight the locust, which has "proved to be notoriously disrespectful towards intercolonial and even international boundaries, and it follows that an efficient anti-locust policy should also be developed without any regard for such boundaries."[32]

The importance of international co-operation in controlling plant diseases has been re-emphasized on the American continent[32a] where stem rust has destroyed many million acres of wheat, large areas of potatoes have been ruined by late blight, and other crops affected by "other equally destructive diseases." Stakman writes:

> In the world as a whole, stem rust is not only the most dangerous of the cereal rusts but also one of the most complex and destructive of all plant diseases. In North America, no other wheat disease has caused such complete and extensive destruction. It is important in Canada, Mexico, and the United States.[33]

Because no natural barriers exist, "the epidemics are regional not national." The scientific reasons for this phenomenon are admirably set forth in the article cited which shows how stem rust may move from north to south and then from south to north with disastrous results. A new menace has appeared—the development of new parasitic races of stem rust on barberries in the United States which threaten Mexico and the South.

But the spread of plant disease, as noted above, is not confined

[32] Owen Clough (ed.), *Report on African Affairs for the Year 1933* (Billings and Sons, Ltd., Guildford and Esher), Vol. V, p. 38.

[32a] Elvin Charles Stakman, "International Problems on Plant Disease Control," *Proceedings of the American Philosophical Society* (Volume 91, No. 1, February 24, 1943), pp. 95–111.

[33] *Ibid.*, p. 96.

to continents. The potato blight which spread to Europe from South America, the mildew on grape which came from the United States and Europe, and the mildew on hops which was brought from Japan and England are three examples only of the hazards of ordinary intercourse.

Fortunately, international co-operation may help to find remedies, and plant scientists from many countries have joined their efforts to develop disease-resistant varieties of a certain number of crop plants. But more remains to be done and Stakman writes that

> For the sake of mutual protection and the safeguarding of the world's food supply, it is urgently desirable that cooperative investigations be made on an international basis to determine the prevalence of diseases, the nature of the pathogens and their parasitic races, the behavior of varieties of crop plants to diseases, and the factors affecting disease development. [33a]

The foregoing survey should make clear how intimately the problem of health has become, or should have become, a part of the problem of government; and one of the tragedies of the present time lies in the inadequate appreciation of the importance of technical questions in the field of political science. Indeed international co-operation for health, as well as national policies for the prevention of disease and the promotion of physical welfare, touch the very foundations of civilization. Haggard has well written that if we were deprived of the discoveries and inventions of the chemist, the physicist, and the engineer we would suffer considerable inconvenience, but if modern medical science were lost to us the great cities of the world would go back in civilization, not fifty but probably five hundred years. Pestilences and epidemics would reduce urban populations to a mere fraction of their present size. "Large sections of the world which are now prosperous would become uninhabitable." Forgotten diseases would return and communications would spread disease with rapidity. "It is no mere imagination, but the cold and literal truth, to say that modern civilization and the use of the inventions and discoveries of physical science would be utterly impossible were it not for medical protection."[34]

[33a] Elvin Charles Stakman, *op. cit.*, p. 109.

[34] H. W. Haggard, *Devils, Drugs, and Doctors* (Halcyon House, New York, 1929), p. 382.

WORLD WAR II AND INTERNATIONAL CO-OPERATION FOR HEALTH

World War II interrupted much of the excellent work achieved by international co-operation. Hospitals and laboratories were destroyed by the hundreds, medical training was interrupted, and severe restrictions were placed upon scientific research in countries under Axis control. Even in the countries of the victorious Allies, serious consequences developed. The shortage of doctors, dentists, and nurses produced a serious strain upon national health services, social disease and delinquency have become more serious, housing shortages have produced stresses and strains, and the general anxiety created by the war has had profound psychological effects. The destruction of cities and the dislocation of millions of people have uprooted ways of life which in turn have reduced the normal restraints of civilized living. The habit of terror has increased. And above all the terrible specter of famine haunts many lands. Not only will the physical effects of food shortages be profound but the psychological consequences will be difficult to estimate. Sorokin[34a] has eloquently described the effects of famine, war, and social chaos upon society throughout a large part of its history. His general conclusions are borne out by what is happening today. A report by the German Central Administration for Health in the winter of 1946 reads in part:

> The people hunger. They hold only the immediate present responsible for their condition. They are without the energy to trace the links of causes. They have even forgotten Hitler. Beyond the immediate present their power to reproduce even memory does not reach. There is growing, as though by psychological compulsion, a mass hysteria, with a thousand different symptoms of drug addiction, drunkenness, perversities, sadism, murder, infantilism . . . . the situation is reaching a generally psychopathological state, through chronic hunger. We are seeing aberrations such as were previously known only among stranded and starving sailors in lifeboats or thirsting peoples forgotten by caravans in desert sands. It is increasingly impossible to discover in the masses of the people opinions. They have only animal urges.
>
> The explanation of this mass phenomenon, this mental and spiritual paralysis, is physical. They are emaciated to the bone. Their clothes hang loose in their bodies, the lower extremities are like the bones of a skeleton, their hands shake as though with palsy, the

[34a] P. A. Sorokin, *Men and Society in Calamity* (E. P. Dutton & Co., New York, 1943).

muscles of the arms are withered, the skin lies in folds, and is without elasticity, the joints spring out as though broken.

A later report from Greece, to take but one other example, indicates that "animosity and fear there have taken the place of national solidarity" and that, among the starving and ill-clad peasantry, government and the state seem something almost foreign, from which little good can be expected. Moral values have broken down thoughout the country. Black markets, graft, and outright thievery have increased. Though the reporter notes with satisfaction that the majority of people have been able to preserve fundamental decency, he has to admit that they do not see light ahead. A deep weariness overcomes them. Moreover the world-wide nature of the war has resulted in a spread of disease beyond former boundaries. The United States has already seen too many examples of tropical diseases introduced by returning soldiers.

Nevertheless the world is better organized now than a generation ago to meet the challenge of disease. The Health Section of the League of Nations continued to do important work desipte the reduced size of its staff.[35]

The League authorities were able to collect information on the main communicable diseases occurring in Europe and to send this information regularly to national health administrations. As its official reports indicate, it was thus able to allay exaggerated fears and also to put information and supplies where they were most needed.

Reference should also be made to the important advances in international co-operation on the American continent. The Pan-American Sanitary Bureau had done important work. Still more notable advances were made during the war through health and

[35] *The Journal of the American Medical Association* has recently commented upon the work of the League of Nations in promoting biologic standardization, calling it "of inestimable value to physicians and scientists throughout the world." Since 1922 standards have been adopted for 35 substances: 13 concern bacterial serums or anti-toxins, 5 concern vitamins, 7 miscellaneous drugs, and 10 various hormones." The *Journal* continues that the co-operation of the best laboratories throughout the world, together with the advice of outstanding scientists, has produced work of the highest quality. It notes that the health organization has been attempting a unification of pharmacopeias. Eventually there may be general recognition of the need for an international pharmacopeia.

The United Nations Charter contains provisions for carrying on the work of the Health Organization. This will insure a continuation of a form of international co-operation of immense value to biologists and physicians throughout the world. (*Journal of the American Medical Association,* June 1, 1946, p. 404).

sanitation agreements signed by the United States with almost a score of other American republics. Grants from the Rockefeller Foundation and from Congress itself helped to spread public health education, to train nurses, to allow for interchange of medical specialists and expansion of schools of tropical medicine. Hospitals, health centers, dispensaries, food programs are among the lasting achievements of inter-American co-operation during the war years. And in the South Pacific, there is reason to believe that with the medical school at Fiji as a nucleus, international co-operation may provide an enlarged teaching and research hospital, and medical and nurses' training schools for the purpose of serving the islands of the South Pacific. In addition, the concept of social security has made headway, and the world, or much of it, has raised its sights in considering the minimum requirements of social security. The first Inter-American Conference on Social Security took place at Santiago, Chile, in September of 1942; some 100 delegates from the 21 republics, who comprised outstanding officials in the various branches of social work, adopted an impressive declaration concerning social and economic security and passed fourteen resolutions indicating a comprehensive program. A permanent inter-American committee on social security was established and several important studies on a realistic basis have appeared which betoken a new alertness to the problem.[36]

Fortunately, too, the world was served by another international agency which helped to prevent disease from spreading on the scale reached at the end of World War I. The United Nations Relief and Rehabilitation Administration, whose economic activities are described elsewhere, had as one of its important tasks the planning of extensive health activities in areas where it operated. In 1946 the Director could report that despite the unprecedented uprooting of populations there was a relative absence of epidemics at that time. UNRRA medical officers carried out extensive immunization programs against diphtheria, smallpox, typhoid, and typhus. Influenza vaccine was used when an outbreak of influenza was threatened in Germany. Hundreds of doctors and nurses, a large number of sanitation officers, and other technical personnel, assisted by voluntary society personnel, by national governments, and by military authorities, worked in Europe and in the

[36] See, for example, Victor Gabriel Garcés, *Living Conditions of the Indigenous Population in American Countries* (International Labour Office, Montreal, 1946).

Far East. The UNRRA officials gave technical advice in selecting medical and sanitation supplies. They were consulted on special medical problems and questions of public health administration. In Greece the organization maintained an extensive tuberculosis section comprising five teams. At one time 12 airplanes designed for spraying swamps and other mosquito-infested areas were brought to Greece to service training planes for Greek pilots who were to use them in spraying during the next breeding season. It sprayed buildings with DDT to prevent malaria. It supervised supplementary feeding programs. It helped to recruit and train nurses. It assisted in the Athens Rehabilitation Center for crippled children and adults, maintained mobile tuberculosis teams in Italy, and helped to bring an outbreak of plague in Taranto under control. It carried out malnutrition studies, it sent special consultants in several fields to work with Polish authorities in devising a health policy, and it administered two international sanitary conventions adopted in 1944 which set up machinery of international co-operation to deal with diseases transmitted through maritime and air travel.

Despite grave difficulties in organization, many of them outside of its control, UNRRA, an international body established by co-operative international effort, helped to prevent what might have been a complete breakdown in the health defenses of the world during the critical months following the end of World War II.[37]

Of special importance has been the Preparatory Conference of Public Health Experts, which met in Paris, March 19–April 6, 1946, under the sponsorship of the Economic and Social Council of the United Nations, to plan an international congress for health to be held at New York beginning June 19. The Preparatory Committee aimed to co-ordinate the work of four existing organizations—the International Office for Public Hygiene (whose work during the war was confined to occupied Europe), the Hygiene Section of the League of Nations, the Pan-American Sanitary Bureau, and the United Nations Relief and Rehabilitation Administration. The Committee unanimously recommended the establishment of a single world organization which will be a specialized agency under the United Nations. In this way it hoped to strengthen the work already being done by the four or-

[37] Detailed information on the activities of UNRRA can be found in the Reports of the Director General to the Council. These reports are published by UNRRA and issued at Washington, D.C.

ganizations in the field of research and in promoting conventions and regulations in international health and sanitary matters.

WORLD HEALTH ORGANIZATION OF THE UNITED NATIONS

The Conference which ended on July 22, 1946, set up the World Health Organization for the purpose of promoting and protecting the health of all peoples. The Organization is to be a specialized agency whose functions are described in Article 2 of its constitution. It is to help governments in strengthening their health services, furnish appropriate health assistance, establish and maintain necessary administrative and technical services, promote improvement in nutrition, housing, sanitation, recreation, etc., promote co-operation among scientific and professional groups, and undertake many other activities. Membership is open to all states; provision is made for nonself-governing territories to be admitted as associate members. The work of the Organization will be carried on by the World Health Assembly, which is to meet each year and in special sessions if necessary. The Assembly will determine the policies of the Organization and will have authority by two-thirds vote to adopt conventions or agreements which are to come into force for each member when accepted by it in accordance with its constitutional provisions. But the Health Assembly is also empowered to issue regulations on sanitary and quarantine requirements, nomenclatures, standards and advertising, and labeling of certain products which will directly bind all members after due notice except for those members who notify the Director General of rejection or reservations within a specified period.

An Executive Board comprising eighteen persons to be elected by the Health Assembly for three years shall meet at least twice a year. Its functions are to give effect to the decisions and policies of the Assembly and to take emergency measures when necessary. The Secretariat is to comprise the Secretary General and such technical and administrative staff as the Organization may require. The work of the Director General will be of supreme importance. Provision is also made for regional organizations, each with a regional committee and a regional office, to be an integral part of the Health Organization.

The Conference also provided for the continuance of the work of existing international organizations of world scope. The Pan

American Sanitary Bureau and other intergovernmental regional health organizations will, it is hoped, be later integrated with the new Health Organization. The constitution will come into effect when 26 members of the United Nations have signified their intention of becoming members. The extensive constitution drawn up and the highly representative character of the delegates to the Conference have given weight to the judgment that the health of the world has become an increasingly significant and urgent matter. At the moment of writing, however, sufficient time had not elapsed to give adequate indication of the scope and energy of the new institution. The fact that it has been planned on so extensive a scale gives ground for hope.[38]

The Food and Agricultural Organization of the United Nations, in August 1946, made a report on the food situation in the 1930's. It found that "about half of the world's population was seriously undernourished, about one-sixth was surviving at a marginal level of nutrition, and somewhat less than a third was enjoying high-calorie diets.[39]

It recommended more effective international co-operation to prevent shortages and surpluses of food and other farm products and proposed the setting up of a World Food Board. It found that poverty is the chief cause of malnutrition and recommended a study of world food consumption country by country and the establishment of nutritional "targets" which would be intermediate goals and would call for "modification of existing dietary patterns rather than any revolutionary changes." The proposed food board would attempt to stabilize prices of agricultural commodities, to establish a food reserve sufficient to take care of emergency, to provide funds to dispose of surplus agricultural products to countries in urgent need, and to co-operate with other international economic and financial institutions.

At Copenhagen in September 1946, these proposals were discussed at a second conference of the Food and Agricultural Organization of the United Nations. It set up a preparatory commission for a World Food Board and urged that governments "con-

[38] The constitution of the World Health Organization may be found in *International Health Conference: Report of the United States Delegation, Including the Final Act and Related Documents,* Department of State Publication 2703, Conference Series 91, New York, June 19 to July 22, 1946. A convenient summary is found in *United Nations Weekly Bulletin,* Vol. 1, No. 1, August 3, 1946, pp. 4–7.

[39] "World Food Shortage Measured," *Weekly Bulletin of the United Nations,* Vol. 1, No. 2, August 12, 1946, p. 6.

tinue to deal with urgent food problems in accordance with the recommendations of the Special Meeting on Emergency Food Problems.[40]

The conference also set up a preparatory commission to deal with the establishment of a world food reserve and agreed to recommend the establishment of a joint nutrition committee to serve as a link between the Food and Agricultural Organization and the World Health Organization. Its short-term recommendations need not be discussed here, although the assistance recommended to take care of the millions of hungry and starving people does not lack significance. At the beginning of 1947, with the end of UNRRA in sight, there were many countries still facing hunger and economic disorganization. The International Emergency Food Council was to determine plans to increase the world's food supplies and already had received evidence from many countries, including Great Britain, France, Switzerland, India, and Portugal, that the world production of fats was not more than one-half of pre-1939 figures, that price production had fallen off; a United Nations Committee found that $583,000,000 would be needed to provide relief for six European countries alone.

Above all, it is important to realize that the future of the world's health may be gravely imperiled unless the present race in armaments is arrested. The United States is perhaps the only country which on the whole is eating better than it did in 1941, but this amelioration may be short-lived for the dangers of inflation are with us. Another war in which atomic energy will be used will have indescribable consequences for a civilization in large measure characterized by the leadership of cities and great metropolitan areas. The continuous strain is seriously affecting the emotional stability of millions of people who are subjected to an almost daily barrage of newspaper and radio reports concerning this and that crisis. Excessive national self-consciousness, in part the result of uncertainty and fear, cannot continue over a long period of time without seriously undermining the morale of civilization. In 1924, C. E. Playne wrote a significant volume, *The Neuroses of the Nations*,[41] which gives a lucid description of the effects of international insecurity, especially upon French and German life. In the generation which has passed since that book ap-

[40] "Plans for World Food Board," *Weekly Bulletin, United Nations*, Vol. 1, No. 8, September 23, 1946, p. 11.

[41] C. E. Playne, *The Neuroses of the Nations* (T. Seltzer, New York, 1925).

peared, the emotional health of nations has still further deteriorated.

Lionel Curtis convincingly shows that one of the great obstacles to social improvement lies in the serious condition "that national governments have to attend to too many things to keep pace with their work. They cannot adapt their laws and system in time to meet the changes imposed by mechanization at an ever-increasing rate,"[42] and he quotes a member of the House of Commons who wrote, in January 1943, that there was enough valuable matter in the Barlow, Uthwatt, Scott, and Beveridge Reports to keep the British government busy for years and reproduced the statement of the late Dr. William Welch that "we know how to do a lot of things which we do not do or do on a wretchedly small scale." What governments most need in order to deal with the question of social reform and material welfare "is to relieve them of the task of maintaining peace, and to give that task to an international government which alone can do it."[43]

Not only governments but individuals are threatened with breakdown owing to their having to carry over-heavy burdens occasioned by the complexity of modern life, a great deal of which is directly traceable to and the consequences of the excessive demands made by competitive armaments which reach into every phase of national existence.

Finally, disease may well become an instrument of power politics. Milton Silverman in 1941 described how, sixteen years before, the German Foreign Office attempted to trade the secret of the manufacture of Boyer 205 or Germanin, a compound claimed to be a most effective remedy for the treatment of African sleeping sickness, as a price for the return of the German African colonies lost as a result of World War I. Bacteriological warfare was much talked of a few years ago but appears not to have been used, in part because of the major defenses of the larger countries and in part because of other considerations. We have just been warned by leading scientists that conceivably atomic energy could be used in such a way as seriously to injure the health of the peoples of the world. The nations have therefore a much more clear-cut choice before them—whether to use science co-operatively for health or competitively on an international scale for destruction.

[42] Lionel Curtis, *Faith and Works,* Oxford University Press, 1943, p. 42.
[43] *Ibid.*, p. 45.

Chapter V

THE INTERNATIONAL PREVENTION OF CRIME

WITH the growth of communications, the problem of preventing crime and of apprehending criminals is becoming increasingly an international one. If terrorists, murderers, slave raiders, forgers, traffickers in women and children, opium smugglers, and other lawbreakers escape across national boundaries and beyond the jurisdiction of a state to which they are subject, the ends of justice will be defeated unless the receiving country is willing to assist in bringing the offenders to trial.

In the sphere of law and order the question is not one of nationalism versus internationalism; it is a question of both national and international organization, a division of powers for the more efficient prevention of actions harmful to society. When criminals and lawbreakers build up international methods for antisocial ends, they must be met by equally wide but more effectively organized force. Otherwise an insistence upon a formal sovereignty may assist smugglers, terrorists, and others to weaken the foundations of law. Indeed, we shall see plentiful evidence of criminal activities being protected in the name of sovereignty and national interests.

PIRACY

Freedom of the seas would be a doubtful boon if robbery and disorder made it impossible for merchant ships to travel in safety. If nations renounced their sovereign claims to great oceanic areas and in so doing would no longer accept responsibility for keeping order in those parts, the last condition of affairs might be worse than the first. History has shown that piracy can make the position of merchant ships even more intolerable than discrimination under responsible national governments has done. International anarchy could inflict greater loss to maritime trade than a system of competing claims of oceanic jurisdiction.

Piracy and robbery are almost as old as history itself. In ancient times sea robbers attacked Phoenician and Greek merchants. Rome, for a while, was able to insure the safety of ships; but after the third century of the Christian era it was so occupied with guarding its land frontiers that the Mediterranean again lapsed into piracy. During the Middle Ages the evil flourished; in the Mediterranean and the Adriatic, and especially along the African and Spanish coasts, pirates pursued their ruthless trade. For almost a thousand years the western Mediterranean was dangerous to the shipping of the Christian states. In the northern seas of Europe pirates were equally active, and even the English Channel swarmed with them, a situation explainable in part by the fact that the line between the ordinary merchant and the pirate was frequently very narrow; many merchants turned to robbery, if they thought that by this means they could reap greater gain than by legitimate commerce.

After the discovery of the Americas, the expansion of trade, and the discovery of new and more valuable cargoes, such as spices, gold, and silver, piracy became even more attractive; and in the sixteenth, seventeenth, and eighteenth centuries it spread to the Caribbean area. English, Dutch, and French financiers who opposed the colonial exclusiveness of Spain in America helped to set up ships to plunder Spanish trading vessels; and in the eighteenth century, freebooting and privateering flourished in the Americas until competition became so intense that many of the pirates were driven out of business, changed their location, and moved to the Pacific.

The Barbary States in North Africa—Morocco, Algiers, Tunis, and Tripoli—were for a long period, and especially during the eighteenth century, the center of extensive piratical activities. The rulers and chieftains raided the islands and neighboring coasts, took hundreds and thousands of people captive, and held them for ransom; they confiscated vessels and cargoes; they forced their captives to do the most laborious tasks, deprived them of food, placed them in disease-ridden detention houses, and in other ways treated them with great cruelty. Not only did the governments obtain money by robbery, plunder, and kidnaping, but they blackmailed European governments and exacted great sums from them "for immunity from future attacks."[1] Espe-

[1] R. W. Irwin, *The Diplomatic Relations of the United States with the Barbary Powers* (The University of North Carolina Press, 1931), p. 11.

cially did the weaker governments have to pay heavily. Even the great powers—Britain, France, and Holland—paid tribute; and, soon after it gained its independence, the United States had to face the demands of the pirates.

Benjamin Franklin hinted at the possibility of a European combination to abolish piracy; and in 1785 Jefferson proposed joint action by the United States and France upon Algiers, if the latter would not forego its exactions upon France.[2] Other public men favored international co-operation; and Jefferson drew up a series of "proposals for concerted action" but his plan was not adopted. At the Conference of Aix-la-Chapelle in 1818 Great Britain proposed that measures be taken against the Barbary pirates. But it refused to agree to any Russian forces being stationed in the Mediterranean to form part of an international police; that is, considerations of national power outweighed considerations of safety of commerce. W. Alison Phillips writes:

> The Barbary pirates were the scourges of the whole continental sea-board; they held up trading vessels at the mouth of the Elbe, and in the Mediterranean no vessel was safe that did not sail under the British or the Ottoman flag; yet it was found impossible to concert measures against them because of British jealousy of Russian intervention in the Mediterranean.[3]

Thus international action accomplished little. National states had long taken action against piracy:[4] England from the fourteenth century to 1536 tried piracy offenses in the admiralty courts, and after that date in the common law courts; she also passed many acts which defined and punished piracy (1536, 1670, 1698, 1721, 1744) as well as several against the slave trade in the nineteenth century. France made an anti-piracy ordinance in 1681 and another in 1718, issued a decree in 1798, and passed laws in 1803 and 1858. Spain published an ordinance in 1628; and an ordinance of the Spanish royal navy in 1748 declared that pirates should be punished with death as enemies of the human race. Argentina, Bolivia, Chile, Greece, Peru, and other governments likewise passed national laws against pirates in the nineteenth century.

The decline of piracy has been due more to the general advance

[2] R. W. Irwin, *op. cit.*, pp. 47–53.

[3] W. Alison Phillips, *The Confederation of Europe* (Longmans, Green & Co., London, 1914), p. 190.

[4] Joseph Walter Bingham, "Piracy," supplement to *The American Journal of International Law*, Vol. 26 (1932), pp. 755–65.

of international trade, the greater size of vessels, the more regular sailing schedules, the development of cables, and later radio, than to the effective national or concerted international action.

During the nineteenth century the American continent and the Caribbean had to deal with the problem of American filibusters, who for some years indulged in lawless expeditions against Nicaragua and Honduras. The filibusters used the United States as a base of operations, and the American government for some time took few or no preventive measures. The British authorities were deeply concerned because the adventurers threatened the Mosquito territory, caused much unrest in Central America, and thereby adversely affected the position of British subjects. Owing to the somewhat delicate diplomatic situation which prevailed between the United States and Great Britain, the latter did not raise the question "whether filibusters were pirates," and the law officers of the British government did not claim that British naval commanders had any "'right to interfere with them on the high seas."[5] Even when President Buchanan designated the filibusters as criminals under American law it did not follow that they were pirates or criminals—"enemies against humanity"—and therefore outside the protection of all law. Lord Palmerston recognized this fact, and wrote that the American President would probably strongly protest if Britain attempted to deal with the criminals as pirates—"he would probably turn upon us and say that we had no right to shoot American citizens, merely because we had declared that they had violated American laws or even international law. They were American citizens still, and answerable only to the government to which they owed allegiance, or to the government whose country they had invaded, but that we had no jurisdiction over them, and no right to put them to death."[6] In 1858 the British government decided to take firmer action against filibusters, and notified the United States of its intention. Fortunately the situation cleared and Anglo-American diplomatic relations were not disturbed by further incidents. But just as pirates had profited because of the military and naval rivalries of nations, so filibustering for a time flourished because of the international complications arising out of power politics.

In 1922 the five naval powers—Great Britain, the United

[5] Richard W. Van Alstyne, "American Filibustering and the British Navy," *The American Journal of International Law*, January 1938, p. 141.

[6] *Ibid.*

States, France, Italy, and Japan—drew up a treaty with the object of forbidding submarine attacks against merchant vessels; Article 3 provided that any person who should violate the rules set down, "whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of War and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any power within the jurisdiction of which he may be found." The article attracted much attention but was not incorporated in either the 1922 or the later 1930 Naval Treaties. "The idea . . . . of incorporating into piracy *jure gentium* inhuman violations of the rules of warfare by naval commanders acting under the orders of their government was definitely abandoned."[7]

This situation prevailed until 1937, when the submarine attacks against merchant shipping during the Spanish Civil War caused nine states to meet at Nyon and sign an agreement which provided for special measures against the sinking of merchant ships by submarines "contrary to the most elementary dictates of humanity"; such actions "should justly be treated as acts of piracy." Submarines guilty of attacks might be counterattacked and, if possible, destroyed by the naval forces of the powers signatory to the agreement. Considerable discussion took place as to whether or not the Nyon Arrangements made these illegal attacks equivalent to piracy. The general view is that they did not do so, because, although attacks on merchant vessels were designated "piratical acts," the agreements made no provision for the trial and punishment of guilty individuals but authorized naval vessels to take preventive action of a deterrent nature. Norman Padelford notes that the Nyon Arrangements are rather to be regarded "as important experiments in, and contributions to, international cooperation and administration," and as significant attempts to bring some of the international aspects of civil war within the realm of international regulation and law.[8]

For a time in the early postwar period reports of piracy complicated the already difficult relations between Yugoslavia and Italy. Unknown submarines were sighted in the Adriatic in February 1946, and midget submarines of unknown nationality were reported in Italian territorial waters. Italian papers claimed

[7] "The Nyon Arrangements, Piracy by Treaty?" *The British Year Book of International Law*, 1938, p. 201.

[8] Norman J. Padelford, "Foreign Shipping during the Spanish Civil War," *American Journal of International Law*, XXXII (1938), 279.

that Yugoslav pirate societies organized in Ragusa and Sebenico and in Albanian ports attacked Italian sailing vessels operating between the Adriatic ports. These vessels represented Italy's only means of costal shipping and because they were unable to defend themselves they were forced to sail near to the shore and to restrict their sailings to a few daylight hours. This example further illustrates the difficulty of separating private from public actions in the modern period of international rivalry.

LIQUOR

Liquor has been a more serious international problem than one may have imagined, and like other social questions has proved to be too complex to be solved by national action alone. International co-operation was found necessary in Africa soon after the advent of modern colonization there.[9] The great powers, by the Brussels Act of 1890, attempted to control the liquor trade in Central Africa. Before this time slave traders had exchanged European spirits for Negro slaves. Although English feeling was already becoming aroused, the Berlin Conference of 1884 took no action, and only six years later were the first international steps taken

The Brussels Act divided certain regions into prohibition and nonprohibition zones. In the former the powers prohibited liquor, except for strictly limited quantities for medicinal purposes and for use by white people. Each government was permitted to decide the boundaries of its prohibited zones, with the result that although France and Portugal failed to proclaim any, other governments extended prohibition over an area of 2,782,400 square miles. In the nonprohibition regions the governments promised to impose minimum duties of 13 cents per gallon for a period of three years, after which time each power might individually increase the amount of duty. But the Act failed to distinguish between higher-grade liquor and the "trade spirits" usually sold to natives, and as all the seaports in West Africa lay in the nonprohibition area (which amounted in all to 5,370,700 square miles) it was important to insure that the duties be high enough to prevent the importation of poor-grade liquor. Unfortunately, some of the powers, especially Holland and Germany,

[9] A. McPhee, *The Economic Revolution in British West Africa* (George Routledge & Sons, London, 1926), pp. 66–68, 92–93.

were interested in exporting large quantities of trade gin and rum, and even Britain supplied a diminishing amount. Experience soon showed that the duties were too low to prevent imports.

In 1899 another conference met at Brussels and agreed to increase minimum duties to 60 cents per gallon, an amount which the British government believed to be too low. The agreement lasted until the 1906 conference, called at the request of Great Britain, raised the duty to 86 cents per gallon. During this period, higher wages and economic progress had enabled the natives to increase their income and to pay the higher duties and liquor continued to flood the African colonies.

Another international conference met in 1912 to consider raising the duties and extending the area of prohibition zones. France, taking a negative position, refused to proclaim further prohibition zones, claimed that higher duties would merely encourage the production of domestic native alcohol, and argued that where the African people were Mohammedans the duties were unnecessary, since Mohammedanism forbade use of liquor. In consequence, Britain took individual action and increased its duties and added prohibition areas.

After the World War of 1914–1918 the powers made a renewed attack upon the problem. They signed a treaty far more comprehensive than the Brussels Act of 1890. Under the convention of St. Germaine-en-Laye, the governments (*a*) prohibited the importation and sale of trade spirits, for the first time distinguishing the cheaper liquor from the higher-grade article, (*b*) extended the area of control, (*c*) forbade the manufacture of distilled beverages by natives and whites in the area governed by the convention, (*d*) placed an import duty of $7.00 a gallon on pure alcohol, and (*e*) provided for a report from each government to a central international office under the control of the League of Nations.

The League of Nations established the Permanent Mandates Commission, which was to receive annual reports from mandatory powers, and, *inter alia*, to watch over the liquor problem in mandated territories. The Commission attempted (1) to equalize import duties by scaling them up to the highest level possible, (2) to obtain annual reports from mandatory authorities which can be used as a basis of comparison, (3) to frame a generally acceptable definition of "trade spirits," "spirituous liquors," and "spirits." Since the Mandates Commission dealt with only a part of the world's colonial territory, despite its activity and that of other

agencies, serious difficulties remained. Among . may be listed the following:

1. The policy of high import duties and, in the c. and British colonies, the introduction of the "negat of excluding all spirits except those specifically adn not met with unqualified success. Some authorities cla has insured that present liquor imports are of better qua less has been consumed since than before the war, and least, liquor can no longer be used in exchange for goods. ι assert that more and not less liquor has been imported intc French colonies, Togoland, Dahomey, and the Ivory Coast, into British Nigeria, Sierra Leone, and especially the Gold Coa

2. The question is complicated by the fact that here, as well as elsewhere in tropical areas, Europeans desire to have liquor.

3. Natives manufacture their own beverages, some of which, according to A. C. Burns, for many years in the government service of Nigeria, are extremely powerful. In a section of Nigeria, according to him, the natives are tapping and injuring palm trees in order to obtain palm wine.

4. Many governments obtain considerable revenue from duties on liquor. In 1913, Nigeria derived over one million pounds from this source. The amount declined during the war, but Lugard pertinently asks why the West African dependencies, rich in palm oil, kernels, cocoa, tin, and gold, which "render them by universal consent among the wealthiest of our tropical colonies, should claim that a revenue from trade spirits, which is possessed by no other colonies, should be indispensable to balance their budget."[10]

5. Authorities differ as to the effects of imported liquor on natives. The 1909 Royal Commission which was sent to Nigeria examined many witnesses and concluded that "there is absolutely no evidence of race deterioration due to drink,"[11] a conclusion with which Lord Lugard and others profoundly disagreed.

6. Complete prohibition would undoubtedly create problems of smuggling and domestic manufacture. To meet these, Lugard suggested the imposition of heavy duties on spirits, the importation or local manufacture of very light beer, the "compulsory dilution of spirits to fixed maximum strength before issued from

[10] Sir F. D. (later Lord) Lugard, *The Dual Mandate in British Tropical Africa* (W. Blackwood & Sons, Ltd., London, 1926), p. 605.

[11] Quoted in A. C. Burns, *History of Nigeria* (George Allen & Unwin, Ltd., London, 1929), p. 244.

bond," a system of rationing by which the total quantity imported each year would be fixed in advance, and the "extension of prohibition zones in those areas where spirits are little drunk."

The liquor question has affected international relations not only in dependencies but also in Europe and America. As early as 1887 six powers signed a treaty to forbid the sale of liquor to men engaged in fishing in the North Sea, where floating cabarets had given rise to many abuses, because fishermen were tempted to exchange their catches for liquor. To maintain order the governments agreed to give their cruisers power to arrest any vessel suspected of violating the treaty, take it to port, and hand it over to its national authorities for trial.[12]

After the World War of 1914–1918 liquor producers exerted influence on their governments to increase liquor sales abroad, and in consequence the smaller countries, Iceland and Norway, which had adopted prohibition, suffered considerable pressure from more powerful nations. In 1921 Spain threatened to triple the duty on fish from Iceland unless the latter country modified its prohibition policy relative to Spanish wines; and Iceland, rather than lose its important market for fish in Spain, gave way, in April 1922, "suspended its prohibition law for one year," and later extended the period indefinitely.

In 1916 Norway's prohibition law brought forth a strong protest from France, with the result that Norway agreed to permit the importation of French wines to an unlimited degree. Spain and, later, Portugal exercised similar pressure on Norway, which had to repeal its prohibition law because the wine-producing countries which consumed a large portion of Norway's fish threatened to close their markets. Buell remarks that the threat of a trade embargo by one country against another for adopting prohibition "is certainly a most questionable procedure."[13]

The prohibition policy of the United States also gave rise to serious international controversy.

After the adoption of prohibition in 1919 rum-running afforded great chances for profit. Vessels brought liquor from all parts of the globe. They kept just outside the three-mile limit and sent liquor ashore by means of boats sent out from hiding places along the shore.[14]

[12] R. L. Buell, *International Relations* (Henry Holt & Co., New York, 1929), p. 270.

[13] Buell, *op. cit.*, pp. 271–72.

[14] W. E. Masterson, *Jurisdiction in Marginal Seas* (The Macmillan Company, New York, 1929), pp. 212–13.

Not only did traffickers smuggle liquor directly into the United States, but ships obtained two clearances "so that the master could produce the one calling for a foreign port if boarded and examined on the high seas by custom officers, while if he succeeded in unloading his illicit cargo without detection, he could go into the American port named in the other clearance for a return cargo." The Canadian government permitted these practices and gave clearances to vessels obviously too small to reach the destination named in their application. This evil was remedied in 1925, when Canada by treaty undertook to refuse clearance to such vessels.

International controversy increased when the United States passed the 1922 Tariff Act empowering revenue authorities to search for smugglers within a distance of four leagues from the shore. The courts, in interpreting this act, laid down the principle that a vessel hailed beyond the three-mile limit but within a four-league distance from the shore, pursued and caught beyond the four-league limit, was justifiably captured on the high seas under the doctrine of "continuous hot pursuit." Great Britain, however, took its stand on the three-mile limit, and claimed that seizure of vessels outside this limit was contrary to international law: "Any attempt on the part of the United States authorities to seize a British ship outside the three-mile limit would be regarded by His Majesty's Government as creating a very serious situation."

Under the Prohibition Law, as interpreted by the Supreme Court in *Cunard* v. *Mellon* (1922), foreign vessels could not bring liquor into the United States or its territorial waters even if kept under seal and not intended for delivery in the United States. This decision threatened to inflict serious injury on foreign shipping; for vessels returning from the United States to Europe had to travel "dry," whereas vessels from Canada could carry wines and liquors. Moreover, France, Italy, and Spain had laws which required their ships to carry a certain amount of liquor. Buell writes that foreign powers thus "aided the violation of the prohibition policy of America, while the United States forced prohibition upon foreign states! Such were the international problems created by what international law calls a purely 'domestic' question!"[15]

The United States desired to obtain Britain's consent for ex-

[15] Buell, *op. cit.*, p. 273.

tension of its powers of search beyond the three-mile limit. Great Britain wished to gain the right for its ships to carry liquor under seal within American territorial waters. Both parties were willing to compromise, and in 1924 signed a treaty which (1) accepted three marine miles as the limit of territorial waters; (2) stipulated that Great Britain should not object to the search of vessels flying the British flag outside the territorial waters, but within one hour's steaming distance, if they were suspected of trying to evade the liquor laws of the United States; (3) provided that the United States should not search or penalize British vessels which were carrying liquor in United States territorial waters if the liquor was kept under seal; (4) provided for claims for loss or injury through seizure.

The United States signed similar treaties with other powers and was thereby enabled better to eliminate smuggling from the high seas. These included treaties with Germany, the Netherlands, Cuba, Panama, Italy, Sweden, Norway, Denmark, Spain, France, and Belgium.

Canada in the "I'm Alone" case took the view that the United States in extending its search for smugglers beyond the traditional limits acknowledged by international law was threatening the doctrine of freedom of the seas. Masterson deals interestingly with this contention. He suggests that the hovering laws, or laws dealing with smugglers hovering just outside the three-mile or twelve-mile limit waiting to dispatch liquor to the shore, do not interfere with "rights of innocent passengers"; legitimate commerce, therefore, suffers no injury. Nor do the laws involve any claim of sovereignty or of territorial waters over an area which is policed solely for anti-smuggling purposes. They do not exclude foreign vessels and do not assert a general jurisdiction over vessels. He asks what other interest can be weighed against "this tangible interest of the littoral state," the welfare of which depends upon the adequate enforcement of its laws. And he denies that the doctrine of the freedom of the seas opens the high seas to all vessels at all times. The rights of action against pirates, of "hot pursuit," and of search of neutral vessels in wartime constitute recognized limitations. It would seem, therefore, that a more satisfactory method of dealing with the question would be to balance interests rather than to argue from abstract principles.[16]

Other international problems arose from the fact that it was

[16] See W. E. Masterson, *op. cit.*, pp. 380–401, for a discussion of this question and of the possibility of international legislation.

lawful to export liquor from Canada and at the same time unlawful to import liquor into the United States; along the St. Lawrence River, and the United States–Canadian land boundary generally, people tried to run liquor across the border. The Canadian policy of granting clearances to ships or boats crossing the St. Lawrence River made prohibition enforcement more difficult for the United States. How extensive were the shipments can be seen from figures which show that during the year ending March 31, 1928, Canada received $18,000,000 from duties imposed on liquor exported to the United States. The latter country made repeated requests to Canada for assistance in the solution of this border problem, and finally the Canadian government modified its policy and introduced legislation making it illegal to export liquor into the United States.

The nations bordering the Baltic signed a treaty in 1925 under which each signatory power agreed to prohibit small vessels under 100 tons from carrying liquor from its territory unless it had obtained special official authority. The powers agreed to permit each other to search vessels suspected of engaging in contraband liquor traffic beyond the three-mile limit up to a distance of twelve nautical miles. Similar treaties for the prevention of smuggling have been signed by the United States and Mexico, Sweden and Norway, and Mexico and Germany.

In August 1935 Congress passed an anti-smuggling act empowering the President to proclaim an enforcement area at any place on the high seas for purposes of preventing the unlawful introduction of merchandise. The area is not specifically defined, and may vary from time to time and from place to place. The act authorizes the seizure of vessels, foreign or domestic, up to ninety miles from the coast, but also provides that the act will not be enforced against a foreign vessel "in contravention of any treaty with a foreign government."

SLAVERY

There are two distinct but related aspects of the problem of slavery: (*a*) Slave trading, which has involved the transport of slaves from one country or one continent to another, the suppression of which required international action; and (*b*) slavery as a domestic institution, which may perhaps be considered as a purely national issue but which has international ramifications because the existence of domestic slavery constitutes a standing invitation to raiders to indulge in slave trading.

Europeans began slave trading several centuries ago. After the expulsion of the Moors and Jews from Spain, Portuguese merchants imported African Negroes for labor purposes. They made great profits, and justified their nefarious trade on the plea that Negroes belonged to a lower order of beings and that because slavery existed in Africa it would be better to bring them as slaves to Christian lands where they could enjoy the benefit of Christianity. Slave traders carried off hundreds of thousands of Negroes each year. In 1713 Great Britain undertook to bring into the West Indies 144,000 Negroes within a period of thirty years. McPhee estimates that over 100,000 per year were shipped from West Africa alone;[17] Lugard writes that it is impossible to estimate the number of people killed or enslaved, but suggests that probably 100,000 slaves reached the east coast of Africa yearly; and authorities believe that about 1,000,000 people were taken slaves each year, at least ten having been killed or left to starve for every person who reached the coast alive. The figure may be doubled for the rest of Africa. And this appalling set of affairs "had been going on for centuries!"[18] In the Sudan the population was reduced from eight and one-half millions to under two millions within a few years.[19] These instances will give some impression of the magnitude of the traffic.

Great Britain ended the slave trade in 1807 by unilateral action. Other nations followed—the United States in 1808, Sweden in 1813, Holland in 1814. But because the ocean is free to ships of all nations, unilateral action on even a wide scale did not serve substantially to reduce the traffic; slave traders continued their infamous work under the flags of nations which had not declared the traffic to be illegal. Great Britain at first attempted to fight the traffic singlehanded by ordering her cruisers to visit suspected vessels. However, in 1817 Sir W. Scott ruled that the British Government had no legal right in time of peace to visit and search vessels belonging to other sovereign states. Britain thereupon sought to obtain some form of international agreement.

Already at the Congress of Vienna, the British Foreign Minister, Castlereagh, had unsuccessfully urged the powers to set up a permanent committee of surveillance. He then proposed an eco-

[17] A. McPhee, *The Economic Revolution in British West Africa* (George Routledge & Sons, Ltd., London, 1926), p. 29.

[18] Sir F. D. Lugard, *The Dual Mandate in British Tropical Africa* (W. Blackwood & Sons, Ltd., London, 1929), p. 355.

[19] *Ibid.*, p. 356.

nomic boycott against countries which refused to abolish the slave trade. "At Paris in 1814, and at Vienna in 1815, every resource of Great Britain was used to secure general abolition by the Powers. West Indian islands were offered, subsidies were promised, commercial boycotts were threatened to those countries whose flags were principally resorted to by the trade; but without much success. There was a marked distrust of British motives."[20] This distrust served to ruin Castlereagh's scheme for "the vigilant superintendence of an armed and international police on the coast of Africa." The European nations did not intend to support "proposals which promised to strengthen" Britain's maritime supremacy, which the Napoleonic wars had served to increase. The governments also rejected Castlereagh's second plan and merely adopted a general declaration

> that, regarding the universal abolition of the trade in negroes as a measure particularly worthy of their attention . . . . they are animated by a sincere desire to co-operate in a most prompt and a most effective execution of this measure by all the means at their disposition and to act in the employment of these means with all the zeal and all the perseverance which they owe to so great and admirable a cause.

The high-sounding eloquence of the Congress resulted in no effective multilateral action, and progress for the next thirty years took the form of bilateral treaties by which certain nations granted each other the right to visit and search vessels suspected of engaging in the slave traffic. However, the result was quite unsatisfactory, because a vessel could be detained only provided that slaves were actually found on board. Nor did the treaties provide against the possibility of selling the condemned vessel; hence the owner could transfer his ship to someone else and suffer little loss. France, Denmark, Sardinia, and Sweden accepted the right of search; but Spain obstinately refused, with the result that slave traders flew the Spanish flag, and made advance in eliminating the traffic extremely difficult. Unfortunately, too, Brazil and the United States for a long time refused the right of search, and slavers "flocked" to the flags of those countries.[21]

In 1841 the first international treaty relating to the slave trade was signed at London by England, France, Prussia, Russia, and

[20] H. G. Soulsby, *The Right of Search and the Slave Trade in Anglo-American Relations, 1814–1862* (The Johns Hopkins Press, Baltimore, 1933), p. 13.

[21] W. L. Mathieson, *Great Britain and the Slave Trade, 1839–1864* (Longmans, Green & Co., London, 1929), p. 27.

Austria. These governments undertook to prevent their subjects from engaging in the slave trade. They branded the trade as piracy (which they had refused to do in 1815), and conceded the right of mutual search. Cruisers of government A could search a slaver belonging to country B and bring it to the national courts of B for trial and condemnation. Palmerston hoped to induce all the Continental powers to ratify the treaty, but his scheme failed. General Cass, the American ambassador to Paris, suspected that England was attempting to extend the right of policing the high seas for selfish purposes and began an agitation against the proposal, with the result that the French refused to sign the treaty.

Great Britain made a distinction between search and visit; the former was to be permitted only under treaty; the latter should be accepted without special treaty consent. The United States, on the other hand, claimed that "visit was as great an outrage as search" and that the principle of freedom of the seas was at stake. Next year some of the differences were settled, and the two countries by the Webster-Ashburton Treaty of 1842 agreed to keep a squadron each off the coast of Africa and "to carry out its laws against slave ships flying its flag." In 1862 they went farther and allowed the cruisers of either country to search the merchant ships of the other and established mixed courts which could condemn slavers. The mixed courts, however, were abolished by the Convention of June 3, 1870, "which obliged the cruisers to bring suspected slavers in for condemnation to the courts of the country of the suspected vessel."

In the 'seventies new forces appeared. The measures hitherto taken were directed against the slave trade at sea, but new problems arose with the opening up of Africa by explorers and missionaries.

The first international effort to deal with Africa's inland slave trade was made at the 1885 Berlin Conference, which Bismarck convened (1) to obtain recognition of the International Association of the Congo as a state, (2) to define the general policy of occupation in central Africa, and (3) to insure equal opportunities for traders and missionaries of all nations. The Conference adopted the Berlin Act, which contained two articles dealing with slavery. Under Article 6 the powers undertook to preserve the native tribes, promote their moral and material well-being, and assist in suppressing slavery and especially the slave trade. Under Article 9 they promised not to permit their colonies to be used as either markets or means of transit for the trade in slaves, and

agreed "to employ all means . . . . for putting an end to this trade and for punishing those who engage in it."

The Berlin Act applied only to the conventional basin of the Congo but did not touch the slave trade in East Africa. For that purpose an antislavery conference met at Brussels in 1889, and from it came the General Act for the Repression of African Slave Trade, July 2, 1890.

Lord Lugard called this act the Magna Carta of the African slave; with its ratification, he wrote, a new era dawned. Nevertheless, many loopholes remained. Meanwhile, the future of the native races was receiving much consideration in the light of new standards of administration and the findings of modern anthropology. At the end of the World War the powers which signed the Treaty of St. Germain revised the Act of Berlin by promising to secure "the complete suppression of slavery in all its forms and of the slave trade by land and sea." This statement was the most comprehensive ever adopted in an international agreement on slavery; it embodied a recognition of the fact that there were conditions analogous to slavery which the governments should take steps to remedy. The League of Nations Covenant contained the principle of international co-operation against slavery by prohibiting slave trading in the mandated territories. The mandatory powers agreed to forbid traffic in slaves and gradually to eliminate slavery in the B and C mandates.

The League of Nations took its first major step in 1922 when it adopted a resolution placing the question of "recrudescence of slavery" on the agenda for the following session. In June 1924 the Council established the Temporary Commission on Slavery which held its first meeting soon after. From a great amount of material which it collected, it presented its report one year later.

The Commission faced many difficulties. It realized that the slave trade was definitely international in character, but that slavery and the analogous institutions presented a more complicated problem, because, in so far as they lay within the sovereign jurisdiction of particular countries, "they might be outside of the realm of international relations as strictly defined."

The Commission had to obtain information on which to base its conclusions and recommendations. The question arose, Should it have power to use information derived from private sources, or should it be restricted to the use of official reports? If it relied upon private information, what guaranty was there that such information would be responsible and trustworthy in character?

If it relied solely upon governmental information, what guaranty was there that official reports would reveal the true state of affairs? For was it not natural to assume that a government would be tempted to hide the full facts relating to slavery within its borders?

The Commission realized its delicate situation, and attempted to escape from the dilemma by proposing the following procedure: The Commission should consult individuals and organizations designated by governments, receive communications from organizations or individuals other than those indicated by governments, and if it considered such communications worthy of consideration, should then ask the government concerned whether it considered the organization or the individuals competent and reliable. All communications concerning slavery conditions were to be forwarded "to the Government under whose administration the facts alluded to are alleged to take place or prevail." Some governments did not relish the prospect of having nonofficial agencies report to the League on slavery within their territory. The Commission tried to reassure them by emphasizing that "it was not a tribune, but merely a body of experts entrusted with the task of proposing measures to facilitate the eradication of slavery."

The report made clear that the evils of slavery existed on a wide scale, and, true to its century-old policy, the British Government presented the draft of a new convention for the consideration of the Assembly, setting forth the minimum standards which, it hoped, would meet with the approval of the League members. The draft was considered by the Sixth Committee, submitted to governments for their examination and comment, and reconsidered by the Committee. The revised draft was submitted to the 1926 Assembly, which approved what came to be known as the Slavery Convention.

The Convention strengthened the attack upon slavery by making more specific the general obligations imposed by the 1919 Convention. The signatories undertook to prevent and suppress the slave trade and "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms." The word "progressively" was inserted because, as pointed out above, it was considered unwise for governments to abolish domestic slavery at a stroke of the pen, in view of the intimate way in which the institution is wrapped up with the whole life of certain tribes. By Article III the powers agreed "to adopt all appropriate measures with a view to preventing and suppressing the

embarkation, disembarkation, and transport of slaves in their territorial waters and upon all vessels flying their respective flags"; they promised to negotiate a general convention to specify more definitely the rights and duties in this matter, and to give each other every assistance in securing the abolition of slavery and the slave trade. Two important methods were suggested: (1) governments should permit a neighboring government to pursue slave traders across inland boundaries into their own territories; and (2) they should agree to permit each other to grant the right of asylum so that consular or other officials might liberate any slave asking for the privilege or right of freedom "and repatriation to his country of origin."

The Convention laid down an important principle (to be analyzed below) that compulsory or forced labor might be exacted only for public purposes. This clause attacks an evil very closely connected with slavery, and attempts to abolish what is in effect slavery under another name. Finally, the signatory powers promised to impose severe penalties for infraction of laws—a desirable and important provision.

Although the Convention was a forward step, it disappointed the British delegation. Sir Austen Chamberlain had proposed that Article III be amended to read,

> The act of conveying slaves on the high seas shall be deemed as between the high contracting parties to be the equivalent of an act of piracy and the public ships of the signatory States shall have the same rights in relation to vessels and persons engaged in such act as in relation to vessels and persons engaged in piracy.

France, Portugal, and Italy opposed the amendment, with the result that the Convention merely obliged the powers to consider the matter at a future date. It is regrettable that three nations, two of them great powers, should still so far defend the principle of slave trading as to refuse to accept a drastic method for its abolition.

More than forty governments signed the Convention; but experience had shown that without some permanent commission to watch over the application of treaties many proposed reforms failed to materialize. Since the 1926 Convention made no provision for such a commission, Lord Cecil proposed that an expert body be set up to replace the Temporary Slavery Commission, which had been disbanded. But the matter was postponed until the 1932 Assembly called for the appointment of a permanent

committee of experts. The Council agreed, and finally the committee was established.

The committee of experts drew up its rules of procedure in January 1934 and submitted them to the League Council. The Spanish representative on the Council regretted that the committee was confined to advisory work and had no powers of supervision, that it was not given authority to deal with forced or compulsory labor, and that it was able to receive only information forwarded by governments. Sir John Simon remarked that it would depend upon the effectiveness of the present machinery whether or not the Assembly would have to enlarge the scope and the powers of the committee.

It is perhaps too early to judge whether the nations, under existing conditions and restrictions, can effectively combat the age-old evils of slavery, the slave trade, and conditions analogous to slavery. The world may yet realize that the principle of national sovereignty should not be used to defend policies which involve the perpetuation of such vicious institutions as slavery, and that international organization does not necessarily detract from national efficiency and welfare—it may even add to them.

FORCED LABOR

The Temporary Slavery Commission recognized that forced labor is closely akin to slavery; and the 1926 Convention bound the contracting parties to abolish compulsory labor for other than public purposes as soon as possible. In 1929 there appeared the *Report and Draft Questionnaire* of the International Labor Conference, which contained a valuable discussion of the whole question. From it the following sections are largely drawn.

In dependencies much pioneering work has to be done in building up organized government, providing elementary services in health and education, and raising the standards of living. Often the government of a dependency has not the necessary revenue to perform services normally undertaken in the Western World; there is little native wealth to tax; and external loans are limited by reason of the small amount of security available. If the administration wishes to undertake essential services, it must make use of the one great resource which is available, namely, native labor. Probably some great territories, Mozambique, for example, could not have been developed so quickly without such methods.

Some people defend the policy of forced labor. They claim that contact with white civilization brings benefits to backward

peoples. Natives become accustomed to the idea of law; they receive money payments which enable them to purchase more goods than they otherwise would be able to do; by the use of forced labor governments can extend the area of effective rule, extinguish tribal warfare, develop and expand native production, and discipline the people and promote the virtues of punctuality and regularity. While admitting the possibility of abuses, advocates of forced labor regard them as an incidental defect which may be remedied.

Other observers claim that the social effects of forced labor have been almost uniformly bad. Excessive forced labor in the collecting of rubber and in railroad construction has caused depopulation in the Lower and Middle Congo, where thousands have fled from the terrible conditions. In many cases the mortality rate has been appalling and little concern has been shown for native welfare. Too much routine, especially in tasks which have no real interest for him, robs the native of his joy in living and, far from being educative, tends to build up a mental resistance to and dislike of wholesome work. Not infrequently natives are called away when they are preparing their land for planting, and compulsory labor is on these occasions most unpopular; it is detrimental to the economic interests of the locality, and "tends to disrupt the village life and upset the whole native economy."

The question arises as to what amount of forced labor is justified. If certain work must be done, what principle shall be used to judge its necessity? The International Labor Office report suggests the following criterion: The public works on which forced labor is employed must directly benefit the native community supplying the labor, and be "clearly demonstrable to that native community itself." The work should be of public interest. It should be of urgent necessity. Forced labor should be used only when it is impossible to obtain voluntary labor and only after it is quite clear that the physical burden will not be too heavy for the native workers. Moreover, the responsibility of supervision and enlistment should rest with the competent central authorities and not be left to local officials or native chiefs. The emergency cases which would justify forced labor are fires, floods, earthquakes, violent epidemics, invasions of locusts, war—crises which threaten, or endanger, part or whole of the population. Important public works such as railroads, drainage, irrigation may have some claim, for these measures make possible the opening up and basic development of a country; in this case, however, the gov-

ernment must be most careful not to push the plea of public welfare too far and make excessive demands upon the time and energy of the natives.

Wherever large bodies of workers are removed from their villages for forced-labor purposes, a number of serious problems arise. Away from the milieu to which they are accustomed, native morale is apt quickly to degenerate. The absence of the workers' wives tends to encourage abnormal sexual habits; the cessation of the tribal authority which they respect, and which provides the sanction of their social conduct, leaves them unguided amid strange circumstances; they lose their own standards without gaining new ones; and their "religion" fails them. They suffer severely from climatic change, and even more severely from change of diet. Usually they are most susceptible to attack by diseases with which they come in contact for the first time. Herded together, they fall victims to highly infectious diseases which play havoc with them. Hence the importance of careful medical and social supervision.

Above all, women and children and the aged and medically unfit should not be recruited for forced labor; men should undergo medical examination to insure that they possess the physique necessary for the particular work in view, and only a limited proportion of the adult male population should be taken. While they are away from home they should be medically examined at stated intervals. An adequate medical staff, dispensaries, and hospitals should be provided. Sanitation facilities, water supply, and suitable food and housing conditions should be insisted upon. If the men are taken into a different climate and given food to which they are little accustomed, the change in diet "should be introduced gradually and every possible measure should be adopted to mitigate the effects" from the change of climate.

Natives should not be forced to perform unaccustomed labor except by gradual habituation. They should not be required to work more than eight hours a day and forty-eight hours a week; sixty days a year should constitute the normal period, with a possible extension to six months. Natives should be paid the wage normally given for the same type of work in districts in which they are employed; a work day should include the time consumed in traveling to and from the job; overtime should be paid at a higher rate. The natives should be paid accident and sickness compensation, and the administration should provide for the dependents "of dead and incapacitated workers."

The report suggests that governments should not require forced labor from natives while the men are sowing and cropping in their villages: forced labor should not interfere with essential native agricultural production. Above all, governments should provide adequate inspection in order to prevent the abuses which can all too easily occur.

One of the most hated forms of forced labor is porterage. In countries where roads and railways are inadequately developed, human carriers have been widely used. The amount of labor required for carrying goods has been enormous, and hundreds of thousands of working days have been consumed in this manner. The report urges that women and children, the sick, and the aged should be exempt from all porterage; as with other types of forced labor, compulsory porterage should provide the same wage rates as volunteer porterage; the normal day should not exceed eight hours, and the government should carefully prescribe the maximum load that the natives may carry; men should not be required to go more than four days' journey from their villages unless absolutely necessary, and should not have to do more than fifteen days a month, or twenty-five days for the year.

Some governments formerly required natives to cultivate part of their land and grow trees or crops. They justified the policy on the ground that such agricultural cultivation provided insurance against famine, helped to raise the standard of living, and inculcated habits of discipline. These things may be true, the International Labor Office suggests; but it recommends that any food produced under a system of compulsory cultivation should be the property of the producers (not the government) "or, where production is on the communal system, it should remain the property of the community which produces it." From this standpoint, it is not easy to justify compulsory cultivation of crops for market, since no question of insurance against famine is involved. The International Labor Office report did not deny the importance of agricultural education but questioned whether compulsory labor, unless limited to insurance against famine or an inadequate food supply, would not defeat the purpose of education by creating resentment and opposition.

Local labor should be required in "minor services connected with cleanliness, sanitation, and the maintenance of paths and tracks in the immediate vicinity of the village, of watering places, of washing places, of latrines, cemeteries, etc." Forced labor for local public works should be limited to maintaining and keeping

clean local, but not main or metaled, roads, and constructing local administration buildings and village schools. Only adult able-bodied males should have to perform this kind of labor for a period not to exceed sixty days a year, and only when they do not have to sow and harvest their crops.

The report took a strong stand against forced labor for the benefit of private individuals or companies; where it still existed, it should be ended as soon as possible. Nor should natives be compelled to furnish certain products (such as timber, rubber, palm oil, copra, etc.) to individuals or companies; where such conditions exist, they should be removed as quickly as possible. Natives should not be taxed for the purpose of forcing them to work for private employers, nor should they be subjected to vagrancy or "pass" laws, the deprivation of their lands, or restriction of lands or cattle-owning for the same purpose.

The International Labor Office incorporated many of these findings into a draft questionnaire which was designed to prepare a convention and series of recommendations for consideration by the 1929 session of the International Labor Conference.

Following these recommendations the International Labor Organization considered the question of forced labor at its 1930 annual conference. Its action did not go unchallenged. The International Colonial Institute at Brussels resolved that there was only a limited room for international agreements on this matter. The main French colonial institutions went on record against "the international control of native administration, an intervention it considers unnecessary and dangerous." Several chambers of commerce also protested against "any interference on the part of the International Labor Office in the regulation of labor in the colonies." And Belgian and Portuguese organizations threw their influence against the move. But the International Labor Office, and especially its Director, took up the challenge and vigorously asserted the competence of the organization, which received the support of many bodies, especially those connected with Christian missions.

The 1930 Convention concerning forced or compulsory labor provided that each member of the International Labor Organization which ratified it undertook to diminish and humanize forced labor in its dependencies.

In 1936 the International Labor Organization adopted a further draft convention relative to special conditions of "recruiting" workers and a recommendation concerning the progressive elimina-

tion of recruiting. We shall see in another chapter that abuses in recruiting may result in something closely akin to slavery, and the convention in attempting to eradicate this evil provides that (1) recruiting should not involve constraint upon native peoples; (2) it should not endanger native society by withdrawing an excessive percentage of adults and thereby breaking up family life; (3) public officers may not recruit for private undertakings, nor may chiefs act as recruiting agents; (4) employers and employers' associations must be licensed before they may recruit, and licenses may be withdrawn as a penalty for misconduct; (5) before being engaged, workers must be brought before a public officer, who must be satisfied that no abuse has occurred and that adequate provision for medical examination has been made; (6) the workers must be protected in specially prescribed ways while on their journeys to and from their homes, and the cost is to be borne by the recruiter and the employer. If recruiting or employment takes place in a territory under a different administration, detailed agreements must be made between the governments of the territory of recruiting and of the territory of employment.

The recommendation concerning progressive elimination of recruiting declares that this should be a cardinal principle to be followed by member states; in order to hasten such elimination each member is invited to improve labor conditions, develop transport, promote settlement of workers in areas of employment, encourage the voluntary movement of labor, and raise the standard of life of native peoples.

These measures against slavery and forced labor not only are important as humanitarian efforts toward elementary justice but are vitally connected with the problem of maintaining labor standards in the more advanced industrial countries of the world. It is pointed out in the section dealing with labor as an international problem that the workers' standard of life is threatened by the importation of goods made from sweated labor; and, as backward areas become accessible, the exploitation of helpless and unorganized people by conscienceless profit-seekers may proceed unaffected by the standards prescribed by civilized communities and thereby the gains already won in such areas by organized effort may be destroyed. International control is here of importance to all concerned.

In the last few years the International Labour Organization has concentrated much energy upon attempting not only to remove abuses but also to promote welfare among the dependent peoples

—in reality the two objectives form part of one over-all social philosophy. In 1944, the office produced an important study, *Social Policy in Dependent Territories*, and two years later prepared a series of proposed conventions which were to be considered at the Thirtieth Session of the Conference at Geneva in 1947. The proposed conventions dealt with (*a*) social policy in non-metropolitan territories, (*b*) right of association and settlement of labor disputes, (*c*) labor inspectorates, (*d*) application of international standards to non-metropolitan territories, and (*e*) maximum length of contracts of employment.

COUNTERFEITING CURRENCY

In 1925 the League of Nations was contemplating the withdrawal of its financial control over Hungary, and the victorious powers were considering closer relations with its former enemy, when a great scandal, involving the forging of 1,000-franc notes, arose. Three Hungarians were arrested in Amsterdam and investigation showed that not only Hungarians of official rank were involved but also important German, Austrian, and Rumanian persons. The head of the Hungarian cartographical department where the notes were printed, the chief of the Hungarian police, and a number of Hapsburg supporters were the most prominent figures.[22] The incident, the most important of many attempts to counterfeit currency, convinced several governments that some form of international action was necessary. They realized (to quote from the proceedings):

that purely national action against counterfeiters of currency was insufficient and that international action was fraught with many difficulties and was often impossible. Sometimes these difficulties were to be found in legislation. In many countries, for instance, punishment of the forging of foreign money was very much lighter than that of national money, and in several the forging of foreign money was not a punishable offense at all. Again—there were wide differences in the punishment given to the various phases of the crime, such as the simple uttering of counterfeits, participation in counterfeiting, or possessing the instruments of counterfeiting. And the rules governing extradition were such that it was usually most difficult and often impossible, to get counterfeiters who had escaped from the country brought to justice.

[22] A. J. Toynbee, *Survey of International Affairs, 1926* (Oxford University Press, London, 1928), pp. 178–90.

After preliminary investigations by a mixed committee, an International Conference in 1929 adopted a draft convention which became effective February 22, 1931. The high contracting parties undertook to co-operate to prevent the illegal issue of currency; each agreed to organize a central office of investigation which should keep in close contact with currency-issuing institutions, with the police authorities of its own country, and with the central offices of other countries. The last-named should correspond directly with each other. The central offices were to exchange full information on forgeries of notes, including photostatic reproductions, and specimens, suspected persons, fingerprints, and other evidence likely to lead to detection. Detailed provisions for letters of request were provided in Article XVI. It was agreed that whenever fifteen central offices had been created by the signatory powers, and before the convention entered into force, the League of Nations should call the first conference of representatives of the central offices and other authorities involved to work out the more technical details. Pending the creation of an international office, the international bureau should continue to act as a co-ordinating body.

The first Conference of representatives from central police offices met in March 1931. Its recommendations went beyond the 1929 Convention which dealt with the offense of counterfeiting or falsifying paper money (including bank notes) and metallic currency, for they dealt with other kinds of financial instruments. In view of the great growth in the international use of checks, bills of exchange, letters of credit, state bonds, shares and bonds, international co-operation had to be extended to include these items. In May 1937, the League Council set up a committee of jurists to consider the question at length, and to prepare a draft additional protocol to the 1929 Convention, "the object of which was to extend to the suppression of the falsification of documents of value the provisions of this Convention." International co-operation in this field was fast becoming a necessity.

The Nazi government indulged in counterfeiting on an extensive scale. The United States Secret Service agents uncovered an almost incredible story of the extent of the issuance of spurious money. It is reliably reported that eight billion separate pieces were printed on specially manufactured paper from the Spechthausen Paper Factory. Three grades and on some occasions five grades of counterfeiting were issued—the first "was proved to be good enough to pass readily, the second so-so and the third was not

good enough to get by under conditions of more than usual scrutiny."[23] Some of this money was used in foreign countries for espionage and propaganda purposes; some was, it was planned, to be showered over Great Britain so as to upset the British financial system.

The main counterfeiting plant at one time was located at Oranienberg and, during the year 1944, according to *Army Talks,* 130 million pounds was printed there and a similar large amount at Sachenshausen. In concentration camps Jews and others who had had experience in banking, engraving, printing, and retouching, were forced to do the work and were given a little more food than the starvation diet of the average prisoner. It was claimed that hundreds of prints were used in imitating Allied currency and thousands of prints for purposes of making facsimiles of passports. Counterfeiting was used as an instrument of war, the Nazis hoping, *inter alia,* to throw national currency systems out of gear.

TRAFFIC IN WOMEN AND CHILDREN

The organized exploitation of vice has not confined itself within national boundaries. As communications have improved, vice profiteers have widened their activities, and the traffic in women and children for immoral purposes has become increasingly an international problem. About 1869 Josephine Butler began the struggle against licensed houses or brothels, which subjected prostitutes "to a system of slavery and deprivation of rights." In 1877 an International Abolitionist Federation Congress met at Geneva, after which Alexander Coote and Senator Bérenger stimulated national committees and governments to take action against the nefarious traffic. In 1899 voluntary organizations held a congress to consider ways of lessening the evil and formed the International Bureau for the Traffic in Women and Children.

In 1904 a diplomatic conference convened by France drew up an agreement by which governments undertook to appoint central authorities to collect information concerning the traffic, to watch ports and assist victims of the trade. In 1910 an international convention was adopted by which countries agreed to punish those engaging in the traffic even though they had committed the of-

[23] "Achtung! Counterfeiters at Work," *Army Talks,* Vol. IV (VIII, November 18, 1945), p. 17.

fense in another country. Unfortunately there was no international central agency to follow up the work of the conferences and to stimulate governments to action, and only sixteen states had ratified the 1904 agreement and nine states the 1910 Convention when war broke out in 1914.

In 1919 the efforts of private organizations and especially of Alexander Coote were successfully devoted to including the question of traffic in women and children in the work of the League of Nations. The League Council, in May 1920, appointed an official of the Secretariat to keep in touch with matters relating to the white-slave traffic, and in 1921 summoned a conference which was attended by representatives of thirty-four states. The Conference drew up a final act which strengthened the provisions of the 1904 and 1910 conventions by raising the age of consent from twenty to twenty-one, making it a punishable offense not only to procure but to attempt to procure women for the traffic, urging governments to make annual reports to the League and recommending the establishment of a League Advisory Committee, and improving the machinery of extradition.

The Council set up the Advisory Committee on Traffic in Women and Children, which was reorganized in 1924 into two advisory committees—Traffic in Women and Children, and Child Welfare. The two committees met immediately after each other, and on each there were advisory members who represented the most important international private organizations interested in these questions. They include the International Catholic Organization, the International Women's Associations, the International Federation of Girls' Friendly Societies, and a large number of others.

One of the weaknesses inherent in previous conventions had been the lack of co-ordinating machinery. The Traffic in Women and Children Committee set up after 1921 remedied this defect. It did important work by bringing agencies into touch with one another, examining annual reports, and providing private organizations in various countries with information of methods adopted abroad.

Sound policy requires adequate and accurate information. For this reason the League, with the assistance of the American Social Hygiene Bureau, undertook an extensive inquiry into the traffic in Europe and America. The report showed the widespread character of the evil; how traffickers used forged passports and forged birth, marriage, and death certificates supplied by regular criminal agencies, how they not only transported abroad

professional prostitutes but also induced girls to join music halls and cabarets and forced them into prostitution by paying inadequate wages and by other means.

Some years later the League followed up the foregoing inquiry by appointing a committee to inquire into the traffic in the Far East. This committee reported in 1933, and its main findings were as follows:

1. Ignorance and poverty are the great causes of the traffic in the Orient. Out of 50,000 prostitutes recruited from Japan for China, 1,654 were illiterates, nearly 3,000 had not attended school, and almost 40,000 had not gone beyond the primary school.

2. In the Orient more men than women had emigrated to Siam, Malaya, and the Philippines; this serious sex disproportion stimulated the international traffic.

3. In the East as in the West the great explanation was to be found in human greed—"greed to make large profits out of human misery and human sex hunger." The methods of recruitment were much the same as in the West, perhaps even more blatant, and the typical evasion of migration restrictions took place.

4. The abuse of Moslem marriage and divorce law and customs enabled traffickers to take women from the Dutch East Indies to Singapore: "They could marry their victims an hour before their departure, take them to Singapore as legal wives and divorce them an hour after arrival."

The committee recommended (*a*) the appointment of central authorities in China and Persia, and a more thorough collaboration and exchange of information by central authorities throughout the East; (*b*) the appointment of more women officials; (*c*) closer co-operation between Chinese officials and the authorities of foreign settlements in China, especially Shanghai; (*d*) preventive work with women of Russian origin in the Far East, including direct help and the founding of workshops and other organizations; (*e*) the abolition of licensed or recognized brothels which provide the surest market for foreign women, enable traffickers to keep close control over them, and "ensure in a country of transit a depot where the victim may be housed without cost and even at a profit pending a decision as to her ultimate disposal"; and (*f*) collaboration of government authorities with missions and private organizations.

Meanwhile the delegate from Poland had urged the League of Nations to take steps toward forbidding licensed houses in any country. The proposal involved a question which "had hitherto

been considered a matter of domestic jurisdiction," and was connected with another proposal to make the repatriation of foreign prostitutes compulsory.

In 1927 a special body of experts suggested that, "in view of the number of minor girls who are exploited on the pretense that they are over age," the age limit be abolished and it be made an offense to procure or attempt to procure any woman of whatever age. They claimed that the frequent use of false papers made it difficult to ascertain whether a woman was or was not under twenty-one years of age, that many who consented to go abroad were not "fully aware of the disaster" to which they were being led, and that "even if the victim over age had been a prostitute" the law should not permit anyone to derive financial benefits from such a traffic. After considerable discussion and diplomatic correspondence the conference of October 1933 adopted the International Convention for the Suppression of the Traffic in Women of Full Age. Thus all women, whether over or under twenty-one years, were to be protected.

Attempts have been made to strengthen co-operation among central authorities. In 1932 a League inquiry revealed that

1. The central authorities do not come under the same service in every country and are not always attached to an executive service;
2. In practically no country does there appear to exist a specialised staff for the work of the central authorities;
3. Inter-communication between the central authorities is not yet co-ordinated or standardised;
4. Relations between the central authorities and the League of Nations are not sufficiently developed.[24]

In February 1937 the Conference of Central Authorities in the Far East met at Bandoeng, Java. (*a*) It considered the general proposals of the Commission of Enquiry, and recommended the creation of a Bureau of the League in the Far East to receive reports from all participating countries, which should deal confidentially with various aspects of the traffic. (*b*) It urged closer co-operation among the police authorities of all governments and regional or local conferences to consider in greater detail what more effective steps might be taken. (*c*) Considering the position of Hong Kong as the strategic point for the traffic in women and children, it recommended that the Hong Kong government be requested to strengthen its inspection provisions in migration mat-

[24] *League of Nations: Traffic in Women and Children Committee*, C. 504, M. 245, 1932, Vol. IV, p. 8.

ters—a task of great difficulty in view of the fact that about 10,000 persons enter and leave Hong Kong each day, necessitating a large staff of officials if stricter control were to be instituted. (*d*) The Conference dealt at length with the problem of licensed brothels and considered the medical, ethical, and social aspects of the question. For reasons too numerous to analyze here, it did not recommend immediate abolition of licensed houses, but declared itself in favor of abolition as a final goal, recommended that educational measures be taken toward forming public opinion against such houses, and emphasized the need of complementary administrative medical and social action. (*e*) Finally, the Conference recommended that governments should welcome the co-operation of voluntary organizations and, in view of the success "which has attended the appointment of women officials in the East," urged that governments should consider the possibility of employing a larger number of women officials on work connected with the welfare of women and children as women with the necessary attainments and training become available.

The terrible dislocation of peoples occasioned by World War II which far outstripped that of World War I has already raised the question of protecting women and children in an intense form. We may expect to see exploitation in the cruelest sense of the term more widespread because of the greater area of human misery. The Executive Committee of the United Nations Preparatory Commission recommended that a temporary social commission be established to deal with the most urgent social problems, to assume responsibility for the functions previously undertaken by the League of Nations Commissions on Traffic in Women and Children and on Social Welfare and to make a general review of international organization in the social field with a view to making recommendations to the Economic and Social Council at the earliest possible date regarding the structure of commissions and committees and possibly of new specialized agencies which it appears desirable to set up. Two forms of organization have been discussed: (1) a commission established by the Social and Economic Council to which it would be subordinate; or (2) an autonomous agency that would later negotiate an agreement with the Economic and Social Council. At the moment a decision appears not to have been reached on this question.

We have described elsewhere the establishment of an international penal commission and the reasons for this action. Here

it must suffice to give one example of tl
World War II has left with the nation
approximately 8,000 children with Norw
man fathers. The action to be taken cor
whether or not they should be sent to Germ
a great deal of concern; its government
Nations Relief and Rehabilitation Admin
aided many welfare officers working throu
whose experience will prove invaluable in e
permanent agency. The protection of women
logically to the need for a positive program of w

THE CONTROL OF NARCOTI(

The word narcotic is derived from the Greek
make numb," or νάρκη, "stiffness," "numbness."
of the narcotic drugs, was early known to possess me
erties, but its abuse has produced untold physical su
moral degradation from ancient times to the present da

Morphine makes people contented and produces an
attitude toward life; cocaine causes an aggressive and
attitude. In the absence of morphine the addict suffers con
able distress; there is nothing that he will not do in order to ol
the drug. He will lie and steal and utterly debase himself. Autho
ities are generally agreed that the dope habit is a menace to society
and that much criminality can be traced to it. The high profits
from the illicit traffic enable peddlers to bribe officials and intensify
political corruption. Probably four-fifths to nine-tenths of the
trade in drugs is unnecessary for medicinal and health purposes
and can be classified as illicit traffic.

It is this illicit traffic which constitutes one of the world's
major problems. Colonel Woods[26] has stated that once the drugs
have been manufactured and have left the factory the police have
the utmost difficulty in tracking them down because of the amaz-
ing variety and ingenuity of the methods adopted by traffickers.
Smugglers send packages of drugs with bills of lading made out
"to order" or to some bank, and if any accident occurs and detec-

[25] For recent developments in child welfare, see Elizabeth Shirley Enoch's "Promotion of Child Welfare in the American Republics," *Department of State Bulletin* (March 17, 1946, pp. 428–30), and the *Reports of the Director General of the United Nations Relief and Rehabilitation Administration.*

[26] Arthur Woods, *Dangerous Drugs* (Yale University Press, New Haven, 1931).

tion ensues the traffickers leave the goods unclaimed. For this reason many seizures of opium and morphine do not lead to the discovery of those engaged in the traffic. Sometimes the forwarders make false declarations by describing packages of drugs to be (for example) rice powder. Frequently drugs are shipped from free ports where customs officials and other authorities do not inspect the goods. Sometimes substitutions are made—Colonel Woods tells that some bowling balls and pins were to be reshipped at Kobe, but that from there duplicates which had been made and filled with drugs were shipped on to the port of destination. Often traffickers are in league with dishonest officials. D'Erlanger[27] explains that a great amount of drugs came into Egypt because of false official papers made out by a subordinate Italian consular official. Traffickers use the postoffice and send thousands of doses by registered letters. Colonel Woods tells that $70,000 worth of narcotics were seized in Los Angeles. Chinese have long complained that drugs have been forwarded from the foreign-controlled postoffices in their country. In Egypt, girls who came to visit incoming ships were found to be carrying off small packages of drugs concealed in their clothing. Even more ingenious was the method of concealing narrow packages under the hair of camels in order to smuggle opium across the long desert boundaries. Only by accident did an official discover that traffickers were using caravans for this purpose, since the extended frontiers make detection extremely difficult because of the absence of an adequate police force.

Inadequate systems of national inspection and control assisted the traffickers. Some governments had required exporters to obtain an import certificate from the government of the place of destination; but governments which required no export or import license played into the hands of the opium rings. Even where an export certificate was required, it might be loosely drawn and prove to be ineffective. Inadequate penalties were an additional incentive to the illicit traffic. The complaint was made for example that Japan imposed absurdly small penalties. "Fines for illicit trafficking are sometimes less than the profit gained from merely a week's sale of smuggled heroin."[28] Finally, the manufacture of "esters," or combinations of morphine and cocaine with acetic acid

[27] Baron Harry d'Erlanger, *The Last Plague of Egypt* (Lovat Dickson and Thompson, Ltd., London, 1936).

[28] Helen H. Moorhead, "International Administration of Narcotic Drugs, 1928–1934," *Foreign Policy Association Reports* (1935), p. 302.

which can be made so as to have the same effect as morphine itself, brings added problems. Any legal regulation of one combination will encourage the illicit traffickers to make a new combination, which, in the absence of frequent adaptations of legislative measures, can be freely bought and sold.

The first international effort to cope with the problem took place in Shanghai in 1909.

The conference had no immediate success; nevertheless it marked the first step in international effort, and its recommendations formed the basis of the first Opium Convention adopted three years later.

The Hague Opium Conference met in 1912. Twelve governments sent twenty-nine plenipotentiaries, who possessed much greater authority than the representatives who had met at Shanghai.

Unfortunately, the measures adopted were considerably weakened by several omissions. The Convention did not indicate how far and by what methods the control of production and distribution was to be effected, or whether limitation of the manufacture and sale of derivatives was to be by direct or by indirect means. The signatory powers undertook only to use their "best endeavors" to adopt the use of licenses for exports; and a similar qualifying clause weakened the whole attempt to restrict imports to licensed purchases.

The Hague Conference was more successful in declaring principles than in presenting effective methods of control. It rejected the United States' proposal for an international commission to supervise the agreement. It set forth no definite program. Many loopholes for differing interpretations existed; and no international co-ordinating machinery was created. And yet this Convention had not been ratified by December 31, 1912, the date agreed upon, and it was not until the Peace Conference that the Hague Opium Convention came into force generally. Eisenlohr writes:

In short, the Shanghai Conference and the Hague Convention were fatally conservative and fatally weak. If the reduction of opium cultivation and limitation of drug manufacture had been undertaken in 1909 and 1912 in a vigorous, systematic, and scientific manner, the enormous growth of the manufactured drugs industry during the war would have been checked and controlled at its close, and the tremendous wave of narcotic addiction which since the war has been the chief preoccupation of the narcotics fight need not have occurred—the fact remains that the most critical moment in the history of the narcotics

fight was passed unheeded, and the opportunity of preventing the unchecked spread of drug addiction was lost when at Shanghai and The Hague the represented powers failed to pursue a strong and determined policy against the production of opium and to carry out promptly and vigorously the measures agreed upon at the Conference.[29]

One may regard the Shanghai and the Hague Conferences in a more favorable light by considering that they were the first steps and that, without this preliminary work, the League would have been unable to make such progress in recent years in fighting the drug evil.[30]

The Treaty of Versailles contained two parts which dealt with the drug question: (*a*) a clause ratifying the 1912 Convention and providing for the enactment of legislation within one year; and (*b*) the Covenant of the League of Nations, Article 23 of which reads: "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League . . . . will intrust the League with the general supervision over the execution of agreements with regard to the traffic in opium and other dangerous drugs." On December 15, 1920, the League Assembly adopted a resolution authorizing the Council to set up an advisory committee which should report to the Council three months before each session of the Assembly on matters concerning the traffic in opium and other dangerous drugs. The committee, which met in 1921, represented the principal drug-manufacturing and opium-growing countries and was the first international machinery at all adequate to deal with the opium problem. It had permanence, breadth of membership, and "generous terms of reference," and was much more comprehensive than any which had been set up in the prewar period. Its first task was to formulate the basic issues at stake, and decide the principles which should guide general policy. Three possible methods may be used: The first is to regulate and control the trade in drugs, and by ascertaining the amount needed for legitimate medical and scientific purposes and by controlling the import and export trades to eliminate smuggling and illicit traffic. It is more immediate and, apparently, the easiest method. But,

[29] Eisenlohr, *International Narcotics Control* (George Allen & Unwin, Ltd., London, 1934), p. 22.

[30] See also R. L. Buell, "The International Opium Conferences," *World Peace Foundation*, Vol. 8, 1925, and W. W. Willoughby, *Opium as an International Problem* (Johns Hopkins Press, 1925), for accounts of the prewar conferences and the early work of the League.

as we shall see, the ease with which illicit traffic may be carried on makes the effort of regulating legitimate trade much less simple than at first sight appears. The high profits derived from the sale of narcotics make traffickers willing to take all kinds of risks, and once the drugs get into circulation, it is well-nigh impossible to trace them.

The second method is to limit the amount of manufactured drugs. Proponents of this scheme say that a limitation of manufacture will eliminate illicit traffic, because, if all the drugs that are made are required for legitimate purposes no surplus will remain for diversion into illicit channels. They assert that the manufacture of narcotics can be supervised without great difficulty, since the process requires a great deal of technical skill, expensive machinery, and practiced operators. It is easier to find unregistered factories than to seize the relatively small packages of prepared drugs after they have found their way into the channels of trade.

The basic weakness of limiting manufactures is that, unless all countries come into the scheme, manufacturers will move to countries where production is unregulated; from there they will continue to flood the world with drugs, leaving the countries which rigidly control manufactures to face the threat of smuggling on a large scale.

For these reasons some authorities favor the most far-reaching measure of all, limitation of production. It was estimated that in 1933 fifteen hundred tons of opium were produced for a world which needed only one hundred tons for legitimate purposes. In addition, the heroin production was far in excess of world requirements. It would seem, therefore, that, if the total amount of poppy leaves grown is strictly limited, there can be no possible surplus for illicit manufacture and none for illicit trade. Difficulties in carrying out the scheme are: (1) the scattered nature of agricultural production, for it is not as simple a matter to regulate thousands of individual growers in many countries as to control factories where workers and machinery are concentrated; (2) the problem of obtaining accurate figures of the amount produced, which, although a serious obstacle, should not be insuperable; (3) the dependence of certain countries, like Turkey and Persia, upon opium, not only as a source of government revenue but also as a means of livelihood for large numbers of peasants. Some years ago the Persian representative argued that thousands of people would be ruined if production of the opium poppy were suppressed

unless the country could obtain a large loan to enable it to train experts to assist in introducing new crops.

These are the outstanding methods which the Advisory Committee has considered. Which one to adopt led to much controversy, and together with conflicting governmental policies caused so much ill-feeling as to threaten to wreck more than one international gathering, and did cause the withdrawal of the United States from the 1925 Conference.

The Committee's first task was to ascertain the legitimate needs of the world; this information was necessary for any intelligent scheme of regulation. It sent out a questionnaire to sixty-three governments, only four of which replied within the time set by the Committee. Even worse was the record in the cocaine inquiry. Not one government of the countries which were important producers of cocaine even sent an answer. The Committee had persistently to remind governments of their obligations under the Hague Convention. Only after many efforts was it successful in persuading governments to send in more adequate annual reports. Because the Advisory Committee was unable to obtain adequate information from the governments, it turned to the League Secretariat and requested it to make estimates of the medicinal and scientific needs of the world.

Part of the difficulties lay in the inadequacy of national administrative systems. Many governments did not have the machinery to deal satisfactorily with drug problems.

The effective control of the production and trade in drugs necessitates the services of more than one administrative department as well as definite location of responsibility in one particular branch. From the time a consignment of opium is imported, manufactured into morphine or heroin, exported, or distributed among the pharmacies and dispensaries of a country, the customs agents, sometimes the revenue officials, the health officers and medical inspectors and not infrequently the police and the judiciary are called in to lend their respective services to its control. This necessary diversity of function has to be reconciled with the equally essential centralization of responsibility.[31]

Great Britain, the first to create a special department, in 1920 set up a new division in the Home Office. Later, several other governments brought their administration to a point of efficiency in dealing with the drug evil; but for some time international organization had to wait upon the development of adequate national administrative machinery.

[31] Eisenlohr, *op. cit.*, p. 69.

By 1924 it was realized that the control of drug traffic was largely a question of controlling the illicit trade carried on by persons bent on defying the law and indulging in "bootleg" activities. The import certificate system established by the Hague Conference assisted governments somewhat, but there were many loopholes. A certificate system, in order to function adequately, required a permanent central organ to collect information as to the drug needs of the world, the amount of imports and exports, and the extent of the illegal traffic. Moreover, close co-operation with police forces the world over was necessary to combat the lawbreakers. Unfortunately, few institutions existed to provide the necessary information. One government might apprehend a criminal or be suspicious of trafficking; but in the absence of an international research bureau and national facilities for providing all interested countries with the most complete facts, the League was severely handicapped.

The traffickers often paid absurdly small penalties for breaking the law. Some authorities believed that it was more important to provide a greater "certainty of detection" than the "prospect of heavy penalty which with luck" the trafficker "might escape altogether." Sir Malcolm Delevigne proposed that the Secretariat keep a Black List containing names of individuals or firms engaged in illicit traffic. The idea was excellent, but the question then arose—should the list be confidential or be available to the public? Those who did not wish to have the light of publicity turned upon the drug traffic said that it would be unfair to a firm which had lapsed from virtue once to be branded before the world for all time; and the Advisory Committee, in a spirit of what many people believed to be overcaution, decided not to adopt a public list.

The existence of more than thirty free ports or zones, including such important cities as Rio de Janeiro, Danzig, Hamburg, Salonika, Naples, Genoa, Fiume, Stockholm, Istanbul, Barcelona, and Vladivostok, made possible a flourishing illicit trade. These cities, which do not possess custom regulations or inspection as do the ordinary ports, have constituted a haven of refuge and base of operations for smugglers.

To deal with these many questions the Advisory Committee in 1923 proposed that a new opium conference be called. The suggestion was adopted by the Assembly and the Council. The Assembly also requested the Council to invite governments to a conference for the purpose of limiting (*a*) the manufacture of

morphine, heroin, or cocaine, and (*b*) the amounts of raw opium and coca leaves which might be imported for manufacturing purposes.

In accordance with these resolutions the first Opium Conference met from November 3, 1924, to February 11, 1925. Eight countries (the British Empire, India, China, France, Japan, the Netherlands, Portugal, and Siam) were represented at the gathering, which was primarily a meeting of governments with territories and possessions in the Far East.

The President of the Conference in his opening speech noted the growing menace of illicit traffic and remarked that "never . . . . has the aspect of clandestine trade been so alarming and threatening as it is now." After a number of violent controversies between the Chinese and the other delegates an agreement was finally reached. The powers declared that they were determined to effect "a gradual and effective suppression" of the manufacture of and trade in prepared opium, and desired to suppress opium smoking as quickly as possible. They agreed to make the sale of prepared opium and its distribution a government monopoly, to exclude children from smoking dens, to limit the number of retail shops as far as possible, to restrict the export of opium to territories where it was used for smoking, to initiate an educational campaign in schools and disseminate literature to strengthen public opinion against the use of opium, and to assist one another in suppressing illicit traffic by exchanging information and examining their respective legislative measures "in the most favorable spirit."

The second Opium Conference was a much larger gathering. Forty-one delegates attended it in contrast to the eight governments represented at the first conference. The agenda provided for consideration of measures to give effect to the 1912 Opium Convention in limiting (1) the manufacture of morphine, heroin, or cocaine, (2) the imports of raw opium, and (3) the production of raw opium and coca leaf for export to the amount required for medicinal and scientific purposes. Early in the session controversy broke out, the course of which cannot be dealt with here. Suffice it to say that the United States and China withdrew from the Conference. The United States, which talked of isolation in political matters, retired in disgust because the Opium Conference would not go fast enough along the lines of international control.

The need for a central administrative board was obvious, but the delegates disagreed concerning the extent of its power. The

problem has been well summarized by the *Foreign Policy Report* of February 27, 1935:

First, must a government submit full and frequent statistics to this board?

Second, should the board have the right to question these statistics, to ask for further details, to question discrepancies arising between the figures of different governments, to comment on the statistics and explanations given?

Third, should each country be required to submit estimates to the board of its needs of drugs for medical and scientific use, or should these estimates be made by the Board? It had been conceded that such estimates must be available to some central clearing house, so that standards might be obtained against which information could be checked and a global total for world needs ascertained. Another fundamental difference arose over the question whether these estimates should be binding on governments, and whether publicity should be given to the estimates.

Fourth, should the board be given the right to communicate directly with governments, and not be compelled to communicate through an organization essentially political in character, such as the Council of the League? Even more important was the question whether the board should be given the right to make public the facts of the world situation and the position of governments with relation to it.

Fifth, would governments agree in advance to follow the recommendation of the board, even to the point of imposing an embargo on exports of narcotics to the countries whose governments refused to follow the board's recommendations? Authority for action on the basis of information must be granted, otherwise the international organ will become ineffective.

Great Britain (as the United States had done) urged that the production and manufacture of drugs should be limited to the amount required for medicinal purposes; that the countries at present manufacturing drugs should send to a central body an annual estimate of its requirements; and that these estimates should form a basis of total world needs. Great Britain and the United States favored a comprehensive plan of international supervision in opium but not in armaments. France, which had advocated considerable international control in armaments, when it came to the question of drugs, urged that each government should decide its own needs and that its figures could be trusted. The French also opposed the plan of directly limiting the manufacture of drugs, and preferred to limit the volume of trade. Opponents of the British and the American plan argued that international

control would limit national sovereignty, would be too complicated, and would involve undue administrative complexities. Some objected that the proposal would lead to a monopoly of manufacture with the danger of excessive prices to the consumers. Japan denied the right of an international body to "revise estimates supplied by a government." The governments, it argued, should retain sufficient power to protect themselves from the board's decisions. The Netherlands insisted that the board have the power simply to collect and to publish statistics. The French delegation objected very strongly to giving the board power to communicate directly with governments, and suggested that its questions and recommendations be made through the Council of the League or the Secretary-General.[32]

Mrs. Moorhead correctly writes that "out of the hodgepodge of ideas and debates during the Geneva Conference of 1925 emerged a convention which represented a definite advance over the Hague Convention of 1912, although it fell far short of providing the stringent measures recommended by the American and British delegations."[33]

Under the convention the signatory powers: (1) agreed to limit the trade and use of drugs and their derivatives exclusively "to medical and scientific purposes"; (2) strengthened the import and export certificate system by making it much more extensive; (3) adopted anti-opium control measures for free ports and zones; (4) provided for heavier penalties; (5) facilitated the extradition of offenders against narcotic laws and regulations; (6) increased the number of derivative drugs to which international regulation should apply; (7) agreed that if a narcotic was deemed by the Health Committee to be habit-forming, it would automatically come within the scope of the convention. This measure met the difficulty caused by the manufacture of new compounds which otherwise would have escaped regulation.

The convention also provided for a permanent central board to be composed of eight technical experts, who were not to represent governments. The board was to receive quarterly import and export statistics, annual estimates of imports and domestic consumption, annual statistics of the amount of raw material produced, of manufactured drugs, and of illicit seizures. The board was empowered to ask governments to explain any apparent excessive stock or traffic in drugs. But the convention failed directly

[32] Helen M. Moorhead, in *Foreign Policy Association Reports* (1935), p. 333.
[33] *Ibid.*

to limit the manufacture of drugs and to that degree reflected the general temper of the Advisory Committee which since 1920 had rejected direct limitation and attempted to deal with the problem by measures to control the trade. Nevertheless, some members of the Committee wished to take more drastic action. Their proposals included (1) various types of monopoly control, and (2) more stringent police organization. In the former class we find Signor Cavazzoni's plan for strengthening national administrative machinery by keeping all imported narcotics in national warehouses, to be released only "upon presentation of the proper government certificate," and by adopting a comprehensive statistical system. The plan was not accepted because it involved the appearance of a government monopoly, and the Advisory Committee contented itself with drawing up a model code providing for a unified and centralized drug administration. Colonel Woods went farther than Signor Cavazzoni and advocated that governments own or adequately control all factories manufacturing dangerous drugs, and rigidly control exports, especially to countries which had not adopted the import certificate system. Dr. Anselmino suggested that governments should permit only "a definitely restricted group of producers" to operate, and proposed a syndicate of drug manufacturers. Colonel Woods also proposed that national administrative officials whose duty it was to enforce the narcotics laws "should meet to discuss ways and means of carrying out their duties."

The proposals to establish more effective organization of police are of interest. Eisenlohr pays tribute to the work of the police in its fight against the drug traffic:

> In the first place the police assessors on the Committee have contributed much to the Committee's achievements; secondly, the international police organization has dealt energetically with the problems of the illicit traffic; and, thirdly, it has made every effort to cooperate directly with the Committee and to establish a recognized and official relationship with it.[34]

The International Police Commission which was set up after the first International Police Congress in 1923 turned its attention to the drug problem. The 1926 Congress recommended the establishment of national central police offices "to facilitate the campaign against the drug traffic." The 1928 Congress requested that a member of the Commission be permitted to attend the sessions of the Opium Advisory Committee. In 1929 the League Assem-

[34] L. E. S. Eisenlohr, *op. cit.*, p. 109.

bly invited it "to assist in framing a convention for the suppression of counterfeit currency and the falsification of cheques," and through the Council to help the League's "technical committees."

In 1930 the police assessor of the Advisory Committee, Mr. Sirks, proposed the following plan of police organization:

1. The establishment in each country of a central narcotics bureau to unify administration and police control over the narcotics trade.

2. The establishment of co-operative relations with like authorities of other countries.

3. The establishment of a central bureau at the Secretariat of the League of Nations for the international Police Bureau at Vienna.

4. Provision for the extradition of offenders against narcotics laws.

The Committee at first did not show great enthusiasm for these proposals but later accepted much of a draft convention for the suppressing of the illicit traffic which the International Criminal Police Commission submitted to it in 1931.

It provided for the strict and uniform application of police measures against crimes committed in connection with the illicit traffic in drugs, defined these crimes, called for the extradition of criminals, or their detention and punishment in whatever country they might have sought refuge, and provided for the centralized organization of the police and periodical conferences of the police chiefs of the several countries.[35]

The fourteenth Assembly and later several governments approved the Convention.

In spite of the steps taken in the Geneva Conference and during subsequent years the narcotics situation grew worse. Impressed by the alarming nature of the evidence presented to it, the League Assembly in 1929 took further action. (Through defects in the Dutch system of control one firm in eighteen months had exported four tons of heroin and morphine—equal to four times the world's needs.) It went on record as favoring a scheme to limit the manufacture of drugs and requested the Advisory Committee to draw up plans to that end. Following action by the latter, a preliminary meeting of the manufacturing countries to consider in advance the allocation of quotas was held in London on October 27, 1930. A fundamental question soon arose. The countries which were already manufacturing drugs desired to keep a mo-

[35] L. F. S. Eisenlohr, *op. cit.*, pp. 117–18.

nopoly by dividing the future market among themselves and maintaining existing ratios; countries which hoped to enter the field of manufacture of a highly lucrative article wished a flexible scheme of ratios. The preliminary conference adopted a draft scheme, but did not come to an agreement on quotas.

The general conference held at Geneva from May 27 to July 13, 1931, adopted a Convention which was embodied in seven chapters.[36] It drew up a more comprehensive definition of dangerous drugs so as to include synthetically manufactured esters. To prohibit the evasion of regulations by the use of new drugs it prescribed that if a special body of experts of the League of Nations Health Committee found that a new drug was habit-forming, it automatically would become subject to the 1931 Convention on notification to the signatory powers. The signatories agreed to limit the amount of raw materials to the amount actually needed for the supply of legitimate medical and scientific needs for a period not exceeding six months. The Convention provided for a Supervisory Body which was to watch over the estimates of amount of drugs needed. Governments undertook to supply their estimates for one year in advance. These estimates were to be binding. Should a government fail to send its estimates to the League authorities, the Supervisory Body (made up of four members chosen by the Advisory Committee, the Permanent Central Board, the League of Nations Health Committee, and the Office Internationale d'Hygiène Publique) would adopt a figure; it was empowered to amend the estimates with the consent of the governments concerned. Supplementary estimates were permitted in case of emergency, and to obviate the danger of undue fluctuation of prices. The signatories also agreed to create special administrative machinery to apply the provisions of the Convention and to undertake campaigns against the use of drugs and suppression of illicit traffic.

The Convention (which might be denounced after five years) marked a step forward in international government by providing a supra-national authority which could lay down the amount of drugs permitted to national authorities. By means of its efficient statistical department, it enabled governments to co-operate to prevent the accumulation of huge quantities of manufactured drugs beyond amounts specified in the estimates.

[36] See *League of Nations, Conference for Limiting the Manufacturing and Regulating the Distribution of Narcotics, Geneva, May 27–July 13, 1931.* Official No. 455, N. 193, 1931, XI.

In 1931 a conference was held at Bangkok to consider the further suppression of opium smoking in the Far East. Under the 1925 Opium Agreement the signatory powers had agreed to review from time to time the position of opium smoking. Seven powers attended the sessions, which lasted from November 9 to 27, 1931. A review of the existing conditions showed that smoking had not decreased in the six years since the last conference. After considering the report of the commission of inquiry, the delegates realized the need of adopting stronger measures, and drew up the Bangkok Agreement, which provided that the retail sale and distribution of opium should take place only in government-owned, -managed, or -supervised shops. Persons handling narcotics must be paid a fixed salary, and not a commission on sales. The signatories agreed to introduce compulsory legislation to sell opium for cash only and to reduce the number of factories. Eleven recommendations followed dealing with other aspects of the opium question, including such technical matters as the control of dross, the cure of addicts, and the aftercare of persons who had been cured. The agreement was not to go into effect until ratified by all the signatory powers, a condition realized on April 22, 1937, ninety days after ratification by Japan.[37]

In 1936 the Advisory Committee of the League reported that certain additional narcotic substances should be brought under international control, and proposed a conference to draw up a draft convention to suppress illicit traffic. The conference was held at Geneva in June 1936, and concluded an agreement to strengthen the penalties for offenses against the Conventions of 1912, 1925, and 1931. It provided that any action contrary to the Conventions must be punished by imprisonment or some forfeiture of liberty. Criminals convicted of violating the various articles may have their convictions used against them in territories belonging to the other signatory powers, who agree, with certain exceptions, to make the offenses as described in the agreement "extradition crimes," to set up a central office of supervision to co-ordinate all work connected with the suppression of illicit drug traffic, and to keep in close touch with similar institutions of the other governments. The conference recommended that, where necessary, governments create a specialized police force to the

[37] League of Nations, *Conference on the Suppression of Opium Smoking*, Bangkok, November 9 to November 27, 1931, *Minutes and Documents, Geneva, 1932.* Official C. 577, M. 284, XI; also . . . . *Agreement and Final Act,* Official No. C. 70, M. 36, XI.

purpose of the present Convention, which was to come into force ninety days after the Secretary-General had received ten ratifications.[38]

In 1936 the Advisory Committee began preparatory work for a conference to "consider the possibility of limiting and controlling the cultivation of the opium poppy." In its resolution to the League Council it recommended that the two questions, the cultivation of the opium poppy and the cultivation and harvesting of the coca leaf, because of the different problems involved, be separated, and that attention be concentrated upon continuing the studies, and collecting documentary material relating to the control of the opium poppy "with a view to convening at as early a date as possible a conference for the limitation and control of this raw material," and "to adjourn to a later date the problem of control of the coca leaf, while nevertheless considering that the studies relating to this problem should be continued."

What were the results of the League's action in the field of opium? The Advisory Committee, in June 1936, reported that all together fifty-four clandestine factories had been discovered between 1929 and 1936, and that the control of narcotics had been very successful. Many of the illicit manufacturing plants had been shifted to other parts of the world. Baron d'Erlanger noted that Egypt had been largely freed from the drug menace The Advisory Committee also reported that many drugs which had gone into the illicit traffic had been abandoned because of the efficacy of the police and the marked rise in price in several countries. Moreover, many drugs were being adulterated—a proof that international control had been extremely effective.

For these results the co-operation of governments and police authorities and the work of the League was largely responsible. The international conventions were being ratified by an increasing number of governments and, considering the scope of the problem and the many technical difficulties involved, as well as the necessity of establishing national agencies, the League might well claim high praise for what it had done. Nevertheless much of the field remained unconquered—sufficient indeed, to enable Margaret Goldsmith, in her volume *The Trail of Opium,* to make many criticisms of the League for its failure to do more. Undoubtedly, it is a question of emphasis. The League did fail

[38] League of Nations, *Conference for the Suppression of the Illicit Traffic in Dangerous Drugs,* Official No. C. 286, M. 174, 1936, XI.

badly in many respects; which is another way of saying that groups and nations often preferred their immediate advantages over the long-term advantages to be derived from building a firm foundation of common interests. Undoubtedly many abuses have continued; it is equally true that they would have been worse had there been no concerted attack by the League of Nations.

One last point remains to be considered. Just as slavery and piracy continued to flourish in an atmosphere of international political rivalry which prevented effective international co-operation from overcoming these evils, so in the Far East recently the institution of war has helped to nullify collective efforts toward the suppression of opium and other dangerous drugs. The charge was freely made by responsible authorities that Japan was deliberately using drugs as an instrument of war and that the fight against China was being waged, not merely with bullets, bombs, and shells, but with the deadly weapon of narcotics which undermined the morale and physical health of the Chinese people. The United States representative on the League Opium Committee brought forth considerable evidence to show how the drug traffic was flourishing in the areas of China under Japanese control. The representative of Egypt, while carefully pointing out that at the moment he had no firsthand evidence, asserted that the second-hand information was of such an alarming character that the situation could only be described as most serious.[39]

In the growing intensity of modern wars, we find that every possible instrument is being brought into use in order to defeat the enemy; and we may expect, if the struggles become increasingly bitter and unrestrained, that still more grim methods of catastrophic consequence to human welfare will be employed.

World War II resulted in a reduction of the staffs of the drug-control bureaus which had been set up by the League of Nations, although the Permanent Central Opium Board continued to collect statistics and estimates on the drug traffic in the Western Hemisphere; however it was unable to receive more than a limited number of reports from elsewhere. The Supervisory Body

[39] The League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs, *Minutes of the Twenty-fourth Session*, pp. 37–43, Geneva, 1939. See also Marcus Mervine, *Japanese Concessions in Tientsin and the Narcotic Trade* (Council of International Affairs, Nanking, February 1937); Haldore Hanson, "Smuggler, Soldier, and Diplomat," *Pacific Affairs*, December 1936, p. 545; Frederick T. Merrill, "The Opium Menace in the Far East," *Foreign Policy Association Reports*, March 1, 1937, and other pamphlet material.

achieved less, and the Drug Control Service was also affected by reason of difficulties of communication and by the withdrawal of Germany, Italy, and Japan from the League. Nevertheless the Central Board, in September 1942, decided to attempt current work and also to begin preparations for the period after the war.

The Permanent Central Opium Board and the Drug Supervisory Body put forward comprehensive plans to deal with drug control in enemy and occupied countries following the end of hostilities. A plan envisaged the re-establishment of prewar measures in order to prevent the illegal spread of drugs after the collapse of the enemy. It was hoped that a unified control would be set up, but, unfortunately, political differences between the Allied powers prevented the establishment of a central administration. Measures were taken in Austria and Japan and occupied China to prevent the situation from getting out of hand but in all cases the authorities were handicapped by lack of adequate information.

In February 1941, branch offices were opened in Washington, D.C., and in 1944, the United States began taking the initiative. Representative Judd introduced *House Joint Resolution 241* for the purpose of promoting the limitation of opium production throughout the world to medicinal and scientific requirements. The Department of State sent texts of the resolution and of draft memoranda to eight governments of the most important opium-producing countries in the world. The United States, in its note to Afghanistan, which may be regarded as typical, suggested eighteen points which the proposed convention should contain, including restriction of the cultivation of opium poppies, restriction of the number of countries which may export opium to not more than five of the largest producers, requiring licensing and complete control of all cultivators by national authorities and complete government control over the distribution of opium; the generalization of the import and export permits, the prohibition of the manufacture and use of smoking opium, and the establishment on a completely independent basis of a Central Control Body which should allot each opium-producing exporting country an equal production and export quota.

Mr. Stettinius, delegate to the United Nations Conference at San Francisco, urged that everything possible "should be done to safeguard the continued operation" of the specialized agencies "now functioning so successfully in this field." And on behalf of the United States delegation, he expressed the hope that the

United Nations would be entrusted with the supervision of international agreements concerning opium and other dangerous drugs; that an advisory body would be established to advise the Economic and Social Council "and that the existing agencies be regarded as autonomous agencies to be related directly to the Economic and Social Council."[40] Sometime later the United Nations established a Commission on Narcotic Drugs with representatives of fifteen member nations to replace the opium advisory committee of the former League of Nations, which had a membership of twenty-five. The new Commission was expected to function more effectively by reason of a smaller number, although Mrs. Helen Moorhead, an American authority, questions the inclusion of Iran on the Commission in view of Iran's very doubtful record in opium matters. "Iran has refused to adopt any international treaty obligations which affect its freedom to sell opium to any and all purchasers. Years of pressure by the League, as well as forceful representations by the United States government on the basis of the Judd Resolution have been without results."[41] Fortunately Great Britain has supported the Commission and has abolished opium-smoking monopolies in Hong Kong, Singapore, North Borneo, Sarawak, Labuan, and Brunei following the British re-occupation of these areas after the defeat of Japan.

The Commission on Narcotic Drugs of the United Nations Economic and Social Council is first attempting "to establish the national narcotic control system in those countries where war has broken down civilian administration";[42] then it hopes to resume the reports and collection of statistics on which so much depends for effective control. Mrs. Moorhead well summarizes the task ahead of the Commission which now faces new and unprecedented situations. It will no longer be sufficient as in the past to allocate quotas among a few raw-material-producing countries, because of the new methods of processing morphine direct from the poppy. "Any country with fertile land and a climate capable of ripening

[40] See George A. Morlock, "Limit of the Production of Opium," *Department of State Bulletin*, December 10, 1944; "Exchange of Notes between the Governments of the United States and China," *ibid.*, October 14, 1945; and Philip N. Burnet, "International Bodies for Narcotics Control," *ibid.*, June 3, 1945.

[41] Helen Howell Moorhead, "United Nations Set Up Narcotic Drugs Commission," *Foreign Policy Bulletin* (April 5, 1946), p. 3.

[42] Helen Howell Moorhead, *International Narcotics Control: 1939–1946, Foreign Policy Reports*, July 1, 1946, p. 102. See also George A. Morlock, *Accomplishments of the Commission on Narcotic Drugs*, The Department of State Bulletin, January 19, 1947, pp. 91–104.

ordinary grain crops can produce its own raw material and process it into morphine for its own medical needs, on an economic basis."[43] Moreover, the disturbed financial situation of the world will encourage many countries to manufacture their own morphine. "This means more possible leakages into the illicit traffic, especially in countries with newly established and weak administrations."[44] The international community thus faces a most grave problem which will require for its solution "much original thinking" and a widely effective organization.

EXTRADITION

If a state should refuse to deliver a criminal who had entered its territory to the state from which he had escaped, it would be aiding and abetting actions detrimental to law and order. In an effort to prevent crime, states have co-operated to a limited extent by signing extradition treaties providing for the manner and conditions under which one country will deliver a criminal to another. Extradition treaties were not common before 1800; until then they were directed toward returning political offenders to their own government for punishment. But by the middle of the nineteenth century states began to adopt the modern practice of extradition for nonpolitical offenses.

The older type of treaty specified the particular offenses which should lead to extradition.[45] The 1794 Jay Treaty between Great Britain and the United States provided for extradition in cases of murder and forgery. The 1842 treaty enlarged the list to include murder, assault with intent to murder, piracy, arson, robbery, and forgery. The 1891 treaty further expanded the list to cover twenty-six offenses. The more modern type of treaty is general in character and provides for extradition for actions which are punishable in both states. Most of the treaties are bilateral in character, but a few multilateral conventions have been signed—one at Montevideo in 1902, another at Caracas in 1911, a third at Montevideo in 1933 and now in force between some American states, and a Convention signed at Guatamala in 1935 by a number of Central American states.

Several difficulties have arisen in applying the general rules of extradition. Should a government extradite one of its own citizens who has escaped to his own land from a country where he

[43] *Ibid.*, p. 103. [44] *Ibid.*, p. 103.

[45] Manley O. Hudson, *Cases on International Law* (West Publishing Company, St. Paul, Minnesota, 1937), pp. 408–19.

committed a crime? Great Britain and the United States normally are willing to extradite their citizens, but most states refuse to do so. It can be readily appreciated that serious injustice might be done to a person holding objectionable political views in the eyes of governing authorities if he were extradited for one crime and then tried for another. As a general rule, therefore, states accept the principle of speciality, i.e., an individual shall be tried only for the crime which has been named in the warrant of extradition.

A country may hesitate to hand over an offender to another country if it believes that the penalties in the latter are too severe. The question of capital punishment causes particular difficulty. Some states in Latin America and Europe have abolished this mode of punishment, and a number of them have enacted laws "limiting extradition so as to avoid surrender where the death penalty might follow." Many countries have signed treaties agreeing not to impose the sentence of death on extradited criminals. Typical of these treaties are those: between Spain and Brazil, 1872; between Portugal and Switzerland, 1873; between the United States and Costa Rica, 1922; and between the United States and Rumania, 1924.

The most difficult are the cases which involve political offenses. In 1830 Austria and Prussia refused to deliver some Polish political refugees to Russia; but in 1833 Austria, Prussia, and Russia signed agreements which provided that individuals guilty of high treason, conspiracy, or revolt against a throne or a legitimate government should be surrendered. Belgium, however, in the same year passed an extradition law which included a liberal article that Belgian treaties with other states "should contain the provision that a foreigner should not be tried or punished for any political offense committed previously to his extradition, nor for any act connected with such an offense." Its first treaty along these lines was signed with France in 1834, and was followed during the next thirty years by forty-six similarly worded conventions. In 1856 Belgium found reason to modify its extradition law as follows:

> An attempt (*attentat*) against the person of the head of a foreign government or against the members of his family, when this attempt constitutes the act of murder, assassination or poisoning, shall not be considered a political offense or an act in connection with a political offense.

Thus Belgium, a liberal state, recognized that there were limits to the methods by which people might legitimately attempt to reform a constitution; other countries followed the Belgian example, and extradited those guilty of political actions of the type just quoted. Many of them, too, agreed to extradite anarchists, on the ground that they were opposed to all forms of government, and persons whose political crime was of "a gross and outrageous character." A 1922 Finland law provides that the government will grant extradition if the crime is a particularly cruel one. Hershey suggests that communists and socialists are in a different class from anarchists because their efforts are not "directed against the bases of all social organization," but "aim at re-organization of society on a juster and sounder foundation," a view with which several states will heartily disagree. He adds that journalism offenses "are usually regarded as political, but not necessarily so."[46]

A crime may be committed from a double motive, in part political and in part personal. These are what the French call *délits connexes* (mixed). Switzerland has had most experience and, incidentally, most difficulty in dealing with this type of problem.

> . . . . that country, by reason of its geographical position and the traditions and character of its people, early became a haven for political refugees . . . . Many and vigorous were the protests dispatched to the Swiss government, in 1834, and later, when it appeared that political refugees were using Swiss soil as a base from which to carry on their revolutionary activities.[47]

Switzerland, in 1892, adopted the principle of "predominance," i.e., treating an offense as political if its predominant character is political.[48] It made no attempt to set forth general rules of predominance, but left it to the federal tribunal to decide as particular cases arose. In 1908 the federal tribunal enunciated three general principles "which it considered determined the predominantly political character of an offense"; the act (1) must

[46] Amos Hershey, *Essentials of International Public Law and Organization* (The Macmillan Company, New York, 1927), p. 384.

[47] Lora L. Deere, "Political Offenses in the Law and Practice of Extradition." *American Journal of International Law*, 1933, p. 256.

[48] In the same year, l'Institut de Droit international, at its meeting in Geneva, adopted "une résolution en vue de l'élimination des actes de terrorisme de la catégorie des délits politiques." A. Sottile, "Terrorisme international," *Académie de Droit International, Recueil des Cours*, Vol. 65 (1938), p. 103.

have been committed to help a purely political program, (2) must have really served a political end and if the murder of a public official did not directly modify the political system, the offense would be deemed primarily nonpolitical in character, and (3) must not be unduly atrocious in character. It is important to note that an accused person who claims that he has committed a political, and therefore nonextraditable, offense must assume the burden of proof.

The outstanding fact is that governments have found it almost impossible to draw the line between (*a*) political and nonextraditable and (*b*) common and extraditable offenses. Deere remarks that "the universal opinion is to the effect that such a definition is both impossible and undesirable," and that it is important to entrust the determination of what is a political offense to a judiciary which, more than an executive body, can be relied upon to do justice. And the same writer made (in 1933) the penetrating observation that:

> the future of the rule of no extradition of political offenders depends partly upon the political offenders themselves and partly upon the future of the states making up the present world order . . . .
>
> There may develop an integration of political organization to such an extent that each state or division in the organization would feel an interest in itself punishing attacks directed at any one of the group regardless of where the act might be committed. At present, however, in view of the strong feeling of nationalism and the principle of territorial sovereignty, there seems to be no trend in this direction, and the problem of what constitutes a political offense for extradition purposes will therefore frequently present itself for solution.[49]

The events of the next year provided an eloquent commentary upon this judgment. The Italian court of appeal at Turin in 1934 refused the request of the French government for the extradition of two persons accused of assassinating King Alexander of Jugoslavia and M. Barthou, the French Minister of Foreign Affairs, at Marseilles in France. The court based its decision upon Article 3 of the 1870 Franco-Italian extradition treaty, which excluded political crimes from the process of extradition. The incident focused attention upon the new international atmosphere within which political crimes were being committed. The peace treaties had ended the formal state of war after 1918, but great passions remained; and the defeated countries, charging that the

[49] Deere, *op. cit.*, pp. 169–70.

peace terms were unjust and tyrannical, continuously thought in terms of revenge. The advent of dictatorships brought the expulsion of many political opponents; persons who would not conform were denied a voice in the government, and even the right to reside in their native land. Many of the political exiles plotted against the dictators, and, in this way what was essentially a domestic difference of one party against another became an international problem. Political refugees from the Soviet Union, Italy, Germany, and other countries swelled the list of political malcontents. Political assassinations of important officials added to the already complex problems of international relations. In 1927, a Russian youth murdered the Soviet minister at Warsaw. The Soviet Union accused Poland of being part of a world-wide conspiracy against the U.S.S.R.; and Poland indignantly denied the charge. While the controversy was at its height, Soviet officials arrested a Pole who had entered Russia allegedly for purposes of terrorism. Each country claimed to be innocent and held the other responsible for the action against itself.

The same phenomenon appeared elsewhere in Europe. Hundreds of Fascist refugees fled to Paris, and Italy accused France of encouraging underground political intrigue. An Italian charged with murder escaped to Paris; this and other incidents caused Italy to pass an act depriving of citizenship those who harmed Italy's interests and Italy's good name abroad. In 1926 the French discovered a plot by which Spain was to be raided from the French side of the border from points where arms and munitions were to be stored. The French police published the plan, and its exposure seriously affected French-Italian relations. France interpreted the conspiracy as an effort on the part of Italy to endanger Franco-Spanish friendship.

In 1928 some machine parts were found at Szent Gotthard on the Austro-Hungarian frontier. Five trucks had been falsely declared, and the Succession States feared lest the arms were destined for Hungary, which had been disarmed under the Treaty of Trianon. Moreover, such action might set a precedent for arms smuggling to other defeated powers. The League Council took no definite action, but the governments of Europe remained considerably perturbed.

During subsequent years many outrages occurred in Jugoslavia. No fewer than twenty terrorist crimes took place, culminating in 1934 in the murder of King Alexander and M. Barthou, the French foreign minister at Marseilles. The Jugoslav authori-

ties claimed that the crime was committed by men who had been trained in special camps in Hungary. They accused Hungary of assisting Jugoslav émigrés to obtain arms and ammunition, of issuing false passports to them, and of drilling them in the methods of professional terrorism. The Czechoslovakian statesman, Beneš, stated that Hungary had tolerated the existence of a veritable school of terrorists at Janka Puszta only a few miles from the Jugoslav border.

In 1925 Professor Pella published an important volume, *La criminalité collective des Etats*, in which he foreshadowed a plan of international co-operation and even the creation of an International Penal Court. The first International Conference for the unification of penal law, held at Warsaw in 1927, considered the problem, and at the Third Conference at Brussels in 1930, the Fourth Conference at Paris in 1931, the Fifth Conference at Madrid in 1932, and the Sixth Conference at Copenhagen in 1935, reports were discussed. The last gathering drew up a draft of eight articles and added a *vœu*

que, lorsque l'extradition n'est pas accord'ée, les délinquants puissent être déférés à une jurisdiction pénale internationale, à moins que l'Etat requis ne préfère les faire juger par ses propres tribunaux.[50]

It was Rumania which in 1926 first brought the matter before the League of Nations by proposing that a study be undertaken for the elaboration of International Conventions for a Concerted Repression of Terrorism. But only after the assassination of King Alexander and M. Barthou in 1934 did the League, on the initiative of France, take action. After considerable discussion the Council called an intergovernmental conference, which met at Geneva, November 1, 1937.

These instances indicate the demoralizing forces at work in a Europe rendered emotionally unstable by the cataclysm of the World War of 1914–1918, the grievances arising from the Peace Treaties, the disappointments suffered by minorities, the apprehension of the majorities, the intolerance of the dictatorships, and the resentments persisting among persons expelled from their country. The decline of liberalism, and of the spirit of tolerance within and between nations, caused many domestic problems to take on an international aspect. People who could not use the ballot at home were tempted to use the bullet abroad. In an effort to stem the growing tide of international violence, governments

[50] Quoted by A. Sottile, *op. cit.*, p. 115.

discussed methods for the repression of terrorism, and considered two conventions—one for the prevention of terrorism and the other for the establishment of an international criminal court.

Opinion was seriously divided as to the desirability of any convention along these lines. Great Britain urged that her existing arrangements were sufficient to take care of terrorist activities, and that it would be difficult to persuade Parliament to change Britain's methods. It claimed that the time was not ripe for the creation of an international criminal court, because such a court would be seldom used, and because of the great diversity in national criminal law systems. Norway also announced its unwillingness to join an international criminal court. The Netherlands and Hungary approved both conventions. Haiti approved the convention for the suppression of terrorism, stating that extradition should be subordinated to such an agreement because terrorism was in reality a crime against civilization. But Haiti feared that the proposed international court would be too slow in its action and too expensive to be very useful. Czechoslovakia, Belgium, and France supported both conventions. The last-named stressed the inadequacy of extradition measures in political crimes. The Belgian representative asserted that an international convention was necessary even though nations claimed that their domestic laws provided adequate punishment for acts of terrorism, and pointed out that although traffic in women and children and the counterfeiting of currency are regulated by national law it was found desirable to supplement these measures by international organization because of the inadequacy of unco-ordinated national actions. But terrorism was assuming an even more international character than the traffic in women and the counterfeiting of currency. Extradition treaties were not effective enough because of insufficient international police organization and the lack of adequate facilities for the exchange of information concerning suspicious characters, the slow execution of letters of request, and the lack of agreements between countries involved as to the real nature of the outrages.

The Spanish representative supported both conventions, although he believed that the criminal court had little chance of survival; however, since adherence to the court was not to be compulsory, experience would show whether the court was a fundamental necessity or not. Other representatives spoke for and against the conventions.[51]

[51] The objections are analyzed by A. Sottile, *op. cit.*, pp. 136–39.

After much discussion and correspondence the draft convention for the prevention and punishment of terrorism was adopted in 1938. It defined acts of terrorism and obligated the signatory powers to co-operate as fully as possible in preventing all activities suspected of being terrorist in nature. Under Article 15, each signatory undertook to establish an appropriate service in close contact with its own police authorities and with the corresponding services of the other states for the purpose of bringing together all information calculated to facilitate the prevention of terrorist offenses and for their punishment when committed.

The convention for the creation of an international criminal court was drawn up in the same year. It provides for a permanent court of judges chosen from acknowledged authorities on criminal law; it is to consist of five regular judges and five deputy judges, no two of the same nationality, chosen by the Permanent Court of International Justice from a panel nominated by the interested countries. Judges are to hold office for ten years, and one regular and one deputy judge are to retire every two years. The court is to apply the substantive criminal law which is the least severe. It shall determine what that law is by considering the law of the territory in which the offense is committed and the law of the country which commits the accused for trial. Such are the general provisions.

The many detailed provisions of the fifty-six articles cannot be analyzed here. Suffice it to say that they represented an ambitious attempt to overcome the weaknesses of the present system of extradition. It was open to doubt whether any considerable measure of success would attend these conventions for some time,[52] and whether we might expect any substantial relief from international terrorism until two fundamental conditions were realized: (1) a restoration of widespread political, religious, and social tolerance within all countries, especially the dictatorships (but can dictatorships be tolerant?); and (2) a substantial degree of international security to permit a lessening of the abnormal fears and sensitivities now rampant in the world. International terrorism is, in large measure, the outcome of political anarchy and repression, both national and international. Its solution will depend upon reforms which will eradicate the conditions which lead to terrorism, rather than upon erecting international machinery to

[52] See Sottile, *op. cit.*, pp. 175–78, for a general estimate, and especially a discussion of the wisdom of not tying the Conventions more closely to the League of Nations.

suppress what a wiser and more enlightened domestic policy could have prevented from arising.

Nor can one ignore the considerable amount of evidence which exists of the fact that terrorism has been increasingly made a weapon of waging international war, by undermining the authority of rival governments and thereby paving the way for ultimate penetration and conquest. There can be little real success in having an international court to try terrorists if these men and women are merely the instruments of governmental forces arrayed against each other in bitter opposition. Until international individual terrorism is divorced from the international struggle for national supremacy over other nations, it cannot be treated separately as a simple question of crime prevention. The major question of international security and order must be solved first: only after that is done can effective steps be taken to deal with a problem which will then be reduced to relatively solvable proportions. The widespread nature of "fifth column" methods which the present war has revealed—spies in all kinds of preliminary work to weaken the future enemy, trusted people worming their way into confidence only to betray it, people guiding enemy parachutists—places the question of international crime in a sinister light, and shows the way in which modern war is breaking down the distinction between public and private activities.

This conclusion is strengthened by the events of the early months of the peace. The terrible deeds of the Nazis before and during World War II induced the British, Soviet, French, and United States governments to draft a charter creating an International Tribunal to be patterned roughly after military courts for the purpose of trying individuals. On October 18 in Berlin the prosecutors charged 24 outstanding defendants and 7 organizations with conspiracies to wage aggressive warfare, breaches of the international peace, violations of the rules of war, and crimes against humanity. Mr. Justice Jackson, in his opening statement for the United States, impressively surveyed their barbarous acts and argued that the plea that the defendants were entitled to immunity because they were agents of a state could not be accepted. States do not make war, argued Jackson; it is time to set aside this flimsy fiction and face the reality that it is individuals, and not some mystical entity, who are guilty of acts of terrorism. To this degree, therefore, an International Court was to assume jurisdiction over individuals and not be confined, as orthodox legal theory had postulated, to cases involving states.

Mr. Jackson's opening statement comprises over 90 pages of the volume entitled *The Case Against the Nazi War Criminals.*[53] It is impossible here to convey the impression one gains on reading the hundreds of charges made, supported not only by Nazi documents, photographs, and films, but also by detailed allegations as to time and place and the number of people killed or ill treated.

The first and second counts, of the conspiracy to wage aggressive war and the breach of international peace, are dealt with in the chapter on "Security." Count three, war crimes, deals with mass murder and ill treatment of civilian populations of or in occupied territory and on the high seas. Many hundreds of thousands, indeed millions, of people suffered death by poison, starvation, and torture, and millions were deported for slave labor and other purposes. Prisoners of war were ill treated and murdered; hostages killed; public and private property plundered (the details of which occupy several pages in the indictment); cities, towns, and villages wantonly devastated or destroyed in a manner not justified by military necessity; civilian labor conscripted, and civilians of occupied territories forced to swear allegiance to a hostile power. Under count four, crimes against humanity, are included (*a*) murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations before and during the war; and (*b*) persecution on political, racial, and religious grounds in execution of and in connection with the common plan mentioned in count one.

The International Military Tribunal consisted of four members, each with an alternate; the Tribunal was to take decisions by a majority vote and in case votes were evenly divided, the vote of the president was to be decisive. The defendants were to have a fair trial with the right of conducting their own defense before the Tribunal or with the assistance of counsel. The agreement by the prosecuting governments laid down the procedure at the trial and the Tribunal was to have the right to impose upon the defendant on conviction death or such other punishment as it should determine to be just.[54] While authorities differ as to the

[53] Published by A A. Knopf, New York, 1946. The indictment, including appendices, takes up pp. 113–217.

[54] An able volume dealing with the texts of the laws and decrees of the Axis powers and their puppet regimes is "*Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress,* by Raphael Lemkin, Carnegie Endowment for International Peace, Washington, 1944, pp. xxxviii, 674. It is interesting to note that in 1933 Lemkin proposed at the Fifth International Conference for the Unification of Penal Law that two new inter-

soundness of prosecuting the Nazi leaders for undertaking a war of aggression, for reasons given in the chapter on "International Law," many agree that sufficient justification existed for the trial and condemnation on the other counts.

The Charter of the International Military Tribunal for the Far East was proclaimed by General MacArthur in January 1946. The Tribunal was to consist of not less than five nor more than nine members. It was to follow the same general methods as the International Military Tribunal in Europe.[55]

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national crimes be formulated, namely the crime of barbarism and the crime of vandalism. A special sub-committee of the sixth (legal) committee, in December 1946, adopted a draft resolution branding genocide an international crime:

"The General Assembly affirms that genocide is a crime of international law which the civilized world condemns and which the main authors and their accomplices, whether private individuals or public officials, must be punished; calls upon the Member states to enact legislation for the prevention and punishment of this crime."

The resolution was expanded by the sixth committee at its 32d meeting on December 9. See *United Nations Weekly Bulletin,* Vol. I, No. 19, December 10, 1946, pp. 47, 48, and December 17, 1946, p. 47.

[55] For text of Charter see *Department of State Bulletin,* March 10, 1946, pp. 361–64.

Chapter VI

MONETARY ISSUES AS WORLD PROBLEMS

THE INTERNATIONAL nature of monetary organization was clearly realized before 1914; and now, after over thirty years of uncertainty and disequilibrium, we can appreciate the advantages to the prewar world of a remarkable mechanism which functioned across national boundaries. The history of the period 1914–1940 is largely the history of nations which preferred for one reason or another to narrow their financial foundations in an attempt to support a purely national economy. The following account is therefore a description of the tragic consequences of a continuous breakdown of international co-operation. As a blind man may be said to appreciate the beauty of light in a negative way, so modern world society is learning or should be learning through bitter experience the truth of the necessity of building economic institutions on foundations wider than that of the sovereign state. But the problem is most difficult and there has been a remarkable shift in emphasis both in theory and practice in the interwar years, so much so that questions which occupied the center of the stage a generation ago attract relatively little attention today, or at least have taken a secondary place.

GOLD

During the nineteenth century an increasing number of countries adopted the so-called gold standard. Under this system banks must hold a certain amount of gold as a basis for paper money; depositors might ask for payment in gold at any time, and it was therefore necessary, in order to maintain their solvency, that banks should maintain a substantial gold reserve. Moreover, gold served the further purpose of readily adjusting the balance of international trade.

Economic life responds very quickly to changes in price levels. A sharp rise or fall in prices affects economic enterprises in a very direct manner. And it is generally admitted that stability of prices is most desirable. But stability of prices depends upon the relation between the amount of business done and the amount of money available. One may take a simple illustration. Suppose fifty people, who are seated in fifty chairs, possess a total of fifty dollars with which they wish to purchase the chairs. Each chair would be worth one dollar. If another fifty chairs are available for them to buy, but the amount of money remains the same, each chair must be priced at fifty cents. The illustration neglects many complicating factors but it may serve to introduce the general problem.

On the basis of this example, one may deduce that if the total amount of world economic activity increases by an average of 3 per cent a year, there must be a similar percentage increase in the amount of currency available in order to maintain stability of price levels. Increased economic activity without an increase of currency will lead to a fall in general prices. It follows that if gold is regarded as a necessary basis of currency, an expansion of trade activity which requires an expansion of currency will also necessitate an increase in the world's gold supply.

Economists made elaborate estimates of the world gold production figures, and equally elaborate calculations of the annual increase in the world's gold supplies which would be required in order to maintain stable prices. The estimates varied from less than 1 per cent to over 3 per cent, according to whether the estimates are based upon nineteenth-century or twentieth-century needs. The outlook for price stability was not bright if the assumptions stated were sound. Mr. Joseph Kitchin in 1930 stated that ". . . on 1850 to 1910 experience, an increase in the gold in central banks and treasuries of somewhere between 3.1 per cent and 3.4 per cent is required to keep prices stable if the world's rate of development is not slowed down, and I cannot conceive of anything like this rate of increase being attained . . . . a fall in the trend of wholesale commodity prices for an indefinite period (moderate at first but increasing with time) is in prospect."[1]

There seemed, when he wrote this, to be every reason for assuming that sooner or later the world must suffer from an inadequate supply of gold. It did not seem possible that the great mines in South Africa, which accounted for more than one-half

[1] Joseph Kitchin, "Gold Production," in *The International Gold Problem* (Royal Institute of International Affairs, Oxford University Press, 1931), p. 68.

of the world's production, could last indefinitely; mines all over the world were experiencing higher costs of production as they went deeper; most lands had been surveyed, and mankind could no longer expect more than an occasional new gold discovery of any substantial magnitude. Mr. Kitchin's warning did not stand alone. The Gold Delegation of the League of Nations Financial Committee, in its interim report of 1930, expressed the fear that the world would soon experience a shortage of gold.

This line of reasoning naturally led to suggestions of methods of economizing gold so as to enable the same quantity to do a greater amount of work. Such suggestions were made by the Gold Delegation, and by the experts who drew up the agenda for the World Economic Conference of 1933. They included: (*a*) a better distribution of gold among countries; (*b*) international agreements to lessen the minimum ratio of gold to other currency; (*c*) the replacement of small notes by subsidiary coin "which will to some extent reduce the strain on gold reserves through the decrease in note circulation."

It may be noted that the increasing use of gold in ordinary life for dental purposes, jewelry, and other ornamentation led to a further demand upon the gold supplies of the world; and this fact was present in the minds of economists when they contemplated the general gold problem.

The gloomy prognostications of what might be called monetary Malthusianism have not thus far been fulfilled. A number of factors have offset the forces at work making for a gold shortage. The fall in prices which followed the world depression raised the value of gold. The increased price of gold as a result of government action—notably that of the United States, which raised the price from twenty to thirty-five dollars an ounce—gave a great stimulus to gold mining and resulted in a great increase in production. The use of platinum instead of gold for jewelry purposes, the falling off in the gold consumption of other industrial activities, and especially the departure of certain nations from the gold standard and the use of managed paper currencies have altered the whole emphasis of the problem.

Thus the question of adequacy of gold supplies turned in large measure upon two further questions: (1) whether or not the world would go back to the gold standard, and (2) whether or not the existing distribution of gold was satisfactory. Should the world again adopt the gold standard, it was theoretically arguable that the quantity of gold would again become a question of great urgency.

And if it was found that the gold already available was so badly distributed that it was shut off from countries which needed it, we must ask whether this maldistribution was a cause or an effect of economic abnormality.

Theorists who blamed maldistribution of gold for much of the world's interwar dislocation say that the World War of 1914–1918 created an abnormal situation and plunged several countries into debt; the necessity of paying such debts in gold diminished the gold basis of currency, forced down prices in the debtor countries, created serious crises, and made it necessary for the debtor countries to (1) export more of their products at still lower prices, or (2) send out more gold, thus still further endangering their national currency structure, or (3) go into default and suspend payments. These critics alleged that the countries which received large quantities of gold, especially France and the United States, did not permit the gold to raise their price levels by being used as the basis of an expanded note issue, but that they "sterilized" it, by segregating it or in some other manner refusing to allow it to play its traditional role. In this way the maldistribution of gold caused a disequilibrium of currencies, threw national price levels out of gear, and prevented a restoration of the gold standard. Countries in an unfavorable economic position and finding themselves short of money had to depreciate their currency and adopt schemes of exchange control. Theorists who write along these lines emphasize the importance of monetary policy in causing the world depression, and naturally believe that monetary methods may alleviate the present ills. They say that if central banks will increase their purchase of securities and thus create more money, new capital developments will take place which will increase employment and add to purchasing power.

Policy along their lines would lead to action which normally can take place only within national limits. If that is so, what will avail the smaller and economically weaker countries which need capital? They cannot sufficiently create purchasing power merely by an inflationist policy by their central banks. What can be done in their case?

Two lines of action are possible: (1) Further loans to them from the creditor countries, and (2) a lowering of tariff barriers by the creditor nations so that the latter will receive more goods and supplies from the debtor countries; in this way economic activity in those debtor countries will be stimulated and will permit them to lessen their indebtedness. The difficulty with the first

course, that is, further loans from creditor nations, is that it intensifies the problem of repayment. Very quickly the question would again arise, How can the debtors pay their creditors if the latter persists in maintaining their high tariff walls?

The foregoing discussion has moved from a consideration of the maldistribution of gold to questions of investments and tariff policy. And according to another group of economists this is inevitable, because in their view the so-called maldistribution of gold is an effect rather than a cause of the world's present economic dilemma. They ask why the maldistribution of gold should have occurred, and reply that nonmonetary factors have been largely responsible in bringing about the monetary disequilibrium. These factors include: the rigidity of interest rates; the growing burden of debt structure, both national and international; the contradictory policy of those countries which loaned money abroad but persisted in keeping up high tariffs; the growing economic nationalism due to alleged necessities of defense; and the desire of agricultural countries to "balance" their economy by encouraging some degree of industry. And these factors have combined to make the maintenance of the gold standard impossible and to force debtor countries to part with their gold. Maldistribution of gold, therefore, is a symptom, rather than a cause. Professor T. E. Gregory once remarked that, even if all the world's gold reserves were miraculously handed back to countries so as to restore the position of 1913, with present economic forces at work gold would soon again be maldistributed.

Economists were not agreed whether or not it was desirable to return to the gold standard.[2] The Gold Delegation of the League of Nations in 1932 considered it of the utmost importance for the world's economic and financial development to return to gold as soon as possible, and urged that national policies should include "the restoration of a reasonable degree of freedom in the movement of goods and services," a solution of the reparations and war debts problem, which involved heavy outpayments from countries unable to live up to their obligations without overgreat financial strain, and co-operation among the central banks of the world so that gold moving to and from countries should be enabled to influence the level of prices. Countries receiving gold should use it in order to expand their currency and so raise prices; countries losing gold would normally experience a decline of

[2] See *Monetary Policy and the Depression*, issued by the Royal Institute of International Affairs (Oxford University Press, 1933).

prices, and their cheaper goods would cause the higher-price-level countries to buy from them and in this manner gradually restore the price level and the normal processes of international trade. Governments also should balance their budgets and economize the use of gold. Professors Lionel Robbins and Hayek wrote along similar lines, urging that the gold standard was a semiautomatic mechanism "less open to political pressure than any other standard," and that with its restoration the current exchange fluctuations would be minimized and confidence again restored.

Experts who opposed the early return of the gold standard insisted that its restoration and maintenance would depend upon many conditions which at present cannot be realized and that, should a "premature restoration" take place, it might have extremely unfortunate consequences, comparable to those which befell Great Britain after returning to the gold standard in 1925. Sir Arthur Salter, in his *World Trade and Its Future*, noted that within ten years of the Peace Treaty most national monetary systems had been restored but the international political crises which developed after 1930—the Japanese invasion of Manchuria, the breakdown of the Disarmament Conference, the disturbing effects of Hitler's advent to power—and certain economic factors such as falling prices, the growing rigidity of economic life, the unwise investment policies of creditor countries, and the increase of tariffs, broke the gold standard. The 1920 Brussels Financial Conference organized by the League of Nations had recommended balanced budgets, cessation of inflation, establishment of central banks of issue, the organization of international agencies for new credits, and the restoration of the gold standard. But monetary re-establishment alone was insufficient. As Sir Arthur puts it, money and finance are only the servants of trade, and the newly restored gold currencies of the postwar period depended upon the maintainence of equilibrium in the general system of international payments.

Opponents of the early return to the gold standard argued that, if these adverse factors destroyed the gold standard in the last decade, there was little ground for believing that present conditions will permit the political and economic stability required for the working of the gold-standard system. Professor Cassel, the Swedish economist, in his dissenting memorandum in the report of the League of Nations Gold Delegation of 1932, asserted that an attempt at this time to return to gold would be doomed to failure, because it would be impossible to obtain

the fulfillment of a number of essential conditions, among which the following should be mentioned here; a great reduction in the value of gold, a radical redistribution of the world's gold reserve, the resumption of a systematic gold economizing policy, cancellation of all claims upon reparation and war debt payments, definite guarantees against the repetition of such extraordinary demands for gold as have occurred during the last few years, and, finally, restoration of a reasonable freedom of international trade and of international capital movement.

The same authority in 1936 published his *The Downfall of the Gold Standard* and, in a chapter entitled "The Illusion of a Return to Gold," strongly urged the necessity of making monetary policy independent of gold reserves and concluded that "for all practical purposes the gold standard is a thing that belongs to the past." The almost continuous instability in international relations during the last few years bears out Cassel's statement. The invasion of the Rhineland, the absorption of Austria, foreign intervention in Spain, the Italian conquest in Abyssinia, the tension in the Mediterranean, the crisis over Czechoslovakia, the conflict in China, and the recent war were too disturbing to permit the functioning of "a semiautomatic mechanism."

Meantime, as will appear presently, the emphasis of economic thinking was markedly changing and monetary theory was being closely tied to the problems of saving, investment, and full employment. This change was reflected in the writings of J. M. Keynes. In the introduction to his *The General Theory of Employment, Interest and Money*, written in 1936, he noted that when he began to write his *Treatise on Money* published in 1931, he "was still moving along the traditional lines or regarding the influence of money as something, so to speak, separate from the general theory of supply and demand. . . . . This book, on the other hand, has evolved into what is primarily a study of the forces which determine changes in the scale of output and employment as a whole; and, while it is found that money enters into the economic scheme in an essential and peculiar manner, technical monetary detail falls into the background."[2a]

Keynes urged that the crises in the modern economic system were largely traceable to the uncertain factor of capital investment in heavy industry. Consumers' demands tend to be relatively con-

[2a] J. M. Keynes *The General Theory of Employment, Interest and Money*, (Macmillan & Co., Ltd., London, 1936), pp. vi and vii

stant but because industry becomes more and more rigid through the development of monopolies and other methods of self-protection new capital development slows up, bringing with it a layoff of workers in capital goods industries and the beginning of a downward spiral. Monetary policy therefore must be considered in intimate relation to the maintenance of full employment, the adequacy of capital investment, and the utilization of public investment if and when private investment should show signs of tapering off. Government budgets and exchange rates must be seen as part of this total picture and not be considered, as in the classical theory, as something with an independence or semi-independence of its own. This type of thought was to find expression at the Bretton Woods Conference in 1944.

SHORT-TERM LOANS

One serious consequence of the world's political instability and frequent crises between 1930 and 1939 was the growth of short-term loans and what was picturesquely called "hot money." A certain amount of short-term credit is always necessary because of seasonal fluctuations. Farmers normally require loans for a few months, and merchants need advances to tide them over certain periods. These normal factors, however, have been overshadowed by other short-term loans, some of which have been used by borrowing countries for capital construction. Funds so expended are tied up and cannot be easily liquidated. One cause of Great Britain's going off the gold standard in 1931 was that several Continental banks had a large amount of money on short call in London, much of which London had reinvested in Europe. When the Austrian Credit Anstalt crashed, confidence vanished and European investors rushed to their banks to withdraw their deposits; and the banks pressed London, which could not stand the strain of such a sudden and huge demand for gold.

No normal banking system can function in an atmosphere of crisis and panicky withdrawal of funds. If, therefore, they lend too great a proportion of their deposits on short loans, they jeopardize their stability and solvency, for they are at the mercy of sudden demands for gold by frightened investors in the event of a panic.

Short-term loans increased so markedly because the frequent international crises naturally made investors unwilling to lend their capital abroad for long periods. Unable to see far ahead, they

feared to undertake long-time loans in a kaleidoscopically changing world. Borrowing countries, unable to obtain funds for long-term construction projects, were tempted to take a risk and use short-term loans for that purpose. The political conditions for sound investment were lacking, and should banks succumb to the temptation of issuing too many short-term loans they would play a dangerous game. Economists agreed that a reduction in the amount of these short-term loans was necessary if financial stability were to be re-established.

There was another aspect of the question. Capital movements seemed to bear less relation to economic and banking factors than they did to political conditions. Hardy wrote that they "do not correspond to shifts in trade, in the interest rate, or in the attractiveness of genuine investment opportunity" and are therefore "not subject to control through the ordinary mechanism of central bank policy."[3] Capital clearly was more concerned "to seek safety rather than profit" and, in the search for safety, funds were being "shuttled from one land to another." It had become "hot money," and it introduced many complicating issues.

Europe's monetary uncertainty in 1932–33, the great pressure upon the gold currencies of France, Switzerland, and Holland, the upturn in American business, and fears in France that the Blum government would unduly penalize French capitalistic interests combined to produce a remarkable migration of capital from Europe, which sorely needed it, to the United States, which already had extraordinary amounts of gold and securities. This flow of capital had serious consequences for the European countries, and created embarrassing problems for the United States. Authorities feared that large foreign investments in this country would send the prices of stock to new heights and would "generate a speculative boom with results as disastrous as those in 1929," and also that gold imports would unduly expand the bank reserves of the United States and thus inflate the credit structure. "The importation of about four billion dollars in gold during the last three years, therefore, created the basis for an enormous expansion of credit which would undoubtedly have led to serious inflation."[4] The Federal Reserve Board, in order to offset the effect of gold imports, "twice raised the legal requirements," by 50 per cent in

[3] Charles O. Hardy, *Is There Enough Gold?* (The Brookings Institution, Washington, D.C., 1936), p. 99.

[4] H. M. Bratter, "Hot Money and International Problems," *Foreign Policy Report*, June 15, 1937, p. 84.

July 1936 and by another 33⅓ per cent in the first half of 1937. The government also "sterilized" the gold imports by holding much of it "in an inactive account in the general fund." Sterilization is a costly business; according to Bratter, "if gold has to be acquired by the Treasury at the same rate as in the last few months, it will involve an increase in the public debt of over $1,898,000,000 a year. Such an increase is particularly embarrassing at a time when the government bond market is manifesting growing concern over continued government deficits."[5] Curiously enough, this gold influx, far from enriching the country, seemed to add to its financial difficulties, and the government attempted to find means of stopping, and even reversing, the inward movement of capital and gold.

One suggestion was to impose further taxation upon foreign capital invested in this country, but there were difficulties in this method. The United States might "offset the influx of capital by renewed foreign lending . . . . but Americans are unlikely to invest money abroad so long as foreigners themselves see better prospects for profits and greater safety for their capital in the United States."[6] It might be possible to reduce the price of gold, but such a step would cause many difficulties of a domestic and international character. The United States and European countries could co-operate to devise banking measures to lessen the volume of "hot money." These measures might help, but the basic evil is political insecurity. Until the world solves this problem, all the lesser measures will be of minor importance and are likely to be swamped in a tidal wave of political panic. Given a minimum degree of political security, it should be possible to work out methods to remedy the evils of "hot money" and excessive short-term loans, and by international co-operation to promote sound international capital investment.

First it should be noted that the problem of investment is related to the question of gold distribution and of bank reserves. In a discussion on a paper entitled, "For What Objects Do Central Banks Hold Gold?" J. M. Keynes writes that it is unnecessary for central banks to keep so much gold in reserve in order to secure their paper issues, and that their gold reserves need not bear any particular ratio to the note issue. If this idea "were accepted in the world at large . . . . it would be an enormous gain." The main function of gold should be to enable a country to pursue a

[5] H. M. Bratter, *op. cit.*, p. 85.

[6] *Ibid.*, p. 86.

sound policy of international lending, especially to countries suffering from gold shortage. "The important thing is that creditor nations should regularly lend their surplus, and that there should not be tension in the gold market arising out of their willingness to do that."[7]

Great Britain's readiness to lend abroad was largely restricted by reason of her gold situation; and the unwillingness of American and French banks to participate in foreign loans was unfortunate, however natural it was under the circumstances.

The breakdown in international lending intensified the world economic crisis, because the debtor countries, and countries which suffered from the catastrophic fall in agricultural prices and from the effects of tariffs placed upon their exports not only could not get financial help to relieve their distress, but even had to export gold which they could ill afford to lose.[8] Keynes concluded that the solution of the problem requires "some sort of international policy by an international institution toward international lending—something a little remote from the gold problem. Gold comes in as a symptom, as a sort of barometer but you will not get real stability unless you cast your eyes beyond gold to the irregularity of the international loan market. That is perhaps the most fundamental cause of serious upsets such as we are suffering from today." We must therefore examine the possibilities of international organization ni this matter, and how far these ideas found expression in the Bretton Woods Conference in 1944 and the Bank for Reconstruction and Settlement which grew out of the Bretton Woods Conference.

INVESTMENTS

Undoubtedly international investment played a most important part in the development of international trade between 1800 and 1914. It made possible the use of capital from Europe to promote the great agricultural, pastoral, mining, lumber, railroad, and other activities of the New World. Without it the new markets for Europe's manufactures and the new openings for the increased population of the nineteenth century could not have developed so rapidly.

[7] R. H. Brand, "For What Objects Do Central Banks Hold Gold?" in *The International Gold Problem* (Royal Institute of International Affairs), p. 187.

[8] M. A. Heilperin, *International Monetary Organization* (International Institute of Intellectual Co-operation, Paris, 1939), p. 30.

Many economists doubt that international investment will ever again have the same great opportunities as it had several years ago. These considerations indicate that it will not: (1) The United States and other creditor countries have suffered heavy losses by reason of defaults on the part of debtor countries and will not readily regain confidence. (2) The scope for foreign investment has diminished owing to the growth of economic nationalism; many of the debtor countries wish to free themselves from the "imperialism" of their powerful neighbors, and are taxing foreign investments in order to weaken the financial hold of the foreign capitalist. (3) The declining rate of population growth in many parts of the world will lessen the demand for food supplies; agricultural countries will therefore not increase their areas of cultivation and borrow so much capital. (4) Agricultural methods have made great progress—"All over the world, the scientific breeding of animals, the increasing use of mechanical appliances, the development of new methods of farming, artificial fertilizers, improved transport, and biological discoveries have helped to increase the output of agricultural products per unit of labor and land employed."[9] Europe will therefore not require to import so much agricultural produce from abroad. The agricultural countries of the New World are setting up their own industries, in keeping with the general growth of economic nationalism. All these developments lessen the scope for international investment. (5) The growth of tariffs, especially in creditor countries, has made the problem of repayment of loans extremely difficult. It seems unlikely that there can be a marked resumption of international lending as long as debtor countries find it difficult to surmount existing tariff walls and cannot pay their interest and sinking fund by means of goods. Further lending without careful consideration of methods of receiving interest and amortization payments would seem to be unwise. Sound investment will necessitate serious attention to the problem of repayment.

And yet a considerable need of foreign loans still exists.[10] Many countries which possess ample resources have a low standard of living. They require capital in order to permit them to develop their resources, improve communications, promote public health, and extend their educational facilities. But the problem

[9] *The Problem of International Investment* (Royal Institute of International Affairs), p. 30.

[10] This need has been intensified by the destruction suffered in World War II.

will require much more careful handling than it has received in the past. And organization will be needed to prevent the type of reckless lending which characterized the period 1920 to 1930. Sir Arthur Salter writes:

It is . . . . impossible to measure specifically the evil of wasteful expenditure by public authorities of funds obtained from foreign loans. But it is very great indeed and will remain a cancer in the whole of the world's financial and political system until it is dealt with. I venture to challenge a denial, from any responsible person acquainted with the public borrowings of the years 1925–28, of the assertion that, with the exception of loans recommended by the League of Nations and the Central Banks, the *bulk* of the foreign loans in these years to public authorities in debtor countries would better not have been made.

If this is true, it is clearly a grave indictment of the world's credit system as regards the immense sphere of its operations comprised by foreign loans to public authorities.

Nor is this all. The dead-weight of these wasteful loans, involving an annual charge represented by no adequate yield of a public enterprise, was a major factor in causing the financial crisis of the same kind as reparations and war debts, and may in future years prove a heavier and more enduring burden upon the world's economy. And the end is not yet. The defaults which have taken place, and those which will come soon, will have destroyed the confidence of the investor in foreign lending of all kinds, including that which is most sound and most vitally needed. When the turn in economic depression is reached, the resiliency of the recuperative forces which should come from new lending will this time be lacking.

Commercial loans do not involve the same dangers as public loans; and when they are unwise the consequences usually extend only over a limited range. This is not the case, however, when the banks of a country assume responsibility for loans from abroad. When this practice extends, the whole of a national banking system may be endangered; and a substantial part of the difficulties of some central and eastern European countries has been so caused.[11]

We see, then, that resumption of international lending is desirable, and since, even though the amount of international investment may not reach prewar figures, there still remain considerable fields for it; that it must be carefully planned so as to permit opportunity of repayments; and that loans must be made for genuinely economic and productive purposes.

State regulation of international investment.—Governments

[11] Sir Arthur Salter, *Recovery, the Second Effort* (The Century Co., New York, 1932), pp. 123–24.

for some time have taken action to regulate international investment. The British authorities exercise their control persuasively rather than according to some law, by "requesting" financial houses to refrain from making certain loans on grounds of public policy. Through the Bank of England it can if necessary exert sufficient pressure; the Bank may refuse to rediscount bills of lending houses which do not respond to the government's request. It is most rare that such action is necessary. In April 1936 the British government established a Foreign Transactions Advisory Committee, whose duty it was to investigate the problem of foreign loans.

> The Committee is to consider applications for loans from foreign governments and other public authorities; offers of share or loan capital to the public, which involve the remittance of funds directly or indirectly to countries outside the British Empire; offers of this kind, not to the public, but in respect of which permission to deal may be sought from the Stock Exchange Committee; and the acquisition of blocks of securities from abroad.[12]

The Royal Institute of International Affairs study group suggested that if London were to contemplate a permanent control of the capital market, "which seems very likely," it would be desirable to set up a Foreign Transactions Advisory Committee with even wider powers.

The United States also exercises a measure of government control over foreign investments. In 1922 the Department of State required would-be investors in the foreign field to consult the Department "on account of the bearing of such operations upon the proper conduct of foreign affairs." The Johnson Act, passed in 1934, to prevent financial transactions with foreign defaulting governments, imposed further official control. Germany has carried governmental action to the greatest lengths. Her nationals may not export currency or purchase foreign securities and her exporters must obtain permits before they can send goods abroad; many kinds of "blocked" currency exist, and in general it may be said that no freedom remains in Germany in the sphere of foreign investment.

The governments of debtor countries have also established official supervision of international loans. The Commonwealth of Australia set up an Australian Loan Council in 1923–24 to co-ordinate borrowing and to prevent competition between the

[12] *The Problem of International Investment* (Oxford University Press, for the Royal Institute of International Affairs, 1937), p. 70.

states and the Commonwealth and between states themselves, in the international money market. Other countries have imposed methods of direct exchange control by limiting the amount of foreign exchange which importers can obtain in order to pay for purchases from abroad.

Governments have not merely taken action to control the amount of investment abroad or loans from abroad as the case may be; they have taken steps to "encourage or promote overseas investments" in several ways. Sometimes the government makes a direct investment; or guarantees export credits and "loans for stabilization and relief purposes." The Export Credits Guarantee Department of the British Board of Trade may grant credits for periods up to ten years. Similar bodies have been set up by at least a dozen other countries. The departments carefully investigate the nature of the proposed exports and the economic soundness of the importing country. The governments then by means of guaranties cover "the risks of default, of undue delay, and of transfer difficulties." Their backing provides to exporters the element of confidence which otherwise might be lacking in an age of political and economic instability, which frequently makes the fulfillment of contracts a difficult matter.

The advantages of a careful consideration of foreign investments by responsible national agencies are obvious. The public authority brings an impartial view to economic openings, and is likely to discourage unsound and reckless loans. Such precautions would seem to be desirable. On the other hand, governmental supervision over foreign loans is open to two objections: the first is the one which attaches to all governmental activity in economic matters—red tape, undue delay, bureaucratic methods, and, especially in the loan field, usurpation of "functions which properly belong to acceptance houses, insurance companies, and certain other institutions."[13] A consideration of these charges lies outside the scope of the present work. The second criticism is pertinent to a volume dealing with international relations: However necessary governmental backing and investigation may be for sound international investment, the danger is that the government will exercise control over investments primarily for political ends and will subordinate the economics of welfare to considerations of national power and prestige. Who can doubt that German official interference in foreign trade has been dictated largely by rearma-

[13] *Ibid.*, p. 93.

ment factors? And who will deny that a similar charge can be made against other governments in these days of international instability? Thus we appear to face a dilemma. The unregulated flow of capital may produce further economic dislocation; but governmental control, in the attempt to avoid this evil, may add to the international tension by increasingly associating capital investment policy with political objectives.

Is there a way out? The answer is yes, provided that governmental intervention to regulate investments is divorced from considerations likely to lead to political rivalry and therefore to international war. Only by the establishment of international security sufficient to remove the fear of war, lessen preparations for war, and eliminate the partnership between economic activity and armament strength can state regulation of investments guarantee sound loans for productive purposes and sound methods of repayment. Until sufficient international organization exists to maintain peace, state activity in international investment will heighten rather than lessen international political and economic confusion. Merely to have state-directed competing policies offers no solution.

International organization and investment.—Some degree of international co-operation in investment policy is indispensable. The need for it has been admirably expressed by Sir Arthur Salter:

> The lenders of the different countries, even if united nationally, must act together or they will break down one another's standards. And they would most conveniently use the two international institutions at their disposal, the Financial Committee of the League of Nations and the Bank of International Settlements. These two institutions might usefully cooperate, or form a joint committee, the League specializing rather more on the governmental side, the public finances, and the bank on that of the Central Banks and on what touches currency. Such a joint committee might begin by drawing up a kind of Charter of Public Loans, the principles upon which such loans should be arranged, and the precautions desirable in different classes of cases.[14]

The Committee of Experts who drafted the program for the World Economic Conference also suggested the establishment of an international credit institute which would grant credits, under sound conditions but with strict supervision, so as to prevent inflation, in order "to set in motion capital which is at present lying

[14] Salter, *op. cit.*, pp. 129–30.

idle." The Committee referred to the need of a monetary normalization fund which could be used to relieve pressure upon, or to strengthen, the finances of a country in difficulties. During the previous years, nations had taken unilateral action in attempting to overcome their financial difficulties: Great Britain in resuming the gold standard in 1925 and in leaving it in 1931; France in stabilizing the franc in 1928; and the United States in its financial measures in 1933–34. All these separate steps caused serious repercussions in other countries. Governments had set up their equalization funds to protect their own currencies; but on September 26, 1936, France, the United States, and England agreed to operate their stabilization funds in close consultation so as to avoid disruptive competition in currency depreciation.

BANK FOR INTERNATIONAL SETTLEMENTS

Co-operation among central banks was an important factor in rebuilding the financial structure of Europe in the postwar period; the rehabilitation of Austria and of Hungary and the granting of financial assistance to Danzig, Estonia, Albania, and Rumania was in no small measure the result of the co-operation of national central banks associated with the League of Nations. To avoid a "scramble for gold" in an attempt to solve their currency difficulties, the central banks agreed not to withdraw gold from each other's vaults without mutual consent; and a number of them undertook not to purchase gold from South Africa without the approval of the Bank of England. These arrangements did not go very far, and despite the growing importance of central banks in the postwar period their early conversations were limited and informal in character.

The International Conference of Brussels, 1920, urged that the League of Nations investigate the possibilities of establishing an international clearinghouse. The Financial Commission of the International Economic Conference at Genoa in 1922 proposed a general convention to "centralize and co-ordinate the demand for gold, and so . . . . avoid those wide fluctuations in the purchasing power of gold which might otherwise result from the simultaneous and competitive efforts of a number of countries to secure metallic reserves"; it would require the establishment of adequate machinery for collaboration among central banks. Already in 1921 the late Mr. F. A. Vanderlip, the American financier, had proposed a scheme for a "gold reserve bank for the United

States and Europe." These and other ideas received attention during the decade after the World War of 1914–1918. Many people realized that the financial and monetary needs of the world required a more systematic basis of co-operation, and a definite location for an institution which would (1) make easier and more regular the personal intercourse of central bank officials, (2) render more efficient and economical the use of gold, (3) facilitate the interchange of statistical and other banking information, (4) assist in the consideration of transfer problems, (5) help to maintain the gold standard, and (6) provide assistance to countries suffering from temporary financial embarrassment.

However logical these principles, they would probably not have sufficed of themselves to set up the Bank for International Settlements. Something more immediate and urgent was needed, and a decisive factor appeared during the years 1929–1930. Germany had been forced to pay large reparation sums. The Allies had not appreciated the problems of transfer and of exchanges, and had forgotten that heavy demands upon national currencies might have a serious effect upon international monetary stability. In 1924 the Dawes Plan set up machinery to handle this problem, and the late Mr. S. Parker Gilbert and the Transfer Commission did valuable work in maintaining reparation payments without injuring Germany's exchanges. By 1929 the general economic situation had made it impossible for Germany to continue to meet her payments, and the representatives of interested governments met to arrange a new schedule of payments. They decided to replace the Agent General and the Transfer Committee by a new institution which would enable the main central banks of the world to co-operate in assisting Germany "during a period of transfer difficulties." The Young Plan enumerated the advantages of such an institution. The experts believed that a Bank for International Settlements would simplify the reparations problem by bringing the existing organizations into an efficient unity.

An organizing committee at Baden-Baden in 1929 and an international conference at The Hague in 1930 drew up the details which dealt with the location of the bank, its relation with governments, the currency in which funds should be accounted, and its objects and functions.

The bank entered upon the following tasks: buying, selling, earmarking and holding gold in custody; purchasing and discounting bills; buying and selling securities, except shares; buying and selling exchange; opening deposits and receiving deposits; acting

as an agent for central banks; acting as trustee in the matter of reparations; undertaking special agreements to facilitate international settlements; and maintaining a high degree of liquidity. It was not permitted to issue notes to bearer and, therefore, was prohibited from creating an international currency. It might not accept bills and thus compete with the ordinary banks, which at this time were suffering from a decline of commission rates gained in this branch of activity; nor to open current account for governments (though apparently it could open time deposit accounts) nor grant loans to governments nor acquire predominant interests in business undertaking or in real estate. Each of the central banks might veto any transaction in its own country or in its own currency.

The economic blizzard which followed 1931 and the widespread suspension of the gold standard dealt a heavy blow to the Bank for International Settlements. Exchanges were disrupted; every country ran for cover and became a victim of the philosophy and practice of economic nationalism. Central-bank co-operation suffered with the rest of international organization, and the shares of the Bank of International Settlements fell in price. Eleanor Dulles lists five ways in which the bank was affected: Under Article XXI of its statute, its operations were to be effected in gold or gold-exchange currency, a condition which "prohibited new investments or deposits, in countries which had definitely abandoned the gold standard."[15] Central banks withdrew much of their deposits from the Bank for International Settlements. It suffered from the maze of national regulations which impeded exchange transactions. The depression halted the co-operation among central banks and correspondingly restricted the role of the Bank for International Settlements. And it had to adapt itself to the whole changed situation due to the departure of the world from the gold standard.

The proposed International Agricultural Mortgage Company.—In May 1931 the League Council approved a scheme to create an International Agricultural Mortgage Company.[16] It proposed a convention containing a charter and statutes which the national governments might sign. The purpose was to provide capital to enable agriculturists, particularly in eastern and southeastern Eu-

[15] E. L. Dulles, *The Bank for International Settlements at Work* (The Macmillan Company, 1932), p. 25.

[16] Wallace McClure, *World Prosperity as Sought through the Economic Work of the League of Nations* (The Macmillan Company, New York, 1933), has a convenient summary, pp. 529–31. See below, p. 450.

rope, to effect changes in their crop systems and to plant crops which had not glutted the market. The company was to make long-term loans, and because of its international backing it was expected that it could do so at lower rates of interest.

The bank was to be situated at Geneva and to operate under a charter granted by the Swiss government. Each participating country was to subscribe to a special reserve fund and to participate in the authorized capital. The mortgage bank was to keep on deposit with the Bank of International Settlements or other banks of high standing a sum equal to that advanced by the governments. The League Council was to appoint the president and the vice-president of the board, and the permanent committee of the International Institute of Agriculture and the Bank for International Settlements were also each to name a director. The mortgage company was to make loans to national companies, the loans to be repayable by annual amortization within thirty years. The national companies were to undertake to use the loans exclusively for first mortgages secured on real property. Loans were not to exceed 50 per cent of the estimated value of the property offered as security. The 1932 Stresa conference recommended that the convention be put into force as soon as possible, but in the same year it was decided for political and general reasons to postpone the date of operation.

PUBLIC WORKS

The possibility of stimulating international public works as a means of encouraging capital exports also received much attention. The International Labor Conferences considered the problem in 1919 and 1926 and at the request of the European Commission, the International Labor Office made a report in January 1931 in which it suggested some economically productive enterprises which might be undertaken in Europe and which would afford opportunities for international capital investment and promotion of long-term credit. The projects included a new European road system, international navigable waterways, the transmission of electrical current from one country to another, and the substitution of automatic couplings instead of screw couplings on all European railroads. Several countries in Europe—Austria, Belgium, Bulgaria, Slavonia, Esthonia—had plans dealing with roads, rivers, electric power, municipal work projects, land improvements, forestry, housing, and ports. In 1932 certain projects were referred back to the experts, and were examined more in detail—a

Jugoslavian waterway to the Aegean, water supply and sanitation for Poland, modern traffic and transportation methods for Jugoslavia, and irrigation schemes for Greece (a plan which received attention because of the heroic Greek efforts to take care of the flood of refugees which had swept the country). The rapid deterioration of the international political and economic situation made progress along these lines difficult, if not temporarily out of the question.

In 1937 the International Labor Conference passed a recommendation concerning international co-operation in respect of public works that each member of the International Labor Organization should inform the office what public works it had undertaken or planned during each year, and should co-operate in the work of any international committee which the governing body of the International Labor Office might set up for the purpose of studying the whole problem. It also passed a recommendation concerning the national planning of public works, and recommended: that each member should time its public works so as to increase the volume of employment during periods of depression, and that special attention should be paid to public works which stimulate heavy industries or which create a more direct demand for consumers' goods; that the financing of public works should be carried out by placing resources in reserve during periods of prosperity and by means of expansion of credit at the right time; and that certain classes of workers, such as young workers, women, and nonmanual workers, should be especially considered. The discussions in the thirteenth sitting revealed an almost unanimous view on these matters, and both the United States government adviser and the employers' adviser warmly supported the plan.

In June 1938 the first session of the new international public works committee was held. Twenty-five countries were officially represented; employers' and workers' representatives appointed by the International Labor Office, representatives of the Economic Committee, the Finance Committee, and the Communications and Transit Committee of the League of Nations also attended. The committee engaged in a general discussion of the principles involved, and examined in detail the information which had been received; it classified public works (1) according to their kind (roads, bridges, tunnels, railways, agricultural land reclamation, land irrigation, canals, forestry work, construction of dams for reservoirs, provision of water supplies, the construction of ports,

airports, coast protection work, administrative buildings, public utilities, etc.), (2) according to the body responsible for carrying out the work, or subsidizing or supervising it (central, regional or local authorities, public utility undertakings), and (3) according to bodies or individuals in receipt of subsidy or loans granted with a view to increasing the volume of employment. A second part of the plan indicated the kind of information to be supplied by the governments.

The question of providing international assistance in rehabilitating devastated areas and developing economically backward regions was to receive much attention as World War II drew to a close and men's thoughts turned to the problems of the peace.[16a]

THE LEAGUE LOANS

Meanwhile the economic depression had made the repayment of international loans issued under the auspices of the League of Nations almost impossible. The League had been able to render great service in the reconstruction of Austria after its collapse in 1921–22. Through the action of the Financial Committee a loan of £26,000,000 was underwritten by ten countries. A loan of £10,000,000 to Hungary followed for economic restoration. The Financial Committee also supervised loans for Danzig, gave assistance to Estonia in establishing a new banking system, provided for a loan to Greece and Bulgaria for refugee settlement, helped China to re-establish its currency, and gave technical assistance to Rumania.

The loans amounted to £30,000,000, and defaults by the debtor countries raised doubts as to the efficacy of international co-operation in capital investments. In 1932, the Austrian, the Hungarian, and two Greek loans defaulted, and only 50 per cent of the amount due on Bulgarian loans was being paid to bondholders. These defaults tended to discredit the financial organization of the League. Critics pointed out that many investors took up the loans because of the League's guaranty that the loans were sound and that sufficient revenues had been allotted by the borrowing country to provide adequate security for interest and sinking-fund repayments. The loans therefore commanded a higher price than similar governmental loans not issued under the authority of the League; some of them admittedly could not have been raised at all but for the League's backing.

[16a] See chapters on Regionalism, International Trade and Commerce, and Conservation of Resources, *passim*.

Supporters of the principle of international co-operation in financial matters replied that the defaults resulted from the great fall in world prices and the cessation of international lending after the world economic crisis of 1931, which made the debt burdens too heavy for the borrowing countries to carry. They admitted that in some cases the League's economic experts might have overestimated the ability of the debtor countries to carry a loan, and asked whether, if the League Financial Organization had demanded stricter conditions, some of the later difficulties might not have been avoided.

A committee set up in London during April 1932 to protect the bondholders of League loans reminded the League Council and the British government that the investing public had subscribed to the League loans "in the faith that a special security attached to them" and that these League loans, therefore, had a "moral claim to special consideration." The defaults were consequently having a "deplorable effect on the influence of the League of Nations both in financial and in other fields" and the committee urged the British government to use its influence on the Council "to take such steps as will best serve to restore confidence in League issues and enable the League to continue its work of European reconstruction."[17]

THE BRETTON WOODS PROPOSALS

The breakdown of the gold standard, of schemes for international public works, and the League loans did not constitute the only tragedies in international finance. Conceivably the world might have adopted a monetary system independent of gold and still have maintained a large degree of monetary unity. In practice, monetary blocs appeared which marked off the world into a series of relatively independent and even hostile groups. As national financial systems became more and more badly strained after the collapse of 1931, regional groups emerged in an attempt to offset "the breakdown of monetary equilibrium." Great Britain and the Dominions and other countries most intimately associated with her in trade relations formed the sterling bloc. Japan expanded into Asia and sought to build up a yen bloc. A number of European countries held to gold for several years, until they were forced off in the years 1935 and 1936. Germany developed

[17] *Annual Survey of International Affairs* (Oxford University Press, London, 1933), pp. 73–77.

an intricate system of exchange control based upon bilateral trade agreements in which the exchange rates were manipulated according to an immediate purpose in view. The United States remained on the dollar but did not attempt to build up a dollar bloc, trusting rather to the policy of reciprocal trade agreements.

World War II intensified the currency difficulties. Germany eliminated the currencies of countries which it had conquered, and by 1945 many of the national currency systems of other countries were badly distorted. The monetary reserves were maldistributed, the United States holding $21,000,000,000 worth of gold, which amounted to nearly two-thirds of the world's supply. (It is important to note that the situation is not as ominous as these figures suggest since other foreign countries now hold some fourteen billion dollars' worth of gold which amount to 50 percent larger than all countries held in 1925; and in addition new gold production is taking place on a greater scale.) Thus, the world suffers from a serious shortage of dollars due in part to the serious disequilibrium in world trade during the 1930's and the heavy losses sustained by many countries and by Great Britain especially in World War II, resulting in a serious crisis in their international financial position. In order to attempt to restore international financial stability 44 nations sent representatives to a monetary and financial conference held at Bretton Woods in July 1944. Two major institutions emerged as a result of the agreements reached there and later ratified by many of the nations.

AN INTERNATIONAL MONETARY FUND

An International Monetary Fund was set up amounting to $8,800,000,000. This Fund was designed to provide permanent machinery for international consultation. We have pointed out above the previous attempts along this line and it is unnecessary here to do more than underline the need of continuous research in international financial matters and the gathering of information on certain important questions such as these:

1. Official and private holdings at home and abroad of gold and foreign exchange
2. International balance of payments of each country
3. International investment position of each country
4. National income of member countries
5. Commodity price indices
6. Comprehensive statement of exchange controls, if any are in effect in the various countries

7. Amounts awaiting clearance in commercial and financial transactions where official clearing arrangements exist and the length of time during which such arrangements have been been outstanding[18]

The Fund is designed also to insure an orderly adjustment of exchange rates. We have analyzed the disturbing effects of unilateral departures from the gold standard and other unilateral measures of changing exchange rates during the 'thirties. The Fund will be all the more necessary now since it may be some time before member states will be able to find the correct level of their exchange rates. Hansen describes the situation thus:

If every country were left free to make this decision quite on its own without international consultation, we can be sure that the process of experimentation and adjustment would be a very chaotic and disturbing one. . . . . When every country seeks to attain an unduly favorable exchange rate, the whole world is let loose upon a stormy sea of competitive exchange depreciation.[19]

Countries will be able to alter their exchange rates up to 10 per cent without consent of the Fund, but if any government wishes to go beyond that figure it must obtain the consent of the Fund. Thus, the Bretton Woods plan was designed to modify the rigidities of the gold standard and to introduce a degree of flexibility. We have analyzed above the criticisms of the gold standard and the assertions of those who claimed that the maintenance of internal stability in price levels was the all-important objective. The Fund is an attempt to meet both objectives in that it does provide for elasticity of exchange rates on an orderly basis so as to avoid undue deflation which might result from a rigid adherence to the classical gold-standard methods.

Provisions are made for the correction of a fundamental disequilibrium which might occur in a national economic system; and a country has the right to withdraw from the scheme should the Fund refuse an adjustment of the exchange rate which its government deems essential to its own economic welfare. We may anticipate that no government will lightly withdraw and also that the officials managing the Fund will be anxious to accommodate a member state in order to preserve the unity of the new institution. In order to provide sufficient elbow-room to countries to adjust their exchange rates during the uncertain years

[18] Alvin H. Hansen, *America's Role in the World Economy*, pp. 64–65.
[19] *Ibid.*, p. 61.

which lie ahead, the agreement provided that the Fund should report on the exchange restrictions still enforced after three years, and a country which still has exchange restrictions after five years must consult the Fund in an attempt to draw up a program designed to eliminate them as soon as possible.

The Fund of $8,800,000,000 is subscribed to the member states in agreed-upon amounts; each country subscribes 25 per cent of its quota in gold or 10 per cent of its gold holdings, whichever amount is smaller. No country may draw out more than 25 per cent of its quota in any one year. From this Fund countries may obtain funds in order to tide them over short-term prices. It is not the purpose of the Fund to do more than that. Howard H. Preston puts the matter thus:

> It is contemplated that the resources of the Fund are to be used to meet temporary needs only, and charges and other restrictions are imposed in conformity with this assumption. The "charges" are graduated on the basis of time and the amount borrowed, the maximum net amount which can be borrowed in any one year being limited to one-fourth of the quota of the borrowing country. For example, since Britain's quota is $1,300 million, the maximum that she may borrow any one year would be one-fourth of that amount or $325 million. No member may become indebted to the Fund in excess of a total of 200 per cent of its quota.[20]

It is also important to note that members of the Fund may not engage in discriminatory currency arrangements or extend credit that does not conform to the purposes of the Fund, and that the Fund may not dictate the type of economy of a member country. The United States has ratified the Fund with an amendment which provides that a National Advisory Council of five shall decide whether the operations of the Fund and of the Bank are consistent with the policies and interests of the United States. Moreover, a single person has been appointed by the United States to be on the governing body of both the Bank and the Fund and he is to be advised by this National Advisory Council.

The economic devastation wrought in so many lands by the war has made it virtually impossible for many of them to get on their economic feet without external aid. They need capital in order to rebuild factories, harbors, warehouses, roads, even cities themselves. But in view of the heavy losses sustained by investors

[20] Howard H. Preston, chapter on "Monetary Policy," in J. B. Harrison, L. A. Mander, and N. H. Engle (editors), *If Men Want Peace* (The Macmillan Company, 1946), pp. 139–40.

in the last twenty years (although the losses were not as heavy as many people believe), some form of guaranty will be necessary in order to mobilize private capital. What American would be likely to invest money in major concerns beginning activities in France, Bulgaria, or China, unless he had some assurance that a responsible body would underwrite his loan? As pointed out above, the guaranty of one's own government might help, but this of itself might lead to power politics on an intensified scale. Clearly, some kind of international agency is necessary in order to encourage foreign investment. The United States has a peculiar interest in sound conditions of foreign investment since, as a result of World War II, its manufacturing capacity has expanded to a remarkable degree and foreign markets will be an important element in maintaining full employment. Other countries will be anxious for American exports and as trade revives they will be able to export goods to America in return and to other countries as well.[21]

THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

In order to meet the needs of reconstructed countries devastated by the war and to promote economic development in less advanced countries, the International Bank for Reconstruction and Development was agreed to at Bretton Woods. The Bank is to have a capital of $9,100,000,000, each country subscribing according to its general economic importance. Ten per cent of the amount is to be paid initially; the Bank also may call up to 20 per cent of the capital for direct loans to foreign countries or foreign enterprises. But most of the work of the Bank will not be through its making direct loans from its own capital. Rather its great function will be to guarantee loans made by private investors through the usual methods and guaranty by the Bank. If, for example, a government or corporation of a foreign country wishes to begin a major undertaking, it will first attempt to obtain a

[21] The United States Treasury puts the matter thus: "While the United States is concerned with the reconstruction and development of other countries for their sake, our principal interest in bringing about an expanded volume of American investment abroad arises out of concern for our own welfare. After the war, our economic policy will be aimed at full employment and full utilization of a greatly enlarged industrial plant. These objectives, however, cannot be realized unless we find new outlets for products of farm and factory."—United States Treasury (Washington, D.C., Feb. 15, 1945), *The Bretton Woods Proposals*, p. 9.

loan from private banks. If the banks feel that the enterprise is not clearly a good commercial risk, they will decline the loan. And there are many such developmental schemes which banks could not be expected to finance, as for example, the Tennessee Valley Authority and similar schemes which have a long-term public purpose in view. In these cases the would-be borrower would approach the Bank and the Bank in turn, after examining the plan, would underwrite the loan.[22] Writers in the field have almost all used the analogy of the Federal Housing Authority. Under the F.H.A., a person who wishes to build a home applies for an F.H.A. mortgage. A commercial or savings bank or some other institution may purchase the mortgage. The borrower pays his money to the private bank and also pays an insurance premium of ½ of 1 per cent which is paid into a central pool under control of the F.H.A. which comprises in Hansen's words a "second line of defense." This "system of mutual mortgage insurance with a final guaranty by the government" illustrates the method by which the International Bank for Reconstruction and Development will operate. Every project must be approved by a loan committee on which will sit one representative of the country within which the project is to be undertaken. The technical experts will carry their examination beyond the apparent immediate soundness of the scheme; they "must report on the productive character of the project, its probable effect upon the real income and development of the country, its contribution to the wealth and resources of the country, together with the probable beneficial effect of the project upon the international balance of payment position of the country in question."[23]

The Bank came into existence after members subscribing 65 per cent of the capital formally approved the proposals for both the Fund and the Bank. A board of governors comprising a representative from each member country has general management of the Bank, wherein each member has 250 votes and in addition

[22] "When a firm in Brazil, for example, wishes to obtain American dollars with which to purchase equipment for an electric power project, it will send a representative to one of our underwriting houses to discuss terms. If the borrower is well known to American investors, the loan might be arranged without the Bank's assistance. But if the borrower is unknown, or if for some other reason funds cannot be raised on reasonable terms, the Bank may be requested to offer its guarantee. If, after a thorough investigation, the Bank is convinced that the proposed project conforms to all of the conditions and standards prescribed, it will guarantee the repayment of interest and principal."—*Ibid.*, p. 10.

[23] Hansen, *op. cit.*, pp. 40, 41.

one vote for each share of stock subscribed. This gives the United States 32,000 votes out of a total of approximately 100,000, or 32 per cent of the voting power. A majority of votes cast will decide general policy issues.

A board of twelve executive directors will act under the authority of the board of governors and will be responsible for the general operations of the Bank. Five of the directors are appointed by the five members with the largest number of sharers and seven will be elected by the other members. A president elected by the executive directors will organize a staff and serve as the operating head of the Bank whose principal office is now located in the United States.[24]

The setting up of the new Bank for Reconstruction and Development was greatly influenced by the economic theories of the late Lord Keynes, who conclusively showed that the economic depressions of the 1920's and 1930's began in the heavy industries and that this beginning was traceable to a falling off of investment in the basic iron, steel, coal, railroad, and other basic industries. The reasons for this phenomenon cannot be analyzed here. Suffice it to say that in Keynes's judgment (and the Soviet Union had already anticipated this judgment)[25] a planned public investment policy must insure the continuous flow of capital into industry, a "comprehensive socialization of investment" must replace the haphazard declining private investment, and the state must insure a balance between savings and investment as well as the proportion of production for consumption and consumption for capital accumulation.

In this connection Professor Jacob Viner, at the 1946 session of the Harris Foundation at the University of Chicago, argued that no adequate international investment policy can be worked out if we must wait upon synchronization of all the legislatures and the legislative processes in the world. He accordingly urged the establishment of an international financial institution which would be added to the Monetary Fund and the Bank for Reconstruction and Development. This institution would have as its primary object, not international investment, but stabilization; it would use its funds to operate "counter to the business cycle, lending heavily

[24] United States Treasury (Washington, D.C., Feb. 15, 1945), *The Bretton Woods Proposals*, pp. 12–13.

[25] See E. H. Carr, *The Soviet Impact on the Western World* (The Macmillan Company, New York, 1947), pp. 33–39.

. . . . at times of incipient depression and cutting off loans, at times of inflationary or unduly expansionist tendencies."[26] This organization, in Heilperin's judgment is "an indispensable, basic element in the new world economic organization," and the same author quotes in conclusion the judgment of the League of National Delegation on Economic Depressions which in 1945 wrote of the danger and untruth of assuming that full employment could be assured by each government acting "in isolated independence."

[26] See Michael A. Heilperin, *The Trade of Nations* (Alfred A. Knopf, New York, 1947), pp. 155–57.

Chapter VII

LABOR AND LABOR STANDARDS

LABOR also has become an international problem. John B. Andrews, Secretary of the American Association for Labor Legislation, tells how, soon after graduation, he joined that organization, which had as one of its purposes the promotion of greater uniformity in state labor legislation. By 1910 he had completed a study of poisoning caused by the use of yellow phosphorus in the match industry. The workers who dipped the splints into the phosphorus paste breathed the fumes and sometimes contracted the occupational disease, phosphorus necrosis, which caused their teeth to drop out and their jaw bones to decay. To the proposal that the matter be regulated by state legislation requiring improved ventilation, employers "protested that the first state law, on account of the expensive safeguards required, would drive the industry from the state." Nor could they use physically harmless substitutes, because they were more expensive. Mere state legislation would be insufficient; a wider "uniform regulation was essential." Andrews accordingly worked for a national bill.

"But when the Congressional hearings opened, these same industrialists protested that even under uniform national regulation their American product would be put at a disadvantage in competition with matches imported from certain foreign countries which were using low-paid labor." It was the fact that a number of countries had ratified a treaty prohibiting the manufacture of poisonous matches which finally enabled Congress to pass a bill in 1912 "placing a prohibition tax upon matches made with poisonous phosphorus, and also prohibiting their importation and exportation." What at first sight appeared to be a problem of local labor legislation turned out to be a problem requiring comprehensive international action.

Even in the early nineteenth century, while the industrial revolution was yet young, and foreign competition was comparatively undeveloped, a few farseeing men realized that labor conditions would exercise a great influence upon the conditions of inter-

national trade. In 1818, Robert Owen appeared before an international conference; he urged that high wages in one country and low wages in another, bad conditions here and good conditions there, would make sound development of international trade impossible. If production of goods by sweated labor was to be avoided, the labor standards must be raised by international action. If this were done, one country would not be exposed to competition from the lower-paid labor of another, the purchasing power of the workers would be raised, and in this way a wider market for an expanding industrial system, being revolutionized in its output capacity by the application of coal and iron and scientific technique, would be provided.

Other individuals took up the matter during the century; the labor movement formed its First International in the 'sixties and the Second International in 1889. All advocated a betterment of working conditions through international organization. The German Emperor called a Conference in Berlin in 1890. It adopted several recommendations, which had no practical effect. Success could not come from an occasional conference but demanded much "careful technical preparation and continuous and regular action." Mere general resolutions did not suffice in a competitive and complicated world.

A number of economists and interested scholars in 1900 formed an International Association for Labor Legislation. This body studied labor questions in all countries, prepared an agenda, set up an international office in Basle, and persuaded the Swiss government to call a conference at Berne in 1905. Here representatives from twenty countries met and adopted two resolutions, one limiting the use of white phosphorus in the match industry and the other limiting night work of women in factories. The delegates possessed no official standing, but an official conference met later and transformed these resolutions into international conventions; there were held "two successive conferences, the first technical and the second diplomatic—such was the method invented to get around a double difficulty arising from the fact that the experts were not empowered to sign conventions, and the diplomats lacked the technical knowledge to draft them."[1]

A second conference of experts held in Berne in 1913 agreed on limitation of hours of work for women and young people

[1] Preface by Albert Thomas, *The International Labour Organization, The First Decade* (George Allen & Unwin, Ltd., London, 1931), p. 24.

and prohibited night work for children; but hostilities in August 1914 prevented further action. The International Association for Labor Legislation did splendid pioneer work. It had sixteen autonomous national sections; twenty-two governments co-operated with it; and, although its budget was extremely limited, its leaders, many of whom later were to help in setting up the International Labor Organization as we know it today, were men of fine idealism and great practical ability and experience. Under its auspices seven international conferences were held. Its members used their influence to urge nations to enter into bilateral treaties for the purpose of improving workers' conditions. France, Italy, Germany, the Netherlands, Switzerland, Austria-Hungary, Luxembourg, Belgium, Hungary, Sweden, Denmark, Great Britain, Spain, and the United States signed one or more bilateral agreements (twenty-three in number), which dealt with such questions as social insurance, worker's compensation, and employment of women and children.

The first step had been taken and labor aspirations became more clearly formulated, but much remained to be done before the world could expect to have an institution capable of functioning on a scale commensurate with the magnitude of the world's labor problems. Only two conventions resulted from a century of effort. Other methods were required if legislation was to keep pace with social necessity.[2]

THE INTERNATIONAL LABOR ORGANIZATION

During the World War of 1914–1918 the working class did not lose sight of their objective—an international organization for the improvement of labor conditions—and between 1914 and 1918 the trade unions and other groups of workers in Europe and America passed several resolutions to the effect that a lasting peace must include provisions for social justice and methods of eliminating the economic causes of war. At the Peace Conference, therefore, the labor question received prominent attention. A Commission of sixteen was set up to investigate the international aspects of employment and to recommend a permanent organization which should be able to provide a means of continuous consultation and investigation. The Commission, during its work of

[2] For nineteenth-century developments, see Albert Vabre, *Le Droit international du travail* (Marcel Giard, Paris, 1923), pp. 11–72. Also L. L. Lorwin, *Labor and Internationalism* (The Macmillan Company, 1929), and G. A. Johnston, *International Social Progress* (The Macmillan Company, 1924).

almost two months, met extraordinarily difficult questions which involved deep-seated problems of political and economic theory, some of which will be examined here later. Finally, after exhaustive sessions, articles were adopted and the International Labor Organization was incorporated in Part XIII of the Peace Treaty.

The philosophy underlying the new world experiment may be summarized as follows: (1) Low labor standards in any country constitute a danger to standards elsewhere and, to avoid cutthroat competition arising from low-paid labor abroad, the erection of tariff barriers would be insufficient; and only an approach to more nearly uniform conditions could provide a sound solution. (2) By raising the purchasing power of workers all over the world, large-scale industry would be enabled to find more extensive markets and in this way avoid crises of overproduction. (3) Intelligent legislation, agreed upon by member countries, could secure the necessary conditions and improve the efficiency of labor. (4) Organized labor should have not merely the right of association but also a voice in the determination of labor policy. And (5) these economic factors enter deeply into the problem of world peace.[3]

These views did not pass unchallenged, and opposition arose especially from the employer class. Critics argued thus: (1) Society should trust to "natural" economic forces and avoid governmental intervention in business; the proposed international labor legislation would lead toward increased governmental direction and control. (2) Labor had no right to demand a voice in industrial policy nor (according to some) to organize itself into unions and engage in collective bargaining. (3) Countries which adopted the international standards set by the International Labor Organization would experience heavier costs of production and would have to raise prices; whereas nonmembers of the Organization and those which had not ratified the labor conventions would be able to sell at a lower price in the world market. (4) Any attempt to adopt universal labor legislation ignored the basic fact of wide national differences in physical and economic conditions. Take, for example, child-labor legislation: To protect young children from over-early factory work may be desirable; but how would it be possible to establish a satisfactory world-wide minimum age since children mature earlier in one climate than another? Or, take the problem of night work: In general, it may

[3] The arguments pro and con are summarized in P. Perigord, *The International Labor Organization* (Appleton & Co., New York, 1926).

be good to prohibit this class of labor; but in the tropics night work might be less exhausting than toiling during the day under a blazing sun. (5) Labor legislation is more a domestic than an international question, in view of different degrees of economic organization and social advancement; national life constitutes something of a unity, and it would be impossible to legislate on labor matters without affecting the whole course of a nation's life. International efforts would be unable to take into account the many effects upon individual countries which a given piece of labor legislation would have. (6) The International Labor Organization, with its international methods, threatened national sovereignty and therefore must be regarded with suspicion and misgiving.

The International Labor Organization under the energetic leadership of its first Director, M. Albert Thomas, began its activities prior to the League of Nations and soon had its agencies in active operation. The three instruments of the Organization are: the General Conference, the Governing Body, and the Labor Office.

The General Conference is a permanent organ; it holds annual meetings at Geneva which "are regarded as a continuous session." We shall examine the main problems which arise: (1) national representation and the selection of delegates; (2) legislative scope and capacity of the Conference; (3) ratification of Conference action by national members; (4) the revision of conventions; and (5) the enforcement of standards.

The Governing Body comprised twelve (later sixteen) government representatives and six (later eight) each of the workers' and employers' representatives. The Governing Body has been a most important part of the organization. It has been responsible for elaborating policy, for proposing legislative measures, drawing up the budget, and producing the agenda for the annual conferences. It has authorized inquiries and in general has exercised control and direction. Although, as Wilson puts it, "the fundamental function of the Governing Body is initiation,"[3a] it constitutes an indispensable element in providing continuity and general supervision.

Each member state sends four representatives to the general conference—two government, one worker, and one employer. In the peace negotiations this question of representation occasioned

[3a] Francis G. Wilson, *Labor in the League System* (Stanford University Press, 1934), p. 140.

much controversy. Many workers desired to have a greater number of worker representatives. They pointed out that if the Conference were to be dominated by government officials, labor would not be interested; it wished to have a real voice in establishing new conditions for the working class. However understandable their viewpoint, it was evident that if the Conference were to carry weight and pass resolutions likely to result in action by the respective national governments, sufficient governmental representation was not only desirable—it was imperative.

The association of nongovernmental with governmental representatives in international conferences has far-reaching implications. First, a conference organized along these lines implies that labor conditions are a matter for more than governments alone. International relations are not confined, as hitherto supposed, to public authorities.[4] Furthermore, if the workers' and employers' organizations are to have a real voice in choosing their representatives, the state must guarantee freedom of association. When Russia went communist and Italy and Germany adopted dictatorships, they created awkward problems for the International Labor Organization. There were no employers' organizations in the Soviet Union; and trade unions of the orthodox type did not exist in Germany and Italy. The workers' delegates at the Annual Conference challenged the credentials of the "labor" representatives from Germany and Italy; and employers questioned the right of an "employer" to be in the Soviet delegation. Undoubtedly the problem of representatives of dictator countries is a difficult one to solve along the lines of the original theory of the International Labor Organization, that of tripartite representation of government, workers, and employers. The organization realized that it must recognize the fundamental changes in government which have occurred, and in 1937 accepted the argument of the Soviet "employer," a manager of a textile industry, who told the Conference that he had to face problems similar to those which confronted private employers—the hiring and firing of labor, promotions, purchase and disposal of goods, etc.

Yet the presence of worker and employer representatives presupposes the existence of the capitalist system. Many workers who advocate international labor action criticize the International Labor Organization because it admits employers—it "compromises" with capitalism, and is merely revisionist. Supporters of the

[4] See Etienne Antonelli, Preface to Albert Vabre, *op. cit.*, pp. v–vi.

Organization assert that it does not ignore, but frankly recognizes, the inevitability of conflicts between labor, capital, and government. It believes, however, that these conflicts can be peacefully settled by continuous research, by a capacity for give and take, and by each proposal having to run the gantlet of the threefold criticism—worker, employer, and government. The first task is to find the facts upon which "imagination and inventiveness can operate. . . . . To this extent, the I.L.O. is neither pro-capitalistic nor pro-socialistic, but does appear to be inconsistent with doctrines of class warfare, and committed to the policy of gradual amelioration of economic conditions by co-operation between labor, capital, and government."

By Article 389 of the Treaty of Versailles nongovernmental delegates are to be appointed from a member's most representative body of workers and employers. Did this mean that the government must choose a representative from the organization with the greatest membership? Disputes between rival unions have occurred as to which one should be consulted in sending the national workers' representative. After much controversy an appeal went to the Permanent Court in 1922. It ruled that the article did not mean that any one trade union or employers' association should be considered exclusively.

The International Labor Conferences scrutinize credentials of delegates and their advisers and may refuse to admit any person deemed not to have been nominated in accordance with Article 389. On this basis the Italian Fascist, the German Nazi, and later the Argentine workers' delegates were challenged. The Conference has had to face the question what to do in the case of countries where workers' organizations are little developed, and where governments consult the workers directly (and not through organized bodies), as Japan did in the early years of the International Labor Organization. To select a workers' representative in countries where there is no central organization, but only a number of loosely related trade unions, is a difficult matter.

Incomplete delegations form the other serious problem of representation. If a government persistently refuses to appoint a workers' or an employers' delegate it upsets the balance which was designed by the Peace Treaty to give effective representation to nongovernmental delegates. The volume issued by the International Labor Office correctly notes that "if the workers had had any expectation in 1919 that this provision would remain a dead letter, they certainly would never have placed their confidence in

the new institution; they would rather have turned their backs on it and tried other means of obtaining satisfaction for their demands."[5] The workers' delegates accordingly made a strong protest when at the first International Labor Conference at Washington they found that sixteen out of forty states had sent incomplete delegations. But the Conference could do little more than bring moral pressure to bear upon the recalcitrant or careless governments and request them to forward reasons for their action. This procedure, as the International Labor Office points out, served to remind states of their obligations and brought to light some genuine difficulties and also occasionally suggested remedies. Apparently the number of states which send complete delegations to the Conference has increased.

The Annual Conference considers labor conditions throughout the world with a view to adopting either conventions or recommendations, which are then submitted to governments of member states. A two-thirds vote of the Conference is necessary for such action, the delegates voting individually and not as national units. This procedure is of interest for two reasons: (1) The two-thirds rule marks an exception to the general rule that international conventions require a unanimous vote of the participating sovereign countries. (2) Because delegates can vote as individuals and not merely as representatives in a national unit, workers and employers have an independent voice which they otherwise would not possess. The founders of the International Labor Organization correctly gauged modern needs when they realized that no longer could international relations "be confined to diplomacy, with diplomacy having as it did, a limited concept of the personal relations of heads of state and of representatives of governments in their simple political dealings with one another." The complexities of life today require the collaboration of many interests—governmental, technical, producer, consumer, employer, labor—according to the particular problem to be solved.

The Annual Conference, although it performs a legislative function, does so indirectly rather than directly; it is not the organ of a superstate, but is primarily an instrument for formulating and defining labor standards and principles. It does not supersede national legislatures, but initiates measures which member states of the International Labor Organization can apply "through national and domestic legislation." Each member undertakes within

[5] *The International Labour Organization, The First Decade*, p. 56.

eighteen months of the Conference to bring the recommendations or draft conventions there adopted before the authority or authorities within whose competence the matter lies for legislative or any other such action as may be deemed desirable. A member is not obligated to adopt the conventions or recommendations, but merely to consider them. Its discretion remains unfettered, and its independence unimpaired.

A "draft convention" is usually regarded as involving a more definite obligation than a "recommendation," but the line between the two is not entirely clear. Francis G. Wilson suggests that recommendations serve the purpose of formulating more general principles which governments might not be ready as yet to put into a convention. He continues: "perhaps the essential function of the recommendation is the enunciation of an international standard which is above or beyond the possibilities of international agreement, such as are included in the more meticulously formulated conventions. When such a standard is formulated in a recommendation, it is hoped that the practice of states will enable the Conference at a later date to embody the principles of the recommendation in a convention."[6]

The founders of the International Labor Organization were anxious to maintain the principles of universality and continuity, so that the Conferences would be regarded not as occasional meetings of governments but rather as an unbroken effort toward the achievement of better world conditions. The ideal was excellent, but it ran into several obstacles. If Conferences dealt only with general subjects they ran the risk of not considering the conditions of the more specialized industries. If they concentrated upon the specialized industries they ran the risk of losing sight of the more general standards; conferences of experts would tend to become absorbed in merely technical problems and "would be in danger of losing sight of the general principles on which international labor legislation is based." It was also important to obtain a reasonable degree of continuity of government, workers', and employes' delegates in the Annual Conferences in order that new representatives would be able to obtain from those who had previously attended the benefit of accumulated experience in Conference technique and procedure.

In a few instances an exception has been made to the principle of universal participation. Maritime matters concern only a

[6] F. G. Wilson, *Labor in the League System* (Stanford University Press, 1934), p. 73.

few countries; and it would be superfluous to have governments which because of their inland position have no labor problems affecting seamen attend a conference dealing with specialized matters in which they have no interest. So with labor conditions in coal mines. Here, too, the problem concerns only a few countries. Nevertheless, in an endeavor to preserve the principle of universality the Governing Body called a preparatory technical conference in January 1930 which was to be advisory in character and whose decisions were to be sent to the Annual Conference later, there (it was expected) to be adopted as a regular Convention. The International Labor Organization was not certain whether this procedure would be the solution to a problem which was likely to increase rather than to decrease in future years, but it realized that it would have to find some means of "reconciling the general and universal character of the Conferences." It admitted that its procedures were still in the formative stage and that the organization had to adapt itself to a "diversity of situations and circumstances"; it was necessary, however, to "safeguard the general authority, the homogeneity and continuity" of the Conference in accordance with the letter and spirit of Part XIII of the Peace Treaty and also "to guarantee by the most appropriate procedure the fullest possible technical and specialized study of the problems under consideration."[7]

A legislature may have wide or narrow powers; its scope may be strictly confined or practically unlimited by the constitution under which it operates. At first sight we might assume that the International Labor Organization would have to limit its activities to labor matters connected with industry, and, indeed, a number of employers and other critics, jealous of the International Labor Organization, have taken this view; and the question has on three occasions been referred to the Permanent Court of International Justice.

What is the competence of the Organization? In the preamble to Part XIII of the Peace Treaty, the objects of the International Labor Organization are defined in broad terms such as the attainment of "social justice" and the "improvement of conditions of labor which involve injustice, hardship, and privation to large numbers of people"; the methods suggested to attain these ends include the regulation of hours of work and conditions of labor supply, the prevention of unemployment, the

[7] *The International Labour Organization*, p. 83.

provision of an adequate living wage, and several other specific means. The preamble ends with the words "and other measures," thus suggesting that the International Labor Organization is not to be limited to the detailed methods enumerated above. In Article 427, which set forth certain general principles, the final paragraph begins: "Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations." Those who drew up the Constitution evidently intended that the Organization should have ample powers, that the social justice toward which it should work should be regarded as a movement and not as something static, and that economic policy should be understood as requiring not merely emergency measures but rather a continuous program and an unwearying application of foresight to economic problems as they arise, and a conception of a social goal toward which a conscious economic policy is directed.

This broad interpretation did not pass unchallenged; and in the early years, as suggested above, the competence of the International Labor Organization was called in question. Some critics attempted to exclude from its consideration so-called national questions and domestic matters; others argued that the organization could not deal with conditions of work and methods of production in the field of agriculture, or attempt to prohibit night work in bakeries if the measure sought to regulate the personal work of the employers themselves. These questions came before the Permanent Court of International Justice for advisory opinions. In all cases the Court upheld the right of the International Labor Organization to deal with these matters, and thus gave support to the theory of "extended competence." It noted that if the Organization had possessed power to bind member states, a restrictive view of its competence would be justified. But such was not the case, and because national sovereignty was protected and nations remained free to ratify or not ratify a convention as they pleased, there was no reason for denying a wide field to the International Labor Organization in its adoption of draft conventions and recommendations. The attempt to restrict its field of activity was thus unsuccessful.

The International Labor Office itself has adopted the social approach to problems of industrial relations and international economic co-operation and believes that it is no longer sufficient to limit governmental policy to emergency measures against un-

employment and other social evils. Industrial legislation is not to be regarded "as a sort of humanitarian excrescence on the economic question."

This view has been well expressed by Harold B. Butler, at that time director of the Office, in his annual report to the 1935 Conference:

The protection of the worker against the hazards and abuses to which he was exposed in industry was the basic notion upon which social policy was directed during the hundred years ending with the termination of the war. It is hardly too much to say that in its essence social legislation was regarded even by many of its protagonists as a sort of humanitarian excrescence on the economic system. The intervention of the State, however necessary in the general interest of the community, was assumed to be anti-economic in so far as it restricted the free play of the law of supply and demand. A fundamental antithesis was believed to exist between the social and the economic objectives, wherever the demands of the two appeared in conflict. As has been pointed out in the first chapter of this report, a different view is now gaining ground. The purely protective conception of social action is now giving way to the wider conception of social security. The negative aim of guarding the worker against social risks and abuses is being replaced by the positive aim of affording him adequate opportunities both of achieving a decent level of material comfort and of ensuring his individual development.

As a result of this new approach to social questions, social and economic policy are now seen as complementary aspects of a single problem. Unemployment insurance and relief, public works in times of depression, hours of labour, the organization of industry, cannot be judged in social terms alone or in economic terms alone. . . . . Unemployment itself is seen not simply as a social evil, but also as an economic evil. The growth of technical efficiency and the consequent replacement of human by mechanical labour present problems of the greatest complexity, which can only be correctly approached if their social and economic implications are kept simultaneously in view.

Elsewhere, Mr. Butler explained why the International Labor Office must adapt its methods to changing conditions:

As social policy has become more inextricably involved in the discussion and solution of the broad economic issues, the Conference has been inevitably led to consider matters which had hitherto seemed to lie on the extreme border-line of its jurisdiction or beyond it. The progressive abandonment of the self-adjusting system has vitally altered the situation. The introduction of any measure of planned economy at

once raises the questions of the goal towards which it is directed. It is impossible for the Conference to ignore the fundamental questions upon which social progress or reaction are now seen to depend. As the most representative body in the social field, it is increasingly its duty to keep the social repercussion of economic measures constantly in review. By so doing it can make an invaluable contribution to the international discussion of the real issues which are now perplexing and dividing the economic world.

The world economic depression helped to widen the scope of activity engaged in by the Organization. The prolonged period of unemployment, the extraordinary dislocation of international trade, the many and various governmental interventions in economic life, and the uncertainty of economists concerning the significance of industrial and agricultural changes have led the Annual Conferences, the Governing Body, and the Office to give attention to some of the more basic economic problems of modern life.

RATIFICATION

An international convention must be ratified by the competent national authorities of a member state before it becomes effective. We have considered elsewhere some of the more general problems of ratification; but in labor matters a number of constitutional difficulties arose because the draft conventions of the International Labor Organization (unlike international conventions which are signed by diplomats especially designated as plenipotentiaries) are adopted in Annual Conference by a two-thirds majority vote in which workers and employers, as well as government delegates, take part.

The technical problems of a constitutional nature need not concern us here. Suffice it to say that the International Labor Office by patient effort was able to persuade the governments to abandon their unduly restrictive legal interpretations of constitutional procedures.[8] But the removal of these obstacles did not of itself clear the way for universal ratification. Indifference, preoccupation with national issues, and fear of the consequences of nonratification by other states were the excuses given for failure to consider and ratify International Labor conventions. It is

[8] A. Vabre, *op. cit.*, p. 298. The author criticizes *"le byzantinisme"* of the French government in its attitude toward the problem of ratifying labor conventions.

obvious that if one government ratifies a convention, and another does not, the former state will be placed "at a disadvantage in trade competition." In order to meet this difficulty, a number of governments agreed to undertake a joint examination of conventions each year so that they might simultaneously adopt them. Denmark, Finland, Norway, and Sweden tried this method; but the International Labor Office felt that the result was not satisfactory because a small difference of opinion between two or more of the states might be used as an excuse for nonratification by all of them. Other countries indulged in "conditional" ratification, stipulating that their ratifications would come into force only when certain other states took similar action. The method is understandable, for a government of one country exposed to the competition of another will want to make certain that a major competitor will be subject to the same obligations. On the other hand, conditional ratification can be easily abused; it is possible for a government to insert such unreasonable "conditions" as to preclude the likelihood that its own ratification will ever come into effect. The Labor Office exerted its influence to persuade governments to minimize the use of conditional ratifications, and in general met with an encouraging response.

One of the chief difficulties in the way of ratification lay in the great number of conventions and recommendations which the early conferences had succeeded in passing. International action was outstripping the capacity of nations to adjust their economic structures to the new standards set. Clearly a revised procedure was desirable so that there could be more time for the Labor Office to prepare, and for parliaments to consider and adopt, conventions and recommendations. In 1922 Switzerland suggested that the Conference should meet less frequently; but this proposal ran into the difficulty that to adopt biennial conferences would have required a revision of the Peace Treaty which had prescribed annual meetings.

After considerable experimentation, including a two-reading and a double-discussion method, the Organization finally adopted the system of preparatory conferences. The last-named method was first used in connection with maritime questions, textiles, labor inspection, etc., and then "was given a definite place in the machinery of the Organization." The Office now feels that the present methods of adopting conventions gives them "a better prospect of being translated into national law and practice than in the past."

ENFORCEMENT

It is not sufficient to sign and ratify conventions: adequate steps must be taken to enforce them. Uniform standards result only when all participating states efficiently administer the labor treaties which they have signed. At the Berlin Conference in 1890, at the International Labor Congress at Zurich in 1897, and at subsequent conferences, delegates drew attention to the importance of law enforcement. Without it international labor conventions would serve "merely to voice expressions of good will without much practical value."[9] The International Association for Labor Legislation in 1911 made an inquiry into the methods of administering labor laws in the various countries. In 1919, Arthur Fontaine argued that "it was useless to adopt a program of international labour legislation if there was nobody charged with supervising its application. It would in fact be to the detriment of those States who applied such legislation in a loyal spirit."[10]

Although the International Labor Office recognized the importance of this question, for some years it concentrated its attention upon obtaining ratifications of its conventions. By 1927–28, it realized that ratification of itself did not provide sufficient guaranties. The Director, M. Thomas, declared that some governments were complaining that other governments were treating ratification as "merely a scrap of paper" and adopting labor legislation which was "a mere caricature of the international rules laid down." Some of these states gave various reasons for not applying conventions which they had ratified—that there were constitutional difficulties. that the general economic situation was unpropitious and the financial condition of the country unfavorable, that the measure was unimportant, or that "special circumstances" justified the noninclusion of some provisions of a ratified convention. To these excuses a special committee of the Organization replied in no uncertain fashion:

The I.L.O. has no use for ratifications of principle, not to say window-dressing ratifications. The moral advantage which might result from merely platonic ratifications is entirely negligible in comparison with the discredit which such ratifications are liable to bring upon the work of the I.L.O. in the eyes of States which regard the

[9] Quoted in *International Labour Conference, Twenty-sixth Session, Geneva, 1940, The Organization of Labour Inspection, in Industrial and Commercial Undertakings, Preliminary Report,* p. 16.

[10] *Ibid.*

conclusions of international Conventions and their scrupulous application as a sure method of promoting social progress.[11]

The constitution of the International Labor Organization provides three methods for insuring enforcement of conventions which have been ratified: (*a*) annual reports, in which member governments describe the measures which they have taken "to give effect to the provisions of Conventions" which they have ratified; (*b*) formal representations by employers or workers that they have been unable to obtain from their governments "the effective observance" of a convention to which the government is a party; and (*c*) the right of any government, a member of the International Labor Organization, to lodge a complaint against another member if it believes that the latter is ineffectually applying a convention which it has signed.

Each of these three methods requires further examination. One must realize at the outset that any attempt to force national governments to live up to their treaty obligations is a matter of the utmost delicacy and difficulty. The failure of economic sanctions against Italy, the unwillingness of governments to strengthen the League machinery to protect minorities or increase the powers of the Permanent Mandates Commission, the reluctance of certain states to agree to the establishment of a Permanent Slavery Commission with even limited channels of obtaining information, all are evidence of the extreme jealousy with which governments guard their national sovereignty.

The *Annual Reports* have been the most effective means of providing "mutual supervision" over the application of conventions. Article 408 provides that the reports "shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference."

In January 1926 the Governing Body appointed a committee to consider ways and means of making the best and fullest use of information contained in the reports, which were so detailed as to make it difficult if not impossible for the average member of a General Conference to read and digest them. It was desirable to have a summary and an analysis which would enable members to concentrate upon "those points which can most usefully and profitably be discussed." The committee recommended that a technical Committee of Experts be appointed to condense

[11] Quoted in J. B. Andrews, *Labor Laws in Action* (Harper & Bros., New York, 1938), p. 222.

the annual summaries to a much briefer report. Some persons feared that the appointment of the committee—a modest step—would be interpreted by governments as an additional measure of international control and would therefore "hinder further ratifications." But those who argued that it was necessary to know the real facts, and not be content with a large number of un- or ill-digested reports, won the day. The committee was appointed and first met in May 1927; a decade later it comprised ten persons (including three non-European), each of whom specialized on the conventions in which he had special interest and competence.

The Committee of Experts has become an important instrument in bringing the pressure of publicity and explanation upon governments which have been slow in applying the conventions which they have ratified, or have not ratified conventions which the Annual Conference has adopted. The committee makes a condensed summary of the annual reports. The Conference Committee on the Application of Conventions holds a general discussion on the experts' summary and examines the application of conventions "country by country," and "convention by convention." It draws attention in careful but definite language to missing, incomplete, and late reports and to ratifications which appear not to have been accompanied by sufficient national legislation, and emphasizes the desirability of "appropriate national measures" to give effect to the conventions. Its deliberations give governments an opportunity to state their reasons for nonenforcement or nonratification, while in the General Conference the workers can criticize governmental authorities for not living up to their obligations.

Wilson points out that the "diplomatic observations of the experts" become in the hands of the workers "criticisms of nonenforcement in the Conference." Wilson's judgment is that "the annual reports under Article 408 have given rise to an evolution of procedure which has been far more successful than could reasonably have been anticipated in the early days of the Organization."[12] The International Labor Office has not been able to examine the enforcement of national legislation "in a direct way" but rather by the processes of "indirection and conciliation." The Committee does not regard its work as unimportant. Quite the contrary; in 1935 it said in its report: "The Committee cannot state too strongly its belief that its task is a regular and integral part of the work of each session of the Conference and

[12] F. G. Wilson, *op. cit.*, p. 241.

not a supplementary item on the agenda of the Conference." In 1936 it frankly emphasized that the center of gravity of its task was shifting from establishing legislative conformity to securing effective administration. And in 1937 it spoke of the need of strengthening factory inspection and law enforcement.[13]

The founders of the International Labor Organization added another method which, they hoped, would help to secure a more effective enforcement of conventions which had been ratified. Under Article 409 the workers or employers of a country might make "representation" to the International Labor Office that their government had "failed to secure . . . . effective observance" of a convention; the Governing Body was then to ask the government to comment upon the charge. If no statement was received within a reasonable time, or if the statement when received was deemed unsatisfactory, the Governing Body should have the right to publish the representation and the reply (if any) made by the government. The method has been used on two occasions: in the case of the Japanese Seamen's Union complaint in 1924, and in that of the Latvian Union's complaint in 1931–32.

LABOR LAW ADMINISTRATION

In recent years the International Labor Organization has become increasingly concerned with labor law administration. In 1936 the Governing Body decided that in the future members appointed to the Expert Committee must possess a practical knowledge of administrative problems. The Organization sponsored a western European factory-inspection conference held at The Hague in 1935, and a similar conference for the countries of eastern Europe in 1937. In the latter year the Office established a new division on labor law and administration. Two years later the International Labor Organization submitted a number of conclusions to a Preparatory Technical Conference. The report adopted by the Conference urged the desirability of international regulation, the need of placing each national inspection service under the direct and exclusive control of a central authority, the necessity of appointing inspectors solely on the basis of qualifications and of protecting them from dismissal except for good cause, also that the inspectors should have adequate powers specifically defined, that they should have the right to apply to the competent authorities for the issue of orders or for

[13] J. B. Andrews, *op. cit.*, p. 225.

the taking of measures with immediate executive force, that penalties should be prescribed for obstructing inspectors, and that adequate penalties should be inflicted for breaches of the laws and regulations which the inspectors have to enforce.[14]

We have here another illustration of the fact that international organization may stimulate national action in countries with lower standards. Undoubtedly the need for factory inspection grows greater with the development of more intricate and dangerous processes and the organization of economic production on a more impersonal basis. From the point of view of human welfare few things are likely to be more important than the strict and impartial enforcement of labor standards, and the work of the Organization in this connection must be regarded as possessing unusual significance.

ACCOMPLISHMENTS BETWEEN 1919 AND 1939

What has the International Labor Organization accomplished? To give an adequate answer would carry the analysis beyond the limits of this volume. Here one can only suggest in barest outline the types of activity undertaken. It may be pointed out that the Organization has considered many questions and adopted a great number of conventions and recommendations, including those dealing with the eight-hour day; the hours of work in maritime occupations and in agriculture, conditions in agricultural production (in an appeal to the World Court its competence was upheld); hours of work in commerce, offices, and mines; a weekly rest for all workers; annual holidays with pay; the abolition of night work for women and children; the prohibition of night work in bakeries; the protection of children, young people, and women in industry; and a draft convention on the employment of women before and after childbirth so that a six-weeks' rest is granted before and after confinement and adequate benefit payment is made during that period. It has attempted to extend this protection to women wage earners in agriculture and to prohibit the employment of women in unhealthful industries.

It has turned its attention to industrial hygiene, has brought out special studies on economic questions which are veritable storehouses of information, and has produced a remarkable piece of work, *The Encyclopedia of Industrial Hygiene,* the preparation

[14] See the *Preliminary Report on The Organisation of Labour Inspection,* International Labour Office, Geneva, 1939.

of which required the work of ninety-five collaborators from fifteen countries. It has engaged in research for the prevention of industrial accidents, emphasized the importance of factory inspection, and passed an important recommendation on accident prevention in 1929. It has adopted a convention for the protection of dockers employed in loading and unloading ships. Realizing that industry cannot afford to dispense with a sound system of social insurance, the International Labor Organization made a prolonged study of the question and drew up two draft conventions and three recommendations concerning compensation for industrial accidents, and in 1927 considered the problem of sickness insurance.

Economists are agreed that an adequate system of statistics is indispensable in assisting to determine sound economic policy and to forecast effects. The Organization has sponsored international conferences of labor statisticians and issued special studies of wage statistics because it realizes the importance of insuring that comparisons between different countries are not invalidated by inadequate or noncomparable systems of statistics. It has worked toward the establishment of a minimum wage and adopted a draft convention to that end in 1928. It has studied the family wage system which has been adopted in some countries and has investigated the doctrine of high wages to discover how far they are a factor in economic prosperity.

No person these days can fail to be impressed by the extent and burden of unemployment. The causes of unemployment have occupied the attention of economists for many years, and the International Labor Organization not only has published statistics of the numbers of unemployed but has made an inquiry into the national and international aspects of the matter. Its various studies have been valuable to experts, but it has not limited its work to theoretical study. The International Labor Conference of 1919 adopted a recommendation for the establishment of unemployment insurance. It realized the importance of efficient national employment exchanges operated on a nonprofit basis. In an endeavor to promote employment and to place people in occupations best suited to them, it undertook studies in vocational guidance, apprenticeship, and technical education. It co-operated in making studies of migration problems and published important volumes on migration statistics, and its representatives took part in several international conferences. Its studies in the so-called lean years between 1929 and 1936 were of great assistance to the international con-

ference held in 1937 to draw up schemes for promoting emigration to South America.

The Organization turned its attention to maritime labor, and considered the possibility of drawing up an international seamen's code in the form of a collection of laws and regulations which might be used throughout the world. It adopted a convention for the establishment of seamen's employment agencies on a non-profit basis, and three separate conventions to prohibit the employment of young persons at sea. It attempted to apply the eight-hour day to seamen, but for various reasons the matter was postponed; and in 1929 it considered the question of protecting seamen against sickness and accident. Between 1920 and 1926 the conference suggested measures for the welfare of seamen in port.

It is studying the question of the representation and organization of agricultural workers, and has adopted a convention concerning sickness insurance for this group. But the problem of agricultural workers is an extremely difficult one, and much study and effort will be required in this connection. Lack of space forbids more than a reference to the efforts made on behalf of professional workers, salaried employees, and native and colonial labor. Nor is it possible to do more than refer to other lines of activities, such as recommendations concerning the utilization of workers' spare time, the housing problem, studies dealing with the workers' right of association, collective agreements, arbitration and conciliation systems, and studies in profit-sharing and workers' participation in management. These and other endeavors engaging the attention of the Conferences and the Labor Office comprise a great part of the field of economic relations.

Rather than attempt to analyze the many problems which confronted the Organization in dealing with the scores of labor questions which it considered, or to compress an analysis of each convention into even one or two pages apiece, it will be preferable to consider one problem, namely, the rights of performers in broadcasting, television, and the mechanical reproduction of sounds, in order to show the way in which the welfare of one class of people is affected by international action.

In chapter vii we discuss the protection of nationals abroad, their property and investments; one section of the chapter deals with the part played by international conventions in protecting literary and artistic property. With the coming of phonographs and broadcasting an artist's work could be heard by a more permanent audience since the records could be played many times,

and by a more extended audience because broadcasting made possible national and even worldwide audiences. A combination of gramophone and wireless intensified the problem of authors' rights, and later conventions expanded the original Berne Convention of 1886. But gramophones and broadcasting deeply affected the welfare of performers as well as authors. The number of musicians thrown out of work by the mechanical reproduction of sound ran into scores of thousands. The International Labor Organization notes that more than 5,000 musicians were unemployed in France in 1932, over 15,000 in the United States in 1935, and over 90 per cent of the members of the musical profession in Vienna in 1937.

To meet the new situation the National and International Federations of Performers tried to find new openings for work and also to obtain certain rights in respect to broadcasting and gramophone recording. They claimed that performers as well as authors should have the exclusive right to authorize the recording, reproduction, or transmission of their performances on the ground that they gave a distinctive interpretation without which the ideas or music of the author would remain either unexpressed or badly rendered. They also claimed "nonmaterial rights" which meant "performer's rights to respect for the personal contribution that he makes to a work of art when interpreting it": he should have his name placed on records and announced on broadcasts; he should be protected against the alteration or distortion of his performance. The professional artists also claimed pecuniary rights in the form of extra compensation when their performances were broadcast or recorded.

When the performers attempted to have their rights included in the Berne Convention they met with opposition from the authors and composers, who voiced their objections at the International Congresses held at Copenhagen in May 1923 and at Seville in 1935. The performers then turned to the International Labor Organization for help. As early as 1926 the Congress of the International Union of Musicians requested the Office to study the problem of performers' rights. After several years of investigation the matter was ripe for consideration by the International Labor Conference and the question was put on the agenda for the 1940 session. A committee of experts drew up a number of recommendations which included the following: (*a*) no record or broadcast of an original performance may be made without the consent of the performer; (*b*) the performer is entitled to

have his name indicated on records of his performances and when his performances are broadcast; (*c*) he should have separate remuneration if his performance is broadcast "even when his contract contains no provisions to that effect"; (*d*) broadcasting organizations should be entitled to record artists' performances for broadcasting at a later date without making additional payments unless subsequent use is made of the record; (*e*) the performer's name should be mentioned as long as record of the performance lasts; and (*f*) disputed questions should be submitted to arbitration.[15]

If we keep in mind the fact that the question which has just been briefly analyzed constitutes only one of more than one hundred labor problems which have been the subject of conventions and recommendations adopted by over fifty nations of the world, we may form some idea of the remarkable amount of research and expert knowledge, of discussion by governments, workers, and employers which has been expended and will be expended in the international effort to promote the welfare of labor.

The Organization has therefore considerably extended the scope of its work. In 1919 some of its founders believed that it should consider only industrial problems; but the leaders now realize that the welfare of workers in all branches of employment must be the goal. The International Labor Organization has improved its technique of making conventions and encouraging their ratification. It has added to its permanent machinery, and there now exist permanent International Agricultural and Public Works Committees. Recommendations have been passed for a Permanent International Tripartite Committee on the Textile Industry, and for a Permanent Committee on Migration Questions.

The visits of International Labor Office officials to various countries have helped governments to prepare and improve social legislation. Specialists have gone to Egypt to advise on matters of industrial hygiene, to Turkey to assist in social insurance questions, and to Venezuela to help in colonization and social insurance policy and in drafting a labor code. Father LeRoy traveled in Brazil, Uruguay, Argentina, and Chile, and the Director, accompanied by three experts, visited the Dutch East Indies, Ceylon, Malaya, French Indo-China, and British India to

[15] See *Report on Rights of Performers in Broadcasting, Television and the Mechanical Reproduction of Sounds,* International Labour Organization, Geneva, 1939.

study conditions at first hand and to see in what directions the International Labor Organization could help to hasten economic reform.

The research work of the Organization has enabled it to do much pioneer work. Many years ago it urged long-range planning of public works to cope with depressions. Today this policy is accepted in many countries. Its technical findings have been of immense service to international conferences such as those held in Johannesburg in 1930 and in Geneva in 1938 to consider measures against silicosis.

All of these activities, important as they are, are subordinate to the main purpose of the Organization which is to build up what may be described as an International Labor Code. Its success in this direction depends upon the ratification of the various conventions by the member states, and the record shows that as of March 15, 1939, no fewer than 63 conventions had been adopted and 839 ratifications received. Theoretically this number equals about one-quarter of the number which would have been received had there been a 100 per cent ratification by all countries. However, it is important to remember that some conventions, as, for example, those dealing with forced labor, hours of work in coal mines, minimum age at sea, medical examination of young persons at sea, protections of dockers against accidents, and sickness insurance for those working at sea do not concern countries which have no colonies, or coal mines, or merchant marine, as the case may be, and that the record of ratifications is therefore better than at first sight appears. To secure over eight hundred ratifications by more than fifty countries within the space of twenty years is no small achievement; and probably were it not for the disturbing effects of the political anarchy of the last ten years the achievements of the International Labor Organization would stand out still more clearly.

It is interesting to note that the curve of ratifications has been a steady one throughout the whole period, and that in the twelve months ending March 15, 1939, fifty-seven new ratifications were received. The Director, Mr. Winant, in his report issued on May 10, 1939, added that the conventions exercised an indirect as well as a direct influence:

Their existence sets up a standard which public opinion gradually tends to accept as normal; and one result of this is that they act as a check on any tendency to allow conditions of work to be depressed below that level in times of difficulty. This indirect influence is very

hard to measure; but if the differences which exist in labour legislation now and twenty years ago are studied in relation to the conventions, there is little doubt that it is considerable.[16]

For example, although the 1919 Convention concerning the eight-hour day and the forty-hour week in industry has received only 28 ratifications, it has provided a standard for the rest of the world and "inspired many laws and regulations." The Director shows that maternity benefit, minimum age for admission to employment in industry, on board ships, and in agriculture, social insurance, seamen's conditions, native labor, and other questions have been more actively considered by many countries as a result of the stimulus given by the work of the International Labor Organization.

In addition to the 63 conventions, the Conferences up to 1939 adopted 56 recommendations, which, although they do not impose a formal international obligation, set forth general principles and point the way to more detailed action. They include recommendations concerning unemployment, anthrax prevention, lead poisoning (women and children), labor inspection, hours of work in fisheries and in inland navigation, unemployment in agriculture, night work of women, children, and young persons in agriculture, vocational education, living-in conditions and social insurance in agriculture, workers' compensation, hours of work in hospitals, hotels, and theaters, vocational education, etc. Not the least service which an institution can render is to create an awareness of better standards and to indicate specific measures by which those standards can be attained, and the International Labor Organization through the general principles contained in the recommendations has exerted a wide influence in many countries.

It cannot be too strongly emphasized that the Organization has given a splendid demonstration of democracy in action. Conferences have taken place, not between governments acting with a minimum of consultation with interested parties, but between workers and employers and governments, who have considered in detail and from the broadest viewpoint what a proposed measure will involve. Not one of the three groups can ignore the claims and criticisms of the other two. Similarly, the representatives of one nation cannot consider matters from only a national vantage point; they come to realize that a particular

[16] *Report of the Director to the Twenty-fifth Session of the International Labour Conference,* June 1939, p. 83.

policy which might be adopted with profit by one country alone would, if undertaken by all countries, produce disaster. And it is not without significance that the Organization has been able to maintain a large part of its civil service of economic experts drawn from all over the world; even now at Montreal about one-half of the members are still engaged in research and in preparation for extended activity when peace shall have been re-established.

THE INTERNATIONAL LABOR ORGANIZATION SINCE THE WAR

World War II of course most seriously affected the position and work of the International Labor Organization. In October 1938 the Governing Body made plans in case hostilities should break out, and a few months later set up an emergency committee to consider practical measures to give effect to a policy of postwar reconstruction. Mr. Winant writes that the committee reported to the June 1939 Conference "that war would create new labor and social problems demanding urgent solution, and that the Organization must remain in a position to offer its experience as a guide in working out social policies in both belligerent and neutral countries."[17] He adds that the Office has received even more inquiries since the war than in the preceding period, and that it "has continued to serve as a world center for comparison and analysis of the experience of various nations with regard to social problems, whether of war or of peace."[18] Countries removed from the theater of the European war were able to carry on a fairly normal economic life for some time and looked to the Organization "to continue to render normal peacetime services to them." Despite the existence of war in Europe, the second American International Labor Conference met in Havana in November 1939. It urged the Office to continue its work and promised the support of both governments and people of the American continent.

Between 1939 and 1945 the war profoundly affected the labor movement as well as the International Labor Organization. Germany conquered many of the European countries and destroyed the trade unions. The International Federation of Trade Unions suffered a serious decline and only a few countries, such as Great

[17] John G. Winant, "The I.L.O. in Wartime and After," *Foreign Affairs*, April 1941, p. 638.

[18] *Ibid.*

Britain, the Dominions, and the United States, could boast the continuance of a free trade-union movement.

Soviet trade unions were not organized in the same way, nor did they have the same functions owing to the fundamentally different character of the Soviet economy from that of the United States or Great Britain. In Central and South America the governments exercised a degree of political control over the trade unions. These three types, free trade unions, Soviet unions, and the other dictator-dominated unions, bore witness to a serious cleavage in the ranks of labor, and it was hoped that the International Labor Organization might help to bring these contrasting and perhaps conflicting workers' agencies together much as the Organization had been able to assemble workers and employers who, despite their differing economic views, had been able in the twenty years prior to 1939 to show a surprising amount of agreement.

The Organization was able to continue its research but could not carry on its annual conferences or the quarterly meetings of the governing body. However, it sponsored two outstanding conferences, that of New York held at Columbia University in 1941, and the other at Philadelphia in 1944. The 1941 conference was attended by over two hundred members from 34 countries at a time when the outcome of the war was in doubt, and it testified to the tenacity of purpose of workers, employers, and governments alike in their determination to maintain and improve labor standards despite the great emergency. The Philadelphia conference set forth again the fundamental principles of the I.L.O. and held aloft the idea which was becoming increasingly widespread, namely, the necessity of full employment, higher standards of living, and adequate social security. It passed seven important recommendations and 23 resolutions too numerous to outline here. It urged the importance of having the I.L.O consulted whenever international loans were to be made so as to make certain that investment would not merely serve the profit of foreign investors but would also serve to raise the standard of living of the people of the country where the investment was made.

The Office produced an effective memorandum looking to the future of the Organization and pointing to the need of sound principles of finance, adequate money in order to continue research, and organization of efficiency; and it emphasized the need of attracting new blood, for many I.L.O. officials were growing old in the service and had experienced undue strain owing to the war.

At the end of 1945 the first postwar International Labor Organization Conference was held in Paris. Delegates from 48 member states took part in this twenty-seventh session; 35 of the national delegations were complete. The Conference moved to admit the former enemy state, Italy, to membership; Guatemala was readmitted, and Iceland entered the Organization. By unanimous vote the Conference rejected the credentials of the Argentine workers' delegate and his adviser. The main task of the meeting, however, was to consider the position of the International Labor Organization and its possible relations with the United Nations Organization. To prepare the way for affiliation it took measures to amend its constitution, to sever its connection with the League of Nations, and to provide a method of autonomous existence between the time of separating from the League and affiliating with the United Nations. On the technical side it discussed a convention to protect children from working at too young an age and to protect the health of youth. A convention on employment relations in dependent territories was also being prepared for adoption at a later conference.

At Copenhagen, November 15 to December 1, 1945, the Maritime Preparatory Technical Conference met and adopted the preliminary text for nine draft conventions, two draft recommendations, and two resolutions. The 28th session of the international labor conference met at Seattle the sixth of June, 1946, to consider the decisions of the Copenhagen preparatory conference. The Seattle meeting was a full meeting of the International Labor Organization but was devoted exclusively to maritime matters. The most difficult subject was that of wages; here a new and fundamental question, the fixing of an international minimum wage for seafarers, was to be thrashed out. At Copenhagen considerable difference of opinion was manifested and only after much discussion was the 18-pounds-a-month rate agreed to, a figure which was reduced to 16 pounds for consideration at Seattle. Space does not permit a detailed examination of the other proposals, which include measures for the social security for seafarers, pensions, reciprocal agreements relating to social insurance for seafarers, crew accommodation on board ship,[19] food and catering on board ship, entry, training and pro-

[19] To take but one instance. The proposed draft convention dealing with crew accommodations on board a ship occupies over 30 pages, 15 each for the English and French versions. *International Labour Conference, Twenty-Eighth Session, 1946, Report III.*

motion of seafarers, holiday with pay for seafarers, continuous employment for seafarers, and recognition of seafarers' organizations.[20] The detailed proposals for the welfare and comfort of the sailors awaken one's deep interest. This constitutes a most ambitious program and indicates the deep hold which the concept of social security and economic welfare has taken on the minds of the working classes throughout the world. That these reforms if adopted would increase the costs of operation is clear and gives point to Smith Simpson's analysis in the next paragraph.

The future of the Organization raises many interesting questions. Smith Simpson in 1941 made a number of proposals. He believed that strengthened national branch offices could assist the central organization by more easily undertaking regional conferences and by bringing the central movement more continuously to the notice of member countries. Simpson also urged that the time of the Conference should be lengthened, for three weeks is too short a time to enable several hundred delegates adequately to consider several complex conventions and/or recommendations (and yet the Conference which met in Seattle in June 1946 had an unprecedentedly heavy agenda which had to be completed in just over three weeks). Simpson further suggested that because labor conditions and costs could not be separated from the wider industrial, financial, and social problems, the I.L.O. should be recognized as being more than a "labor" organization. It could certainly be criticized for interpreting its functions too narrowly if it conceived labor standards as capable of progressive increase without any relation to the difficulties which these standards raise for employers and investors.[21]

As international labor legislation increases, the question of factory inspection will become more important; and advance in this direction may perhaps be sought in the utilization of more adequately staffed branch offices, regional secretariats of regional conferences, permanent committees of special industries, and other "appropriate administrative bodies." Simpson believes that the conventions should become "automatically binding unless voted otherwise by the competent authority of a member," which would still retain the right to reject a convention but would then assume

[20] In all, nine reports were considered at the Seattle Conference.

[21] Smith Simpson, *The International Labour Organization: Retrospect and Forecast* (Committee to Study the Organization of Peace, *Preliminary Report and Monographs*, Carnegie Endowment for International Peace, 1941), p. 331.

the burden of proving the unsuitability of the convention. But most important of all must be the recognition that labor problems can no longer be regarded as merely technical problems; they involve political considerations just as much as any other major problem of the day. "If that is true, to what extent can the International Labour Organization in the future remain aloof from 'politics'?"[22]

The relation of the International Labor Organization to the United Nations presented some thorny problems. The I.L.O. was not included in the United Nations' Charter, and for a time doubts were expressed whether it would come under the jurisdiction of the Social and Economic Council of the United Nations. Two strong reasons supported this judgment. First, several members of the I.L.O. were not members of the United Nations and presumably would be unwilling or would be unable to participate if the Organization were absorbed into the United Nations. Second, the Social and Economic Council comprises representatives of governments, whereas labor and employers have had a status in the I.L.O. for which there seemed to have been no parallel in the United Nations. The trade unions especially held out against a diminution of their status which they feared would follow any subordination of the I.L.O. to the United Nations.

After long negotiations, the International Labor Organization signed a draft agreement with the United Nations in pursuance of Article 57 of the Charter which provided that specialized agencies might be brought into relationship with the United Nations. The agreement provided that the United Nations recognizes the International Labor Organization as a specialized agency, that each organization might attend the meetings of the other and of its commissions and committees without vote, and that the two organizations would exchange information and documents; the I.L.O. would co-operate with the Economic and Social Council in rendering assistance to the Security Council and to the Trusteeship Council. The two organizations agreed that they would consult together concerning the establishment of an international Civil Service Commission to advise on the recruitment, salary scales, retirement and pension rights, etc.; that they would strive for maximum co-operation in statistical services and would avoid where possible the establishment and operation of competitive and overlapping facilities and services. The I.L.O. undertook to con-

[22] Smith Simpson, *op. cit.*, p. 336.

sult with the United Nations in the preparation of the budget and agreed to inform the Council of the nature and scope of any formal agreement between itself and any other specialized agency.[22a]

The 29th Conference, held at Montreal, adopted the necessary constitutional changes and took the necessary action to integrate the International Labor Organization's activities with that of the United Nations. These changes go into effect when ratified or accepted by two-thirds of the organizations of 52 member states.[23]

On the assumption that events turn out for the best, we may note two or three further tendencies. Industrial committees, some nine in number, have been established to deal with particular industries as was earlier suggested by Smith Simpson. These committees give greater mobility to the I.L.O., for it is easier for them to move than to have the full organization shift from one place to another. They also serve the purpose of preparing a preliminary draft which it is hoped will obviate the double-discussion method described above.[23a]

Indications are that Montreal is not the most suitable place for the location of the Organization and some evidence points to the return of the I.L.O. to Geneva. Such a step would have a twofold advantage. It would tend to prevent an undue amount of international organization being concentrated in North America where costs are high and where certain problems are not so urgent as they are in Europe, and it would also encourage the regionalism which will attach loyalties to the world organization.

The Office has made a striking proposal in order to overcome a constitutional difficulty of serious proportions. At present, a convention dealing with wages and hours might run into difficulties in the United States, where the federal government would not have power to legislate directly since the matter might be one for collective bargaining between employers and workers.

[22a] See *International Labour Conference, 29th Session, Constitutional Questions, Parts 2, Draft Agreement between the United Nations and the I.L.O.*, International Labour Office, Montreal, 1946. See also the *Economic and Social Council of the United Nations: The United States and the United Nations Report Series 3,* Report by the Hon. John G. Wynant, United States Representative on the Council, July 15, 1946, pp. 20–25.

[23] See *I.L.O. News Service,* February 1947, International Labour Office, Montreal, Canada.

[23a] The British government strongly supported the establishment of the industrial committees on the ground that neither the Conference nor the Governing Body is sufficiently adapted to meet the detailed problems of special industries.

On the other hand, another government might have power to commit its country in the form of a ratification to the convention. The Office has proposed that a country in which the existence of collective bargaining makes it impossible for the government to sign the convention might be empowered to issue a certificate of notification which would serve notice to the contracting member states that the standards provided for in the convention were being lived up to under the collective agreements. Many legal problems have arisen in connection with this proposal and at the moment of writing the outcome is not known. If it or some modification of it should be adopted an important advance in international procedure would have taken place inasmuch as non-governmental arrangements between capital and labor would acquire an international status equal with that of governmental legislation of other countries.

Above all, the future of the I.L.O. will also depend upon the caliber of its personnel. We have paid tribute above to Albert Thomas and the staff which did such excellent work for twenty years and with reduced numbers held the organization together during the war period. In a report prepared for the Philadelphia Conference, the Office pointed to the necessity of strengthening the staff "by the early entry or reentry into its service of substantial numbers of men and women young in outlook and, in a majority of cases, in years who have the integrity, imagination, drive and technical grasp, for the challenge the age requires and who are inspired by the standards of disinterested public service to an international institution which Albert Thomas evoked among his collaborators." It should not be difficult to find many hundreds of young men and women who will be anxious to take up the torch at this point. In this connection the proposals of the Staff Questions Committee to bring salary schedules, annual leave, and other conditions of the I.L.O. staff into substantial line with those of the United Nations and other international organizations assume importance, for these factors will have a great influence in recruitment and also in the possible development of an international civil service if and when the United Nations becomes more firmly established and more widely organized in affairs dealing with everyday life.

More difficult may be the task of harmonizing not only the Russian and British and American viewpoints in the United Nations, but also the Russian views on the one hand and British

and American on the other concerning the I.L.O. At the moment the attitude of the Soviet Union seems to be one of non-co-operation, even of hostility, due to its belief that the I.L.O. recognizes the existence of employers and hence of the capitalist system, an apparent reversion to its pre-1934 attitude. The association of the Organization with the now defunct League of Nations, from which the Soviet Union was expelled in 1939, may also be a contributing factor.

Meantime the Organization is making its plans for expansion of operations. Its budget has been greatly increased and has been put on an independent basis by reason of its autonomous existence relative to the United Nations. It has under way a wide range of studies—a committee of statistical experts is helping to decide the eight states of chief industrial importance which will have permanent seats on the Governing Body, a technical tripartite conference on safety provisions for factories will meet in 1948, a committee studying problems relating to salaried employees and professional workers and other committees dealing with coal mining, inland transportation, iron and steel and metal trades are at work, and finally a technical commission is to study at first hand the question of migratory native labor in Central and East Africa.

Chapter VIII

INTERNATIONAL TRADE AND COMMERCE

PREVIOUS to 1914 international trade moved with surprising ease. We who live today under a mass of restrictions and prohibitions may well envy its delicate and self-adjusting nature. The law of supply and demand seemed to work over a large field of economic effort: if prices rose because of an inadequate supply of goods, production increased in the hope of higher profits; the resultant higher output caused prices again to fall. In international trade, the gold standard operated to keep international prices reasonably stable. If over a long period of time country A exported more to B than B did to A (we neglect triangular trade relations for the moment), it would cost more for B to buy foreign exchange in order to pay for goods coming from A. If the exchange moved beyond the gold points—i.e., the figure at which it paid a buyer to purchase gold at a bank, insure it, and have it transported, the price level of country B would tend to fall because a diminution of gold reserves would lead to a restriction of paper currency. On the other hand, country A, which had received the gold, would expand its currency and its prices would rise; the rise in prices in country A would lead to a diminished demand from B; the fall in prices in B would cause a heightened demand from A; and gradually trade would be restored to equilibrium. Thus the two distinguishing features, the law of supply and demand and an almost self-regulating currency adjustment, were such that international trade took place with comparatively little interference.

Tariff treaties were signed for fairly long periods of time, and the most-favored-nation clause, by which two nations promised to grant each other any further lowered tariff rates which might be extended to a third country on certain goods, enabled the benefits of tariff reductions to be considerably generalized. Moreover, Great Britain and Holland threw open their colonial trade to foreigners, who were subject to very few restrictions. Governments

kept law and order, and there was little or no repudiation of international contracts.

BREAKDOWN OF INTERNATIONAL TRADE

Economists point out that this happy state of affairs depended upon a number of conditions which were undergoing gradual change. International trade took place between "complementary rather than competitive" countries. Many countries still concentrated upon agricultural production, and although they produced some manufactured goods they had not gone very far in doing so. Germany, the United States, France, and Britain were becoming industrial rivals, but not at an unduly alarming rate. The system worked well because there were expanding markets in two directions—nations enjoyed an increase of population at home, which absorbed a great deal of their products, and the opening up of new countries provided new markets and opportunities of capital investment. London, still the financial center of the world, dominated monetary policy and unity of direction was comparatively easy to obtain.[1]

Nevertheless, some ominous signs were appearing. Already the economic system had begun to suffer from a growing rigidity —governmental costs were rising, involving heavier taxation; trade unions were demanding higher wages and were resisting wage reductions in times of depression and thus, according to some economists, were preventing a necessary lowering of costs; monopolies were holding up prices, preventing the operation of the law of supply and demand and thus denying the masses the purchasing power they would otherwise have had. Agricultural countries were wanting to go into industrial production, and tariffs were rising. Nevertheless, it was generally true that prewar commerce was surprisingly self-regulating.

The World War of 1914–1918.—The war interrupted and profoundly affected the mechanism of international trade. Owing to immediate war necessities, the state entered economic life to an unprecedented degree, and intensified the governmental interference which, on humanitarian grounds, had already begun to produce better wages and conditions for the working class. The submarine and the blockade forced nations to a war policy of self-sufficiency; vested interests grew up and gained such great strength that their dislodgment became almost impossible when the war

[1] Sir Arthur Salter, *World Trade and Its Future* (University of Pennsylvania Press, 1936), pp. 10–27.

had ended. Organized labor received concessions from some governments which it was not willing to lose. Organized capital grew in power, and tended toward monopoly. Great war loans were causing national debts to mount and placing a heavy interest burden upon the postwar generation. Economic rigidity was increasing.

The destructive effects of the war were more far-reaching than this brief analysis suggests. It diverted scientific research to purposes of destruction, disrupted the world's credit system, and lowered the standard of living for all peoples. Between 1914 and 1918 people of belligerent countries suffered from the shortage of many things which make for health and civilized living. World prices were forced out of line and within nations, too, the price structure was distorted; supplies were rationed and uneconomic substitutes were called into play. After the war was over, it was found that great stocks of munitions, manufactures, and raw materials had accumulated in the wrong places. Too many ships had been built; millions of dollars worth of transport materials had to be scrapped; the problem of reabsorbing into industry many millions of soldiers presented infinite difficulties; and, as Condliffe notes, the task of readjustment.

> was greatest in precisely those industries the overstimulation of which is the normal sign of the unbalancing of production that leads to an industrial crisis. . . . . To many people the paradox of poverty and distress in the face of enormous productive capacity appears almost beyond explanation; but the problem is largely one of wrong capacity in the wrong places, aggravated by a breakdown of the distributive system.[2]

The collapse of the world's credit system involved disastrous consequences, the causes of which were not readily appreciated by the man in the street. Credit inflation produced changes in income; the collapse of prices in the postwar period brought much suffering because of the difficulty of adjusting debt structure to new price levels. The breakdown of the gold standard and the maladjustments of national currencies, one to the other, made it difficult to exploit to the utmost the specialized production which depended largely upon "a common monetary measure for the whole trading world."[3] Great Britain especially suffered from

[2] J. B. Condliffe, *War and Depression* (World Affairs Pamphlets, World Peace Foundation, Boston, 1935), pp. 13–14.

[3] *Ibid.*, p. 19.

the loss of five years of continuous contact with her world-wide customers. A second similar experience in 1939–45 was to aggravate her serious position.

In an able volume James T. Shotwell shows something of the direct costs of the World War.[4] The editor of the famous series, *The Economic and Social History of the World War,* in one hundred and fifty volumes, quotes some of the evidence there presented: The war cost Austria-Hungary five times as much as its annual income, and almost four-fifths of its total national wealth. It impoverished Germany's economic system by forcing everything into military service, with the result that, when the collapse came, disorder and disruption were complete. Much of the normal life was set aside as being militarily "non-essential"; consequently, when Germany came to re-establish her peaceful life, her whole economy was inadequate for the normal international trade so essential to her welfare. While not denying the many mistakes made by Allied statesmen, Shotwell estimates that the war itself cost Germany four times the amount of the reparations figures. What Germany forgot was the *destruction of the future,* a destruction which was not evident at the time of hostilities. Hitler, in Shotwell's judgment, has done Germany and the world a great disservice by concentrating attention unduly upon the effects of the peace and ignoring the profound effects of the war: "Germany's attempt to escape from the continuing economic disturbances due to the War can only succeed if it can enslave the rest of the world in the same kind of economic fetters as it wears today." That is the negative side of the truth. The other side is that there can be no sound economic development unless war is eliminated. Unfortunately, the world misread the evidence, as the following chapters will show.

The peace treaties.—The peace treaties further disrupted the prewar economic unity of Europe. The terms which the victors imposed upon the vanquished may have been necessary from a military point of view, but from an economic point of view they were disastrous. In particular, the Treaty of Versailles dealt Europe a heavy blow by dislocating the economy of the leading industrial country of the continent.

The Treaty deprived Germany of (1) 79 per cent of her iron ore supply, through the loss of Alsace-Lorraine; (2) about one-third of her coal—20,000,000 tons of coal a year, in addition to

[4] James T. Shotwell, *What Germany Forgot* (The Macmillan Company, New York, 1940), pp. 129–30.

the difference between the prewar and the postwar production of northern France; (3) important potash supplies in Alsace, thereby diminishing the productivity of German soil as much as 40 per cent; (4) large areas of agricultural land in Posen and West Prussia which had produced about a quarter of Germany's grain and potatoes and one-tenth of its domestic animals; (5) 140,000 milch cows, despite the fact that the shortage of milk had created a grave food problem; (6) all Germany's overseas colonies; (7) German rights in Morocco and Siam and Liberia, and also other rights;[5] (8) 8,000 locomotives and 150,000 railroad wagons (under the Armistice terms), and all the locomotives and rolling stock of railroads in the provinces; (9) all merchant ships of sixteen hundred tons and upwards, one-half of its merchant ships between a thousand and sixteen hundred tons, and one-quarter of the steam trawlers and other boats, while Germany further agreed to build for the Allies up to two hundred thousand tons a year for the next five years as required. Germany's full use of her main river communications were placed under Allied control. Heavy demands were made upon her chief industries such as 35,000 tons of benzol, 50,000 tons of coal tar, 30,000 tons of ammonia sulphate. The Reparations Commission might take 50 per cent of dyestuffs and chemical drugs under German control at the time of the Treaty, and until 1925 demand one-quarter of the German production of dyestuffs and chemical drugs—the Commission to determine the method of delivery and the price "having regard to cost." Germany was denied most-favored-nation treatment, though she was compelled to give it. Preliminary payments of £1,000,000,000 in cash or the equivalent were required by May 1921, the final amount of reparations to be decided later. By the subsequent plebiscite in Upper Silesia, Germany lost an area which in 1912 had produced over 70 per cent of its zinc supply.[6]

Reparations.—Germany, upon whom these great burdens were placed, had suffered (like other countries) from four years of exhausting warfare. Its internal situation in 1919 was terrible, and foreign observers corroborated Dr. Starling's report that indus-

[5] The Allies also had the option of confiscating all German concessions in Russia, China, Turkey, Hungary, and Bulgaria, and in former German territory; at the same time the rights of all German subjects might be canceled, thus threatening to wipe out the accumulated fruit of years of individual German effort abroad.

[6] For a German view of the economic effects of the Peace Treaty and Reparations, see Carl Rothe, *Weltkrieg Gegen Deutsche Wirtschaft* (Hanseatische Verlagsanstalt, Hamburg, 1932).

tries were without raw materials and that little food was available. Hundreds of adults and children had died "as a direct result of slow starvation." In Berlin two-thirds of the people "are living on a low level of vitality." Tuberculosis in Prussia had increased about 250 per cent. The death rate had mounted and the birth rate had dropped by almost one-half. The German people were utterly exhausted; the productivity of the land had diminished; industry was disorganized, and the morale of the nation almost broken.

It is important to realize these facts; they made fulfillment of the reparations clauses more difficult, if not impossible; and one can understand more readily the psychological reaction of a despairing and defeated people.

Sir Arthur Salter writes that the story of reparations is the story of postwar Europe. Reparations constituted a "principal obstacle to every attempt at recovery. It has disturbed the relations of old allies no less than of old enemies. It has thus been a principal factor in the tendency of countries to realign themselves into opposing groups and alliances, the alternative to the 'collective' system of the League and the Kellogg Pact, on which the future peace of the world depends. The cash results have not been proportionate to these consequences."[7]

Salter believed that it would have been possible to work out a rational system of reparations but, unfortunately, political and emotional factors entered the picture and reparations became one of the most hotly debated subjects. On the one hand many people quoted J. M. Keynes's *The Economic Consequences of the Peace* and asserted that the insistence upon reparations prevented German recovery, prolonged the economic dislocation of Europe, and paved the way to later economic collapse. On the other hand, it was asserted that the analysis made by Keynes would not square with the facts, that by 1929 Europe's iron output exceeded that of the record year of 1913, that Germany by 1927 was producing more iron and steel than she produced in 1913, that German coal mining had become more efficient and its output greater, that the German mercantile marine by 1930 was within measurable distance of the five million tons of the prewar days of World War I.[7a]

[7] Salter, *Recovery, The Second Effort* (The Century Co., New York, 1932), p. 141.

[7a] See Étienne Mantoux, *The Carthaginian Peace, or The Economic Consequences of Mr. Keynes,* (Oxford University Press, London, 1946), especially chapter vi.

Whatever be the truth of Germany's capacity to pay, the fact remains that the question of reparations introduced much bitterness and division among the former Allies, but Germany might well have been made to help in the reconstruction of areas which had been destroyed after both World War I and World War II. The fundamental question in both cases was whether the victorious powers were willing to see the central problem, namely, how to rebuild the European economy which had been shattered by war, how much Germany should have to supply in capital, equipment, and raw materials, and how industrially strong a Germany was necesary for a reconstructed Europe. Above all these problems was the question of how to permit Germany to develop industrial strength without becoming a military menace, and this problem the victorious powers failed to solve after World War I. The failure is traceable to the inability of the victors to establish an adequate system of collective security which alone would have made Germany's economic power available for raising standards of living, without at the same time constituting a military threat.

War debts.—The war debts question also aroused considerable discussion and caused much misunderstanding. On both sides of the Atlantic keen emotions have developed, making it difficult for even educated persons to approach the problem in a spirit of detached analysis and to see how it has helped to throw the world economic system out of gear.

By 1918, intergovernmental debts amounted to twenty-one billion dollars; five years later the total had reached twenty-eight billion dollars. Little attempt was made until 1922 to settle the debts question. Europe was in such a condition of uncertainty and disorganization that little good could have resulted from raising the issue. But in 1921 President Wilson informed Mr. Lloyd George that Congress and the American people would probably not consent to canceling war debts in order to facilitate a settlement of reparations in Europe. Thus early did the United States deny any relation between war debts and reparations. The French saw the matter in a very different light. They claimed that since Germany was responsible for the war, it should pay for the war—it was absurd to ask France to pay war debts to the United States if Germany paid no reparations to France. The French argument was logical, but it was a logic on a plane which the United States would not or could not appreciate.

Meanwhile Great Britain, realizing the need of freeing the world from a debt burden which threatened to prevent a revival

of international trade, hinted at general cancellation; but at this stage she did not press the matter.

When negotiations began, American opinion was divided. Many economists and others, on grounds of economic theory, favored at least a partial cancellation of the debts. Firms which engaged in international trade, or had loaned money abroad, spoke on similar lines, saying that to load Europe with war debts would delay its economic reconstruction and prevent its regaining effective purchasing power, with the result that American foreign trade would suffer. Others pointed out that some countries (England especially) were already paying very high taxes and that the burden of governmental debt in those lands was seven to eleven times higher in relation to national income than in the United States. Paying the war debts would impose great hardships on these countries, while what they would pay to the United States would benefit the latter to only a small degree, since its annual receipts from debt payments would amount to less than 5 per cent of its imports—less than one-third or one-half of one per cent of the national income. The burden upon the debtors would be out of all proportion to the benefits which the United States would receive.

Nevertheless the majority of the American public demanded repayment. They spoke of the sanctity of contracts and said: Europe must pay for a war which it had voluntarily undertaken; debt repayment would do more to create confidence in governments and to re-establish credit than any other single factor; also, if Europe could afford to spend so many millions on armaments after a "war to end war," and if France could make loans to the Little Entente and Poland, they could afford to pay for the last war. For these reasons American public opinion opposed cancellation, and Congress was so united on this point as to force the Administration to demand repayment in full. Europeans retorted that the armament expenditure was largely due to the failure of the United States to join the League of Nations or to give any security guaranties by which Europe could be freed from the fear of war. To this United States isolationists replied that the European nations could, if they wanted to, develop a sound European security system. Thus the war-debts question turned out to be part of the problem of security!

The war-debts question thus showed how little the countries involved were willing to take a comprehensive view of the question. Given a reasonable will to compromise, it should have been

possible to work out a fair solution. With the future of world trade and of international politics at stake, a few hundred million dollars a year should not have been so great an obstacle. Had the United States seen more broadly and been more ready to adjust and had the European countries shown more willingness to meet their obligations, the result might have been different. The temper of all parties on what was after all a relatively minor problem compared with the greater questions at stake boded ill for the chances of adequate statesmanship in a tangled world. Lack of comprehensiveness stands out as the most evident fact in the war-debts question. The same characteristic was to mark the United States postwar tariff policy. Fortunately, Lend-lease arrangements during World War II helped to prevent similar difficulties after 1945. To that degree nations profited from the mistakes of 1921–32.

The United States tariff policy.—The postwar tariff policy of the United States was a major factor in the breakdown of international trade. The United States within a few years had loaned, publicly and privately, thousands of millions of dollars abroad in the form of war loans and other economic advances. Logically it should have modified its tariff and shipping policy, so as to have enabled the debtor countries to discharge their obligations. Unfortunately, it took a different course and adopted a series of inconsistent measures. It increased its tariffs in 1922 and 1930; it took energetic steps to expand its export trade; it subsidized its merchant marine and thereby deprived foreign ships of the opportunity of increasing their earnings; it sterilized the gold which came in payment from abroad; it insisted upon collecting war debts; and, after the boom of 1927–1928, it curtailed further loans abroad because American investors hoped to gain greater profits at home than from abroad. In a word, it made repayment of loans by goods and services a most difficult matter.

The Hawley-Smoot Tariff[8] completed the contradiction of American economic policy. It made repayment of foreign debts still more difficult. It weakened the debtors' will to pay, and reacted most unfavorably against the interests of United States exporters and branch factories abroad. The income of the cotton farmers in the South declined from 1,535 millions of dollars in 1928 to 483 millions of dollars in 1934. One-sixth of the cultivated area in the United States was producing commodities for

[8] See J. M. Jones, *Tariff Retaliation: Repercussions of the Hawley-Smoot Bill* (University of Pennsylvania Press, Philadelphia, 1934).

which no domestic market existed. Wheat, cotton, tobacco, and corn, also industrial machinery and many other manufactured goods all needed foreign markets. Francis B. Sayre estimated that 10,000,000 people of the United States depended upon exports for their livelihood; the high tariff was, therefore, "a voluntary abandonment of foreign markets," the extent of which may be judged from the fact that the United States exports dropped from 5,241 million dollars in 1929 to 2,133 million dollars in 1934, and its imports dropped from 4,400 million dollars in 1929 to 1,655 million dollars in 1934.

Obviously the American tariff was not the only cause of this disastrous fall in foreign trade. Such a claim would be absurd. But that the anomalous economic policy of the United States—a powerful creditor country maintaining high tariffs and developing a merchant marine—did seriously distort the world economic structure cannot be doubted. The debtor countries, finding it difficult to repay in goods, exported their gold; their prices fell in consequence, and the failure to find markets depressed the prices of their commodities; in order to protect their national currencies they forbade the export of any more gold and ultimately defaulted on their debt payments. In addition to the war, the war debts, the economic clauses of the Versailles and other treaties, and the growing rigidity of the economic system, the United States tariff policy from 1922 to 1932 must be regarded as a fundamental cause of the world's economic disequilibrium and as contributing to the breakdown of its peace machinery. The "battles without bullets" which have been waged during the last two decades can be traceable in no small measure to the contradictions of the United States economic policy.

Between 1930 and 1932 President Hoover tried to overcome these contradictions. He saw that the combination of tariffs, government encouragement of exports, and government insistence upon the repayment of war loans was imperiling the whole system of international payments and he therefore worked toward a reduction of reparations and war debts, the limitation of armaments (so as to lessen the amount of uneconomic expenditure), and a resumption of lending abroad. However, he approved the Hawley-Smoot Tariff and did not attempt to restore international trade by lowering the barriers imposed by high duties.

Mr. Roosevelt, on his accession to office in March 1933, proposed to balance international accounts, not by a resumption of lending, but by a reduction of the tariff and by a degree of planned

economy. These two objectives proved to be somewhat contradictory, and the failure of the World Economic Conference in June 1933 destroyed the international elements of both the Hoover and the Roosevelt programs. For a time the United States moved toward economic nationalism by reducing exports and attempting to plan an insulated national economy.

Many writers set forth a theoretical justification for the closed system. Charles A. Beard wrote *The Open Door at Home*, and Samuel Crowther, Dean Donham, and others reproduced the arguments which are analyzed under the theory of economic nationalism; they pointed out that it was more important to maintain the stability of domestic prices than the stability of foreign exchange, that political instability abroad made long-term commercial and industrial plans difficult, that foreign trade accounted for less than 10 per cent of the whole of the United States trade, and that because of the diversity of its resources and the inventiveness of modern science the United States could make the transition to practical economic self-sufficiency with relatively little disruption. They identified themselves with economic nationalism, now to be discussed.

Economic nationalism.—The theory and practice of economic nationalism have developed with great rapidity and intensity during recent years.[9] There are several reasons: The younger countries, largely agricultural in their economy, have suffered from the fall in the price level of primary products. The law of comparative advantage—that countries should produce those things for which they possess the greater skill and national advantage—has received a heavy blow. Of what use is it to produce more primary products if the effect is to depress the price level still further? Why not turn to industry which has not suffered so serious a price collapse as agriculture has done? It is better, so the argument runs, to diversify one's economic life, to avoid putting all the economic eggs in one basket, and to establish an economic balance. Thus a nation will avoid being at the mercy of world conditions and of undue fluctuations in the price of any one commodity. The disastrous consequences to Cuba and Brazil, which have been mono-culture countries, specializing in sugar and coffee, is a sufficient example of the hazard of entrusting a

[9] The effects of the noneconomic aspects of nationalism upon the liberal theories of international trade, and the triumph of politics over economics, may be studied in several works, e.g., J. B. Condliffe, *The Reconstruction of World Trade*, Part I; Peter Drucker, *The End of Economic Man;* Pierre Lucius. *L'Agonie du liberalisme;* and Frank Munk, *The Economics of Force.*

nation's economic life to the uncertainties of a specialized international trade. The younger countries, moreover, did not feel that they should permanently remain merely agricultural and in a position of dependence upon older industrial nations. They did not wish to accept the existing economic status quo but desired to build up their own industries and make use of their own skills. They protested against the imperialism of the great powers, and aimed to achieve a genuine economic as well as political independence.

The troubled international situation, the desperate armaments race, and the emphasis placed upon security provide another explanation of the growth of economic nationalism. Countries wish to be self-sufficient, so that in wartime they may be independent of foreign supplies. Hence industrial nations turn to agriculture to insure adequate home production of foodstuffs, and agricultural nations develop industries in order to build up their military power. In both cases there is a loss in economic efficiency. People have been willing to sacrifice material welfare for noneconomic purposes. There has come about a subordination, even if not the end, of "economic man."

The peace treaties of 1919 set up new nations which in the first flush of national self-consciousness, and for reasons of defense, adopted high tariffs, currency restrictions, and government subsidies.[10] The old larger imperial economic units, as, for example, the Austro-Hungarian and Russian Empires, disappeared; in their place arose small, hostile units which destroyed the possibility of extensive international trade.

Some theorists assert that modern invention has lessened the need for international trade. Japan now produces many things hitherto made by Great Britain, Germany, France, and Italy; and other countries by importing machinery and developing technical skill can make for themselves things which they previously had to import. When Japan, India, and Australia can make their own textiles as well as produce their foodstuffs, the need for international trade is correspondingly lessened. So runs the argument.

Other writers claim that, in spite of the great growth of international trade during the nineteenth and twentieth centuries, by far the greater amount of interchange of goods still takes place within national boundaries. Trade is still mostly intra- and not inter-national. The foreign trade of the United States is less than

[10] L. Pasvolsky, *Economic Nationalism of the Danubian States* (The Macmillan Company, New York, 1928), pp. 70 ff.

10 per cent of its total trade; even Great Britain, the leader in world commerce, enjoys a greater volume of trade in its home market than in its foreign market. Why, then, should a nation not develop the market within its own boundaries to its utmost capacity? Why not raise the purchasing power of those millions at home who are still living in poverty and want? Many socialists long ago pointed out that under modern capitalism industry was searching markets abroad because the workers at home were not given sufficient wages with which to buy the products which they had helped to create. When the economic crash came, and debtor countries one by one defaulted, people began to speak of the hazardous nature of international trade, which placed the fortunes of people at the mercy of political and economic forces beyond their control, and to ask whether it would not be better to adopt a planned economy within the nation itself, in an endeavor to overcome the periodic economic crises which have long afflicted human society. A nation, they maintained, just because it had political control over its own affairs, and because its internal trade was so much greater than its external trade, could set to work to build up and expand its own internal market. Planned economy thus became the ally of economic nationalism. By nationalizing economic life within the nation and adopting the open door at home, a country could escape from dependence upon an unstable and unpredictable international world.

If the internal market is more important for a nation, it follows that stability of internal prices is more important than stability of foreign exchanges. Sir Basil Blackett and others argued along this line; they pointed to the catastrophic effects of falling prices, and claimed that it was the violent fluctuation in internal prices, and of purchasing power within the nation, more than the instability of foreign exchanges which constituted the fundamental problem.[11] It would not be difficult to keep the national price level under control, because central banks which had had long experience in keeping foreign exchanges stable could, by controlling the discount rate and through open market operations, maintain essential stability. (One may note in passing that this theory was adopted by President Roosevelt in the early years of his administration.[12])

Dean Donham claimed that an indefinite expansion of the export trade would lead to a trade war between the capitalist

[11] Sir Basil Blackett, *Planned Money* (Constable & Co., London, 1932), p. 86.

[12] See his message to the World Economic Conference, 1933.

countries and would run the risk of ruining some of the competitive nations and of hastening foreign bankruptcies. While much foreign trade is desirable, the theories that tariffs should be reduced "appear to give far too little attention to social stability" and overlook the danger that many domestic industries would be wiped out.[13]

Finally it was pointed out that the self-regulating and automatic character of the nineteenth-century capitalist system had largely broken down. The law of supply and demand no longer freely operated, and competition no longer directly affected the level of prices. Several things had happened to make the modern economic system more rigid: the state had intervened to raise and maintain wages, which were not allowed to fall below a certain level; industrial monopolies had retarded the reduction of prices previously established through competition; tariffs had prevented the free flow of goods; the great national debts had necessitated heavy fixed interest payments; and dictatorships had still further stratified society in the large and had restricted still more the free actions of economic forces.

Criticisms of the theory of economic nationalism will follow presently. It remains to consider how economic nationalism has been put into operation.

Methods of attaining self-sufficiency.—The methods adopted to attain self-sufficiency were four in number:

First, a country might launch a campaign to avoid waste. In Germany this movement went to remarkable lengths.[14] German regulations for avoiding waste applied to dozens of materials including men's and women's hair, food scraps, bones, bottles, scrap metal, and potato peelings.

Second, some governments required their people to do without certain goods or at least to be satisfied with smaller amounts. In Germany children might not have toy balloons at Christmas time; women's skirts and men's shirts were shortened; even stage magicians were asked to do their part in the conservation of food and were "forbidden to use eggs, milk, or other edibles in their performance"; photographers were limited as to the amount of photographic paper they might purchase.

[13] W. B. Donham, *Business Adrift* (McGraw-Hill Book Company, New York, 1931), pp. 77–97. J. M. Keynes expressed similar views in *The General Theory of Employment, Interest and Money* (The Macmillan Company, 1936). See pp. 348–49 and 382.

[14] Even before the outbreak of World War II in September 1939.

Third, a vigorous attempt to use substitutes was made in those countries which desired to free themselves from dependence upon foreign supplies. In 1936, regulations appeared in Germany that men's clothes and uniforms were to contain 15 to 25 per cent of artificial and a certain percentage of local wool. Cheese was not to contain more than 20 per cent cream. Builders were forced to use substitutes for, or to do without, lead, nickel, zinc, copper, and their alloys. Shopkeepers were not permitted to advertise butter, margarine, or lard. In Germany and Italy synthetic rubber was made.

Fourth, the autarchic-minded countries might produce foods at home even though resulting costs might be greater and prices higher for the consumer. Quantitative restriction of imports—butter, poultry products, sugar, oils and fats, coffee—the enforced use of domestic raw materials, as noted above, and foreign exchange restrictions all prevented the importation of goods hitherto purchased from abroad. Land irrigation and reclamation, mining for low-grade coal and for oil, and the establishment of manufactures made for a degree of self-sufficiency, though at the expense of the general standard of living.

It is impossible to deny that there are some important truths contained in the doctrine of economic nationalism. There is need to banish the fear of national insecurity and to raise the purchasing power of the masses at home. The less economically developed countries do have a claim to develop their own economic life as fully as possible. To some degree the theoretical advantages of international trade are offset by the precarious nature of present-day international political relations, and a certain lowering of the standard of living may be a small price to pay if it could really contribute to a country's security.[15]

Unfortunately, the facts show that the practical consequences of self-sufficiency have not been so attractive as the theory might suggest. In the first place those industries and agrarian interests which were geared to export markets lost their customers as foreign trade declined. Next, the business interests connected with former imports suffered depression, and profits and wages declined. Many substitute articles required new factories and the outlay of capital, thereby necessitating, in some cases at least, heavier imports. And the incontrovertible fact remains that, under modern conditions, no nation can be self-sufficient. The United

[15] Lewis L. Lorwin, "Economic Nationalism and World Co-operation," *Pacific Affairs*, August-September, 1933, pp. 361-67.

States and the Soviet Union supply 80 per cent of twelve of their most important commodities; but both countries must import goods vital to their industrial efficiency, although relatively small in volume. Consider, for example, the effect upon the automobile industry of the United States if foreign supplies of rubber were shut off.

Nor can one rightly deduce that because foreign trade is only 8 or 10 per cent of a nation's total trade, it is only 8 or 10 per cent important. The human body requires the presence of vitamins which constitute a very small percentage of the food which it consumes each day, and in industry a particular product may have an importance far out of proportion to its percentage of the whole, in either amount or value.

Some industrial and agricultural units depend largely upon foreign markets; their foreign trade constitutes a high percentage of their total trade; if they lose it, they face depression and possible bankruptcy, their workers are rendered idle, their creditors cannot realize, and they in turn cannot buy goods; a serious decline of general purchasing power therefore results. These losses affect the domestic industries, and, like a stone thrown into a pool, a failure in foreign trade spreads in ever widening circles.

Nor has the attempted autarchy eased international tension. Some of the enthusiastic exponents of self-sufficiency soon began to complain of being have-nots and of being shut out from raw materials. Hitler, who had turned from international trade, after six years proclaimed that Germany must export or perish, and energetically preached *Lebensraum*. And, as forecast by more than one economist, the practice of autarchy has led to ever greater international rivalry and danger of war, because nations which could not obtain their necessary materials by peaceful trading have tried to get them by belligerent means. The American isolationist preached autarchy as a method of keeping out of war. The German autarchist spoke of it as an instrument of war! The former feared that international trade would lead to war; the latter feared that it would lead to weakness and military dependence!

The belief that mechanical and technical methods can be easily transferred from one country to another, and that such easy transference reduces "the need for and advantages of specialization," rests upon extremely doubtful foundations, as Ellsworth admirably demonstrates:

Since the benefits of international trade rest upon cost differences, the spread of technical knowledge will reduce the need for and the advan-

tages of specialisation only so far as it tends to equalise costs of production everywhere. Unless costs are equalised, the basis for specialisation and trade remains. Unless cost differences are reduced, the benefits of trade are as great as ever . . . . the mere spread of technical knowledge in itself proves nothing with respect to the advantages of specialisation . . . . Cost differences may be increased, altered little or not at all, or largely eliminated. Any a priori generalisation as to what will always happen is unwarranted.[16]

The same author goes on to remark that as technical advance spreads throughout the world, particular specialization on the new technical level takes place, and he quotes an important passage from Ohlin's *International Economic Reconstruction:*

Technical progress is still continuing. It is possible for any country to forge ahead of others, but only in a limited number of branches of industrial activity. Hence it is only by concentration and national specialization that technical progress can be maintained and the most up-to-date technique be utilized.

That is, new bases for specialization will be developed, and "gains from specialization will shift to different commodities." The claim made in Italy that modern science has destroyed the basis of the distinction between "natural" and "artificial" industries, important for international trade, is therefore not sound.[17]

In addition, one must include the increased costs of armaments as one of the items to be charged against autarchy. Whether it be cause or effect, the deliberate attempt to make oneself economically independent has resulted in much international friction, and has helped to intensify the armament race. Instead of buying and selling peacefully, nations threaten to fight in order to obtain markets and raw materials. Well may Secretary Hull say that there is no more disastrous illusion than the belief in isolation.

The facts bear out the accuracy of the theoretical analysis just given. A secret memorandum signed by important German industrial leaders in 1937 bears eloquent testimony to the failure of the attempt at autarchy.[18] It pointed out that Germany lacked 40 to 60 per cent of its necessary raw materials, which, in the absence of German exports to pay for imports, must be acquired by more extensive recourse to substitute goods—an enormous

[16] P. T. Ellsworth, *International Economics* (The Macmillan Company, New York, 1938), pp. 514–17. Quoted by permission.

[17] *Ibid.*, p. 519.

[18] R. W. Seton-Watson, *Britain and the Dictators* (The Macmillan Company, New York, 1938), pp. 279–83.

task. Even required foodstuffs were inadequate. Moreover, an "ordered budget" was impossible while people did not know the extent of military preparations; costs of state administration were very high, because of the new governmental agencies made necessary by the labor front, youth organizations, and control over imports and exports and over industry and labor. Exports at a loss and the uncertainty of the rate of interest added to the difficulties. Only exports could maintain the financial and currency stability; but large exports were not compatible with the 1936 Declaration of Autarchy. German policy had reached an impasse.

The recent experience of the world has shown that, in spite of theories to the contrary, international trade is not only desirable and advantageous but, under present conditions, absolutely indispensable. The German and Italian autarchists found it impossible to live within the area which they inhabited, and turned to forcible expansion (by incorporating Austria, part of Czechoslovakia, Abyssinia, Albania, etc., into their political systems) or to special methods of international trade which must now be examined. What had begun in autarchy developed into expansionism. Economic arguments became hopelessly entangled with noneconomic arguments, with a resultant conspicuous confusion of thought. International trade could not be dismissed; rejected in one form, it reappeared in another, less efficient indeed, and weighted under a load of official restrictions.

It is significant that in an able study on employment, wages, and international trade, the International Labor Office found that, although in a few cases the foreign trade movements of countries showed a substantial difference from the "movements of employment and real payrolls," in general changes in national employment and payrolls showed a striking power to change the volume of imports and exports. This is due to the fact that production is "the chief factor determining, through the medium of employment, the aggregate real income of industrial labour," that production is intimately affected by international movements of capital, gold, merchandise, and services; and that, in so far as trade restrictions affect international gold and short-term capital movements, they tend to accentuate "fluctuations in employment and the aggregate income of labour." The conclusion reached is that the benefits to society from the specialized production made possible by world markets still holds good despite all the theories to the contrary: "In a greater exchange of goods between countries lie prospects for improving working conditions and raising

the real income of workers in the mutual interests of all economic classes of society and all countries."[19]

METHODS DESIGNED TO RESTORE INTERNATIONAL TRADE, 1919–39

What were the major methods by which countries have attempted either to restore the prewar system of international trade and finance, or to offset the disadvantages which have attended their overemphatic adoption of economic nationalism? They may be classified as: (1) general world and special commodity conferences; (2) bilateral agreements, including quotas, compensations, and clearing agreements; (3) regional agreements; (4) imperial preference; (5) military imperialism; and (6) the United States Reciprocal Trade Agreements policy. Each has had certain theoretical and practical advantages and disadvantages.

Conferences.—It was natural, after the Peace Conference, and in view of the establishment of the League of Nations, to attempt to restore the prewar economic system by general measures of international co-operation.

Currencies.—The war had produced a tremendous dislocation of national currencies and a great excess of expenditure over income. The first international step toward reconstruction was the International Financial Conference held in Brussels, in 1920, under the auspices of the League of Nations. Thirty-nine governments were represented, and their economic experts brought together a great amount of material on economic and financial subjects.

The importance of this Conference cannot be overestimated. It set forth clearly the existing situation and the remedies which were necessary. It pointed out that there was still a large gap between the income and the expenditure of most states; inflation remained unchecked in several European countries, most of which imported more than they were exporting; exchanges which had been artificially pegged during the war had deteriorated when those controls were removed after 1919; the purchasing power of national currencies had diminished and the cost of living had gone up; international trade had been dislocated and diverted from normal channels.

The Conference stressed the limitation of financial remedies and urged that finance was only a part of the mechanism of economic life. It strongly emphasized the need of world peace, and

[19] International Labour Office, *Studies and Reports*, Series B, 1932, *Employment, Wages, and International Trade* (Geneva, 1940), p. 11.

warned that the continuance of a war atmosphere and of war preparations was fatal to the resumption of normal trade relations. It then made its specific financial recommendations:

1. It insisted upon balanced national budgets in order to put public finances on a sound basis. In order to balance these it was important drastically to reduce the expenditure on armaments and war preparations: "The conference desires to affirm with the utmost emphasis that the world cannot afford this expenditure."
2. It urged a policy of relentless taxation in order to keep expenditure within the limits of revenue.
3. It warned against the growth of inflation, and recommended a return to the gold standard.
4. It advised that a country which possessed no central bank of issue should establish such an institution even if it required some form of international control and the help of foreign capital.
5. It recommended an international organization to provide credit to countries which needed it in order to pay for their essential imports.
6. It suggested extending along international lines the existing system of export credit insurance for countries then suffering from lack of confidence because of uncertain political and social conditions.
7. A number of miscellaneous proposals were added, and the Conference unanimously affirmed that national action alone was not sufficient, that international co-operation was necessary, and that in this the League of Nations "must take the initiative." It concluded by pointing out that experts of thirty-nine countries were unanimous in their recommendations. "Whatever may be the future of our positive proposals, the Conference cannot have been in vain. It has been a gathering unequalled in the history of the world. It has not been a gathering of statesmen, working on the solutions of political difficulties in the interest of their particular countries; it has been a gathering of experts from all nations working for the solution of the common problem of the whole world."

Despite these recommendations, currency difficulties continued; but in 1923 stabilization began in certain nations. By 1925, it had made considerable headway, and by 1928, most countries were financially stable. The restored gold standard, it was hoped, would

maintain the stability of international exchanges and internal prices; but, as analyzed elsewhere, it had to meet conditions other than those which had prevailed before 1914. Also within the postwar nations the circulation of gold and convertibility of paper money almost disappeared. Gold became less important as a basis of domestic currency and more important as a reserve to balance "external liabilities" of short-term loans. Much gold had flowed to the United States and to France, and national currencies had been revalued at different levels. The English pound was overvalued; the French franc was undervalued and gained advantages in world trade.

Other causes, some monetary and some nonmonetary, combined to wreck the restored gold standard. High tariff barriers interfered with international payments. The United States, as a great creditor country, made it difficult for its debtors to repay because of its mounting tariff walls, its energetic export trade, and its subsidized merchant marine. Excessive interest rates made the economic structure more rigid. The French financial system was more inflexible than that of Britain, and capital flowed less freely into international channels. The growing boom from 1925 led many Americans to cease sending their capital abroad, and caused foreigners to invest in the United States. Countries which needed capital found it difficult to obtain it. Reparations and war debts made it difficult for Germany and other powers to adjust their payments. Political uncertainties and the failure to reach any disarmament agreement prevented the re-establishment of that confidence which is the indispensable foundation of commercial and economic stability. Hence the alarming development of short-term loans. Investors feared to lend money for long terms; consequently, millions of dollars were invested for 60-, 90-, or 120-day periods. Not a little of this money was devoted to capital expenditures, which meant that in case of a sudden break in confidence and a rush for funds it would be impossible for borrowers to find money at such short notice in order to repay. Political distrust and the lack of confidence played a decisive part in postwar economy; short-term capital movements (caused by political crises) became more important than factors based upon commodity prices and trade; and if the short-term reaction developed violently enough, a condition would ensue which long-run forces could not correct.

The attempt to restore the world's currency system by general international effort, as well as by national effort, succeeded for a

time, but ultimately broke down. As pointed out in the chapter on "Monetary Policy" another attempt was made at Bretton Woods after the second World War and changing economic theories had played their part, showing the need of a renewed concerted attack upon the world's financial problems.

Tariffs.—The second type of world conference had to do with tariffs. After the war many countries erected tariff duties to protect themselves against a flood of goods from nations which had depreciated their currency. The tariffs were designed also to act as a check to internal currency depreciation by cutting down imports. The unstable currency conditions were remedied in the middle 'twenties, but many tariff restrictions remained. We have seen that the newly established countries desired to guarantee what they hoped to be their security by encouraging industry and thereby diversifying their economic system; in so doing they built up an excess of productive capacity. They then turned to foreign markets and intensified competition in the international sphere. Other countries imposed high tariffs for budgetary reasons, hoping in this way to restore equilibrium—a dangerous method. The net result was that nations undertook economic activities for which they were not best suited, and produced substitute goods at high costs. The domestic consumer suffered in consequence and "an uneconomic stimulus to exports" created artificial competition in foreign markets, endangering the position of producers who by reason of natural advantages were most efficiently organized for lower-cost production.

In an effort to overcome these conditions, the World Economic Conference met in 1927. It made its recommendations in a clear and forceful manner. It urged nations immediately to remove or diminish tariff barriers which were gravely hampering trade and to begin with those tariffs "which have been imposed to counteract the effects of disturbances arising out of the War." States should move along three lines: individual action, bilateral action through the conclusion of suitable commercial treaties, and collective action. It urged the wide adoption of unconditional most-favored-nation treaties which should be interpreted in the widest and most liberal terms. The League Council should entrust the Economic Organization of the League to undertake the necessary discussion, consultation, and inquiries in order to work out the most efficient methods of tariff reduction. States should refer commercial disputes to arbitration and preferably to the Permanent Court of International Justice. They should not place in-

ternal duties upon foreign goods, nor should they impose export duties on raw materials; but, if such duties were unfortunately necessary, they should "never discriminate between different foreign destinations."

The next year the Economic Consultative Committee set up by the League of Nations made a report which expressed a degree of modified optimism. It noted that some states had reduced their customs duties " by autonomous action" and that during the year 1927–28 many bilateral commercial treaties had been concluded, the most important of which was the Franco-German treaty of August 1927. Others were the German-Jugoslavian, the German-Greek, the Austrian-Hungarian, and the Hungarian-Czechoslovakian treaties. All of them, it noted with satisfaction, were based upon the unconditional most-favored-nation clause. Little or no collective action had been taken and the committee urged that "a continuous effort should be made . . . . to reach a general agreement."[20]

An attempt was made at this time to mitigate the consequences of absolute prohibitions upon exports adopted after the war for emergency purposes In 1929 the Economic Organization of the League suggested to the Council that a conference be held to consider a preliminary draft of a convention for purposes of establishing a customs truce. The conference met in 1930; but meanwhile commodity prices had fallen catastrophically, and the representatives, dominated by fear and anxiety, preferred the immediate, short-term security which economic nationalism and emergency measures seemed to promise. Thus, instead of a truce for two or three years, the negotiators merely promised in March 1930 not to denounce any of their bilateral treaties before April 1, 1931. The second conference on concerted economic action, in November 1930, served only to keep discussion alive, and finally admitted practical failure.

Textiles.—The Tripartite Technical Conference held in Washington, D.C., April 2–17, 1937, was an attempt by governments, workers, and employers to find a solution for the difficulties which confronted the textile industry of the world. Twenty-seven countries were represented, and officials from the governing body of the International Labor Office also attended. The 209 delegates knew intimately the conditions of the textile industry and brought expert knowledge to bear upon the technical problems.

[20] League of Nations, *Economic Organization. Report of the Economic Consultative Committee* (c. 217, m. 73, 1928), p. 12.

They did not have to consider so wide a range of subjects as the delegates to the World Economic Conferences in 1927 and 1933. Nevertheless, the record of proceedings clearly shows that the Conference could not discuss the particular problems of the textile industry without at the same time considering the general economic and social problems of the day. Delegates realized that the improvement of the cotton and woollen industries depended upon expanding the purchasing power of the great mass of the people and upon raising their standards of living. If all the world enjoyed a per capita consumption of the population of Western Europe, "it would call for approximately forty million bales of cotton for piece goods alone instead of the present consumption of twenty-six million bales to cover all uses." The Conference disagreed as to whether the expansion of consumption should take place by increasing the purchasing power, by raising wages, or by reducing prices.

Discussion took place concerning the need of improving agricultural conditions because of the millions of people engaged in agriculture who had suffered from a disproportionate fall in prices. The Conference concluded that unreasonable trade barriers should be reduced, that minimum wage-fixing machinery and trade boards should be established where they do not at present exist, that conditions of fair competition both nationally and internationally should be established, that weekly rest and annual holidays with pay should be considered by all governments, that a minimum age should be fixed by law in all countries, and that the International Labor Office should attempt to "bring about a solution of the problem of regulation of labor conditions in the International Settlements in China."[21] These and other recommendations show that in addition to the special technical problems which confront the textile industry, there are certain more general factors which must be considered, and that it is impossible for any one section of economic life to rise beyond a certain limit above the general level of industry.

Customs formalities and nomenclature.—Efforts have been made to reduce barriers to international trade and commerce by investigating the results of undue hindrances imposed by customs departments, and the unnecessary complications which arise from

[21] International Labour Office, *Tripartite Technical Conference on the Textile Industry* (Washington, D.C., April 1937, *Record of Proceedings*, first part, Geneva, 1937), pp. 2–17. For the general significance of the Conference, see Lewis L. Lorwin, "The World Textile Conference," *World Affairs Pamphlet No. 19* (National Peace Conference, New York, 1937).

different classifications of goods. The administration of customs may cause serious loss and inconvenience to those engaged in international trade. Merchants may have to face arbitrary and unfair procedures imposed by customs officials. Sudden changes in tariff rates published after goods have already been shipped, excessive requirements in description of goods, the use of health regulations in such a way as to delay delivery and even involve the rejection of goods, arbitrary evaluation of goods with no right of appeal, excessive consular fees—these and other methods constitute some of the problems under the general heading of customs formalities.

As early as 1900 the matter had received attention at an International Congress, and again in 1913. The League of Nations Council, in September 1921, passed a resolution favoring action upon that part of Article 23 of the Covenant which related to the equitable treatment of commerce. At the 1922 Genoa Conference the matter was again considered. The Economic Committee of the League submitted a draft to the governments for consideration and suggestion. Two groups of officials from the customs administrations of seventeen countries then examined the draft and brought their technical knowledge to bear upon the problem. The International Chamber of Commerce considered the draft at its Rome Congress in March of 1923.

The Geneva Conference of 1923 which drew up and adopted a convention therefore had a large amount of data upon which to work. The President of the Conference summarized the aims of the Convention as: (1) Publicity—customs regulations should be published at the earliest possible moment for the convenience of traders and others interested. (2) Simplicity in customs rules and procedure—in order to reduce prohibitions, restrictions, and formalities to a minimum. (3) Expedition—customs rules and procedures should be imposed in such a manner as to cause as little delay as possible to the rapid passage of goods and passengers from one country to another. (4) Equality—formalities should not be used to impose arbitrary or discriminating burdens or restrictions. (5) Redress—states should provide adequate means to enable traders and others to appeal against alleged abuses at the hands of customs authorities.

The amount and number of customs do not constitute the only obstacles to international trade. What is called the problem of nomenclature has raised serious difficulties. As countries increase their industrialization, they tend to add to the number of

goods which are protected by tariffs; the growth of tariffs, in turn, means a greater "particularization" in describing the goods which appear on a tariff schedule. Now, different countries have different specifications, and this practice causes confusion to exporters and importers, who must exercise great care in comparing duties on goods differently specified. Not only that. Countries divide their tariffs "by entirely different systems," which "are classified according to entirely different standards." Some countries classify goods according to natural divisions, such as animal, vegetable, and mineral. Others use the different branches of production, such as agriculture, forestry, cattle-breeding, and the various industries. The French tariff combines these two methods. A glance at the table prepared for the International Economic Conference in 1927 which shows the classification adopted by five European countries—Belgium, Germany, France, Italy, and Czechoslovakia—gives some idea of the complexities involved.

Some countries still retain the method of classification by material, but they do not seem to have done this consistently. "Thus most tariffs have special sections for machines, irrespective of whether the machines are made of iron, steel, copper, wood, or leather. Similarly, the majority of tariffs have a special category for vehicles, and notably for motor-cars, these articles being made of iron, steel, aluminum, leather, wood, rubber, textiles, and glass."[22] Further, governments adopt different methods in determining the grade or quality of articles. Czechoslovakia divided cotton tissues into three classes—common, fine and very fine—and then "according to the number of the yarn," and also the number of threads in a given amount of cloth. German, Swiss, and French tariffs differ in their methods, and other countries introduce further complexities too technical to be treated here.

In textiles generally, and especially silks and woollens, these differences have placed great obstacles in the way of importers and exporters, and have been causes of many controversies over what should be the right customs rate to pay. For example, an importer, hoping to export a product to a foreign market, might find that an unexpected classification would increase the duty to such a degree that it would seriously impair his chances of a reasonable profit. When does a piece of furniture become an antique? What thickness of paper is necessary to make it into

[22] *Customs Nomenclature and Customs Classification* (League of Nations Economic and Financial Section, 1927), p. 12.

cardboard? These and hundreds of similar questions are involved in the problem of nomenclature.

Dr. Trendelenburg, a member of the Preparatory Committee for the International Economic Conference, in the document referred to, remarks that a greater unification of schedules is necessary for the following reasons: to enable progress in the sphere of trade statistics, to introduce greater certainty into the importing and exporting business, to permit a greater rationalization of production, and to facilitate commercial treaty negotiations. "It constantly happens that differences of opinion arise with regard to the duties imposed upon the goods by the other party owing to the fact that each of the parties is basing its arguments on a different type of goods and that a comparison between the respective tariff items is not possible because they only correspond in rare cases." It thus follows that one cannot easily compare the level of customs duties, for it is

> impossible to say, for instance, that one country has a duty of *X* per cent and another a duty of *Y* per cent on silk tissues, as long as the classification of silk items is different in each country. The unification of schedules is therefore also a necessary preliminary to the conclusion of any international treaties for the equalisation of duties. As long as the schedule is not uniform, any agreement regarding the equalisation of duties or their reduction to a particular level must give rise to interminable disputes as to whether the duties correspond to the limits agreed upon.[23]

The 1927 World Economic Conference urged the simplification of customs tariffs and the unification of tariff nomenclature. It recommended (1) that the League Council take steps toward this end; (2) that a beginning be made with these types of goods which most easily lend themselves to such treatment; (3) that governments be consulted at each stage of the preparation and that they in turn transmit the proposals to "the producing and commercial circles concerned"; (4) that by bilateral agreements, or a multilateral convention, governments should apply this common nomenclature; (5) that governments should not be bound to use all the subdivisions but should undertake in the headings they use to conform to the rules of classification and description internationally agreed upon; (6) that the League of Nations should propose further measures of publicity, information, friendly settlement, and arbitration. The economic committee

[23] *Customs Nomenclature and Customs Classification*, p. 19.

appointed an expert subcommittee which in the following year suggested a revised tariff classification.

Quarantine restrictions.—Arbitrary use of quarantine and other restrictions on agricultural and animal products have led to difficulties in international trade and have created much ill will and, on occasion, reprisals. Two or three examples will suffice. In 1897, France limited the importation of meat products and drew a protest from the United States. More recently, England, Germany, and Holland refused to admit potatoes and other vegetables, fruits or plants, "harvested in France within two hundred kilometers of a spot infested by doryphora. Germany even demanded that the product be accompanied by a certificate declaring that the products are uninfested and that they have been harvested more than 200 kilometers from a doryphora focus." This regulation was described by M. Agué-Laribé as "pure arbitrariness."[24] J. M. Jones wrote of the resentment felt in Spain owing to the refusal of the United States to admit Spanish grapes and oranges, ostensibly on the plea that the Mediterranean fruit fly might be introduced into this country, despite the safeguards afforded by refrigeration.[25] Canned fish was also excluded on grounds of health.[26]

In an excellent study,[27] Percy W. Bidwell discusses the problems raised by the imposition of sanitary restrictions, particularly when they conceal motives of economic protectionism. He describes many of the measures imposed by European powers against American meat products in the last part of the nineteenth century. The hardships resulting to the American meat industry led to the passage of laws in the United States which required that meat destined for export must be inspected by United States authorities. The inspection service became so efficient that the European governments accepted the American certificates, and several of them "removed their prohibitions on pork products with resulting increase in American exports."[28]

The United States began its sanitary control of imported

[24] Quoted from a report of the Commission of Inquiry into National Policy in *International Economic Relations* (University of Minnesota, 1934), p. 52.

[25] J. M. Jones, *Tariff Retaliation Repercussions of the Hawley-Smoot Bill* (University of Pennsylvania Press, 1934), pp. 37–39.

[26] *Ibid.*, p. 41.

[27] Percy W. Bidwell, *The Invisible Tariff* (Council on Foreign Relations, New York, 1940). Part two, *passim.*

[28] *Ibid.*, p. 170.

meats in 1903, and strengthened this measure of protection by the 1913 Tariff Act, which gave to the Secretary of Agriculture considerable power in issuing regulations. Similar federal control was enforced on imports of milk by the 1927 Act, which, together with state law requirements, helped to diminish the American market for Canadian milk. In order to prevent the spread of animal diseases, Congress passed a law in 1865 limiting the importation of cattle to animals which passed required health tests. As veterinary science developed, and international trade increased, redoubled efforts were made to prevent the entry of diseased animals. The measures culminated in the embargo provisions of the 1930 Tariff Act under which the Bureau of Animal Industry by administrative order prohibited imports of live cattle and meats from about sixty countries. "In effect, this order allows imports of live animals and meats only from North America, countries in the Caribbean area, a few countries in northern Europe, Japan and Australia."[29] Bidwell critizes the embargo, saying that it is unnecessary for biological purposes, and has been introduced primarily to protect the economic interests of the American livestock industry. The embargo has had serious effects upon United States–Argentine political relations. Argentina resents the use of sanitary devices to serve the purpose of economic protectionism, and alleges that not only does it lose markets within the United States but its meat trade with other countries is "endangered by the stigma laid upon it by the American embargo." It claims that a large area of the country, especially Patagonia, is free from the foot-and-mouth disease (a contention denied by American meat interests) and that justice requires a modification of the present situation.

Similar restrictive measures have been imposed upon the exports and imports of plants and plant products. The details are too numerous to mention here except to say that under the 1912 Act regulations have been imposed, especially Quarantine 37, which considerably limits the import of foreign plants; economic purposes, in the opinion of several experts, in addition to the ostensible purpose of preventing the spread of disease, have been responsible for these measures.

No one will deny that quarantines are necessary. Animal and plant diseases have cost governments many millions of dollars, and it is mere elementary wisdom to take adequate protective action. The officials in charge of plant and animal quarantine are

[29] Percy W. Bidwell, *The Invisible Tariff*, p. 212.

experts in entomology, biology, silviculture, and animal husbandry, and do their best to enforce the laws so as to "protect agriculture from its biological enemies."[80] Nevertheless economic considerations have entered into sanitary protection, and have given rise to much dissatisfaction through suspicion that, disguised as biological safeguards, certain restrictions are in reality animated by interested economic-pressure groups. Consequently a great field for international co-operation exists wherein countries may assist each other in preventing the spread of animal and plant diseases and at the same time eliminate the abuse of such measures.

In 1927 the World Economic Conference recommended that

> International agreements which establish sanitary supervision, if they provide the contracting countries with adequate guarantees, should, without infringing sovereign rights, remove from the regulations any suspicion of disguised protection and should add to the stability of trade relations, which is one of the conditions of successful production.

The Economic Organization of the League of Nations set up a body of experts to study the question, recommended bilateral treaties between countries for joint inspection by representatives of both contracting parties, and proposed that laws which unnecessarily hindered trade should be modified. It also prepared draft multilateral conventions, which found expression in the Convention of February 20, 1935. This instrument was signed by several countries and came into force in March 1938, after having been ratified by Belgium, Bulgaria, Iraq, Latvia, Rumania, and later by the Soviet Union.

Since 1934, when the Trade Agreements Act was passed, the United States has discussed the question with many countries, so as to "reduce the international friction which sanitary restrictions, foreign as well as American, have caused. A section is now uniformly inserted in the agreements providing for consideration of objections made by the party that feels injured, and for consultation by a joint technical committee in order to reduce trade disturbances to a minimum."[81] In 1935 the United States signed a sanitary convention with Argentina which would have considerably mitigated the difficulties arising from the blanket legisla-

[80] W. G. Campbell, "Quarantine Measures as Trade Barriers," *The Annals of the American Academy of Political and Social Science,* January 1929, p. 34.

[81] Bidwell, *op. cit.,* p 252.

tion of the 1930 Act. Article 3 provided that neither party might prohibit the import of animal or plant products from areas of the other country which the importing country found to be free from diseases or pests or exposure to such diseases or pests. Other articles provided for the exchange of technical information, for the right of mutual visits for study of diseases and pests, and also for the meeting of committees of technical experts so as to minimize injuries which might arise from the application of the sanitary provisions. Bidwell notes that the 1935 convention from many points of view "was a model of its kind."[32] It went beyond the 1935 League Convention, but, unfortunately, the opposition of agricultural and livestock interests within the United States was sufficient to prevent the Senate from ratifying the measure.

International co-operation in these matters will depend almost entirely upon the willingness of economic groups within nations to refrain from pushing their group interests at the expense of general welfare. In this respect as in many others, what at first sight seems to be a conflict between nations turns out on closer examination to be a conflict between group interests utilizing national machinery and projecting into the international sphere their own class rivalries. These class conflicts then take on a national cloak and masquerade as national interests pitted against one another. If these interests will not voluntarily restrain themselves it will then be necessary by study, publicity, and other forms of pressure to compel them to subordinate their aims and methods to the requirements of the more general welfare.

Bills of lading.—Ridgeway writes that it would be difficult "to exaggerate the confusion under which goods were carried by sea" before recent international co-operation resulted in a reform of the rules governing bills of lading. In 1920 the International Chamber of Commerce proposed action to simplify the rules; the Brussels Financial Conference in the same year endorsed the movement, and the I.C.C. urged the carriers themselves to give support to the adoption of a uniform bill of lading by promising to use it and no other. Considerable research was initiated. The International Law Association, the British Bankers' Association, and other bodies joined in the campaign. Their activity resulted in the drafting of a code under a committee headed by Sir Norman Hill, and the Hague rules which were adopted in 1921 at the International Law Association Conference were accepted by the

[32] Percy W. Bidwell, *The Invisible Tariff*, p. 218.

Brussels Diplomatic Conferences of 1922, 1923. Twenty-four nations signed a convention. Thirteen years later the United States ratified the instrument, following the lead of Great Britain and Australia in 1924, India in 1925, Belgium in 1928, and New Zealand in 1930. The United States' ratification was followed by those of France and Sweden, which "brought seventy per cent of the world's tonnage under the regulation of this international code of uniform law."[33]

Ridgeway writes as follows:

The successful fight for the establishment of this bill of lading "League of Nations" is one of the brightest pages of international cooperation. The bill of lading had become a symbol of uncertainty and distrust to all international traders. Every country had a different law on the obligations of this contract. Every steamship company had a different form of bill of lading, and sometimes as many as a dozen different forms. The forms themselves were so long and so ineffectual that no one would have read them—had they been readable. But reading was impossible, for they were printed in type so small as to require a magnifying glass. And in any case they were not worth the reading for the conditions of limitation and regulation were subject to overnight change.

The Hague rules have supplanted this chaos with a rule of law. The debt of all international traders to the I.C.C. for its leadership in this achievement was well stated by Sir Norman Hill in a letter to the chairman of the bill of lading committee, "You have saved from the scrap heap one of the few really big steps that have been taken since the War to promote and facilitate international trade. We are all—both producers and consumers—your debtor."[33a]

Most-favored-nation clause.—In the nineteenth century governments adopted the theory and practice of the "most-favored-nation" clause, by which country A in a commercial treaty with country B would undertake to give B the benefit of any lower duties which it might subsequently grant to country C. If a number of governments adopted this method, the result would be a general lowering of tariff barriers. Unfortunately, the clause which once served to liberate and extend foreign trade has now become an obstacle for the following reason: If some countries raise their tariffs to great heights and two other countries lower their duties one to the other, a third country which enjoyed the most-favored-nation clause may claim the benefit of the lower duties

[33] G. L. Ridgeway, *Merchants of Peace* (Columbia University Press, New York, 1938), p. 315.

[33a] *Ibid.*, p. 316.

without itself making any corresponding step. Thus it is possible for a move toward tariff reduction to be defeated by one or more governments which insist upon having their cake and eating it, too. They can maintain their high tariffs and yet claim the benefits of lower tariffs on the part of other countries. The Scandinavian countries were defeated in their attempt by Great Britain's insisting upon its privileges under the most-favored-nation clause. Can any way out of the difficulty be found? It is suggested that the problem is not insoluble. In earlier days, exceptions used to be inserted in the most-favored-nation-clause agreements. Certain countries were permitted to form blocs with special low duties among themselves—say, the Scandinavian countries, or Spain, Portugal, and Latin America. Great Britain and her Dominions claimed a similar preferential treatment, although this claim was criticized by other countries. It should be possible for contracting parties in signing new most-favored-nation treaties to prescribe that the benefits of most-favored-nation clauses shall accrue only to countries which do not increase their tariffs or which adopt certain other measures. Sir Arthur Salter suggested that countries which had tariffs as low as the lowest of the contracting parties should be given the advantage of the lower duties accruing under the most-favored-nation treatment. Measures along these lines would permit the retention of the most-favored-nation clause, together with modifications which would make it the instrument of liberalizing trade, instead of being as now a hindrance to the lowering of trade barriers.[84]

The International Chamber of Commerce has also considered the difficulties in the way of bilateral treaties created by the most-favored-nation clause and has recommended "courageous experimentation in an endeavor to lower tariffs," presumably meaning that states may well take the risk of having benefits extended to third parties who maintain high tariffs. It favored multilateral agreements with an "adhesion clause" by which they would be opened to signature of other countries, and with an equity clause which would extend the benefits of the most-favored-nation clause to states which fulfilled the conditions of the general treaty even without formally adhering to it. It realized that treaty obligations should be observed, and that third states would be justified in availing themselves of their rights if they so wished; but the I.C.C.

[84] Sir Arthur Salter, *The United States of Europe* (George Allen & Unwin, Ltd., London, 1933), pp. 92–102.

saw no reason why states should not propose modifications of the original most-favored-nation-clause relationship, or why third states should regard any such proposal as an unfriendly act. Finally, it should be possible for an international conference to draft an international convention binding the contracting parties to interpret the most-favored-nation clause of their bilateral treaties as not obstructing the application of multilateral agreements intended to bring down the general level of tariff barriers.

The Committee of Experts who drew up the program for the World Economic Conference in the form of a Draft Annotated Agenda urged extreme caution in permitting permanent exceptions to the principle of the most-favored-nation clause even with the end in view just described, in that such action might provoke "the formation of mutually opposed groups of countries, thus aggravating the very evils which it is sought to mitigate."[35] The agreements containing such exceptions must be kept open to the adhesion of all interested states, should be concluded "under the auspices of the League of Nations or of organizations dependent upon the League" and should not involve "new hindrances to international trade *vis-à-vis* countries having most-favored-nation rights."

Proposals were also made to grant temporary exceptions to the principle of a most-favored-nation clause. These came largely from southern and eastern Europe, which had suffered from the catastrophic fall of world prices. The Conference with a view to Concerted Economic Action in November 1930 gave qualified approval to the idea of granting a temporary exception for cereals and their derivatives and for quantities limited by quotas or other methods. The experts in 1933 agreed that the World Conference to be held at London should further examine the question, although certain members of the Commission believed that temporary exceptions would constitute a bad precedent and should not be granted.[36]

Bilateral and clearing agreements.—The impossibility of developing and maintaining absolute autarchy and the equal impossibility of restoring general world trade because of the disordered conditions due to chaotic finances, disturbed price levels, high tariff barriers, and unsettled political situations led to bilateral and clearing agreements, which were first used in Novem-

[35] J. W. Angell, *The Program for the World Economic Conference* (World Peace Foundation, Boston, 1933), pp. 69–72.

[36] For a general discussion of the most-favored-nation clause since 1931, see Margaret S. Gordon, *Barriers to World Trade* (The Macmillan Company, New York, 1941), pp. 370–82.

ber 1931 by Switzerland and Hungary. The fashion soon spread. Countries, instead of permitting the free exchange of goods by private importers and exporters who settled their balances by international payments negotiated through banks, now required that import and export transactions between the two countries should balance so as to avoid the necessity of any international transfer of funds. Importers now had to obtain prior licenses for all imports and had to pay into a special office the sums with which to pay for them. From this money the clearing office paid the exporters, and attempted as far as possible to equalize the amounts of goods imported and exported. It followed that some goods would be more essential than others, and a complicated system of priorities grew up. Frequently the central offices determined the amount of foreign exchange which might be available for certain classes of trade, how it should be divided between foreign countries, and to which companies or individuals it should be available. Special financial methods also developed. Instead of permitting foreign exchange to be bought and sold on the open market, countries developed what the League of Nations Economic Committee called compulsory conventional clearing systems, or artificial returns of exchange. Germany brought this method to a high point. Its blocked marks were depreciated currency "made available to anyone for certain authorized purposes, but without distinction as to the nationality of the user or the commodities for which used." In addition, compensation or aski marks were adopted which were balances which could be used only within Germany itself "for certain specified commodities."

Undoubtedly these expedients were, as the League Committee and the governments which reported to it recognized, a necessary evil, and grew up as a desperate attempt to restore international trade under highly unfavorable world conditions. They permitted the financially weak debtor countries to buy goods from each other with the minimum of financial complications in a financially disordered society. In a sense it was a re-emergence of the barter system in a badly disorganized commercial world. They permitted countries whose gold basis was threatened to engage in a certain amount of financial trade with less danger to their own currency systems. To this degree they helped to reduce the obstacles which had been placed in the way of foreign trade, and somewhat offset the adverse effects of quotas, high tariffs, embargoes, etc. Apologists for the scheme also claimed that it tended to reduce dumping and exchange dumping, and helped to pave the way to better politi-

cal relations. But to put the matter in this way was to show the weaknesses of the system and to reveal the appalling contradictions into which modern international trade had fallen.

Critics noted that bilateral trade and clearing agreements distorted trade, and forced it into artificial channels. Frequently, countries had to accept goods which they did not need in order to market their own produce abroad. Sometimes the creditor country drove a hard bargain and asked higher prices for its own goods than it could have obtained on the world market. The system could operate only as long as a country had an adverse balance of trade. To balance every bilateral agreement meant to lose advantages of multilateral trade, to lessen its volume. It served to divert trade from one part to another, and not to increase it. There was a serious danger that agricultural nations would increase their industrialism and industrial countries engage in agriculture beyond the margin of efficiency. The system led to regimentation and to great power in the hands of political officials. Bureaucracy reared its ominous head, and traders in an effort to evade the mass of rules were tempted to indulge in smuggling and other unlawful activities. The rapidity of turnover was lowered, and stocks piled up, leading to depreciation of prices. The bilateral trade agreements also tended to lower the quality of trade. Finally, in the struggle for raw materials, governments were tempted to try to take by force that which they could not obtain by ordinary peaceful trading. Whatever the merits of the bilateral system might have been as an emergency measure, they were of such limited value when compared with the efficiency which might have been re-established in a politically stable world that the best that could be said for them was, to repeat, that they were a necessary evil. But an emergency measure prolonged beyond a certain period tends to become a normal measure, and, to that degree, instead of assisting to bring back health, it may perpetuate the very evil which, theoretically, it was supposed to cure.

Moreover, the purposes behind much of the bilateral bargaining methods were primarily political rather than economic, and were much used by Germany especially in order to bring smaller powers within the German politico-economic orbit, and are therefore related to conquest economics, discussed in a later section.[37]

Regional agreements.—Some countries which could not be or did not desire to be self-sufficient made regional agreements with their neighboring countries in an attempt to stop the rising

[37] See J. B. Condliffe, *The Reconstruction of World Trade*, pp. 288–94.

tide of tariffs and even to reduce their level. In December 1930, Belgium, Luxemburg, the Netherlands, Norway, Sweden, and Denmark undertook not to increase their tariff duties without giving notice to each other. If after such notice a party felt that its interests were in any way prejudiced, it might propose modifications within ten days. If the first party was unable to agree to the modifications proposed, it could put its original program into effect within one month. This agreement, known as the Oslo Convention, entered into effect on February 7, 1932, and was to last for six months, with the right of denunciation by any party after a further six months.

In July 1932, Belgium, Luxemburg, and the Netherlands concluded the Ouchy Convention,[38] under which each agreed not to increase its customs duties beyond the level then prevailing nor to increase duties to third states unless the latter by heightening their tariffs should cause grave difficulties to the signatories; and, what was particularly important, the three governments agreed immediately to reduce duties 10 per cent, to reduce them 20 per cent after one year, 30 per cent after two years, and 50 per cent by the end of the fourth year, and to give each other unconditional most-favored-nation treatment. Unfortunately this laudable attempt was wrecked by Great Britain, which demanded the most-favored-nation treatment which it enjoyed by reason of prior treaties with one or the other of the signatories. Britain's action was criticized by many economists as a regrettable insistence upon a legal right, without a corresponding willingness to enter into the spirit and practice of the agreement.

In 1932 the Stresa Conference met to consider whether a regional agreement might not help to remedy the deplorable wheat situation in southeastern Europe. An interesting proposal was made resembling somewhat the processing tax adopted in the United States. The manufacturing powers of western Europe would pay a price above the market level for wheat from southeastern Europe; the extra income would serve to rehabilitate the farmers in that area, who then would use their heightened purchasing power to buy products from the European manufacturing countries. This step failed because of the opposition of the non-European countries—Canada and Australia and Argentina had no desire to see Great Britain pay higher prices for European wheat than for their own.

[38] A. J. Toynbee, *Survey of International Affairs, 1932* (Oxford University Press, 1933), pp. 38–40.

By the Oslo Agreement signed at The Hague in May 1937,[89] Belgium, Luxemburg, the Netherlands and Netherlands India, Norway, Sweden, Finland, and Denmark agreed not to raise their tariffs. Belgium, Luxemburg, and the Netherlands, which had quotas, undertook to remove them from certain commodities; and the other signatories to the agreement promised not to adopt quotas. Unfavorable conditions prevented the renewal of the agreement after its expiration in July 1938.[40]

Regional agreements have an important but limited significance, depending largely upon the size and economic resources of the area in question. A small area will not radically change the course of world affairs, and if it is only partially a self-sustaining unit it will be much influenced by forces outside its boundaries. It cannot rise very far above the level of world conditions, nor can it hope to become an island of economic sanity in a sea of world trouble. The relative simplicity of regional agreements, owing to the limited area to which they apply, is offset by the interdependence of the intra- and extra-regional factors.

Imperial preference.—Countries which possess colonies have attempted to develop a system of imperial economics and, by preferential tariffs and quotas, to widen their economy beyond a purely national area to include their imperial possessions and dominions. This method is a revival of mercantilist economics and had already been preached and, to some extent, practiced before the World War of 1914–1918. The great world depression, which began in 1931, led to a renewed development of the empire policies, as illustrated by Great Britain and France.

Great Britain sought relief from the ravages of the economic nationalisms which swept the world and wiped out important markets by attempting to build up a compensating system of empire trade and financial agreements. Before 1914, Britain was "the most international of all countries," the "most completely merged . . . . in the world's economy," and the "most dependent upon overseas trade." The World War of 1914–1918 disrupted its markets, and for five years British merchants lost the important day-to-day contact with their customers. After 1919 the United States, Japan, and Germany became ever more serious competitors, and

[89] League of Nations, *World Economic Survey, 1936–1937* (Geneva, 1937), p. 148.

[40] League of Nations, *World Economic Survey, 1937–1938* (Geneva, 1938), p. 169. See also H. J. Procopé, *Economic Co-operation between the Northern Countries and the Joint Delegations for Its Promotion,* and H. Koht, "The Oslo Convention and After," *Le Nord,* 1938, Nos. 1–2.

tariff barriers for economic and political purposes arose throughout the world. The strain upon British economy became marked: the great woollen, cotton, coal, metal, and shipbuilding industries which had enabled Britain to rise to supremacy now faced a major crisis; and it was more than doubtful whether new industries, such as the automobile, the radio, artificial silk, and electrical appliances, would make up for losses sustained in the older fields of economic effort.

It was natural for Great Britain to attempt to restore the world economic conditions which had been favorable to them in prewar days. In 1925, it returned to the gold standard, but unfortunately at a level which economists now generally agree was too high and which operated to penalize the British exporter. It supported measures to free the channels of world trade, and hoped that the 1927 World Economic Conference would assist toward this end by a comprehensive reduction of tariff duties. Internally it adopted a policy of rationalization. The railroads, though handed back to private enterprise in 1921, were combined into four large units instead of remaining in the 119 prewar units. In 1930 the Coal Mines Act set up machinery to regulate the production and sale of coal, to fix quotas, and prepare reorganization schemes. In 1926 a Conservative Government established the central electricity board, which proceeded to construct high-tension distributing lines all over the country. An industrial transference board somewhat unsuccessfully attempted to shift labor from the depressed areas.

These measures did not suffice to restore prosperity; and already world conditions were suggesting to many Britishers that reliance upon restoration of the prewar type of international trade and internal rationalization was not enough, and demands for tariffs against foreign goods and for imperial preference became more outspoken. During the war, the government had imposed the 1915 McKenna duties on automobiles and accessories, films, watches, clocks, and musical instruments. The Labor Government repealed them in 1924; but the Conservative Government restored them in 1925, and gave them a definitely protective character. Imperial preference was given to Dominions by means of a rebate of one-sixth on empire goods. However, the step was not very important. J. H. Richardson points out that the McKenna duties applied to only 2.3 per cent of British imports and thus, although they mark a theoretical departure from free trade, their practical significance was not great. The Dyestuffs Act of 1920 and the Safeguarding of Industries Act of 1921 represented a

second step toward protection. The latter act was designed to restrict imports of certain military necessities from abroad, and also to stimulate production of these goods in Great Britain. In 1925 the Key Industries Act was extended so as to apply to unemployment arising from foreign competition: a firm could complain that certain imports were causing unemployment and ask for tariff assistance. These acts also did not cut very deep; by 1930 less than one-fifth of the imports into Britain paid duties. As Richardson puts it, the stream of free trade had been only slightly contaminated.

The world economic crisis of 1931 caused a profound change in British policy. The Abnormal Importations Act (1931) added duties which were not to exceed 100 per cent on many classes of manufactured goods. Because there was no definition of "abnormal," the Board of Trade had considerable liberty in applying the Act. The Horticultural Products Act of 1931 provided for duties not to exceed 100 per cent on many agricultural products. The two acts were of an emergency nature; but in 1932 the government introduced the Import Duties Act, which imposed the first permanent tariff. It provided for a 10 per cent tariff except for goods already under duty or on the free list. It set up an independent Imports Advisory Committee with power to recommend increased duties or the removal of articles from the free list, and it gave the Treasury power to raise duties to 100 per cent on imports from countries which discriminated against British goods and to lower or remove them from countries with which reciprocal trade agreements were made.

A movement arose to protect the farmer. In 1925 an act providing for subsidy on sugar beets benefited 40,000 farmers but cost the Exchequer about $200,000,000 in ten years. A Wheat Act (1932) provided for deficiency payments to wheat growers, and under its stimulus the acreage in wheat rose by one-third The government applied a whole set of import quotas to chilled beef, frozen mutton and lamb, bacon and ham, condensed milk and milk powder, cream, potatoes, eggs, and oats. These quotas were applied to non-empire countries and also by agreement to some of the Dominions.

The new protective measures applied also to capital investments. In prewar days British capital had been loaned abroad with little or no governmental interference. In the postwar period the government took a more active part in influencing the investment of British funds abroad, especially encouraging the placement of

funds within the Empire and on occasion during the first decade discouraging certain foreign loans. After the 1931 crisis the government appealed to the capital market to refrain from making new issues until the great War Loan Conversion Operation had been completed. For a time it practically prohibited foreign lending; but after July 1934 it relaxed the restrictions and permitted loans (*a*) to countries within the Sterling Bloc which required funds to minimize exchange fluctuations, (*b*) to countries which undertook to use the loans to benefit British industry, and (*c*) especially to countries within the Empire.

In 1932 an Imperial Economic Conference was held at Ottawa to see if it would be possible within the British Empire to lower tariff barriers and stimulate the flow of trade. Many imperialists had talked of a self-sustaining exclusive empire which could dispense with the rest of the world; but the great majority of serious economists knew that Britain, which exported 60 per cent of its goods to foreign lands and had almost one-half of its capital investments placed outside the Empire, could never make such revolutionary adjustments. The question was whether it would be possible to come to agreements to encourage intra-empire trade without diminishing the foreign trade of Britain and the rest of the Empire.

A full examination of the outcome of the imperial preference policy lies outside the scope of this volume. Several writers have made analyses, but it will be sufficient for our purpose to summarize the careful statement of Frederic Benham, of the University of London, who concludes that "it can hardly be claimed that the tariff played a major part in the British recovery."[41] Indeed, it adversely affected the export trades, and most of the employment increase took place in the nonprotected occupations. The great factor in recovery was the building boom, and "clearly its connection with protection was extremely slight." The issue of cheap money played a modest part; technical progress and the low prices of imported foodstuffs served to increase purchasing power in other fields; the rearmament program played a prominent part, and it too owed little to protection. On the other hand, the continued high level of unemployment was largely due to the depression in the exporting industries, and the fall in the value of the English pound adversely affected the same important branch of economic life.

[41] Frederic Benham, *Great Britain under Protection* (The Macmillan Company, New York, 1941), p. 220. Quoted by permission.

Benham's conclusion is as follows:

The prosperity of Great Britain depends on her international trade. In the long run she is bound to lose by a greater movement towards greater self-sufficiency on the part of other countries. Yet her own economic policy during recent years has inevitably fostered such a movement . . . .

With the signature of the Anglo-American trade treaty in November 1938 it seemed possible that Great Britain was preparing to adopt a more liberal trade policy, and was coming to realize that her true interests lay in a general revival of world trade. But the outbreak of war temporarily put an end to all such hopes.[42]

Conquest economics, or military imperialism.—Countries which found national autarchy inadequate and which had no empire which they could organize into a larger economic unit were tempted to draw the sword in order to carve out such an empire. World trade had broken down; markets abroad were being shut out through mounting tariffs, currency restrictions, and other obstacles. What was more natural than for Japan to try to create an empire in Asia so as to plan a more rational economic order satisfactory for an allegedly overcrowded country? Hitler and his followers, after the initial enthusiasm for national autarchy had evaporated in the face of economic realities, talked of *Lebensraum* and set out to dominate a large part, and perhaps the whole, of Europe. Germany must break through the "encirclement policy" of Britain and France, because in a hundred years "there will be 250 million Germans living on this continent." Italy also defended its invasions of Ethiopia and Albania on similar economic grounds, and Japan talked of a new order in Asia. This military imperialism has two aspects: (*a*) colonial, in the narrower sense of the term; and (*b*) conquest of other sovereign countries. Each must be discussed separately.

Colonies.—The same arguments for colonies as were used fifty to sixty years ago are being heard today—that nations need colonies as population outlets, as sources of raw materials, as markets for trade, and to retain as political subjects those emigrants who, finding conditions of life at home economically unfavorable, seek their fortunes abroad. Between 1870 and 1914 the imperialist powers acquired great areas of land in non-European countries—France, four million square miles; England, three and a quarter million; Germany, one million; Japan, one hundred and twenty-two thousand; the United States, over seven hundred thousand;

[42] *Ibid.*, p. 249.

and Belgium, nine hundred thousand square miles; and Russia secured a large territory and vast spheres of influence in Asia.

We are led to inquire if colonies possess so great a value as is popularly supposed, if their economic significance is correctly appreciated, and if there is not a great deal of false sentiment attached to them. Most students agree that colonies have afforded little or no outlets for surplus population. Peffer in an article, "The Fallacy of Conquest," points out that in 1914 more Italians lived in New York than in all the Italian colonies which were conquered by war; there were more Germans in ten blocks of Manhattan Island than in the whole of the German Colonial Empire in Africa; and Japan, after having lost a quarter of a million men to obtain South Manchuria in 1904–1905, took twenty-five years to settle 200,000 people there! Grover Clark[43] notes that over a period of fifty years German emigration to the whole of Africa did not amount to 300,000 people, while the colonial struggles of modern times, costly and provocative of deep-seated jealousies and antagonisms, gave the European powers territories to which less than 1.5 per cent of the permanent emigrants from Europe went. Sweden, with fewer colonies, and with a population less than one-tenth that of Japan, had a larger emigration than Japan, whose net emigration to foreign countries and colonies in the years 1925–1933 amounted to 35,000, whereas her population during this time increased over seven and three-quarter millions.

If colonies are not important as reservoirs for surplus population, how essential are they as sources of raw materials and fuels? Culbertson classifies such materials as follows: energy resources, such as coal, oil, and water power; reproducible raw materials, such as silk, cotton, jute, and nitrates; nonreproducible but partially recoverable raw materials, such as iron, which can be recovered in the form of scrap; and nonreproducible and nonrecoverable raw materials which need conservation, such as magnesium used for cement, graphite for lubricants and paint, fluor spar for use as a flux in steel manufacture, and asbestos and mica as insulators. The Royal Institute of International Affairs classifies essential industrial materials under the headings of metals, nonmetals, rubber, textile fibers, and vegetable oils. Whichever classification is adopted, the United States stands out pre-eminently as

[43] Grover Clark, *The Balance Sheets of Imperialism: Facts and Figures on Colonies* (Columbia University Press, New York, 1936). The evidence presented to the International Studies Conference in 1937 fully bears out Clark's view; see F. G. Wright, *Population and Peace,* chapters vii and viii.

the producer of many of these necessary things; the British Empire as a whole is fortunately situated, and the U.S.S.R. takes third place; but Germany, Japan, and Italy need to import a great amount of raw materials. The United States, the British Empire, and the Soviet Union would still remain indispensable to the three powers just mentioned as sources of raw materials whatever the changes in ownership of colonial possessions. Without supplies from the major nations, the so-called "have-nots" might enjoy an emotional thrill in adding to their empires; they would obtain little economic comfort.

The fact is that the ex-German colonies in Africa are quite poor in resources, and it is misleading to say that Germany's economic situation was in any substantial measure due to the loss of her colonies,[44] or that their return would have made any appreciable difference to Germany's economic welfare. As one English author puts it, it is a "cruel fraud" to persuade people that any effective economic solution can come from colonial redistribution.

A question arises, however, whether countries like Germany and Italy did not have to pay higher prices because they had to buy from other countries which might impose special duties. We have seen that some nations have imposed duties upon colonial products in recent years. Most of the raw materials required for industry, however, come from areas outside of what we normally regard as colonies; and, although there are restrictions such as we have noted above, they appear not to be serious enough to justify undue emphasis on the question. In general, noncolonial nations do not particularly suffer from difficulties of getting raw materials at average market prices. The helium which Germany had been vainly trying to obtain came not from colonies; it was produced in the United States. If it is for purposes of supplying the home countries with essential materials in wartime that colonies are demanded, the answer is that such colonies would be worthless during hostilities unless the nation had control of the seas.

We have also seen that nations desire to invest capital abroad[45]

[44] However, H. D. Henderson writes that, although the colonies of all powers produce only 3 per cent of the total of the world's commercially important raw materials, they produce over one-half the tin, one-quarter the copper, and practically all the rubber. See "Colonies and Raw Materials," *Pamphlets on World Affairs*, No. 7 (Farrar & Rinehart, New York, 1939), pp. 9–10

[45] H. D. Henderson notes that, although prewar British investors invested money freely in all parts of the world, the investments within the Empire are, in the present disordered state of international relations, worth more than foreign securities.

and to make profit from the development of hitherto unexploited areas. How far have nations the opportunity to invest in colonial territories belonging to other nations? In the class A and class B mandated territories, the League Covenant, and in the Congo Basin, the General Acts of Berlin 1885 and Brussels 1890, revised by the Convention of St. Germain in September 1919, provided for equality of commercial investment. In British and Dutch colonies foreign capital may be freely invested, except for the mining of petroleum ("in British Honduras, Brunei, the Cayman Islands, Fiji, Nigeria, Nyas Island, and Trinidad, oil leases or licences are only granted to British subjects,"[46] although British colonies are more naturally disposed to grant preference to British nationals); a similar attitude toward the mother country doubtless exists with the French, Dutch, and Belgian empires. The Royal Institute of International Affairs points out that France imposes many restrictions on the investment of foreign capital in French colonies unless French nationals retain two-thirds of the control of the company. Portugal, on the other hand, appears to have maintained a relatively open door to investors. Japan did not encourage foreign investments within its empire. The Spanish and Italian colonies are not important as outlets for placing capital abroad. From these facts it seems that the "have not" countries do not suffer a serious economic handicap; not sufficient, indeed, to warrant "much ado about little."

In addition to these factors, which appear to have small economic significance, there remains the question of colonies as markets. Grover Clark notes that between 1894 and 1932 the Italian trade with Italian colonies amounted to less than one one-hundredth of Italy's total trade, and that twenty years of colonial administration cost a greater sum than the whole amount realized by her colonial trade in a period of forty years. Both Germany and Japan have paid heavily for their colonial adventures, for in each case the administrative costs have outweighed the economic benefits. Indeed, it is arguable that in all colonial expansion the taxpayer has suffered more than the merchant has profited.[47] Nevertheless, colonies may have a certain negative value. If all possessions were open to the trade of all nations, ownership would

[46] Royal Institute of International Affairs, *Raw Materials and Colonies* (London, 1936), p. 47.

[47] Norman Angell's *The Great Illusion,* Conrad Gill's *National Power and National Prosperity,* and Leonard Woolf's *Empire and Commerce in Africa* stressed this point.

have no importance.[48] But if nations are shut out from the markets of colonies belonging to others, they may have a real grievance. If they are told that they can buy raw materials almost anywhere in the world at world prices, they reply that, because of tariff barriers, they cannot sell their products and that therefore they suffer from lack of foreign exchange with which to buy the materials which they need. Thus the causes of the world economic collapse were primarily due to tariff restrictions and other obstacles to trade between the major countries. Consequently the answer to the economic problem is to be sought not primarily in the direction of colonial expansion but by a liberation of international trade. The solution of population problems depends not on the size of a nation's empire, but upon its natural resources, its economic efficiency, and its opportunities for the exchange of goods.

The evidence thus adduced supports the general conclusions of Etienne Dennery in his *Le Problème des matières premières* (1939),[49] that, although an inequality in the distribution of raw materials does exist, the question has been considerably oversimplified, and perhaps falsified, by the division of countries into "haves" and "have-nots." Dennery suggests: (1) that all countries suffer from insufficiency of raw materials; (2) that there are degrees of richness, poverty, and resources; (3) that one must consider whether potential or actual needs are to be considered; (4) that some raw materials are key products, and their importance depends upon their function rather than their quantity; (5) that some raw materials are threatened with exhaustion because they are not replaceable, while others can be replaced; (6) that changes occur in the relative importance of raw materials as a result of invasions by chemists and engineers (Switzerland's sources of power have successively been wood, coal, and water power); (7) that there is a growing decentralization of the production and the consumption of raw materials; (8) that all countries, even the so-called "satisfied ones," have to import materials; (9) that the great raw-material-producing countries have had their economic crises too (Cuba, Brazil, Australia and New Zealand, Canada, etc.), thus suggesting that raw materials constitute

[48] ". . . the real advantages of territorial possessions are negative rather than positive. They are a safeguard against certain ills rather than a means of positive advancement." L. C. Robbins, "The Economics of Territorial Sovereignty," in C. R. W. Manning (ed.), *Peaceful Change* (The Macmillan Company, New York, 1936), p. 54.

[49] Institut International de Coopération Intellectuelle, Société des Nations (Paris, 1939).

only one factor in the total economic situation; (10) that a nation may be an industrial country without possessing raw materials,[50] and hence the idea of raw material "needs" is highly subjective in character; and (11) that colonies play only a minor role as a source of "matières premières."

In truth, the question of colonies seldom remains within the field of economic analysis. It quickly moves into the realm of politics and national emotion. A former British Secretary for Colonies, Mr. Amery, in opposing the return of colonies of Germany, argued that Great Britain should retain them, otherwise Germany would be able to menace the security of the British Empire. Fifty years ago English statesmen were apprehensive of German colonization on the ground that the security of their empire would be threatened—presumably adequate security of the Empire would only be realized when all colonies were under the Union Jack! As long as colonies possess a strategic value, nations will resist surrendering them to potential rivals and other nations will strive to obtain them. Any solution of the colonial problem, any redistribution of possessions, and possibility of liberalizing colonial economic policy, must insure against the possibility of their being used to strengthen a nation's military, naval, or air power. And such a solution can come only under a genuine system of world security which would deprive colonies of any military significance.[51]

The new conquest economics.—Under Hitler a new kind of military economics was devised by which the conquered peoples were to play a role subordinate to that of the victorious German race. The ultimate goal was to reduce the conquered nations to an agrarian status in order (*a*) to weaken them militarily, since agrarian economies cannot be productive of efficient war machines, and (*b*) to have them serve as sources of foodstuffs and raw materials for German and Italian factories and as markets for the manufactures of these powers. Germany early began this policy in eastern Europe and the Balkans, of

systematically reducing industrial production, by closing down plants which compete with their own, sending the workers thus thrown out of employment to the Reich; and excluding the Jews who, owing to

[50] "La Suisse a pourtant la réputation d'un pays 'satisfait' et prospère. Son exemple souligne la multitude des attitudes qui existent à l'égard des matières premières et la variété des solutions qui ont pu être apportées en fait au problème du ravitaillement en matières premières."

[51] For further discussion of colonies see chapter xiv, "Colonial Powers and Dependent Peoples."

their previous exclusion from agricultural pursuits, had played a dominant part in the commercial and the financial life of relatively backward agrarian countries.[52]

Germany pursued the same policy in western Europe, and followers of Marshal Pétain in France seemed content to accept a new agrarian destiny for France, contending that "the inherent virtues of a nation reside in its peasantry, and that only by returning to the land will industrial countries shake off the intellectual and spiritual vices allegedly produced by urban existence."[53]

Munk vividly portrays the German policy of subjecting Czechoslovakia, Poland, and France to an intense program of forced labor. He estimates that at least one and one-half million persons have been carried off to Germany for labor purposes, "subjected to military discipline, cut off from their families and homes [one of the Nazi methods of reducing the number of future Czechs, Poles, and Frenchmen], and at the same time cut off from every normal social contact, even with German co-workers. They are the new caste of untouchables, the 'underman' according to German theory."[54]

In order to destroy the Czechoslovakian economy, Germany gradually replaced leading businessmen with Nazi agents in government offices, in the National Bank, and in other important businesses such as communication and transportation. The new officials then instituted a strict control over deposits and current accounts, and forced the Czechs to sell their controlling interests in heavy industries to German banks, thereby turning them into sources of armament supply for Hitler's military machine. Germany then took control over the consumption industries by expropriating the Jews and replacing them with agents of the German government. Many Czechs had to sell out at ridiculously low prices, and received payment in a blocked account with a German bank. By clever methods Germany introduced its currency into all the conquered territories—Poland, Denmark, Belgium, Holland, Luxemburg, and France—in such a way as to tie the native currencies to the German mark so that they "can be manipulated freely from Berlin,"[55] and finally incorporated the Czech area into the Customs Territory of the Reich.

[52] Vera Micheles Dean, "Europe under Nazi Rule," *Foreign Policy Reports*, October 15, 1940, p. 180.

[53] *Ibid.*

[54] Frank Munk, *The Economics of Force* (George W. Stewart, New York, 1940), p. 115.

[55] Munk, *op. cit.*, p. 172. And see especially chapter xvii, "Total Conquest."

In this way the Nazi government hoped to make war pay, not necessarily in economic terms alone but also in terms of prestige, leadership, and Continental dominance. Because of this fact, it was an error to interpret Nazi economic expansion in economic terms alone. Its expansion was part of a philosophy of life which includes power as the central element. It marked, if not the end of economic man (to use Drucker's phrase), his attempted subordination, or at least his incorporation into a society in which leadership, power, race, blood, and soil were merged in a political faith which constituted the most serious challenge to the economics of welfare and the assumptions on which democracy is built which the last hundred years has witnessed.

Japan also followed in the path of military economic conquest, or what Edgar Snow calls "military fascist imperialism." Snow contrasts this type of imperialism with the older laissez-faire kind, indicating that in prewar days economic expansion developed from a country's surplus capital and surplus commodities, whereas, modern Japan's imperialism was dominated by the conception of war and empire, by investments on the part of a country which only recently had become a creditor nation, and which had established heavy industry to only a moderate degree.

After taking Manchuria, Japan in effect confiscated "all mines and other resources, developed communications, railways, and industries." It "grabbed an enormously valuable accumulation of resources and raw materials, plus cheap labor, and needed only operating capital to make it genuinely productive."[56] The army, by taking control of capital securities, dictated the nature of investment, and seized "as much existing wealth as possible."

Japanese military imperialism seems to need to capitalize itself ever more speedily by skipping the intermediary stage of massing profits through trade and uses the simple expedient of expropriating the investment and accumulation of others. In China it aims to seize capital not only in money but by total expropriation of all existing wealth, resources, and means of production, including a monopoly of labor power, which can be harnessed to the military machine while the same process is completed at home. Japan must, in the end, eliminate all capital holders in China, first the Chinese, and finally the foreigners. No attempt to balance the books of Japanese imperialism can be realistic if it ignores this basic aim of expropriation of capital.[57]

[56] Edgar Snow, *The Battle for Asia* (Random House, New York, 1941), p. 375.

[57] *Ibid.*, pp. 376–77.

Japan seized the holdings of the Chinese government and has expropriated many millions of dollars' work of foreign-owned property. It took capital from the Chinese merchants and moneyed classes. It destroyed China's universities and colleges in an attempt to wipe out China's intellectual and technical leadership. It attempted to eliminate China's currency and thereby obtain control over Chinese economic life.[58] It drove Chinese from office and replaced them by subservient officials. It encouraged the smuggling of opium and other drugs as well as the smuggling of commodities used in normal life, thereby hoping to disrupt Chinese government and Chinese morale.[59] In commenting upon the policy of Japan, Snow warns that we may be in error if we consider it in terms of our Western economic values:

> The thing about Japanese economy is that since the Manchurian occupation it has been constantly changing and enlarging and reconstructed within a framework in which the military becomes the main consumer, while the people "consume" only in proportion to their relationship with the military purposes. This economy does not envisage the restoration of a peaceful society in our lifetime. It is based frankly and *inevitably* upon continuous expansion and continuous wars as the solution to all its own contradictions.[60]

George E. Taylor correctly describes the 1937 war as an attempt by Japan to control China "on a frankly monopolistic basis,"[61] with new techniques for accomplishing its purpose. But here as in the case of Germany we have moved from the nineteenth-century economic imperialism to a new set of values in which the economic factors play only a part and, in the opinion of many able scholars, a minor part in determining policy.

The bearing of all this upon a better organization of modern world society is obvious.

United States Reciprocal Trade Agreements policy.—The United States policy of Reciprocal Trade Agreements represents another method of trying to reverse the tendency to economic nationalism. After the failure of the 1933 World Economic Con-

[58] Guenther Stein, "The Yen and the Sword," *Pacific Affairs*, March 1939; also D. K. Lieu, "The Sino-Japanese Currency War," *Pacific Affairs*, December 1939.

[59] H. Hanson, "Smuggler, Soldier, and Diplomat," *Pacific Affairs*, December 1936.

[60] Snow, *op. cit.*, p. 378.

[61] George E. Taylor, *The Struggle for North China* (Institute of Pacific Relations, New York, 1940), p. 16.

ference, President Roosevelt's administration leaned in the direction of national self-containedness. Perhaps the word "self-containedness" is too strong, "intranationalism" may be more accurate. The President in his message to the Conference on July 3, 1933, wrote: "The sound internal economic system of a nation is a greater factor in its well-being than the price of its currency in changing terms of the currencies of other nations."

In 1934 the pendulum began to swing the other way. In January Mr. Roosevelt announced to Congress that "all of us" are seeking the restoration of foreign commerce in ways which would preclude the building of large favorable trade balances of any one nation. Already in November 1933, Secretary Henry Wallace had warned that, unless there was a fundamental tariff revision to permit imports, the United States must resign itself to a permanently reduced output. Criticisms of "The Open Door at Home" appeared. They were to the effect that (1) the financial and tariff policies of a so-called self-contained America would hurt other countries dependent upon United States trade and would force them into a painful economic readjustment and provoke their ill will; (2) no "feasible" compression of American economic interests could possibly give economic isolation; (3) self-containedness in Russia, Germany, and Bulgaria had not smoothed the foreign relations of those countries or made for peace; (4) although international trade is "often disturbing and irritating," it has conferred many benefits upon the world and a large part of it is carried on with comparatively little friction; the essential problem is to "minimize the irritating factors" and expand rather than restrict trade; (5) pressure of sectional interests upon a government would not cease in case of self-containedness; (6) although international trade produces friction, an extraordinarily large part of it operates with comparative ease and smoothness; and (7) in the words of Herbert Feis, who criticized Beard's views,

> there are compelling reasons to believe that in the actual economic conditions of today, the pursuit of the policy which he advocates would not produce a newer and better type of nationalism, but one given over even more to excitement and hostility, one more easily led in a direction contrary to his own intentions.[62]

Writers pointed out that the tariff had burdened the American consumer to the extent of several hundred million dollars on twenty-one products, that the South had suffered from high tariffs,

[62] Herbert Feis, "The Open Door at Home," *Foreign Affairs*, July 1935.

and that the cotton area would be ruinously affected by a rigorous program of economic nationalism. Secretary Wallace in his pamphlet, *America Must Choose,* claimed that it would be necessary to take up to 100 million acres out of cultivation, perhaps to resettle elsewhere a large part of the population of the South, and almost certainly to undergo a great amount of regimentation if we failed to restore international trade. Secretary Hull claimed that "instead of increasing as our foreign trade decreased, our domestic trade decreased at a suicidal rate," and insisted that a twofold economic program was necessary—domestic trade and foreign trade. Concentration on one and not on the other was not enough: what was needed was action on both fronts.

The Reciprocal Trade Agreements Act of 1934 was technically an amendment to the 1930 tariff act. It empowered the President to enter into agreements with foreign countries for a period of three years and to reduce duties up to 50 per cent. These benefits were to be denied to any country which discriminated against United States commerce.

In spite of all opposition the trade agreements act went into effect in 1934. Mr. Roosevelt warned the country not to expect too much because of the great financial instability of the world at that time. The first year witnessed no great change; but at least a halt had been called to the mounting tariff barriers. Even by 1936 it was difficult to see clearly the full effects of the move because of the complexity of cause and effect in modern international life. It seems clear, however, that the Reciprocal Trade Agreements, although a step in the right direction of themselves, could do little to affect the more fundamental factors. Only by a far-reaching modification of the American tariff structure and a willingness to expand its loan policy could the United States make a major contribution to the restoration of world trade. Adequate investment policy and tariff reduction on a wide international basis, it was to be seen, would have to take place, with the United States playing a major role in both phases. This truth was to emerge with almost undeniable force at the end of World War II, and the extension of the Reciprocal Trade Agreements in 1945 constituted only the prelude of a new act in the world economic drama which was being staged at the time of writing.

As we shall see, the United States government in 1946 made comprehensive proposals which were the basis of those submitted to the Geneva Conference called for April 1947, embracing practically the whole range of international economic relations.

ATTEMPTS AT INTERNATIONAL COMMODITY CONTROL

We have now to consider the attempts, by international co-operation, to prevent dislocation and possible collapse of special agricultural and other primary industries. The day of free competition has passed, and the necessity of concerted action has become obvious. The following examples will show how far international co-operation has gone in this direction. The story is not one of great success, owing to the relative newness of the problem, the counter-working of the theory and practice of economic nationalism, and the struggle to seize raw materials for purposes of power politics. If, however, the economics of welfare is to make headway, the following examples must be taken to indicate the general path along which international policy must proceed.

The question of raw materials has had several changes of fashion since the end of the World War of 1914–1918. At first there was considerable scarcity following the wastage and the dislocation caused by the world conflict. Italy proposed a policy of international control of raw materials, but without success. The League Economic Committee in 1921 considered the question and made a number of general recommendations, particularly urging that measures of restriction or prohibition and export duties were bad. The 1927 World Economic Conference also recommended freedom of access to raw materials as much as possible and the minimization of export duties and other restrictions. But by this time the world was witnessing an overproduction and a slump in the price of wheat, sugar, coffee, tin, and other raw materials, and the question was not so much how to insure a sufficiency of supplies as how to gain adequacy of profitable markets.

As pointed out elsewhere, several restriction schemes were adopted by governments to prevent a collapse of the whole structure of the primary producing economy. Recently the have-and-have-not fashion of thought has spread, and once more the charge is made that certain countries must have access to raw materials and that they are being denied the legitimate opportunities which they require for their existence. But it is most important to emphasize that, strictly speaking, there is not a particular problem of raw materials. It is merely one phase of the whole question of international exchange, and "it is only by re-establishing the

normal currents of trade and finance, that there is any hope of bringing a remedy to the present difficulties of international economic relations, one of the special aspects of which is the difficulty of procuring raw materials."[68]

Wheat farmers have suffered greatly from the adoption of economic nationalism and from the desire of nations to insure an adequate food supply in time of war. In recent years the doctrine that agriculture is important in building up a strong and healthy nation has become allied with the desire of countries to offset the disadvantages of a monoculture. Some governments have seen in the peasantry a bulwark against radical doctrines. Practically every government has taken some step to encourage wheat growing. In consequence, overproduction appears and farmers are threatened with ruin. The Institute of Agriculture at Rome called two conferences to see what might be accomplished. The 1931 Wheat Conference at Rome did little more than survey the complexities of the problem. A later conference of eleven exporting countries at London produced many proposals but little agreement on policy: "The United States would have nothing to say to a quota; Russia would have nothing to do with restricted acreage." The Conference adopted a few general recommendations, and set up a permanent consultative committee. A scheme by which manufacturing countries would pay higher prices for wheat to enable the southeast part of Europe to get on its feet failed.

In 1931 Canada called a wheat conference, which accepted "the principle of reduction of acreage"; but the Soviet Union refused to consider a quota export system. At the World Economic Conference in 1933, Canada, Australia, Argentina, and the United States agreed to a policy of regulated production so as to prevent a further fall in price. They also agreed to co-operate with producers in Europe. The Secretary General of the League of Nations then called another conference which included twenty European countries, the United Kingdom, and the four countries just mentioned. The conference concluded an international wheat agreement which "provided for the reduction of exports on a quota basis and pledged its adherence to reduced wheat acreage to 15 per cent beginning with the season of 1933–34." When prices rose to the higher figure, the countries agreed to reduce tariffs

[68] Michael A. Heilperin, *The Monetary Aspect of the Raw Materials Problem* (International Studies Conference, International Institute of Intellectual Co-operation, Paris, 1938), p. 30.

and other barriers. The signatories undertook not to encourage production but to do what they could to heighten the consumption of wheat. An international wheat committee was established with equal membership from importing and exporting countries; it was limited to advisory work and was to have no control over policy.

Unfortunately, prices continued to fall, and tariff and other barriers continued to rise. The agreement made no provision for the disposal of existing surplus stocks. Consequently it was difficult to get the machinery of co-operation in motion. The principle is sound, and without doubt co-operation between governments and farming and consumer interests will be increasingly important; but until two things happen, international organization for wheat will have limited success: there must be a lessening of the fear of war and a strengthening of the authority of any international wheat committee.

Such is the view of M. Paul de Hevesy of Hungary, who in 1934 advocated a World Wheat Entente. His thesis was that the world market for wheat did not possess the elasticity of some other products; that while national harvests of wheat were variable, the world yield was remarkably stable; that although the consumption of bread was giving way to other foods in some countries, world consumption varied but little; that the price of wheat was too low and the accumulated stocks were too great to be solved without international measures. He therefore proposed an International Council of Wheat. It should have an International Office and each member nation would have a National Office of Wheat, which would possess a monopoly of buying and selling the commodity and would work in close harmony with the international office. The latter would fix the price for the world market. Other detailed recommendations followed which need not be noted here. M. de Hevesy anticipated that the Entente would be consistent with a large degree of freedom of action and that, having achieved its purpose of overcoming the disequilibrium existing in the wheat market of the world, it could be dissolved.[64]

The Food Research Institute in 1935 noted that little progress had been made "toward a genuine economic equilibrium in the world wheat economy," and doubted if sufficient skill had yet been acquired to enable national or international agencies to make accurate forecasts of market conditions, acreage requirements, and

[64] Paul de Hevesy, *Le Problème mondial du blé (Librarie Felix Alcan,* Paris, 1934).

weather and other natural conditions.[65] Its view reflects that of those who are suspicious of "planning," whether national or international.

The great increase in coal production after the World War, and the demand for reparations in the form of coal from Germany, upset the whole industry. Overproduction resulted and, in order to offset the low prices which were making production uneconomic, governments had recourse to subsidies. Europe faced a coal crisis. The League Economic Committee suggested international measures; but the countries turned to national remedies. They rationalized the industry, and in the case of Great Britain appointed a central council of coal owners to "allocate production quotas among the various districts." They made trade agreements, and also restricted imports—France, for example, limited imports to 80 and later to 72 per cent of the average for the years 1928–1930. But national restriction plus national rationalization helped rather to intensify the gap between expanded production and diminished markets. It shifted the incidence of the depression but increased its intensity. In 1928 the coal subcommittee of the League Economic Committee considered rationalization on an international scale, and the International Miners Conference made similar proposals. The League Assembly of 1927 considered the question, and a committee of experts published a report in 1929. It recommended that the League should study further the problem of tariff barriers but not international organization of coal production. The situation grew worse, and the Assembly in 1931 again was discussing the problem of coal; the economic committee resumed its studies,[66] and in January 1932 another conference of experts was held. It decided that the League should assist in drawing up an agreement. The 1933 World Economic Conference appointed a coal subcommittee, which resolved that the main producing nations should come to an agreement, that the League should watch the interests of the consumers, and that the League Council should call a conference of producing and consuming countries in the event of a failure of the producers to reach an agreement.

These proposals did not result in substantial action. Competition became most intense, and in the disorganized political and economic state of the world the industries preferred to scramble

[65] R. F. Martin, *International Raw Commodity Price Control* (National Industrial Conference Board, New York, 1937), pp 50–55. See below, p. 433.

[66] League of Nations, Economic Committee, *The Coal Problem* (Geneva, 1932).

for themselves. Nevertheless, experienced people in industry realize the necessity of a comprehensive approach to the whole problem. Greaves suggests that an effective international organization of coal would require:

1. The granting of monopoly and rationalizing powers to national bodies. For it must be realized that coal, unlike oil, must be based on national or, at least, regional units. Such national bodies would naturally be subject to their international superior, acting where its decisions were concerned merely as its agent.
2. An international producers' agreement providing for an international coal board to replace the separate national authorities.
3. Representation of the consuming countries and labour on this board.
4. Submission to an I.L.O. convention on hours of work, conditions of employment, and wages.
5. A common marketing scheme for countries inside and outside the group.[67]

In 1934 Poland and Great Britain reached an agreement, renewed in 1937 for two years, to regulate the sale of coal in export markets; and Germany, Belgium, Great Britain, the Netherlands, and Poland agreed for four years from April 1937 to regulate coke exports.

The Miners' International Federation and the Governing Body of the International Labor Organization in 1936 urged the Economic Committee of the League to take action toward an international coal agreement. But the committee preferred not to intervene "for the time being, in the hope that an agreement may be reached between the producing countries."

In January 1938 the Governing Body of the International Labor Organization invited representatives of governments, owners, and miners of the chief coal-producing countries to a technical Tripartite Conference at Geneva in the following May.

The International Labor Office in a two-volume study, *The World Coal-Mining Industry,* published in 1938, stated its conclusions thus:

The facts presented in this chapter reveal clearly that the coal-mining industry in all countries has passed out of the era of "free competition" into one of economic and social "control" in which production, marketing and prices are largely governed by combines, car-

[67] H. R. G. Greaves, *Raw Materials and International Control* (Methuen, London, 1936).

tels, etc., which are subject to the regulation of public and semi-public bodies. Despite their differences, the schemes of control have this in common, that they all aim at developing rules and regulations which would minimise the effects of differences of mining, transportation and distribution costs upon prices and upon the relative competitive status of mining districts or exporting countries.

What is also clear from the record is that the efforts, described in Chapter VII, to restrict import shipments and to protect domestic collieries as well as the movement, reviewed in this chapter, towards integration and the regulation of output, sales and prices, do not form a harmonious system nor are they entirely complementary to one another. In some measure, it is true, the control of coal mining in individual countries presupposes the regulation of the import and export trade in coal, while such regulation promotes, to some extent, the movement towards national control. On the other hand, the piling up of obstacles to the world trade in coal during recent years represents a short-run reaction to emergency conditions, while the various control schemes arise out of a desire to deal with the economic and social problems of coal mining on a long-run basis. To evolve a policy which would meet the short-run problems of the industry in individual coal-mining countries while satisfying, at the same time, the long-run needs of the industry as a whole, is one of the basic problems which the transition from "free competition" to "economic control" in coal mining has accentuated. A particular aspect of this general problem arises from the fact that any measures taken on behalf of the coal-mining industry must be devised in full recognition of their possible effects upon the further use of substitutes for coal and further economies in the use of coal. The final suggestion which emerges is that the growth of combination and public regulation in coal mining, by protecting the competitive equilibrium against the differentials of labour costs, should act to facilitate the international regulation of labour standards in the industry.[68]

The great growth in the use of sugar in the latter part of the nineteenth century, combined with the extensive development of beet-sugar growing in Europe, led to overproduction, and growers in the West Indies and elsewhere were threatened with ruin. In 1902 several governments agreed to an international sugar convention, the first to give an international committee power to dictate policy. The organization worked well for a time, but even before the World War of 1914–1918 difficulties arose, and the agreement lapsed in 1920.

The same phenomenon of overproduction appeared soon after

[68] International Labour Office, *The World Coal-Mining Industry* (Studies and Reports, Series B, No. 31, Geneva, 1938), I, 251–52.

the end of the World War in 1918. The 1927 economic conferences recommended that the problem be studied, but no steps were taken. Greaves notes that in 1928 seven-eighths of the world's total sugar output "was being produced behind protective barriers, or with the help of subsidies and bounties." In 1930 a gentleman's agreement was reached between the United States and Cuba, and for a period of five years Cuba limited its exports to the United States, which in turn limited its output to the 1928–29 level. But Java, the Philippines, and Europe were important producers. After negotiations with them a conference met at Brussels in December 1930; negotiations were interrupted, and another general conference met at Paris in March 1931; finally a convention was signed at Brussels in May of that year. The Chadbourne scheme, as it was called, established an International Sugar Council which was to permit a 5 per cent increase in export quotas when the world price rose to two cents a pound, and further exporting increases when the price rose to 2.45 and 2.5 cents. On the International Sugar Council each of the three countries had three members, whose voting power was weighted in proportion to the extent of the sugar interests involved. This scheme is interesting because it represented not an agreement between governments, as had the Brussels Sugar Convention of 1902, but an agreement between national bodies of producers to secure regulation of the raw sugar supplies of the world through commercial channels."[69] The attempt at allocating exports for a period of five years failed because when some countries curtailed their production other countries increased theirs, with the result that prices did not rise and even tended to fall. Consequently the plan lasted less than four years. In 1937 the continued unsatisfactory position of sugar, which did not respond very markedly to the improvement in general economic conditions, led to another international sugar conference, which met in London April 5, 1937, was attended by twenty-two nations, and adopted an agreement providing for an adjustment between the total exports to the free markets and the total requirements. The plan of export quotas was supplemented by the appointment of an International Sugar Council with an Executive Committee and a Secretariat.

Great Britain attempted to overcome the postwar rubber slump in Malaya by adopting the Stevenson plan in 1922, which restricted the output in Ceylon and Malaya. The attempt failed after being

[69] Royal Institute of International Affairs, *World Agriculture* (Oxford, 1932), p. 221.

in force for a few years because it held the price of rubber to a higher level, penalized consumers, especially in the United States, and caused interested parties to seek new plantations. The Dutch expanded their area of planting, and Firestone opened up areas in Liberia.

The renewed struggle which occurred after removal of restrictions led to difficulties, both in the Dutch Indies and in British Malaya. In 1934 the governments of Holland and Britain discussed the matter; and the next year France, Great Britain, India, the Netherlands, and Siam drew up an official agreement which was to last until 1938, and was to apply to the regions belonging to these countries in southeast Asia. South America and Liberia were not included. The agreement was designed to regulate the production export of rubber so as to reduce existing world stocks to a normal level by means of fixed quota allotments and limiting the area of planting. An international rubber-regulation committee was established to determine the export quotas of the signatory powers. The committee comprises government appointed delegates and of panels nominated by the manufacturers to advise the committee. The scheme was more extensive than the Stevenson plan had been, but it still lacked universality because important outside interests were not included.

Timber also suffered from a combination of overproduction and a decline of markets. Canada, the United States, Austria, Finland, Poland, Rumania, Sweden, Jugoslavia, and the Soviet Union have been the principal victims. Most countries have developed a national organization in order to systematize their exports, and this fact should make international co-operation simpler, in view of the difficulty of organizing unco-ordinated private groups on a continental or world basis. At a conference held in June 1931, timber exporters accepted the principle of international-quota distribution and suggested the establishment of international statistical research. Sweden was to call a later conference to "embody these measures in a convention." The central and eastern countries of Europe met at the Vienna conference in 1932, and agreed to restrict exports. In 1931 the League Economic Committee appointed a committee of timber experts from fifteen major timber-producing countries. The committee agreed that no international organization of timber production was then possible, because of the lack of enforcing authority, but that exporting countries should agree on the amount of timber that should be exported each year and that nations should agree

to reduce the cuttings of timber to an amount which would not exceed the annual growth. But thus far little has been done to carry these recommendations into practice.

It was realized that the world trade was "utterly disorganized"[70] and that the situation of the timber industry is paradoxical. Despite the reduced demand for lumber due to smaller-sized houses, the use of substitutes, and the decline in the use of wood for fuel, the normal demand would still exceed the possibilities of national forests which are economically capable of exploitation. However, it is becoming recognized that "timber problems have ceased to be purely national economic questions and have become international problems," and that "no remedies can be effective henceforward without international co-operation." Unfortunately, there is no substantial agreement as yet on the form of this co-operation. At the 1932 Vienna Conference the proposal to establish a Central International Timber Office, possibly connected with the International Institute of Agriculture at Rome, met with no success. In 1947 the first postwar Timber Conference met in Czechoslovakia and considered (1) the housing crisis, (2) its effect upon foreign policy, (3) co-ordinated long-range programs.

Depression affected the tin industry as well. Great Britain has interests in the Malay States, Nigeria, Siam, and Burma; the Bolivian-American Company operates mines in Bolivia; while Dutch interests control the mines in the Dutch East Indies. Despite national amalgamations, the industry continued to suffer loss at the end of the decade following the war. In 1931 an international conference representing British Malayan, Nigerian, Bolivian, and Dutch East Indian interests met at London. They drew up the international tin agreement, providing for the reduction of output by several thousand tons a year. Each country had one member upon the committee whose main duty it was to determine the quotas of production. An international syndicate was formed in August 1931 and took charge of disposition of surplus stocks. In 1933 the agreement was renewed for a period of three years, the output quota being increased by several per cent. During the next year French Indo-China, Portugal, the Belgian Congo, and Cornwall acceded to the plan. The long-term success of such an agreement will depend upon maintaining satisfactory prices to consumers and the adjustment of the labor standards of workers in the Orient to those in the West.

[70] League of Nations, Economic Committee, *The Timber Problem* (Geneva, 1932), p. 7.

The policy of the international tin committee gave grounds for disquietude. Charges were made that it unduly held up the price of tin, and that it created a buffer stock of several thousand tons in order to await a rise in the market price. Great Britain apparently favored maintaining high prices so as to obtain foreign exchange in order to prosecute the war which broke out in December 1939. United States consumers, however, were paying higher prices, and the continuation of such a policy caused dissatisfaction. The low quota assigned to Malaya caused unemployment among the Chinese workers, and in 1937 an expert of the League of Nations criticized the conditions in the Yunnan tin mines, thus confirming to some degree the charges which had been brought against the international committee.[71]

We may summarize by saying that the serious condition in which these products have found and may find themselves is due in the case of some of them to an apparent overproduction, which, in turn, is traceable (1) in part to the effects of the two wars, that called into cultivation large areas which, after peace was restored, could no longer find satisfactory markets, in view of the resumption of cultivation by the warring countries; (2) in part, to the discovery of low-cost sources of supply, such as the copper mines in Africa; (3) in part, to monopolistic tendencies of groups desiring to make undue profit; and (4) in part, to the attempt of nations to make themselves self-sufficient in case of war.

Attempts at international organization constitute a reply (1) to the disturbances created by war and the threat of war, (2) to the inability of groups and individuals to see the political and economic problems as a whole and to sacrifice a temporary advantage to a long-term stability, and (3) to groups which do not hesitate to use national policies and emotions for their own group ends.

International action on commodity control was not lacking during World War II. The Hot Springs Conference on Food and Agriculture in 1943 discussed international commodity arrangements to see if such arrangements might lessen price fluctuations and assist in preventing periodical slumps and oversupply of agricultural products. British delegates urged the importance of gathering and maintaining buffer stocks of wheat and other grains. An international agency should be empowered to purchase excess annual production and dispose of such stocks during periods of scarcity. In this way, the world would balance supply and

[71] Alvin Barber, "Tin Control in a Major War," *Far Eastern Survey*, November 22, 1939, pp. 267–72.

demand over a period of years. Another group urged that production control in addition to buffer stocks would be required. To the criticisms that controls tend to restrict production the reply was made that policies could be devised to avoid this evil—indeed, there was no reason why, by developing new markets, increasing nutrition standards, and raising the level of income, there should not be increased production.

Thus far, the commodity agreements have been largely reached with the producers having the major voice and thereby raising prices and imposing export quotas in order to avoid cut-throat competition. If, however, consumer interests can be represented and expansionist policies undertaken and full employment be maintained, commodity agreements may serve a useful though subordinate purpose. Alvin Hansen suggests that an international commodity corporation given the power "to buy, store, and sell international raw materials and to act as a buffer in the raw material market" would by skillful buying and selling operations help to prevent undue price fluctuations. It could also "search for new uses for basic raw materials" and in co-operation with national governments "facilitate the movement of resources out of submarginal areas in an effort to adjust supply to long-run changes in demand."[72]

The American Trade Proposals, put forward by the United States government early in 1946, took into account the criticisms made by several economists that commodity agreements tend to maintain prices unduly and are made at the expense of the consumers. The American government hoped that it would be possible "to deal with specific commodity situations in a way that will be equitable to both producers and consumers"; the approach therefore "differs in important respects from the restrictive commodity agreements which have existed in the past."[73]

The Proposals emphasized the desirability of government's reducing surpluses by encouraging an expansion of consumption and by the reduction or elimination of trade barriers. Moreover the Proposals provide for the establishment of study groups which will "survey the consumption expansion possibilities of existing outlets and new uses for the commodities." These studies may

[72] Alvin H. Hansen, *America's Role in the World Economy* (W. W. Norton, 1945), p. 123. See below for United States recent pronouncements on commodity controls.

[73] "American Trade Proposals: Intergovernmental Commodity Arrangements," *Department of State Bulletin* (March 31, 1946), p. 510.

obviate the need of restrictive quantitative regulation, but if restriction is found necessary, it should be "under rigid specifications" so as to avoid holding up prices for all kinds of producers, the inefficient as well as the efficient. The least-efficient producers must go or justify their existence by improved methods. Moreover the consuming countries will have an equal voice with the producing countries in helping to regulate "prices, trade, stocks, or production" instead of, as hitherto, being unrepresented in the commodity schemes.

These two factors, shifting production and consumers' representation, should do much to eliminate the evils of previous agreements under which primary emphasis has been on the restriction of output and the maintenance of prices, with little effort made to remove the basic causes of the maladjustment or to consider the position of consumers.[74]

This approach to the problem of commodity control has not passed without challenge, and the past attempts as well as present proposals have been subjected to close scrutiny. Joseph S. Davis, for example, urges that the international commodity schemes outlined above had only a slight importance and but a limited success between 1931 and 1939. Indeed, he writes, by the middle of 1941 none of the major agreements was "functioning actively." Nor did they effectively readjust the excess of productive capacity or insure regularity of production. Rather they tended to retard technical progress and to keep alive inefficient producers and inefficient producing areas.[75]

The international commodity agreements, Davis suggests, may help fasten restraints on production and trade and result in increasing regimentation, and in "official cartelization of primary foodstuffs and materials, with assigned quotas reached by bargaining," instead of permitting price competition to determine the flow of commodities.[76] There would be the danger of "international log-rolling" by which various producing groups would combine against the consumer interest. Moreover, the pre-1939 agreements were relatively successful only when a few nations were involved. The greater the number of national agencies involved, the more complex will operating problems become. Also, it may be difficult to reconcile American criticism of private in-

[74] *Ibid.*, p. 538.

[75] Joseph S. Davis, *International Commodity Agreements: Hope, Illusion, or Menace,* The Committee on International Economic Policy (1947), p. 16.

[76] *Ibid.*, p. 22–23.

ternational cartels with its advocacy of the commodity agreements which some writers have described as "official cartels."

The Food and Agricultural Organization has urged the creation of buffer stock schemes following a 1945 report by the League of Nations delegation on economic depression. Now an international buffer stock agency might limit the range of fluctuations in commodity prices and insure a minimum of speculation and shortage in time of crisis, but, critics claim, many detailed questions must be worked out—the methods of financing, the costs of storage, the difficulties of establishing a "world price" for commodities, say, wheat, coffee, tea, wool, or cotton, which in reality are not homogeneous but comprise a complex of goods differing greatly in value.[77] Moreover, it is far from certain that primary producers will view buffer stocks and so-called stabilization of prices with equanimity. What they want is higher prices, and moreover agricultural interests are often politically powerful enough to force prices up, as the experience of the United States in cotton and other primary products has amply demonstrated.

On the political side international commodity agreements face difficulties. The processes of negotiating, ratifying, and amending intergovernmental agreements is "cumbersome and time consuming," and improvements in these processes are "urgently needed." Again, the problem of voting power and unaninity in major decisions remains in the economic as well as in the political sphere.

Davis therefore concludes that the most promising step forward would be to establish a responsible international agency to review the various international commodity agreements. This suggestion was embodied in the American proposals of December 1945, and in the suggested charter which was discussed at Geneva in April 1947. Such a body might or might not be effective; opinion is not unanimous in the United States as to the outstanding success of public utility commisisons. Nevertheless, an overall international body which might "render regular and special reports, with recommendations, on I.C.A.'s and their operation, on the evolution of improved precepts relating thereto and on commodity situations that might seem to call for international measures" might do valuable work.[78] For international commodity agreements do not necessarily result in full and open reports of what is accomplished, and such a commission or board con-

[77] Joseph S. Davis, *op. cit.*, p. 32.

[78] *Ibid.*, p. 70.

sisting of full-time persons appointed for a term of years might do much to bring the light of publicity upon such agreements, which too often may have more the appearance than the reality of serving the public interest.

INTERNATIONAL ORGANIZATION AND ECONOMIC GROUPS

The problem is to conserve the advantages of large-scale production, and to see if trusts and combines can be purged of their evil features and transformed into acknowledged instruments of public and private welfare. The Marxist may well say that they cannot be regulated under a capitalist system and that the only remedy is a radical transformation of economic society. Palme Dutt, for example, writes that there is no longer a united international capitalism, that society has reached the point where monopolistic blocks are curtailing production and trade, that there are currency wars, and that the contradictions of modern society are so great that the trusts must develop more intense conflicts and ever more desperate methods.[79] The answer to this charge lies hidden in the future. Efforts are being made, however, to reform monopolies. These attempts are foredoomed to failure if the Marxists are right; they have a chance of success if the Marxist analysis is, as the writer believes, inadequate to explain modern economic and political phenomena.

Trusts have restricted trade and held up prices unreasonably and have depressed wages and cornered markets. These have been the evils. But the trusts have rendered some fine services.[80] They have helped to stabilize economic conditions against the ravages of dumping, cutthroat competition, and currency depreciation. They have been replies to excessive tariff barriers; and, by regulating markets according to distance and transportation facilities, effecting savings and heightening efficiency through combinations of sales forces, curtailing advertising costs, and co-operating in shipping and other distributing services, and by exchanging patents and processes, they have done good. Some of the international combines have attempted to bring about political understandings among the governments. They have frequently exercised a restraining influence during an upswing of prices, and by

[79] R. Palme Dutt, *World Politics, 1918–1936* (Victor Gollancz, Ltd., London, 1936), pp. 85–107.

[80] League of Nations, *General Report on the Economic Aspects of International Industrial Agreements* (Geneva, 1931).

keeping a uniform scale have enabled small purchasers to benefit. Rousiers notes that maritime conferences have given small clients a better chance than they would have in a fiercely competitive system: "All shippers are sure that their most powerful competitors have to pay the same freights, that they do not receive higher rebates—in a word, that they are treated in exactly the same way." And Hirsch also, reporting to the Preparatory Committee for the 1927 International Economic Conference, notes that international cartels did help to bring together economic groups that were divided into hostile political camps under the influence of the World War of 1914–1918. Staley well says that the world commodity controls have today a special significance: "In all the welter and confusion of new efforts at conscious control of economic activity, they are among the few that are *super-national.*" He admits that many of them have been guilty of bad practices, but correctly notes that the world very much needs "the habit of working out economic policies on a wider than national basis." And the controls "represent a trend towards the broadening of economic policy to fit the new conditions of world-wide economic inter-dependence, despite their origin in producers' demands for restriction of output."[81]

How can the trusts and combines be adapted to serve the wider public needs? First, they must be supervised and registered in such a way that their operations will be carried out in full publicity. Hirsch proposed that the League of Nations "might establish a general observation post to see how far the combines represented a legitimate trend toward rationalization of industry for the European economic system as a whole"; the International Management Institute at Geneva could perhaps undertake this task. Moreover, the League could publish reports on the unfavorable effects of monopolies, and might establish an independent body to which a party could appeal for a report on the effect of particular international agreements.

This general recommendation was also made by William Oualid, who proposed that League Members should adopt a draft convention containing a declaration of principles, including the need of normal equilibrium between production and consumption, stable prices, stable supply, and regular work; and that cartels, by abusing their economic power, act to endanger public interest. An international cartel desiring official recognition from the League

[81] Eugene Staley, *World Economy in Transition* (Council of Foreign Relations, New York, 1939), pp. 146–47.

and its members should be required to make a declaration concerning the enterprises belonging to it, "the States under whose laws they exist, the nature of their products or of their operations, the conditions of the cartel, its aims, its means, its statutes or contracts specifying these matters."[82] The League would be authorized to invite member states to take action against unregistered cartels. All member states should create national commissions or bureaus of control to investigate cartels and to centralize and verify "the justice of complaints made against the actions of irregular international cartels operating in their territory, or themselves to take the initiative of inquires into such actions,"[83] and submit the results of the inquiries to their governments and to the League. These national organs should include administrative and legal experts, employers and workers in equal numbers, and representatives of consumers, co-operatives or other consumer organizations. The League should have a similar agency composed of government, employer, and worker representatives of the International Labor Organization, whose task it would be to examine the national reports and bring complaints to the attention of member states.

Staley also drew attention to the need for such a type of international control and suggested that the International Economic Organization should have authority.

> to require reports from international cartels and commodity control schemes, like those in copper, aluminum, steel, tin, rubber, sugar, tea. It might eventually charter public corporations for the construction of international public works, or for the administration of international public utilities—canals, radio facilities, aviation lines and the like.[84]

Thus the problem of controlling economic groups leads to the wider problem of world economics, of which it is a part. Staley suggested a world economic conference, not for the purpose of trying to bring in detailed recommendations, but merely to adopt certain principles—not as a substitute for action but as "a useful prelude to a positive and dynamic program."[85] He advocated an autonomous international organization representative of economic groups as well as governments within a reorganized League of Nations. This organization could launch a "world development

[82] W. Oualid, *International Raw Materials Cartels* (International Studies Conference, International Institute of Intellectual Co-operation, Paris, 1938), p. 51.

[83] Eugene Staley, *World Economy in Transition*, p. 52.

[84] Staley, *op. cit.*, p. 310.

[85] *Ibid.*, p. 302.

program by studying the needs of capital, labor, raw materials, technical training of experts for relatively undeveloped areas." It would be something of a "permanent world economic conference," an "international planning commission designed to facilitate cooperation between countries."[86]

Following 1941, much animated discussion took place in the United States concerning cartels. The investigations of Senate committees, the writings of Thurman Arnold and other critics, and the prosecutions of the Department of Justice brought into the limelight many alleged evils.[87]

The general criticisms previously leveled at cartels were repeated with the charge (1) of reducing competition, (2) of raising prices through price-fixing arrangements, (3) of dividing the markets territorially, functionally, or technologically, (4) of restricting output, (5) of buying up patents and preventing technological improvement. In addition, a strong charge was made that American firms, by becoming entangled in cartel and other corporate relations with German and other foreign firms, placed the security of the United States in jeopardy. Committees of Congress and the Department of Justice showed that, in the case of petroleum, rubber, magnesium, plastics, tungsten, and other products, the United States was caught at a dangerous disadvantage in the early years of the war. The evidence suggested that the international cartel arrangements were so drawn as to restrict American production and productive capacity; this result was achieved by a number of methods. "Inhibition of research in this and other Allied countries; restriction of exports as to quantities or market areas; transference of technological information of military significance; intermingling of corporate interests; and confusion of national corporate identities through subsidies situated in neutral states."[87a]

[86] Staley, *op. cit.*, p. 305. See below, p. 457, for the United States proposal concerning cartels.

[87] See, for example, Thurman Arnold, *The Bottlenecks of Business* (1940), and *Democracy and Free Enterprise* (1942); Wendell Berge, *Cartels*, (1944) and Joseph Borkin and Charles A. Welsh, *Germany's Master Plan* (1943).

[87a] Corwin D. Edwards, *A Cartel Policy for the United States* (Columbia University Press, New York, 1945), p. 61. Ervin Hexner writes (*International Cartels* [University of North Carolina Press, Chapel Hill, 1946]) that there has been too much sweeping generalization based upon inadequate detailed studies and quotes Edward S. Mason that it is an open question whether patents and processing agreements between American and German firms hampered American war production. Cartels have probably been less implicated in international politics than some of their critics suggest (p. 144). The members of such cartels

Several critics also urged that cartels must be broken; it is not enough merely to supervise them, because government-supervised cartels may constitute an even greater threat to economic freedom than uncontrolled cartels; government control adds the evil of bureaucracy and establishes a partnership as it were between the powerful state and powerful corporate interests.

On the other hand defenders of cartels continued to claim that supervision, national and international, could obviate the main evils of cartels, that they do serve to stabilize prices in a difficult and complicated world, that they help to prevent industrial and agricultural fluctuations due to periods of unregulated agricultural and industrial oversupply (to which the critics reply that such restrictive schemes tend to intensify the fluctuations in other economic groups and that society faces the same kind of plea made by cartels as by industries claiming tariff protection, namely that the temporary privileges given in the form of cartels as with tariffs tend to become permanent privileges and that maladjusted industries will remain maladjusted with entrenched interests profiting therefrom).

The advocates of abolishing cartels suggest several methods: (1) Compulsory registration of cartels, which they agree with the proponents of regulation may do a certain amount of good. The publicity which such registration will afford will enable national and international authorities to know more of the many skillful and subtle practices and devices used by cartels. Nevertheless the danger exists that such recognition will give cartels a status which the critics are anxious to avoid. (2) A vigorous enforcement of the antitrust laws, such as Thurman Arnold and Wendell Berge have advocated, will serve to prevent many abuses both nationally and internationally. (3) Governments which have signed reciprocal trade agreements might "deny the benefits of the Act to any government which promotes cartel activity adverse to American commerce."[88] (4) The American government might prevent the operation of a contract involving undesirable patent restrictions "by relieving the American party of legal responsibility as well as by rendering void the restrictive provisions of

"belonging to various nations, do not divide their political loyalties; they only compromise their business interests" (p. 161). Consequently, if the world can evolve an adequate system of political security, entrepreneurial co-operation will offer problems quite different from those of the period prior to World War II (p. 162).

[88] *Op. cit.*, p. 67.

the contract."[88a] (5) The United States should, in its disposal of surplus war property, make certain that it will encourage small enterprise and not add to the tendencies toward economic monopoly. (6) The United States migth use its strong economic position to encourage action on an international level against cartels.

Opinion in this country is more critical of cartels than in some countries which, by reason of their unfavorable trade position, may feel themselves compelled to agree to economic "rationalization" in order to eliminate wasteful competition between producers at home so that the resulting efficiency will better enable the nation to compete in world markets which they so desperately need. Clearly then American policy will have to be directed toward helping to provide conditions of world trade under which the poorer countries may be able to compete with American exporters with a reasonable chance of holding their own, and even of improving the scope of their markets. Whereas foreign trade will be an important means of stabilizing the American economy, for some states it will be a matter of life and death. The conditions therefore under which foreign trade takes place will have an important bearing on the American effort to persuade the rest of the world to outlaw cartels with their restrictive practices. Although the United States has unusual economic power, it cannot by unilateral action force such a policy upon the rest of the world. If the American economy is dependent upon certain critical and important materials from abroad, it must adopt a co-operative policy in order to make certain of obtaining such important commodities as tin, nickel, quinine, etc. Moreover since many countries wish to obtain dollar exchange, they will be ready to accept American exports as much as possible.

If, however, one country encourages cartels it is liable to force other countries into similar arrangements for allegedly defensive reasons. The United States in 1920 passed the Webb-Pomerene Act permitting a modification of the Sherman Anti-Trust Act in the case of firms engaged in foreign trade, and Great Britain about the same time agreed to a number of chemical combinations in order to meet the threat of German cartels. These examples show that unilateral national action may breed a kind of economic armament race which at all costs should be prevented.

[88a] Edwards, *op. cit.* Charles R. Whittlesey in his very able *National Interest and International Cartels* (The Macmillan Company, New York, 1946), stresses the importance of removing defects in patent laws.

The end of World War II presented the Allied powers with an opportunity to strike at one important root of cartelization, namely Germany. The evidence seems incontrovertible that the Nazis efficiently used cartels as an instrument of economic warfare and by business agreements were able to chain a great part of Europe to the German economy. It is important that steps be taken to prevent any possibility of a resumption of such a policy (which might be described as cartel imperialism) on the part of Germany, while at the same time insuring that sufficient German industry is re-established in order to provide a reasonable standard of living for the German people. It has been suggested that the Allies "suspend all domestic cartel operations and commandeer all cartel records," investigate every industry, and "terminate any German participation in private international cartel or restrictive agreements."[89] And "there must be an open door for all comers to the rich stores of the German patent office and access to Germany's vast technical knowledge and 'know-how'."[89a] These measures will involve considerable difficulties, but it is urged they are an indispensable condition of restoring healthy international economic relations.

Joint international action had been foreshadowed by a statement of President Roosevelt in 1944 that, in addition to eliminating the political activities of German cartels, other measures will be required which will necessarily involve "collaborative action by the United Nations." And in February 1942, the United States and the United Kingdom signed the Master Lend-Lease Agreement, which became the model for agreements with other countries. Article 7 provides, *inter alia*, for agreed action directed "to the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other tariff barriers." The British Government early in 1945 announced that it would seek power to inform itself "of the extent and effect of restrictive agreements and of the activities of combines, and to take appropriate action. . . . ." The Labor Government presumably will at least continue the policy indicated in this announcement. Other governments have expressed themselves in similar terms and at the Inter-American Conference held at Chapultepec, Mexico City, early in 1945, the signatories resolved "to seek early agreed action by governments to prevent those practices by cartels or through other private business arrangements which obstruct

[89] Edwards, *op. cit.*, p. 42.

[89a] *Ibid.*, p. 43.

international trade, stifle competition, and interfere with the maximum efficiency of production and of fair competitive prices to consumers."

What then should the United Nations policy be? It must take into account the wide discrepancies between the American economy and that of the many poor economies throughout the world, the problems raised by the existence of national economies dependent on the one hand upon one or two staple commodities and on the other hand those that are widely diversified in character—the former are likely to urge the need of some commodity or cartel arrangement to enable them to stabilize production and prices—and it must take into account the contrasting modes of action embodied in the proposals to regulate and the proposals to eliminate cartels. It cannot ignore the many constitutional problems which arise within various countries by reason of "differences in constitutional limitations upon governmental action, in the division of powers between central and regional governments, in the protection which the fundamental law gives to private traders, and in the rules of administrative and judicial procedure."[90]

We have mentioned above the proposal that an international authority be granted the power to "license" international cartels, but critics argue that such a method is impracticable partly because few members of the United Nations would be willing to entrust such an authority with extensive powers of investigation, and especially they will be reluctant to give punitive powers to such a body. Consequently the more conservative recommendations content themselves with urging that national governments must be the agents to deal effectively with cartels on a national level. The international arrangement presumably would be limited to a statement of objectives and exchange of information by the governments, a modification of international patent and trademark conventions, and a series of agreements dealing with special items; but primarily the enforcement action against cartels would remain a matter for unilateral national action.

Nathanael Engle well points out that cartels and tariffs have an intimate relation—that tariffs have "frequently given rise to cartels" and their removal may help to provide the competition which will make cartels less effective even "if it does not destroy them." Also if the United States wishes to persuade other countries to eliminate cartels, "it is very certain that those nations will counter with the request that we reduce our high tariffs and repeal

[90] Edwards, *op. cit.*, p. 108.

our Webb-Pomerene Act and other restrictive legislation."[90a] For example, the United States which has criticized cartels has participated in commodity-control schemes which have substantially the same effect of restriction as do cartels, both at the expense of the consumer. Engle suggests that some kind of orderly production and distribution of "problem" crops and raw materials is required, but that they should be investigated to search for possibilities for improvement. The cartel question thus becomes part of a general economic problem of reducing tariffs, repealing the encouragement given to firms engaged in foreign trade to cartelize, withdrawing artificial price supports, and above all extending credit. Engle also proposes that perhaps the Economic and Social Council of the United Nations might establish an international antitrust division "empowered to find the facts on international monopolistic practices inimical to world peace and to make recommendations to the International Court and Security Council for appropriate action."[91] In addition, "a raw materials bureau might well be established to deal with strategic natural economic commodities and international control schemes."[92]

Hexner emphasizes the need for comprehensive market research to determine how competition may, if at all, be legally enforced, and what is the institutional behavior of business executives and the relation of world export to domestic prices. He urges the importance of taking into account "available alternatives and the possible effectiveness of public policies and regulations," the importance of buffer stocks and financing of private stocks in moderating fluctuations in raw material markets, and of insuring protection against blocking or hampering of technological progress by private agencies. He points out the need of strengthening international law and organization to deal with international cartels and regrets that the League of Nations did not interpret Article 24 of the Covenant giving it power to take over various international bureaus to assume public supervision of large international commodity controls, though he agree that such a course would have necessitated a politically efficient League. International organization should control private agreements concerning communication, transportation, explosives, armaments, and dangerous drugs and should encourage potential outsiders and protect consumers

[90a] Chapter on "Cartels and Commodity Control Schemes," by N. H. Engle in *If Men Want Peace* (J. B. Harrison, L. A. Mander, N. H. Engle, editors, The Macmillan Company, New York, 1946), p. 160.

[91] Engle, *op. cit.*, p. 161.

[92] *Ibid.*, p. 163.

while regulating cartels. He concludes that the degree of co-operation required in this field will, of course, depend upon political co-operation and that currency and investment policies, regulations of armament and disarmament, restoration of devastated areas, colonial policies, and economic sanctions against non-co-operative nations, will all reflect on international cartel policies.[92a]

STATE TRADING AND INTERNATIONAL TRADE

The widespread development of state control over economic life has posed serious problems for world trade. Classic economic theory assumed the workings of a free market and, while this assumption was never fully realized in practice because of tariffs, monopolies, and other "rigidities," nevertheless while trade remained primarily on a private basis questions of "dumping" and other forms of unfair competition could be more readily analyzed and theoretically answered. With the advent of governmental control, the situation was radically changed. Nazi Germany utilized the full power of a determined government to undersell merchants of other nations in foreign fields. But whereas the individual merchant had only his own resources to fall back upon, the German government could afford to take a loss here and there and recoup out of the general treasury or by using its economic (or often diplomatic and military) power to recoup elsewhere. Even if trade had not become the handmaiden of conquest policies, the problem would have been difficult enough, for even on the straight economic plane private traders could with possible justification complain that a state-controlled economy could undersell by reason of its political advantage. Nor was this the whole story. As the doctrine of socialism spread, more nations accepted government control as a desirable thing. Into the merits and demerits of socialism or other forms of government control we cannot enter here but merely note that a cleavage of economic thought was separating countries which once had accepted a fairly common pattern of economic theory.

And as a result of two world wars many nations were so impoverished and their economic life so disorganized that only by planned economy did it seem possible to hope for economic recovery. By 1947 the Soviet Union was in the fourth of its five-year plans; Great Britain set forth a comprehensive one-year

[92a] Ervin Hexner, *op. cit.* Consult Professor Edward S. Mason's authoritative *Controlling World Trade: Cartels and Commodity Agreements* (McGraw-Hill Company, New York, 1946).

program; France had announced its four-year plan; less industrialized countries were taking the same road; the Bombay plan adopted in India in 1938; the Yugoslavia planned economy patterned on the Russian model; the Czechoslovakian two-year plan adopted in 1946; Poland's four-year plan; Hungary's three-year plan; Austria's four-year rehabilitation plan; and Italy's plans for railroads, homes, and like industries, all bear witness to the fundamental shift in the center of gravity of economic thought and action. And one of the most urgent questions confronting the world, namely, the relation of state to private trading, was the subject of the American trade proposals, indicating the methods by which fair competition between the two systems could be effected. The United States government believes that the margin between buying and selling to be charged by state enterprises having an import monopoly of a particular product may be negotiated in the same way as tariff rates. If a government has export monopolies it should be possible to agree upon a maximum margin between domestic buying price and foreign selling price. It believes that state trading agencies in making purchases or conducting sales abroad can be guided entirely by commercial considerations such as price, quality, transportation, marketability, and other factors, and it believes that state trading nations might be persuaded to agree to some minimum level of imports. Whether such hopes can be realized will depend in no small measure upon political agreement in the field of security, for it seems hopeless to expect that trade will be divorced from the struggle for military power should the United Nations break down in its attempt to prevent an armaments race between the United States and the Soviet Union; if the struggle is to come, trade will become primarily a political and military instrument and only incidentally an exchange of wealth for the raising of the standard of living. Given the obtained security the American thesis may become practicable. Without it, it would seem to be doomed to failure.[93]

Thus far Russia has not participated in the discussions dealing with an international trade organization. It would seem that the United States government has wisely set forth the vast interrelation of tariffs, employment, investment, restrictive business

[93] For a statement of United States position, see *Informal Commentary to Accompany Preliminary Draft of Articles of a Charter for an International Trade Organization of the United Nations* (Office of Public Affairs, Department of State, Washington, D.C., February 1947), pp. 38–42. For the United States government's position on principles of commodity agreements, see *ibid.*, pp. 54–62.

practices, and problems raised by the juxtaposition of state and private trading systems, for in a very real way the existence of bilateral treaties is the result of special economic circumstances. The Soviet Union, for example, may find it necessary to continue bilateral and almost barter-trade methods unless it can obtain large-scale loans or credits from the United States and, as pointed out in the chapter on communications, the immunity from municipal jurisdiction of foreign government-owned corporations or missions will have to be faced. Further, while the smaller nations may well desire to have American capital for developmental purposes, they may become; as debtor countries have shown themselves in the past to be, suspicious of what they term "financial imperialism," and yet some method of providing adequate guaranties for foreign capital, on the one hand, and sufficient assurance that this capital will not be a precursor to political subordination on the other, must be found. Mrs. Vera Micheles Dean suggests that possibly private Western concerns may not be able to trade and invest satisfactorily unless "they have the active support of their governments—unless, in other words, they too create official or semi-official trade organizations. Should this prove to be the case, the United States and Britain may come to the conclusion that the most effective way of participating in the economic life of Eastern Europe and the Balkans, a unified Germany, and perhaps other areas, will be through joint undertakings with Russia, perhaps under the supervision of the United Nations."[93a] However difficult it may be to translate this idea into practice, it nevertheless remains as perhaps the *sine qua non* of world economic sanity and restoration. But the implications for theories of Capitalism and Communism are immense—one can only suggest here that neither Capitalism nor Communism as at present defined seems capable of envisaging the vast complexities of economic life and the policies necessary to find solutions in this technological age.

THE RESTORATION OF INTERNATIONAL TRADE AFTER WORLD WAR II

So great was the economic dislocation occasioned by the war and so pronounced the strain upon the world economic system that the normal machinery of economic life had almost completely broken down in many parts of the world. Even major countries found themselves unable to restore their economic life by their

[93a] Vera Micheles Dean, *Russia's Foreign Economic Policy* (Foreign Policy Reports, February 1, 1947), p. 279.

own efforts. In some cases the elementary conditions of life had been destroyed—hunger, disease, and exposure, to say nothing of the destruction of factories, banks, and systems of transportation, had reduced millions of people to the direst straits. The first steps toward world recovery had to take the form of relief and rehabilitation of liberated countries on the basis of outright help.

In June 1943 the United States proposed an international relief organization; some five months later 44 nations met and set up the United Nations Relief and Rehabilitation Administration. Each uninvaded nation pledged 1 per cent of its national income for the year ending June 1943; in this way two billion dollars was made available; later this sum was increased by further grants. The UNRRA Council of 44 members had a general authority over a Director General and his staff; a central office was set up in Washington, D.C., and later regional offices were established in London, Cairo, and Chungking, with representatives in other key centers. The organization sent missions to contributing countries to procure needed supplies. A training program set up in May 1944 at the University of Maryland was designed to give persons recruited in North America a four-weeks intensive course. At the end of 1945, UNRRA employed over 10,000 Class One persons and more than 6,400 class two (the latter served only in the country where they were recruited).

The organization supplied food, erected shelters, undertook extensive health and medical programs, supplied materials for agricultural and industrial rehabilitation, and undertook the relocation of millions of displaced persons. Despite many serious defects partly due to the hurried recruitment of personnel, the inefficiency normally attendant upon hurriedly established institutions, and the slow-moving character of national governments, UNRRA performed a remarkable work and as an agency for the transition period helped to set desperate countries upon their feet and to that degree paved the way for more permanent agencies including the Food and Agricultural Organization, the International Bank for Reconstruction and Development, the International Monetary Fund, and the Economic and Social Council of the United Nations.[94]

[94] For the work of UNRRA see the reports of the Director General to the Council of UNRRA. Of the many articles dealing with the difficulties under which UNRRA labored, John Perry, "Why UNRRA Has Failed," in *Harper's Magazine* (January 1946, pp. 77 to 86), is one of the best informed. Perry was formerly Director of Foreign Agricultural Relations and later was Chief of the Food Branch of the Office of Foreign Relief and Rehabilitation Operations.

The United Nations established the International Children's Emergency Fund in December 1946, after having received an urgent request from the UNRRA Council to take action on behalf of the hundreds and thousands of children in war-devastated areas. These children, homeless and neglected, were suffering from serious nutritional inadequacies; they lacked clothing and shoes; they were in dire need of children's institutions and services, many of which had been destroyed by the war. The fund set up by the United Nations will depend upon the contributions from governments. At least four hundred and fifty million dollars will be required to serve the minimum needs of over sixty million children. The Executive Director of the fund will be assisted by a twenty-five nation Executive Board; the fund will be closely tied to the Economic and Social Council and its headquarters have been established at Lake Success.[94a]

The United Nations also set up the International Refugee Organization for the purpose of assisting the many hundreds of persons who, as a result of World War II and subsequent events, "were unable or unwilling to avail themselves of the protection of the government of their country." The organization was to come into existence on the ratification of the agreement by fifteen (15) states, contributing at least 75 percent of the operational budget. Space does not permit extended discussion of the plight of the refugees. Unfortunately this problem is not a new one although it now exists in intensified form. After World War I, a similar situation existed and, while the League of Nations had some success, the story is not a happy one owing to the unwillingness of the victorious countries to receive more than a handful of the unfortunate refugee population.[95]

The economic system of the world had become so distorted that relief and rehabilitation did not prove adequate. Even advanced economic countries like Great Britain, the Soviet Union, and France lacked the financial means to make use of the machinery of world trade. The war almost completed the disruption of the mechanism of international credit. The International Monetary Fund and International Bank for Reconstruction and Development, as we have seen, "are geared to a world where international credit has been largely restored."[95a]

[94a] See John J. Carnow, *The International Children's Emergency Fund* (Department of State Bulletin, March 16, 1947, Publication 2787).

[95] See also chapter ix, p. 408.

[95a] Crain Brinton, *The United States and Britain* (Harvard University Press, 1945), p. 161.

There will, then, have to be special measures taken in a transition period of some three to five years at best to restore the financial position of many countries *before* the Bretton Woods agreements can be given a chance to work normally.[96]

Under the circumstances the United States found itself impelled to lend large sums of money to Britain, France, and other countries in order to provide those countries with sufficient dollar exchange and general economic goods to tide them over the difficult transition period.

If these important transition arrangements, UNRRA, the I.R.O., the Children's Emergency Fund, and the American loans, could play an adequate role in restoring a minimum of normalcy the way would be clear for the more permanent agencies now to be described to begin their operations with reasonable prospects of success.

Even during the war it was realized that relief agencies such as UNRRA would not be sufficient to place the world on a long-term secure basis of food production. The United States government therefore invited 44 governments to meet at Hot Springs, Virginia, in May 1943, to consider the establishment of a permanent international organization to deal with food and agriculture. As we have pointed out above, health and disease problems cannot be separated from the questions of nutrition, education, agricultural production, and adequate purchasing power. These problems are intricately interwoven—until malnutrition has been conquered we cannot hope to make inroads upon many diseases; until poverty has been eliminated malnutrition will remain; until agricultural production is made more efficient there will be insufficient food; until education teaches people how and what to eat and how and what to produce there will be lack of balance.

The Hot Springs Conference set up committees to deal with the following problems: consumption levels and requirements, expansion of production and adaptation to consumption needs, facilitation and improvement of distribution, and recommendations for continuing and developing the work of the Conference. Out of the recommendations came the draft constitution of the Food and Agricultural Organization of the United Nations.

This constitution has been adopted and provides for a general conference to meet at least once a year in order to determine the policy and, if two-thirds majority agree, to undertake additional

[96] *Ibid.*, p. 162. As from 1945 when Brinton's book appeared.

functions within the limits of its charter. An executive committee of 9 to 15 persons carries on the work between the meetings and a Director General, Sir John Boyd Orr, and an International Secretariat, carry out the bulk of the routine and planning work.

Although states will continue to act primarily on a unilateral basis to attain the ends described above, they realize the necessity of an international organization to give advice, to suggest coordination, and to take joint action when necessary. The Organization is to collect, analyze, interpret, and disseminate information concerning nutrition, food, and agriculture. It is to promote and recommend national and international action on scientific, technological, social, and economic research in these fields and to encourage education and promote knowledge of nutrition and agricultural science. The Organization will also attempt to promote conservation of natural resources, improve methods of agriculture in production, processing, marketing, and distributing products. It will give technical assistance to governments which request it and the member states are requested to report periodically on what is being done within their boundaries toward these ends. Research on a broader than national basis is to be undertaken in a wide variety of fields and, although a great deal has already been accomplished by these means (not as yet by the Food and Agricultural Organization), much remains to be done.

It is anticipated that the FAO will co-operate with the International Bank for Reconstruction and Development in order to facilitate credit for agricultural purposes where necessary. We have noted above[96a] the plan for an Agricultural Mortgage Bank proposed in 1932.

Sir John Orr, an outstanding British scientist and an acknowledged author on nutrition, has injected into the FAO something of his philosophy and energy. To him the FAO has as its two major functions: the application of scientific agricultural methods of production to the soils of poor and backward countries, and the inauguration of a world economic trade program which will enable countries more systematically to transfer their surplus where they are needed. The FAO is not to be a permanent relief agency. It is to have no "power" but will be essentially advisory, and it will seek to work as far as possible with and through other United Nations agencies.

By May 1946 it was being questioned whether the FAO, lacking as it does specific authority for concrete action, should not be

[96a] See pp. 325–26.

transformed into a world food administration with an executive rather than purely advisory function. Such a proposal was made by former President Hoover on his return from a comprehensive survey of Europe and its food requirements. It was becoming clear that the food crisis—one of the worst, if not the worst, in the world's history—was not going to be settled in 1946 but was likely to continue for at least three or four years. Consequently, "hurriedly devised spasmodic measures" could not save the situation, as Sir John declared before the special conference called by the FAO in May 1946. This conference was to consider whether the FAO should take over the work of the UNRRA, how to deal with the shortage of meat and livestock resulting from the great diversion of cereal grains for human consumption, and how to insure that an expanded food-production program would not result in the type of economic slump which occurred in the early 1920's. Whether or not the FAO is to receive authority, it will not be able to function efficiently unless the governments are ready to disclose information concerning their supplies, crops, livestock, and the amount of foodstuffs which they are willing to export.

Sir John believes that if the world were to understand clearly the meaning of food and nutrition it would support the FAO, which then could be "the most beneficent thing to have swept the world since Christianity."[97] Food should have a special position in relation to the national and international economy. It is not in the same category as other commodities and it should be taken out of the gamble and uncertainty to which ordinary economic forces have subjected it. In his book, *Food, Health, and Income,* published in 1935, he pointed out that one-third of Britain's population was undernourished owing to poverty. His studies on nutrition in Scotland showed that one pint of milk a day had astonishing consequences to the health of the Scottish school children and, because the greater part of mankind lives below the nutritional level necessary for good health, he rightly feels that humanitarian as well as the purely economic considerations should play a powerful part in world organization.

The FAO completed a 40-page World Food Survey for the Copenhagen Conference held in September 1946. It brought out in detail the general conclusion mentioned above that much of the world is undernourished and that poverty is the chief cause of malnutrition. It recommended the establishment of a world food

[97] *New York Times,* May 19, 1946, p. 50.

board in order to devise a concerted international policy to prevent food shortages and surpluses.

The Copenhagen Conference approved the objectives of the proposals set forth by Sir John Orr and then established the Preparatory Commission to develop a detailed program for reaching those objectives. The Commission will report to the Director General of FAO; proposals will go to the member governments; after which a full conference of FAO will then make recommendations to the United Nations.[97a]

The task of restoring normal international trade and commerce is a gigantic one. Whereas at the end of the struggle a generation ago there were three financial centers, New York, London, and Paris, now only New York remains. Twenty years ago the industrial plant of Great Britain was largely intact; today it suffers from the terrible effects of the blitz. And just as World War I resulted in a separation of trading countries from their markets and forced a degree of war industrialization upon other countries, so to even a greater degree has World War II intensified these forces. India, Australia, and Canada have gone much farther along the path of industrialism. Above all, the terrible destruction wrought upon the Axis powers and their satellites has rendered the problem of relief and rehabilitation, let alone the question of restoration of normal production and trade, a major task. We may say that the limit of elasticity of the modern world's economic system has been overreached and the steps necessary for restoration must be much more drastic than would have sufficed a generation ago.

In addition, changing theories have had their effect. Although all reputable economists denounce economic nationalism of the kind described above, they are of the opinion that a certain degree of industrial development will be required if the economically backward areas are to be developed so as to raise the standard of living of the inhabitants. Southeast Europe, Latin America, and Asia come in this category. And in the case of larger agricultural countries such as Australia and Argentina and monoculture countries which have depended upon sugar, rubber, tin, etc., for their prosperity, a degree of economic diversification will enhance prosperity. The agricultural countries realize that they are at the

[97a] *See F.A.O. Information Service Bulletin* (October 4, 1946); *World Food Survey, Food and Agriculture Organization of the United Nations* (Washington, D.C., July 5, 1946); *First Annual Report of the Director-General to the F.A.O. Conference, Food and Agriculture Organization of the United Nations* (Washington, D.C., July 5, 1946).

mercy of world fluctuations if they retain an undue amount of agricultural specialization; they urge that economic diversification will permit a greater degree of cultural development and provide more vocational openings for the graduates of their schools and universities since many more different kinds of jobs are provided in an economically complex than in an economically simple economy; and they strongly urge that the application of science to their natural resources can permit a utilization of materials which otherwise would go to waste. Taking their cue from the small industries which have been developed in the Tennessee Valley through development of hydroelectric power as well as by water conservation, they believe that the future policy should then be directed toward improving agricultural methods and also expanding the number of industrial undertakings. Southeastern Europe, as Yates and Warriner point out, faces the necessity of consolidating the farm-strip system, developing co-operative processing and marketing, introducing more efficient transportation to permit wider exchange of goods, and promoting irrigation to enable more extensive grain growing. A Danube Valley Authority is widely talked of as well as the regrouping and rebuilding of houses, the introduction of machinery not requiring a large capital outlay, "such as water pumps, fruit presses, milk pumps, and small motor plows." Small industries, such as boot- and shoemaking, fruit canning, papermaking, and many others, will enable the peasants to supplement their meager agricultural income. The Import-Export Bank has made loans to various countries in Central and South America for the purpose of encouraging this type of what may be called minor industrialization, and the same policy is urged for the Middle East.

This policy, which departs from that advocated by economists in the nineteenth century, who pushed the principle of economic specialization to perhaps an extreme point, will require careful international co-operation for two reasons. First, great care must be exercised that economic diversification in many countries will not lead to a new kind of exclusive economic nationalism; the plea of supporting infant industries may well be raised, and economic groups, once they acquire a vested interest, will first demand tariff protection and then oppose tariff reduction. Second, as pointed out elsewhere, the policy of economic diversification will necessitate capital investment, but international loans if they are to be repaid must be accompanied by a rational policy providing for the repayment of loans; hence the lending countries must make

provision for an expansion of their imports as well as exports and thus modify their tariff policies to harmonize with their capital export policies. This principle must be observed, whether capital exports are undertaken unilaterally or in association with the United Nations Social and Economic Council following the Bretton Woods Agreements, or by any agreement which may be reached at the international trade conference called for the spring of 1947.

Merely to reduce tariffs may not reach the heart of the problem. In this dynamic age new industries arise and older established industries, finding themselves in severe competition with new methods, tend to ask for tariff protection if the new competitor is a foreigner, or for some subsidy or quota protection or trade agreement limitation in the case of domestic competitors. If the world standard of living is to be raised, industry and agriculture must use the utmost technical efficiency and will not be able to afford to retain outmoded methods of production. But established industries may view the problem very differently. Scores of employers and thousands of workers will see their means of livelihood threatened by new methods and will naturally band together to resist the lowering of tariffs or other methods which may put them out of business. Therefore, as Eugene Staley and Wynfield Riefler well point out, it will be necessary to relate the reduction of protective duties to a policy of economic adaptation. Because of the influence of group-pressure interests, especially in the United States, tariff reductions are not likely to be very extensive in scope unless they are

coupled with a positive program for: (1) facilitating and encouraging shifts of capital and labor out of those lines that require protection (unless technical improvements can be introduced that alter the comparative cost situation) and (2) spreading broadly over the community the cost of transition associated with such transfers; joining such a program to a trade policy directed towards the lessening of obstacles to trade and toward the increase of imports into the United States,[98] is *desirable* on grounds of justice as well as expediency. Trade barrier reductions which benefit the nation as a whole may injure certain groups and, though the operation is not wholly analogous to taking private property for a public use, there is a case for some form of compensation.[99]

[98] This principle of course should apply to all countries.

[99] Eugene Staley and Wynfield W. Riefler, *Two Proposals for Tariff Reduction* (Council of Foreign Relations, New York, August 1945), p. 2. (This study is one of a program of studies entitled *American Interests in the War and Peace,* undertaken by the Council on Foreign Relations.)

The two writers propose both a domestic and an international policy to promote economic adaptation. They suggest the following national measures: (*a*) that the United States Tariff Commission or some other agency publish an annual survey showing what branches of industry and agriculture are receiving substantial tariff assistance (say 25 per cent), how long the particular establishment or industry has been receiving benefits from the tariff, "how its wages and dividends compare with other industries in the same regions," what measures the industry has taken to improve its productive efficiency, how much it has spent during the year on research in new products and new methods of production, and, in the event of a declining market for the goods of this particular industry, "what alternative occupations may be available to which labor and capital might transfer with advantage and what measures might be taken to facilitate such transfers";[100] (*b*) the United States government should undertake regional resource surveys and developmental programs in order to find "promising lines of economic expansion which can provide alternative employment for communities now more or less dependent on tariff-subsidized occupations"—these investigations would cover such protected products as sugar beets, cattle, sheep, copper, etc.; and (*c*) the Tariff Commission should transfer to the free list goods produced by industries where not more than 500 American workers are directly affected and if "no skill essential to the military defense of the United States would be lost." These workers should be assisted in finding other employment and be granted compensation for a certain length of time.

The authors also suggest that the governments of the world include in a multilateral trade convention an agreement, first that each signatory will explore methods of encouraging "adaptive changes" in their own productive methods, and, second, to participate in international consultation and investigation on problems that arise. An international committee on economic adaptation should be instituted and corresponding national committees all under the aegis of the United Nations Economic and Social Council be formed.

These suggestions and proposals take on added interest in view of the proposals made for an international trade organization by the United Nations. We shall outline the structural economic institutions of the League of Nations and the United Nations presently. It is important here to indicate the significance

[100] *Ibid.*, p. 3.

for international society of some of the official American proposals[101] which begin by reciting four international difficulties which must be overcome: (1) the danger of violent depressions; (2) the increase of discriminatory state trade restrictions; (3) the increase of private cartel arrangements; and (4) intergovernment commodity controls exercised on a discriminatory basis. It urges the importance of full-employment programs on the general theory that reduction of tariffs is unlikely to take place and even if it should take place would be comparatively ineffective unless national employment figures are kept at a high level. The government expresses the hope that the Conference on International Trade will reach a general agreement on the desirability of full and regular employment in all countries.[102] It urges the need of a broad but detailed agreement which will provide action to eliminate or substantially lessen the many types of governmental restrictions upon trade. It makes suggestions: to limit quotas and embargoes, "to carefully define cases," to avoid discrimination in the application of quotas and embargoes, to reduce the tariff levels, to eliminate tariff preferences, to limit local taxes on important products. Government agencies conducting foreign trade should "give fair treatment to the commerce of friendly states . . . . make their purchases and sales on economic grounds and . . . . avoid . . . . monopoly of imports to afford excessive protection to domestic producers."[103] The proposals admit the necessity of allowing countries "to take temporary action to prevent sudden and widespread injury to the producers concerned" (a possibly dangerous clause, as earlier international efforts to deal with this question have revealed) and agree that periods must be provided before the principles listed above can be fully carried into effect.

In the American preliminary draft it is urged that if a country has a persistently unfavorable financial balance it should be able to protect itself "by imposing certain ordinarily forbidden trade regulations" but only with the express permission of the proposed International Trade Organization. If a member which gives or receives capital, trained workers, or managerial skill from abroad feels that the obligations undertaken are not being met, it may appeal to the International Trade Organization which will at-

[101] "Proposals for Expansion of World Trade and Employment," *Department of State Commercial Policy*, Series 79, Washington, D.C., November 1945.

[102] For further analysis, see Ellsworth H. Plank and Maurice J. Erickson, *"The American Trade Proposals: Proposals Concerning Employment, Department of State Bulletin*, April 7, 1946, pp. 561–64, 578.

[103] Plank and Erickson, *op. cit.*, p. 23.

tempt to bring both sides together. Under Article 13 a member wishing to give special protection to a new or reconstructed industry in the interests of full employment and development will apply to the ITO. "What Article 13 accomplishes is to provide a way of enlisting the authority of the ITO, in legitimate cases, in support of the use of kinds or degrees of protection that would otherwise be forbidden."[104]

Under Article 18 signatories will agree to work toward standardizing definitions of value in customs arrangements and the ITO will have authority to study the problem. The same body is to receive from member states whatever foreign trade statistics it requires including figures on revenues from tariffs and the amounts from subsidies. Also, the ITO will have power to set out standards, terms, and forms for use in official statistics and documents dealing with international trade and, significantly, it is proposed that, unless a member state refuses to accept these standards, terms, and forms within six months, they will become effective—an interesting development in the matter of ratification referred to in the chapter on international law and organization. If a member believes that another member has not fulfilled its obligations to negotiate satisfactory tariff and provisional arrangements under Article 24, it may refer the matter to the ITO, which, if it finds the complaint justified, "may authorize the other country, or in exceptional cases all member countries, to withhold from the offender the tariff reductions negotiated among the other members."[105] Within two years after its establishment the ITO will review all restrictions employed for balance of payments purposes and, if necessary, will, in consultation with the International Monetary Fund, initiate general discussions to remedy the situation.

The ITO, through a Commission on Business Practices, will attempt to check restrictive policies and practices by cartel and other arrangements. In this matter the ITO must rely primarily upon publicity, for it will have no police powers of its own. It also will have the responsibility of dealing with international commodity agreements in three ways: (1) by setting up study groups, (2) by arranging commodity conferences, and (3) by encouraging commodity agreements. The structure of the ITO as proposed by the United States will conform to the general pat-

[104] *Informal Commentary to Accompany Preliminary Draft of Articles of a Charter for an International Trade Organization of the United Nations* (Office of Public Affairs, Department of State, February 1947), p. 9.

[105] *Ibid.*, p. 27.

tern familiar to students: (1) a conference comprising all member states, (2) an executive board, (3) a Secretariat under a Director General, (4) three commissions: (*a*) on commercial policy, (*b*) on commodities, and (*c*) on business practices. It is proposed that the ITO will be associated with the Economic and Social Council of the United Nations as a specialized agency. Finally, provision is made for the interpretation and settlement of legal disputes by means of the International Court of Justice.

ECONOMIC INSTITUTIONS OF THE LEAGUE AND THE UNITED NATIONS

We have described at some length the attempts to find adequate international policies and methods; it remains to describe the institutions which the League of Nations and later the United Nations established for that purpose.

There is a tendency to underestimate the scope and extent of the economic work accomplished by the League. Although it failed to solve the major problems of depression, unemployment, and economic nationalism, the long experience gained by officials in that organization has been invaluable to those responsible for establishing and working with the Economic and Social Council of the United Nations. The League's main bodies were: the Economic and Financial Organization (separated into an Economic Section and a Financial Section from 1931 to 1938), the Communications and Transit Organizations, and in the social sphere the Health Organization, the Opium Section, the Mandates Section, and the Social and Humanitarian Section. The International Labor Organization though associated with the League of Nations had almost complete autonomy.

Apart from the ILO, the Economic and Financial Organization was the largest of the technical agencies of the League, but compared with national departments it was, of course, a very small one; "at the end of 1938, for example, it had a staff of sixty-five at Geneva, while the headquarters staffs of the Health, Communications and Transit, Drug Control, and Social Questions Organizations numbered less than sixty all told."[106] The second committee of the League Assembly discussed economic and financial questions each year and considered the Secretary-General's annual report, the Co-ordination Commitee's annual report, and the re-

[106] Martin Hill, *Economic and Financial Organization of the League of Nations* (Carnegie Endowment for International Peace, Washington, D.C., 1946), p. 4.

ports by the technical committees. The League Council also considered the work of the Economic Sections, and both the Council and the Assembly had the general responsibility of guiding and controlling the work of the Economic and Financial Organization. However, as Hill points out, neither the Council nor the Assembly was quite suited to the task, for in both bodies political questions tended to "overshadow" economic discussions. Considerable discussions took place concerning the desirability of a reform which would somewhat divorce political from economic matters and, at the same time, still have the association and prestige of the League. A comprehensive policy was needed.[107]

This truth was emphasized by the Bruce Committee in its report of August 22, 1939. Modern economic and social welfare, it wrote, demands day-to-day co-operation in scientific research, education, economic organization, and, indeed, every department of human life. Government would be impossible without the routine and unostentatious activities of hundreds of thousands of people. In a world which has become "for all its political severance . . . . daily closer knit," the same day-by-day adaptation to changing conditions must take place. The Secretary-General of the League has well said: ". . . . the abundance of life cannot be compressed within rigid limits. There are too many factors of change." As the League special committee has pointed out, industry is growing within agricultural states and all governments now are facing much the same type of problem. Therefore, "the opportunities of each country to gain by the experience of others are increased." Many of the problems need scientific study, careful and continuous co-operation, the exchange of experience, and the co-ordination of national policies.

The committee therefore proposed to bring all of the economic and social work of the League under an effective and representative agency which could co-ordinate the activities of the organization which had become increasingly interconnected, and by this reorganization to add "fresh efficiency and vigor to the work itself," and by separating the economic and the social from the political activities of the League to give states which were not members of the League "the opportunity of the fullest possible co-operation in the work itself as well as in its direction and supervision."

[107] For an interesting discussion of international technical co-operation see H. R. G. Greaves, *The League Committees and World Order* (Oxford University Press, London, 1931).

In pursuance of these objectives, it submitted to the Assembly a draft constitution for a Central Committee for Economic and Social Questions. The Committee should comprise representatives of twenty-four states, chosen for one year by the Assembly. After the first election it should comprise "such number for such period as may be determined in the light of experience." The Committee should co-opt not more than eight members appointed in a personal capacity on grounds of special competence and authority. It should study the conditions under which states which desired to participate in the economic and social work of the League should be able to do so. The Central Committee should meet at least once a year and submit the annual report to the Assembly, and should draw up its own rules of procedure, approve its agenda, elect its own president and bureau, etc. Unfortunately, World War II prevented action upon the Bruce Report.

At the San Francisco Conference the Australian delegation took the lead in enunciating the principles which should animate the new Organization in the sphere of economic and social co-operation. Under Article 55 of the Charter, the United Nations is to promote (*a*) higher standards of living, full employment, and conditions of economic and social progress and development; (*b*) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and (*c*) universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion.

To this end, provision is made in the Charter for an Economic and Social Council which has special responsibilities for matters concerning the broad field of human welfare. The Council consists of eighteen members elected by the General Assembly, six members each year for a term of three years. The Big Powers wished to have a special position relative to the smaller nations as on the Security Council, but the proposal was rejected. Hence the nations meet on the ground of theoretical equality, but this equality did not carry with it the sovereign right of veto, for decisions are to be made by a majority of the members present and voting.

By the end of 1946, the Economic and Social Council had already done much preliminary work. It had set up nine commissions, including Economic and Employment, Transport and Communications, Fiscal, Population, Social, Human Rights, Status of Women, and Narcotic Drugs. A number of subcommittees, Re-

construction of Devastated Areas, Employment and Economic Stability, Economic Development, and Statistical Sampling, had been formed and subcommittees to deal with Freedom of Information and the Press, Protection of Minorities, and Protection Against Discrimination had been authorized. Arrangements were being made to bring the Economic and Social Council into relation with the International Labor Organization, the United Nations Educational, Scientific, and Cultural Organization, Food and Agricultural Organization of the United Nations, and the provisional (later permanent) International Civil Aviation Organization, while it was hoped that relations would be established with the International Monetary Fund, the International Bank for Reconstruction and Development, the World Health Organization, the International Refugee Organization (set up early in 1947), and the proposed International Trade Organization.

It was important to bring these specialized agencies into close association with the Economic and Social Council and during May and June, 1946, agreements were reached with three of them, namely, the Food and Agricultural Organization, the International Labor Organization, and the United Nations Educational, Scientific, and Cultural Organization. These agreements recognized the competence of the agencies in their particular fields, and provided for reciprocal representation without vote in meetings, as well as for co-operation in exchanging information and in carrying out decisions of the Security Council toward maintaining or restoring peace or security. None of the agencies was prepared to accept a common budget with the United Nations, but the agreements did "provide for future consultation regarding the desirability of closer budgetary relationships which may eventually result in an integration of the budgets of all the specialized agencies in the general budget of the United Nations."[108] The agreements also provided for channels by which administrative and technical services might be developed without overlapping and for co-operation in statistical work. The agreements may be implemented in the light of experience and so are subject to revision, thus paving the way for closer relationships in the future.

Of striking importance is the relatively short Article 71 of the Charter of the United Nations, which provides that the Economic and Social Council "may make suitable arrangements for consul-

[108] *The Economic and Security Council of the United Nations* (United States and United Nations Report Series 3, Department of State, Publication 2600), p. 23.

tation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."[109] A committee on non-governmental organizations considered a report drawn up by the Committee on Consultation and finally agreed that there should be three types of non-governmental organizations recognized: (1) those having a basic interest in most of the activities of the Council, as for example, organizations of labor, business and management, farmers, and consumers, (2) organizations with especial competence but which were concerned with only a few fields of activity covered by the Council, and, (3) organizations primarily concerned with the development of public opinion and the dissemination of information. Especially important in these non-governmental organizations were the World Federation of Trade Unions, the International Co-operative Alliance, and the American Federation of Labor which were given "consultative status." Indeed, the Soviet Union and the Ukraine believed that the World Federation of Trade Unions was so important that it should be given a special status. The United States representative urged the inclusion of the International Chamber of Commerce which, however, was referred to a later meeting. The significance of these non-governmental organizations may be realized when we recall that the Federation of Trade Unions has a membership of 65 million and its influence may be much more powerful than that of a small so-called sovereign state. A Soviet author writes thus:

Can it now be stated, without giving offense either to fact or to common sense, that while any state, even a tiny one which plays no role whatsoever in international relations, is a subject of international law, an international organization of 65,000,000 members is a *quantité négligeable* for international law? If international law is to deal with realities and not with fictions, it must admit that the conception of subject is not an absolute category existing out of space and time. There was a period, for example, when the Roman Catholic Church was a subject of international law, and a highly influential one.

We are entering a new period, in which international associations of the working people are stepping out as a most active factor in international politics; associations in whose close and daily collaboration

[109] Article 71. See the *United Nations Weekly Bulletin* (Vol. I, No. 16, November 18, 1946). Also the *Economic and Security Council of the United Nations* (The United States and the United Nations Report Series 3, Department of State, Publications 2600).

the democratic states are vitally interested. Hence the institution of appropriate organizational forms for such collaboration, for example, the admission of the largest international workers' organizations into the United Nations with a consultative vote (to the Assembly or the Economic and Social Council), would considerably promote the progressive development and democratization of international law.[110]

The Economic and Social Council will give what Finer calls "regular and continuous leadership," by means of "three broad classes of activity: (1) preparation of general policies for the Assembly to consider; (2) watchfulness over the activities of the Members and the specialized agencies; and (3) administrative co-ordination of the several specialized agencies."[111] These three categories merit closer examination.

Under Article 62 the Council "may make or initiate reports" on international economic, social, and other related matters, may make recommendations to the General Assembly, and members of the United Nations, and to the specialized agencies concerned. It may prepare draft conventions for submission to the General Assembly and call international conferences on matters which fall within its competence.

Finer suggests that the power to receive reports may be very important. It will enable the General Assembly to act more informedly in its general over-all task of considering the problems relating to the welfare of the member nations. But the power to receive reports, if it is to be effective, must carry with it the right to obtain them; no compulsory powers of investigation are granted the Council, but appropriate steps of an amicable character may be taken to obtain the desired information.

So with the specialized agencies: The International Labor Organization and others have pointed to the need of having some general agency to watch over the special agencies, in order to prevent the latter from going beyond their legitimate spheres of action, and "to avoid the friction and waste which would result from divergent administrative practices and competition in recruitment." The authority over the budget resides in the Assembly, but probably the Economic and Social Council will have a degree of control over the specialized agencies. The Council

[110] Eugene A. Korovin, "The Second World War and International Law," *American Journal of International Law* (Vol. 40, No. 4, October 1946), pp. 745–46.

[111] Herman Finer, *The United Nations Economic and Social Council* (World Peace Foundation, Boston, 1946), p. 92.

may also be expected to investigate the operations of each specialized agency and ascertain whether the scope of activities should be expanded or contracted, and where necessary to suggest the appropriate procedure in case action is required in fields where no international organization exists.

In a general way the Economic and Social Council may gradually become a great international deliberative policy-discussing body. In association with the General Assembly it may help to bring the many new agencies—the Food and Agricultural Organization, the International Monetary Fund and Bank for Reconstruction and Development, the proposed International Trade Authority, and the Health Organization—into a closer working relation than was true in the case of the technical organizations of the League of Nations. Without question, it will develop a comprehensive set of rules to promote practical co-operation between the specialized agencies: (1) by the use of observers from Allied agencies at Conferences called by a particular agency; (2) by Mixed Committees; "the International Institute of Agriculture and the I.L.O. co-operated through a Mixed Committee on Agricultural Questions. The Permanent Mandates Commission included the I.L.O. in its membership";[112] (3) by the use of reports and by acting as a clearing-house; (4) by making arrangements (under Articles 69 and 70) for representatives of the specialized agencies to participate without vote in its deliberations and its commissions, and for its representatives to take part in the deliberations of the specialized agencies. It will be important for the Council to seek at all times the judgment of the experts in various agencies, and to inform them of the wider implications of questions of an apparently specialized character.

It would seem that the Economic and Social Council represents an advance over the League of Nations organization for economic and social matters. Whether its essentially advisory character will suffice to produce sufficient economic co-operation among the sovereign member states, or whether its powers must be strengthened before adequate economic policies can be effected through the United Nations remains to be seen. But we cannot expect much headway on the economic plans if the Security Council continues to be the scene of irreconcilable political and military differences among the Great Powers.

[112] Herman Finer, *op. cit.*, p. 106.

Chapter IX

COMMUNICATIONS

COMMUNICATIONS have a local, national, imperial, and international significance. Roads, rivers, railroads, airplanes, cables, and radio serve to unite all kinds of society. We may expect, therefore, to find no clear-cut picture in attempting to estimate the part which communications play in modern international affairs.

The unity of nations needs a material basis, and historians point to the great service rendered by railroads in promoting the national unity of Germany, the United States, and Russia during the nineteenth century. Railroads have also helped to build empires by enabling colonial settlement to go inland instead of being confined, as the earlier empire settlements were, to the coastal regions. They were not susceptible to the diseases which destroyed animals used for transport purposes; they enabled revolts to be put down more easily; they made possible the exploitation of inland resources; and in areas visited by famine they facilitated relief measures. In these ways considerable constructive work was done. The same holds true of shipping, cables, radio, and airplanes. Cheaper postage, the development of refrigeration, the exchange of tropical products and raw materials for manufactured goods, made possible by better shipping, have led to a higher standard of living.

Just as better means of communication made for national unity, so they later made for national expansion. But in the course of the expansion, rivalry developed on an international scale, just as on a smaller scale there had been rivalry between railroad companies, shipping groups, and providers of other forms of transportation. The difference now was that governments were tempted to place their armed forces back of the expansionist forces. Within their own boundaries they had developed national security; but, in a world of power politics, communications served not only economic welfare but also military security and striking power. A railroad could be used to transport troops and munitions as well

as consumers' goods; and so long as the threat of war existed, so long would governments view projected railroads (and, of course, other forms of communication) from a military as well as an economic point of view, and on many occasions the military considerations outweighed the economic.

In a world of growing international trade, however, the demands of ordinary economic life went far beyond national and empire channels, and the interests of governments as imperial instruments clashed with their interests as rulers of citizens with economic interests all over the world. The latter demanded organization which would more efficiently minister to international shipping, railroads, cables, radio, and air traffic, and the normal communications incidental to international trade led to wider systems of international co-operation. A contradiction thus developed, growing more pronounced every year; on the one hand the institution of war demanded an ever increasing amount of independent national effort, and on the other hand the need of efficient international organization for everyday purposes became apparent. The following survey will show in more detail the effects of the growingly incompatible purposes which communications have had to serve.

WATER TRANSPORTATION

SEAS AND STRAITS

The freedom of the seas which vessels enjoy today in time of peace came only after centuries of effort and struggle. Ancient historians relate how Phoenicians, Greeks, and Romans fought many a naval battle to gain sovereignty over the Mediterranean. Hundreds of years later at different times Venice claimed dominion over the Adriatic Sea, British monarchs asserted jurisdiction over waters "belonging to the King of England," and other rulers took such titles as "lord of the ocean" and "king of the seas"; each of these units treated the waters around it as its own possession and deliberately penalized foreign ships.

In the sixteenth century, the international lawyer, Gentilis, advocated a modification of the traditional policy and suggested that all countries should enjoy the use of the sea, "but without violation of another's jurisdiction." We refer elsewhere to the close connection between fishery questions and the problem of the high seas. Here it is sufficient to note that the expanding commerce of the seventeenth century brought a challenge to the mo-

nopolistic pretensions of national monarchs, and that, following many controversies on the law of the sea, the doctrine developed that the sea was free to all nations and claims of national sovereignty over the open ocean were discarded. Nations now possess jurisdiction over their territorial waters, which, generally speaking, extend for three miles from the shore line. Beyond these limits modern international shipping no longer meets with obstacles imposed by nationalistic claims of jurisdiction. The oceans are free to all, and cargoes and passengers may proceed without let or hindrance. The sea has become internationalized.[1]

This freedom of the seas in peace time is a precious right; but its value would be considerably diminished if nations which are in a position to control certain straits and canals could block international shipping at their will and pleasure. Thus freedom of ocean commerce in order to play its full part requires freedom of commerce in such narrow seas and connecting waters, as the Dardanelles and the Bosporus, the Straits of Gibraltar, the Great Belt and the Little Belt, and the Kiel, the Suez, and the Panama canals.

In earlier years Denmark claimed jurisdiction over the Danish Sounds and Belts; these were not strictly territorial waters, but Denmark claimed a prescriptive title deriving from the days of *mare clausum,* when a nation regularly claimed jurisdiction over the ocean surrounding or adjoining it. It was only in 1857 that Denmark, by international agreement, surrendered the right of collecting tolls on ships passing the Great Belt and the Little Belt, undertook not to substitute taxes, and promised "to maintain in good condition existing lights to the entrance of her ports, harbors, and roadsteads and those along her shore as well as existing buoys, beacons, and markers that served to facilitate the navigation of the Cattegat, the Sound and the Belts."[2] The King of Sweden and Norway agreed to maintain the lights on the shores of his countries "without imposing any dues upon the ships that passed the Sound and the Cattegat."[3] Denmark in return was to receive special sums from the powers, each of which was to make

[1] Certain limitations involved in national claims over bays, gulfs, and other waters are discussed in several volumes dealing with international law. See also P. M. Ogilvie, *International Waterways* (The Macmillan Company, New York, 1920), pp. 116–49.

[2] Charles E. Hill, *The Danish Sound Dues and the Command of the Baltic* (Duke University Press, 1926), p. 261.

[3] *Ibid.,* p. 262.

a special convention with Denmark "to regulate the rate of exchange of foreign into Danish money." The United States, which had given one year's notice in 1855 to terminate the Treaty, made a special arrangement in 1857 and contributed in no small measure to bringing about the freedom of the seas through the Danish Straits. International requirements had triumphed over national claims.

In 1850 the Clayton-Bulwer Treaty between the United States and Britain provided that if a canal were to be built in Central America separating North from South America, it would be by joint effort. The United States subsequently attempted to free itself from this provision, and on grounds of national interest claimed the right to modify the treaty by unilateral action. Considerable diplomatic correspondence ensued, in which Great Britain successfully asserted her position under international law. Finally, in 1901, the Hay-Pauncefote Treaty modified the 1850 Treaty, leaving the United States free to build a canal, in return for which it promised equal treatment for the ships of all nations. Soon after the opening of the Panama Canal, Congress passed a bill exempting United States coastwise traffic from canal tolls. The measure aroused considerable resentment in Great Britain; many people felt that the bill was inconsistent with the treaty commitments of 1901; others feared that to place tolls on foreign ships and exempt American vessels would unduly penalize foreigners and seriously affect their carrying trade, since they would have to charge higher freight and passenger rates or accept a lower rate of profit. Fortunately, Congress accepted the recommendations of President Wilson in 1914, and the canal, although constructed, administered, and fortified by the United States, is now open to ships of all nations without discrimination.

The Suez Canal is of paramount importance as an artificial waterway. It has assisted a revolution in sea transport, namely, the rise to supremacy of the steamship and the decline of the sailing vessel, which was frequently becalmed in the Red Sea. Before the canal was built, European nations had to use the route around Africa. When companies found that by using the Suez Canal they could save many days in sailing time, make great economies in wages and fuel costs, and increase their income through more frequent journeys, the canal rapidly grew in importance. In 1870, there were 486 vessels that passed through it; in 1913 the figure had risen to 5,000; in 1930, there were 5,761 vessels, of 31,000,000 tonnage, which used this great waterway. A purely national con-

trol of the waterway would carry with it the threat of discrimination against foreign vessels. Nevertheless, Great Britain, in view of its empire in India and the Pacific, felt that it had a special strategic and economic interest in the canal, and fought against the principle of international control in Egypt, and finally gained a predominant political position in that country. The other nations, however, were not minded to permit Britain to monopolize or dominate the waterway, and agreed in 1888 to a convention which still regulates the status of the canal. Under this convention the canal is free in peace and war to all vessels, and it must never be used for the purpose of blockade. Belligerent powers undertake not to take warlike action against it, and war vessels must not remain in its waters. Only in case of a legitimate self-defense exercised by Egypt and its protector, Britain, can the canal be closed. Article 11 of the convention provides that in the exercise of the right of defense the free use of the canal shall not be interfered with. In fact, on only two occasions has the canal been closed—the first before the convention was signed, the second for a period during the World War of 1914–1918.

This important canal, then, is open to the trade and commerce of all nations. The Suez Canal Company, governed by a Board of Directors, 32 in number, of whom 21 are French, 10 are British, and one is a Dutchman, administers an area which transcends all national importance and has become a matter of concern to the whole world.

However, it is impossible to regard the Suez Canal merely as a great waterway for the world's commerce in time of peace. It is for Great Britain an important line of defense, vital to maintaining her lines of communication with India, her other Asiatic possessions, Australia, and New Zealand. Consequently, the neutralization provided for in the convention of 1888 does not constitute a strong guaranty. And until the danger of international war is considerably lessened, the Suez Canal will not be an unmixed blessing to the world; for, as Hallberg[4] suggests, while it does fulfill an important civilizing mission in promoting trade and commerce, and in bringing the Orient and the Occident near to one another, it has also caused many international rivalries, played its part in bringing on the war of 1914, and in the recent struggle was a factor of no small importance, as the war in North Africa and in eastern Mediterranean countries testified.

[4] Charles W. Hallberg, *The Suez Canal* (Columbia University Press, New York, 1931).

The question of the Bosporus and the Dardanelles has occupied Europe for several hundred years, and well illustrates the conflicting claims of imperialistic power policies and the requirements of the world's and especially Europe's economic welfare. In its modern form it dates from the decline of Turkey and the rise of Russia. The Bosporus and the Dardanelles are at the intersection of a north-south line connecting Russia with the Mediterranean and an east-west line joining Europe and Asia; and on this cross the peace of Europe has more than once been sacrificed. The reason is not difficult to find. The power which controls the east-west axis can prevent a Russian move to the south; if Russia dominates the north-south line, it can block the eastern expansion of rival powers, strengthen its position in the Mediterranean, and threaten India. The European significance of the Straits was revealed in World War I, when the Allies sacrificed many thousands of men in an effort to break through the Dardanelles and the Bosporus for the purpose of transporting troops into the Black Sea, so as to assist Russia and thereby strengthen the attack on the Austro-German eastern frontiers.

Russia's first important contact with the Black Sea occurred under Peter the Great who conquered Azov in 1696. But it was not until the Treaty of 1774 that Russia gained considerable power over the Turkish empire including an extension of Russian navigation privileges in the Black Sea in 1779. Russian advances continued through the 1805 treaty which gave Russia the right to go through the Straits to the Ionian Islands. It forced Turkey to sign the Peace of Adrianople, giving the right of passage of Russian vessels through the Straits to the Mediterraneon and the immunity of Russian ships from seizure by the Ottoman authorities.[5]

By the Treaty of Unkiar Skelessi (1833), the Black Sea was practically converted into a Russian base. Britain and France were able in 1840 to reverse these provisions and re-establish the rule that the Straits were to be closed to foreign ships of war. After the defeat of Russia in the Crimean War, the Treaty of Paris provided that the Black Sea must be denavalized; hence Russian military vessels and arsenals were forbidden, but in 1871 Russia took advantage of the situation to denounce what she

[5] See C. Phillipson and N. Buxton, *The Question of the Bosphorus and the Dardanelles* (Stevens & Haynes, London, 1917), p. 44, and James T. Shotwell and Francis Déak, *Turkey at the Straits* (The Macmillan Company, New York, 1940). Both give a history of the rivalry between Russia and Great Britain.

regarded as an intolerable limitation upon her sovereign power. In 1923 Turkey had to submit to the demilitarization of the Straits under the Treaty of Lausanne; this step meant a setback for the Soviet Union since Turkey would be unable to prevent a powerful naval aggressor's entering the Black Sea. In 1935, largely due to Hitler's rise to power, the Lausanne Treaty was replaced at the Conference of Montreux, which represented a "substantial sacrifice" by Great Britain, who receded "from her persistent policy of opposing a preferential status for Russia and the other Black Sea powers."[6] "For Russia it accomplished what successive attempts over the course of a century had failed to bring about: control of the Black Sea by the Russian fleet, freedom for Russia to send her raiders into the Mediterranean without danger of a superior force pursuing her into the Black Sea. . . . ."[7]

Shotwell and Déak, writing in 1940, ventured to prophesy that the Soviet policy of expansion would make it reasonably certain that the question of the Straits would be raised in one form or another at the end of the war. Their prophecy has proved correct, and unless the advent of the atomic bomb and cosmic rays causes the three Great Powers to see the futility of playing power politics over the Straits, we may expect to see the position of Turkey rendered extremely precarious and the utilization of the Bosporus and the Dardanelles as the waterway for peaceful commerce subordinated to that of military power.

This judgment is borne out by the events of the last two years. The Potsdam Conference, July 1945, agreed that a modification of the Montreux Convention was required, but two versions of the agreement indicated the difference between the Russian and the Anglo-American point of view. The United States proposed that the Straits should be opened to merchant vessels of all nations at all times and to the transit of the warships of the Black Sea powers at all times, that passage should be denied to warships of non-Black Sea powers at all times except for an agreed limited tonnage in peacetime, and except also "with the specific consent of the Black Sea powers or except when acting under the authority of the United Nations." The Soviet government, on August 7, 1946, proposed to the Turkish government, and sent the notation to Great Britain and the United States, that the Straits should be always open to the passage of merchant ships of all countries, should be open to the passage of warships of Black Sea powers, that passage for other than Black Sea powers should not be per-

[6] Shotwell and Déak, *op. cit.*, p. 128. [7] *Ibid.*, p. 127.

mitted except where specifically provided for. On these points the Soviet Union's view coincided with that of the United States, but the Russian proposal called for the establishment of a regime of the Straits under the competence of Turkey and other Black Sea powers; and the Soviets also demanded that Turkey and the Soviet Union, "as the powers most interested and capable of guaranteeing freedom to commercial navigation and security in the Straits," should organize joint means of defense of the Straits. This view was challenged in the American note of August 19, 1946, in the British note of August 21, 1946, and in the Turkish note of August 22, 1946. The discussion continued for several months without conclusive result. Great Britain and the United States pointed out the international character of the Straits and urged that a joint Turko-Soviet system of defense was not acceptable. The Soviet took the view that the Straits were essentially a regional proposition and, at the moment of writing, the two conflicting viewpoints had not been reconciled.[7a]

TECHNICAL CO-OPERATION FOR SAFETY AT SEA

Adequate freedom of the seas requires not merely an abandonment of national claims to ocean highways and the suppression of piracy but also freedom from the dangers of shipwreck occasioned by fogs, collisions at sea, and inadequate lighthouse facilities at dangerous points. It is obvious that if a shore line under the jurisdiction of an economically backward or inefficient government were dangerous to shipping of all nations it would constitute a challenge to international action.

As early as 1865 the major European nations, the United States, and Morocco signed the Tangier agreement, by which the governments agreed to co-operate in the establishment of an international lighthouse at Cape Spartel in Morocco. The lighthouse itself and the surrounding land remained under the sovereignty of the Sultan of Morocco; but the contracting parties undertook the administration of the lighthouse and shared the expenses of its upkeep. Stuart writes that it was essential that the lighthouse which protects "one of the world's most important trade routes, should be kept at the highest degree of efficiency"[8] and to this end

[7a] See Harry N. Howard, "Some Recent Developments in the Problem of the Turkish Straits, 1945–1946," *The Department of State Bulletin*, Vol. VI, No. 395, January 26, 1947, pp. 143–51 and 167. Also *The Problem of the Turkish Straits* (Department of State, Publication 2752, Near Eastern Series 5).

[8] G. H. Stuart, *The International City of Tangier* (Stanford University Press, 1931), p. 44; also pp. 39–49.

the International Commission approved the installation of a semaphore in 1892 and a fog signal in 1905. In 1914 a technical commission recommended an increase in the candle power of the beacon from 20,000 to 320,000, but the World War of 1914–1918 prevented the step from being taken. Other proposals were made in 1922, 1923, and 1926, but they had to do primarily with political questions arising out of the changed international situation in Europe and the desire of the Shereefian government to exercise greater control over the administration of the lighthouse. The benefits to world commerce from the relatively small amount of international co-operation necessary to establish the lighthouse have been out of all proportion to the costs involved.

In 1889 the first International Marine Conference met at Washington. It proposed various rules to prevent collisions, and suggested uniform action in the matter of sound signals, lights, and buoys. Over twenty years passed before the International Council for the Exploration of the Sea was set up for purposes of scientific research. In 1910 twenty-four nations accepted uniform regulations concerning assistance and salvage at sea "and providing for equitable remuneration when such assistance is given." After the "Titanic" disaster in 1912, when 1,490 lives were lost through an iceberg collision, an international conference in London drew up a convention for safety of lives at sea. The convention provided for the destruction of derelict ships, the study of ice conditions, and the establishment of an ice patrol. The signatory powers were to join in defraying the expenses of the service, and agreed upon international signals, life boats, safety devices, etc. "Next to submarines icebergs are the greatest menace to international shpiping. Each spring ships of the International Ice Patrol, supported by fourteen nations, rove the North Atlantic, charting the course of giant floes, destroying some, and warning merchant ships of the presence of others, in or near heavily traversed northern routes." In 1940, for the first time in twenty-six years, United States Coast Guard cutters engaged in the work from a United States port or base (Boston); hitherto Halifax, Nova Scotia, had been the Atlantic base.

The International Ice Patrol resumed its activities in the first part of 1946 after a five-year interruption caused by the war. The Patrol has benefited from the scientific advances made during this period, such as using radar to probe the fog for drifting icebergs, and the B-24's will make aerial surveys of drift ice and small bergs (growlers) as well as the larger icebergs. The Patrol

explores the sea lanes which are approximately 120 miles from each other. When heavy ice is reported at one lane, ships are advised to use another track. Some of these icebergs weigh as much as a half-million tons. But the smaller ones constitute quite as serious a danger. During the period of its operation, the Patrol can boast that no person has been lost in peacetime as a result of collision with icebergs "although the area patrolled is as large as the State of Pennsylvania and as many as 1,000 drifting bergs have been reported in a single year."[9]

A similar patrol has been proposed by the interim council of the Provisional International Civil Aviation Organization Council which recommends the establishment of a surface patrol of 13 vessels in the North Atlantic which should gather meteorological data, control air traffic, handle communications, and be available for search and rescue work.

Air traffic today still faces many perils, and Dr. E. P. Warner, President of the Council, an acknowledged authority in aeronautical engineering and once Assistant Secretary of the Navy for Air, has sent a letter to the North Atlantic nations urging this patrol and suggesting a method of meeting the costs.

The proposed distribution of patrol vessels spots them across the North Atlantic airplane lines between latitudes 34 and 66 north at distances varying from 450 to 700 miles, depending upon the importance of the locality. This arrangement gives a maximum distance of 350 miles for a rescue ship to steam to the aid of a distressed plane say 18 hours at 20 knots.[10]

Strategically located rescue co-ordination centers along shore on both sides of the Atlantic are proposed; each patrol vessel it is estimated could be maintained at approximately $1,000,000 per year, a possibly optimistic estimate. Captain Oliver notes that if this organization can be set up in the Atlantic area it might serve as a model for use elsewhere.

In 1921 an International Hydrographic Bureau to co-ordinate the efforts of nations to insure greater safety at sea was established. In 1929 a League Committee at Genoa met to consider proposals to unify maritime signals, and drew up detailed rules dealing with

(*a*) unification of buoyage regulations; (*b*) unification of lighthouse signs; (*c*) unification of various coast and port signals; (*d*) the de-

[9] *Christian Science Monitor,* March 22, 1946.

[10] Frederick Oliver (U.S.N., Ret.), *The Christian Science Monitor,* May 21, 1946.

sirability of a certain concordance between the characteristics of lighthouses and the associated fogsignals; (*e*) wireless lighthouses.

It also recommended international collaboration between air and sea navigation in the matter of signaling from shore and the enlargement of the international signaling code, and that a special maritime conference should deal with the question of local storm-warning signals.

In 1930 a general conference at Lisbon for the unification of buoyage and lighting of coasts adopted several agreements in conformity with these principles. The recommendations were designed to make uniform the various rules concerning lighthouses and safety signals, and were adopted because of the need of developing radio beacons throughout the world.

The experience of the World War of 1914–1918, new inventions, and further shipping collisions induced governments to meet and sign a general convention in May 1929. It became effective on January 31, 1933.

Among the topics dealt with are ship construction, life-saving appliances, methods of detecting and extinguishing fire, radio signal devices such as automatic alarm receivers, various phases of the art of navigation, including the collection and dissemination of meteorological data, and inspection and certification of ocean-going vessels.

In 1930 another London conference succeeded in formulating an International load-line convention which

deals with the extent to which ships may be loaded with cargo without interfering with security during the voyage. The importance of a precise location of the load line is obvious: safety first, indeed; but economic considerations dictate a parallel prudence in avoiding unnecessary abstinence in the use of cargo space.[11]

One further condition had to be realized if freedom of the seas for international commerce was to be reasonably complete. Ships might travel the ocean, be free from pirates, and avoid shipwreck by reason of the precautions just enumerated; but if they found themselves on their arrival at a foreign port discriminated against by higher taxes, or subjected to delay in unloading in favor of other ships, they would suffer serious loss. The advantages of freedom of the seas might be entirely wiped out at the

[11] Wallace McClure, *World Prosperity, as Sought through the Economic Work of the League of Nations* (The Macmillan Company, New York, 1933), p. 429.

very end of the voyage. Foreign shipping companies could easily be ruined by a government which claimed that, under the doctrine of sovereignty, it had a right to discriminate against foreign vessels in its own ports. Because nations are put to considerable expense in maintaining harbors, lighthouses, and port facilities, it is natural and just that they should charge harbor dues; but these dues should be equal to all shipping, and no favor should be granted in the use of ports to vessels of the home government. Otherwise international shipping would soon be entangled in endless complications.

Many bilateral treaties were signed during the nineteenth century to insure such equality of treatment; and at Paris in 1919, Barcelona in 1921, and at Genoa in 1922, these matters received further international attention. The three conferences were a prelude to the 1923 Convention and the Statute on the International Regime of Maritime Ports, which guaranteed freedom of access to seaports, and accepted the principle of equality in charges and port facilities, including "facilities of all kinds, such as allocation of berths, loading and unloading facilities, as well as dues and charges of all kinds levied in the name or for the account of the Government, public authorities, concessionaries or undertakings of any kind."[12] The signatory powers agreed that in levying customs, local or consumption duties, or incidental charges, the flag of the vessel must not be taken into account, although nation X might suspend the equality of treatment to a vessel from nation Y if Y did not adequately apply the statute; furthermore, the equality rule might be temporarily disregarded in emergency cases, or in matters of vital interest—a dangerous exception owing to the elastic nature of these phrases.

Already in 1919 the Treaty of Versailles had afforded to Czechoslovakia, a landlocked state, the privilege of free ports at Hamburg and Stettin; Germany was to lease to Czechoslovakia "areas which shall be placed under the general regime of free zones and shall be used for the direct transit of goods." The Maritime Ports statute clarified certain matters connected with this area.

A problem which may not at first sight seem important concerns the different methods of measuring the cargo capacity of vessels. Taxes or dues paid by a ship varied according to the system of measurement adopted by various ports; and many disputes arose in consequence. The Communications and Transit Organization of the League appointed a technical committee to

[12] Wallace McClure, *op. cit.*, p. 424.

examine the rules which were in force. After some effort the committee, in 1931, drew up a set of regulations. As to it McClure well remarks:

> Real saving would result from their acceptance by all maritime states, not the least element of which would be the avoidance of disputes growing out of different tonnages in use for the same ship, which thus may pay on different bases at each of the ports it visits. The wide utilization of the British rules has shown how necessary is internationalism in this seemingly small and technical, but by no means to be despised, detail in the vast complex of world economy.[13]

SHIPPING POLICY

Shipping has been an international problem for several hundred years, and the reason is obvious. The mercantile marine provides the means of carrying on commerce and is thus an economic agency of the first importance; it is necessary for carrying troops and supplies in wartime and therefore forms a vital element in national defense. The English Navigation Acts, which began in 1651, had as their object the building up of a strong merchant fleet in order (1) to provide a link between the mother country and the colonies, (2) to insure a means of defense in wartime, and (3) to enable England to develop as a distributing center and engage in a profitable carrying trade. Whether because of these Navigation Acts or not (economic historians are not agreed), British merchant shipping made great progress after the seventeenth century; it outstripped Dutch and French competitors, both of which were destroyed during the Napoleonic Wars. The industrial revolution in Britain led to a demand for cheaper freight rates, and the navigation laws were at first modified by the signing of reciprocity treaties concerning shipping and were then repealed between 1849 and 1854.[14] British ports and British sea trade were henceforth open to the ships of all nations. For the next thirty or forty years there was little or no state control over the mercantile marine; the period was one of tremendous expansion and of technical revolution in ocean transport. The iron steamship, the compound engine, the opening of the Suez Canal, the use of steel, and the growth of specialization of shipping whereby vessels were

[13] Wallace McClure, *op. cit.*, p. 430. See League of Nations Organisation for Communications and Transit, *Draft Regulations for Tonnage Measurement of Ships*, C.176.M.65.1931, VIII; and *Report to the Advisory and Technical Committee*, C4.M4.1936, VIII.

[14] H. Heaton, *Modern Economic History* (The Macmillan Company, Ltd., Melbourne, 1925), p. 154.

specially built to carry frozen meat, oil, fruit, and other products, combined to give merchant shipping a great impetus. Because of the amazing growth of its manufactures and agriculture which followed the scientific and industrial revolutions, Great Britain took the lead in the shipping life of the world. It was a lead built up mainly by private enterprise. The government gave subsidies to a few companies in order to insure that mails would be carried on the fastest ships; but only about 3 per cent of the vessels received this form of assistance. The private companies did not need government aid, because the one rival, the United States, which might have been a serious competitor, had dropped behind in the race. The American Civil War had adversely affected American shipping; the decline of wooden ships occurred before America had acquired the engineering skill to perfect the new type of iron and steel vessels; and the years following the Civil War witnessed the expansion to the West and a great industrial development which absorbed much of the nation's energy. Hence Great Britain stood unchallenged for the time, and her remarkable shipping developments helped to build up and consolidate the new British Empire, which was drawn closer in trade relations by the new transportation facilities and cheap freight rates.

The other nations did not view the British good fortune without a feeling of envy. The political condition of Europe and its growing emphasis upon nationalism added to the desire of governments to free themselves from a dependence upon British shipping. These governments developed industry by the use of tariffs and then assisted shipping by granting subsidies. The great battle of subsidized shipping had begun. For about thirty years before World War I, the competition grew more intense, and official subsidies took increasingly varied forms. Governments granted mail subsidies to companies and paid larger sums than the actual services rendered by the companies warranted. They reserved their own coastal shipping for their national vessels, gave loans at low rates of interest to shipping companies, and permitted materials for use in shipbuilding to be imported at low rates of duty or to be carried over railroad lines at unusually favorable charges. These and other forms of assistance enabled the shipping companies to indulge in price cutting. The practice of subsidization grew rapidly. Mrs. Knowles states:

France started this elaborate bounty system in 1881 and was followed in 1885 by Germany, Italy, Austria, Hungary, Japan, Russia, Denmark, Spain, Belgium, and the United States, all of whom adopted

some of these forms of State encouragement to national mercantile marines and they were still in force in 1914.[15]

Companies set out to build better and faster ships, and between 1912 and 1914 Britain and Germany competed in such luxury liners as the "Lusitania," the "Mauretania," the "Imperator," the "Vaterland," the "Bismarck," the "Olympic," and the "Titanic." Germany made great progress, because it could concentrate much of its shipping in two ports, Hamburg and Bremen, where the import and export cargoes were well balanced and involved little uneconomic sailing; and because Germany's rapid advance in the iron and steel industries gave the shipping companies large supplies of low-priced raw materials.

The keen international competition brought the inevitable result—a great fall in freight rates, heavy losses to the companies, and a period of extreme uncertainty for the whole industry. It became, as Mrs. Knowles put it, "a sheer gamble." In order to offset the losses, companies formed combinations and met in conferences. Their actions took both a national and an international form. Some national lines, closely tied to the national state, agreed to stabilize their rates and bring some kind of order out of the confusion. They held conferences which divided the shipping trade into various spheres of influence. These understandings managed to obviate the more extreme fluctuations and the worst effects of the uneconomic cutthroat competition. But national arrangements did not suffice, and a number of international arrangements developed by which British and German lines apportioned the shipping routes, each national line retaining a given area in which the other would not compete. Agreements concerning timetables, passenger rates, interchangeability of tickets, etc., were common in days of peace.

Between 1900 and 1914 world shipping increased from 29,000,000 tons to 49,000,000 tons, a remarkable development in a relatively short period of time, and one which will largely explain the unstable condition of world shipping.

The World War of 1914–1918 had disastrous consequences for the merchant marine. During that period about 12,500,000 tons were destroyed; but so efficient and determined were the national building programs that by 1920 the world possessed 57,000,000 tons. Meanwhile a new international realignment of

[15] L. C. A. Knowles, *Industrial and Commercial Revolutions in Great Britain during the Nineteenth Century* (E. P. Dutton & Co.), p. 305.

forces had appeared: The United States, which had possessed less than 3,000,000 tons in 1900 and somewhat more than 5,000,000 tons in 1914, by 1920 had over 16,000,000 tons. Japan also had increased her tonnage, but to a lesser extent. And the stage was set for another great international shipping race. Substantially the same results appeared as had occurred in prewar days, and in 1933 the world saw the shipping industry with a capacity of 68,000,000 tons facing a world economic depression and a shrunken international trade. The inevitable consequence followed, and nearly 11,500,000 tons of vessels were rendered idle.

The question arises: Why did the nations, with the experience of the prewar days to guide them, follow the same policies even more intensely, when it must have been evident that these policies would lead to similar conditions of cutthroat competition, low freight rates, and bankruptcies? In order to find an answer it will be necessary to analyze the extent of, and the reasons for, national shipping policies.

Nations desire to possess mercantile marines for a number of reasons: By carrying goods, ships add to the national income, although the direct amount received for this service is a very small item compared with the total national dividend of most nations. An efficient mercantile marine assists a country in its foreign trade. The United States found that its trading opportunities with South America were more limited when it was dependent upon British shipping, because materials from certain ports in the United States could not be carried direct to their South American destinations; owing to the necessity of transshipment, time was lost and freight costs were heightened, and the American exporter consequently suffered in business competition with his British rival. When international competition tends to become keener, and the amount of profit narrower, direct contact with a market may constitute a decisive element. Moreover, the agents of a shipping line at the foreign end do their best to stimulate the foreign demand for the goods of their own country, because they realize that the prosperity of their merchant fleet depends upon adequate cargo and passengers. Shipping representatives thus tend to become important commercial agents.

The charge is sometimes made that foreign nations have discriminated against the ships of another country; but the United States Maritime Commission in 1937 found that Americans, at least, had not, in a highly competitive age, suffered substantially from discrimination. The Commission added that "the trend

toward nationalized shipping may increase the potentialities of discrimination in the future—a consideration that should not be ignored," and that a national fleet would enable a country to engage in retaliatory action in case of discrimination against its own shipping.

It is important for a country to maintain continuity of its economic life and to guard against any interruption of transportation services. If war breaks out, the merchant ships of combatants will be required for war purposes, and the economic life of the neutral powers may suffer severely in consequence. But neutrals are anxious to maintain as much of their normal trade as possible; if they are dependent upon the merchant ships of the belligerents they may be unable to ship their goods abroad. The United States had this experience during the World War of 1914–1918 when "the withdrawal of alien vessels resulted in a serious dislocation of our foreign trade at a time when we enjoyed an unprecedented opportunity to expand our business with other nations." Referring to this, the Maritime Commission has recently stated:

> Today we are faced with the threat of a recurrence of the conditions of the last war. Political uncertainty and international tension are on the increase. If the present antagonisms should result in war, we would be confronted again with the problems which beset our commerce in 1914. The disruption of our trade probably would be much greater in the future, as a larger percentage of our trade is now being transacted with nations not having their own shipping facilities.

A large mercantile marine may therefore be an insurance, and the extra cost of maintaining a merchant fleet greater than is required for normal commerce may be justified on this ground.

Another reason for merchant shipping remains to be analyzed, i.e., its importance in time of war; for a navy is impotent without a supporting mercantile marine. The Maritime Commission estimated that the United States, in the event of war with a major power, would require at least 1,000 merchant ships aggregating about six million gross tons for transportation purposes. In 1937 there were more than that number available, although most of them were relatively old and slow and the merchant marine was deficient in tankers and rapid vessels suitable for troops transport. The services which a merchant marine can render in wartime cannot receive detailed attention here; but the question arises whether or not a merchant fleet which is adequate for wartime needs can be profitably employed in normal periods of peace. Will not many

of the vessels remain idle or have to be run at a loss? The Maritime Commission has admitted that national defense requirements increase both the construction and the operating costs of vessels, but believed that the nation should be informed how much of the expenditures were for reasons of defense and how much for normal economic pursuits. The point is well taken; nations should clearly distinguish the functions, defensive and economic, of a merchant marine, and should realize that the more politically disorganized the world is the more will the normal requirements of peacetime economic agencies be distorted.

We have already seen that, as a result of the World War of 1914–1918 and the great building programs of the postwar period, there were 67,000,000 tons of shipping in the world in 1933, of which nearly 11,500,000 tons lay idle. The world had an excess of shipping facilities, and ocean freight rates were so depressed as to make shipping a most unprofitable venture. The shipping companies appealed for government aid, and subsidies grew still more numerous. Countries which had hitherto given little governmental assistance joined in the subsidization race. From a short-term nationalist viewpoint subsidies were urgent if national shipping was not to be ruined by subsidized foreign competition. But the combined effect of well-nigh universal subsidization was to stimulate a worldwide uneconomic competition, which found expression in larger and more luxurious liners, on the one hand, and in cutthroat competitive rates, on the other. The vicious shipping circle cannot be broken by intensifying subsidies on all sides; this policy can lead only to progressively heavier burdens for taxpayers everywhere and further disorganization of international shipping.

The problem is rendered more serious by two other factors: the intensified economic nationalism, and the high protective tariffs which are a common feature of today. The result of the attempt by governments to reduce their dependence upon foreign trade, combined with subsidized encouragement to greater merchant fleets to carry the lessened amount of goods internationally exchanged, must be obvious. There is a downright contradiction between tariff policies designed to curtail international trade and an expanding merchant marine policy which for its profitable use requires an increased foreign trade. The contradiction becomes even more obvious if we remember that a tariff is a type of subsidy. Manufacturers at home receive tariff protection at the cost of the taxpayer in order that they may keep foreign goods out; the shipping company receives subsidies to carry more goods abroad

which can be paid for only by receiving gold or goods or services from abroad!

We thus see that the question of subsidized merchant shipping is closely connected with the question of balance of payments. If the United States, a creditor country, desires repayment for its exports, it should not make the task of the debtors overburdensome by imposing high tariffs and by participating over-heavily in the shipping trade, so that other countries cannot use their shipping services to help repay their debts.

Subsidized shipping, like tariffs, if carried beyond a certain point, results in keeping inefficient companies in existence, tends to promote wastefulness and extravagance, and adds to the burden of the taxpayer. The growing intensity of subsidized international competition leads to an aggravation of the condition of merchant shipping throughout the world; and before 1939 a French authority feared that nothing would be able to "save the fleets of commerce from complete general bankruptcy now approaching."[16]

The system of subsidies has received criticism at the hands of various bodies. In its final report the Trade Barriers Committee of the International Chamber of Commerce, in 1927, considered "the continuance of the wide-spread practice of subsidizing shipping to be undesirable as introducing an uneconomic element into business and disturbing markets," but recognized that this objection did not apply to payments by governments to shipping companies at a prevailing transportation rate for services actually rendered. The economic experts who drew up the program for the 1933 World Economic Conference stated:

> We agree with the meeting of shipowners recently held at the International Chamber of Commerce that it is impossible to return to sound conditions in the shipping industry so long as the uneconomic policy of government subsidies continues. This policy of excessive intervention requires to be checked by agreement between the governments. At the same time, certain possibilities of agreement might be considered with regard to the scrapping of old tonnage, the utilization of existing tonnage and the laying down of new ships.

[16] *Foreign Policy Report,* "Ship Subsidies and the Future of World Shipping," March 14, 1934; see also *League of Nations Publications VIII, Transit 1934,* for a description of the increase in tonnage, the decrease in sea-borne goods and passenger traffic, and the fall in freights in the years 1929–1934, with the consequent loss of profits and the laying-up and scrapping of part of the surplus tonnage. The report considers many proposals for international action, some of which are considered here.

At the Conference Great Britain proposed that governments should move as quickly as possible toward the ultimate abolition of state assistance to shipbuilding. Norway, Holland, Sweden, and Denmark took a similar stand. But the United States argued that the term "uneconomic subsidies" was too vague, that subsidies could not be considered the only cause of the crisis in shipping, and that it was important for the United States to have its own merchant marine.

The *Foreign Policy Report* of March 1934 well remarks that it may not be feasible to tackle the subsidy question directly, because government assistance takes so many forms. These complexities would make it extremely difficult to draw up "an international agreement sufficiently comprehensive." One of the basic troubles is that shipping is as much a political as it is an economic matter, and that, while the danger of war exists, it will be impossible to treat shipping merely as an economic problem. Until international organization has guaranteed adequate security, nations will be unable to think in terms of economic efficiency and welfare alone; they will sacrifice lower costs to considerations of safety; and as in the case of sugar and other raw materials, so in shipping, unsubsidized or modestly supported organizations will be driven out by the overwhelming pressure of more heavily subsidized foreign competition. One may say, then, that the future of the world's shipping depends upon the solution of the problem of war.

If such a solution is found, it will not necessarily cause the abandonment of all subsidies. There will then be less need for defense, but undoubtedly shipping companies will continue to exercise pressure for government assistance, just as is the case today with tariffs; and, in any case, the bewilderingly complex forms of subsidies will make their abolition extremely difficult. The *Foreign Policy Report* suggests that it might be desirable to plan shipping on an international scale in such a manner as to "assure to every one of the chief maritime powers a fair proportion of the world's shipping, while leaving each free to grant such subsidies as it deems necessary for the maintenance of its share." Such a scheme would tend to cause freight rates to rise, because it would eliminate the surplus tonnage which has forced freight rates to an abnormally low and unremunerative figure.

The French government in the 'thirties proposed that there should be international agreements to limit future construction, a joint operation of vessels sailing the great ocean routes, and a joint

account to cover the whole of the working receipts and expenditures. The proposal would carry farther the existing practice of steamship companies which hold rate-fixing conferences but which by themselves cannot guarantee that competition of outsiders and internal disputes may not seriously upset the agreements reached. John C. De Wilde, in the *Foreign Policy Report* already referred to, has admirably summarized the situation as follows:

> Furthermore, no conference can tackle the fundamental problem of surplus tonnage and the competitive building of bigger and faster liners unless assured that rational scrapping and replacement programs would meet with almost universal adoption. Intergovernmental action might make this possible. The governments of the countries interested in each trade route covered by a steamship conference might call on the lines serving the route to draw up agreements on freight rates, sailings, the scrapping and replacement of old vessels and, possibly, division of the traffic. If these agreements meet with approval, the governments concerned could guarantee them against infringement.
>
> Before effective planning through steamship conferences can be carried out, some way of fitting tramp shipping into the scheme must be devised. Tramp vessels do not operate on regular routes, but are available for the carriage of bulk cargo to any part of the world. They perform a particularly useful economic function in supplementing regular line services during seasonal freight movements. A separate international arrangement applying to tramp shipping would therefore be necessary. Presumably such an agreement would need to provide for the scrapping of old and excess tonnage and to regulate the conditions on which "tramps" could operate on conference routes.
>
> The technical and political obstacles to the conclusion of international shipping conventions are many. Yet there is widespread conviction that a determined attempt must be made to overcome them. The alternative is the continuation and aggravation of the nationalist policies and wasteful competition which have long been the bane of world shipping.

These conclusions are confirmed by an analysis of the present shipping situation. In March 1946 the United Maritime Authority, under which merchant ships of 17 Allied powers and Sweden were pooled, ended its activities. For the next eight months, an international committee was to control a substantial portion of the pool in order to carry cargoes for UNRRA. As these international tasks were completed, the ships were to revert to national control. The outstanding problem confronting the world is that of the serious disproportion in national carrying capacities produced by

the war. The United States, which had twelve million tons in 1939 had by 1946 about fifty-five million dead-weight tons. The British Empire had twenty-three million tons in 1939 and less than twenty million dead-weight tons in 1945. Norway, the Netherlands, France, Greece, and Russia all had reduced the tonnage at the end of the war, compared with their figures in 1939.

For Great Britain, the loss of its outstanding creditor position is perhaps no more serious than the loss of its position as the world's greatest carrier. The Norwegian people also depend upon their merchant fleet for the maintenance of their standard of living, and The Netherlands and other countries also need all the dollar exchange which they can earn by carrying freight and passengers. How can some balance be struck between the desperate needs of these countries and the overwhelming tonnage controlled by the United States? Even if one-tenth of the American vessels are out of date, and allowance is made for the inadequate competitive power of the Liberty ships which comprise one-half of the modern vessels, the fact remains that the United States still has some twenty-two hundred vessels with a twenty-four million capacity, "a fast modern fleet, twice the size of the prewar merchant marine."

This fleet consists of high-speed tankers and swift, new, dry-cargo ships, all of them capable of taking and maintaining their place in the competitive postwar shipping world, a great contrast with the merchant fleet of 1939 of which more than one-half of the ships were obsolete, two-fifths comprised small vessels, and five-sixths were slow.[17]

The question arises whether the United States should sell any ships to foreigners and thereby enable them to compete with its own merchant marine. Admiral Land, chairman of the United States Maritime Commission, recommended that foreigners be permitted to buy surplus American tonnage "at a figure equal to their cost of construction." The Ship Sales Act of 1946 provides that seventeen billion dollars' worth of war-built ships are to be disposed of. American operators are to have first opportunity and unsold vessels would be put up for charter by American operators. Then and only then foreign operators may buy, but not charter, ships that are left. The Act forces foreign countries to cancel their charter on about 600 vessels of which Great Britain

[17] Gilbert L. Gifford, "International Communications" in *If Men Want Peace* (L. A. Mander, J. B. Harrison, N. H. Engle, eds.) (The Macmillan Company, 1946), p. 166.

had some 400, and this step may be a serious blow to the nations already suffering from the inadequacy of their merchant marine.

The economic does not constitute the only problem. The moral obligations loom large. Indeed in the case of Norway, the United States agreed to assist it in a program of shipping replacement when conditions permitted. Great Britain in 1942 undertook to assist Allied governments which made their merchant vessels available to the common war effort in purchasing a proportion of the new vessels built in Britain and of second-hand vessels purchased by Britain from other countries. Gifford well notes that "the United States can hardly refuse to turn ships over to Great Britain since the agreement in the dark days of 1942 was that Britain would concentrate her shipbuilding industry on war ships while the United States would build cargo ships."[18]

American shipping interests are pressing heavily for the largest merchant marine possible for purposes of national defense, maintaining shipbuilding operations and providing employment for a large number of people. It would appear that the merchant shipping required for American defense cannot now be accurately estimated until the full consequences of the atomic bomb have been explored. If the United States is to have a merchant marine equal to 50 per cent of the world's total shipping, the consequences to the prosperity of other countries may be grave, leaving the United States in a most critical position in building up exports to these countries, for unless foreigners can earn sufficient to pay for what they buy, they will not become good customers. Substantially then it is a matter of balancing the shipping interests with those of other elements in the American economy.

In addition, the question of subsidies is likely to come to the fore. American interests claim that British shipbuilders receive $29.10 for a 47-hour week, whereas American shipyards pay an average of $49.36 for a 40-hour week. While there are compensating factors, it is claimed that the cost of constructing cargo steamers and tankers is 60 per cent higher than in British shipyards and that combined cargo and passenger vessels cost 54 per cent more; costs of high-class passenger ships, though somewhat less, would put American ships at a competitive disadvantage. Moreover the safety regulations of the United States for ship construction are more severe than those of other countries. Add to these facts the crisis in domestic shipping where coastwise and

[18] *Ibid.*, p. 168.

intercoastal shipping is in a serious condition owing to the skyrocketing of operating costs and the relatively small increase permitted in freight and passenger rates, and the complexity of the problem stands out still more clearly.

The Merchant Marine Act of 1936 provided for subsidies to offset the difference in cost of building and operating ships between the United States and foreign shipping. But if government subsidies are to become the rule, we may witness a subsidized competition which may be even more disastrous than unregulated cut-throat competition. Difficult as the task may be, it would seem more logical to attempt to lessen the wage differentials between the various countries and by international agreement to limit the rivalry in this important field. An International Maritime Conference in London in 1944 drew up an international seafarers' charter calling for minimum wages for able-bodied seamen of $72 per month and a general improvement in working conditions. These matters were considered at the International Maritime Conference in Seattle in June 1946.

An outstanding legal authority on maritime matters, C. John Colombos, has suggested the establishment of an imperial sea council sitting permanently in London with administrative and executive powers in order to co-ordinate the shipping policies of Great Britain and the Dominions. But a larger scheme is needed; and while the International Maritime Committee, formed in 1897 and comprising a voluntary association of jurists, shippers, merchants, and underwriters, has done excellent work, Colombos feels that the time has arrived for the setting up of an international sea commission composed of shipping experts from all the interested nations of the world.

It will be the main function of this international body to effect the rationalization and redistribution of shipping and cargoes on an equitable assessment of world needs, to act as a medium for the solution of all disputes which may arise between its members, and generally to promote the interests of the sea services. It will, at the same time, facilitate the unification of the law of the sea, not merely in the sense of codifying its principles but also in adapting them to the ever-changing conditions which a future world organization will entail.[19]

A proposed United Nations shipping agency seemed to give promise of realizing the suggestions just examined. But, whereas

[19] C. John Colombos, "The Unification of Maritime Law in Time of Peace," *The British Yearbook of International Law*, 1944, p. 110. The whole article, pp. 96–110, will repay study.

the United Maritime authority which operated in wartime had power to direct the ships of 18 nations in a wartime pool, the new agency apparently will have advisory powers only. Its function will be to gather information and deal with shipping generally. A Draft Convention is being prepared by the United Maritime Authority for consideration by a conference scheduled for autumn 1947.

In their concluding chapter of an authoritative study, Sir Osborne Mance and J. E. Wheeler discuss the principles which might govern international sea transport.[19a] They suggest that public maritime law seems to be sufficient to meet normal peacetime needs since, generally speaking, "the high seas, territorial waters, ports, straits, and maritime canals have been open to all merchant ships on terms of equality."[20] The failure to establish a uniform regime for territorial waters does not, in their judgment, involve very serious difficulties and they conclude that no important change in international public law seems to be called for. Some rationalization of shipping will undoubtedly be required; the major problem here will be the basis of allocation of shipping lanes on particular trades for it will be necessary to establish "some yardstick" and then "principal criteria." In shipping as in other economic matters "there are from time to time changes in the relative positions of different countries." Possibly a beginning could be made by agreeing on the total world tonnage required, then allocation according to the relative prewar figures which might in turn "lead to an allocation by trades, as with prewar liner conferences, rather than globally, and to a licensing system for tramps."[20a]

Whatever the International Labor Organization might do there seems little chance that wages and standards of working conditions on board ships can be substantially equalized but an allocation might take into account services and cost differences which might in turn be offset by national subsidies. The authors do not anticipate that governments will completely abandon subsidies but they do suggest that governments consider the possibility of agreeing on the basis of future subsidies and the full publication of the facts.

For the international organization of sea transport they suggest: (1) An organization for regulation which would deal pri-

[19a] Brigadier-General Sir Osborne Mance assisted by J. E. Wheeler, *International Sea Transport* (Oxford University Press, 1945).

[20] *Ibid.*, p. 149.

[20a] *Ibid.*, p. 155.

marily "with safety and other technical questions, health, labour, private law and similar matters and applicable to all kinds of shipping wherever they are operating."[21] Here the International Maritime Committee could be of great assistance to an international shipping conference as the recognized co-ordinating unofficial body. (2) An organization to deal with commercial questions would use its efforts to prevent as far as possible unrestricted international competition. (They point out that before 1939 international shipping relations were deteriorating with increasing demand on the part of companies to ask for governmental subsidies.) A permanent international Secretariat would prepare for the official conferences and carry out duties normally entrusted to such a Secretariat. (3) There should be established a tribunal to deal with cases where agreements have not been carried out and such a tribunal might deal with disputes involving both shipping and outside interests.

With closer coordination of the different forms of transport, some international transport tribunal might be instituted for dealing with international transport cases where arbitration is not provided for, other than those between two governments which would be dealt with by the Permanent Court of International Justice[21a] [now the Court of International Justice].

Finally, the authors suggest the desirability of working out an international shipping arrangement by which ships will be placed at the disposal of the United Nations Security Council for purposes of enforcing collective security and they conclude with these words:

There would seem to be no difficulty over sea transport if the major problems of collective security are successfully solved. One is tempted to suggest that there is not much hope for improving international shipping relations if they are not.[22]

[21] Mance and Wheeler, *op. cit.*, p 161.

[21a] *Ibid.*, p. 169.

[22] *Ibid.*, p. 171, a conclusion which has been strongly stressed in the preceding pages. In this connection it is significant to read that "As in the case of the synthetic rubber industry, it is generally agreed in Washington that Merchant Marine policy should continue to be guided by the importance of the shipping industry to our national security." Harold H. Hutcheson and O. K. D. Ringwood, "The Merchant Marine Problem," *Foreign Policy Reports*, March 15, 1947, p. 12. If such is the case, the outlook for international agreement on the economic level will remain unpromising.

INTERNATIONAL RIVERS

If the doctrine of national sovereignty were strictly carried out, rivers flowing through more than one country would be subject to several exclusively national jurisdictions. It can be imagined that country A, having control over the mouth of a river, might prohibit the passage of goods from country B through its section. Country A, moreover, need not take such drastic action in order to place serious obstacles in the way of international commerce. If it were inefficient and neglectful, and permitted the river to silt up, or did not erect adequate wharving facilities, or charged onerous transit duties, it could seriously affect commerce, and produce international friction. With the growth of modern trade, countries have realized that some rivers possess so great an importance that exclusive national control is no longer consistent with general international welfare.

Grotius held that the use of rivers should be free; and from the early seventeenth century bilateral treaties which opened certain rivers to both contracting parties became increasingly common; but it was not until the Treaty of Paris in 1814 that nations made the first general declaration of freedom of international rivers. For forty years riparian states used international rivers freely; nevertheless, there still remained a strong tendency to exclude the nonriparian states. The Treaty of Paris in 1856 extended the principle of liberty and equality to the Danube, and set up the European Danube Commission comprising representatives of both riparian and nonriparian states. A treaty between riparian states at Dresden in 1821 had already opened the Elbe to general commercial navigation, and the Rhine in 1868 was thrown open to international traffic. The General Act of Berlin, in 1885, guaranteed free navigation of the Congo, the Niger, and affluent rivers, and these provisions were applied by Great Britain and Portugal to the Zambesi River in 1891. By the end of the nineteenth century the right of free navigation extended to most of the great waterways of Africa.

The United States urged that in South America the Amazon River be opened to foreign vessels; but Brazil opposed the suggestion for several years, and not until 1867 did it open the river to all nations. In fact Bolivia obtained the right of river passage across Brazilian territory only in 1903. In 1852 Argentina opened the Rio de la Plata system to all nations; Uruguay and Paraguay took similar action in the following year.

These examples—which do not give the whole list of internationalized rivers—show that the forces of modern commerce were instrumental in modifying the exclusive and impeding claims of national sovereignty.

The Danube.—The European Danube Commission is the greatest example of international organization to improve river traffic. Between 1829 and 1854 Russia controlled the mouth of the Danube. Owing to her neglect, navigators found this section of the river extremely dangerous. After the Crimean War, the great powers, believing that Turkey would be equally incompetent, decided to extend the principle of free navigation to the Danube and set up a European Commission for the purpose of making it a safe and navigable waterway. Great Britain, France, Austria, Rumania, Sardinia, and Turkey each had one representative on the Commission, which was empowered to levy dues on boats using the river. The Commission could determine the amount of the dues by majority vote, but was required to guarantee equality of treatment to all nations. Its first major task was primarily an engineering one, that of dredging to improve the navigability of the Danube. Subsequently a second commission, with representatives from only the riparian states, was set up to introduce regulations for the whole of the river. This second commission, however, broke down through attempting to levy excessive tolls and to exclude nonriparian ships. But the European Commission continued to function and by an agreement in 1865–66 obtained authority to erect further permanent works along the lower Danube, as well as to establish navigation rules. In 1865 the powers agreed to confer the status of neutralization on the works constructed by the Commission, in order to prevent their confiscation or destruction by belligerent nations in time of war. In 1871 the administrative and technical personnel also came under the status of neutralization. Three years earlier the powers had agreed to permit the Commission to borrow funds, and most of them guaranteed loans which it floated. In 1878 the Commission's authority was extended to Galatz, and five years later to Braila. In 1882 it was given a special flag, and its employees wore a distinctive armband.[22a]

Writers pay tribute to the successful work of the Commission. Before it came into existence the Danube was a difficult and dangerous river with shoals and sandbars which made navigation

[22a] F. B. Sayre, *Experiments in International Administration* (1919).

extremely hazardous. Under the new authority, the river was deepened, wrecks were reduced, lighthouses built, floating elevators erected, and pilot and police services made more efficient. Interestingly enough, these improvements coincided with a decline in the amount of dues which vessels were required to pay.

The Commission had wide powers. It fixed the navigation duties and collected them and expended hundreds of thousands of dollars annually. A large amount of Danubian navigation was under its control, and governments had no right to interfere; it licensed tugs, lighters, and pilots, appointed and controlled its many employees, and maintained two hospitals. It exercised judicial or quasi-judicial powers, and could impose fines for breaches of its regulations. But, as Chamberlain points out, the Commission, in spite of its extensive powers, was "not an example of an independent international body acting on its own initiative in important matters.[22b] It could not punish crimes or hear civil suits for damages. Only Rumanian policemen might board ships and arrest criminals; only Rumanian police courts might punish them for crime or try civil cases. The Commission had "no police force of its own, but depends upon the guard ships which the Powers represented in the commission are authorized to keep at the mouth of the Danube."[23] Its members might be removed at any time if their governments so wished, and the matters to be considered at their semi-annual meetings were communicated to each commissioner, "thus giving the Governments an opportunity to instruct their commissioners in case of need."[23a]

At the conclusion of the World War of 1914–1918 the Allied Powers made provision for the regulation of the Danube in Articles 331 and 347 of the Treaty of Versailles. The European Commission resumed its prewar powers, with British, French, Italian, and Rumanian representatives provisionally constituting the Commission. International regulation was extended to Ulm, and by Article 347 a new international commission with headquarters at Bratislava was given charge of that part of the Danube not under the control of the European Commission. Several difficult questions arose concerning the respective competences of the two commissions, as well as of the Rumanian government. The question was submitted to the Permanent Court of International Justice, which gave a decision affirming the wide author-

[22b] J. P. Chamberlain, *The Regime of the International Rivers; Danube and Rhine* (Columbia University Press, 1923), p. 98.

[23] *Ibid.*, p. 96.

[23a] *Ibid.*, p. 97.

ity of the international commissions as against the national claims of Rumania.

The League Committee for Communications and Transit appointed Mr. W. D. Hines to report on navigation questions of the Danube. The report, which appeared in 1925, discussed the history and administration of that river and contained proposals for co-ordinating river and railroad transportation. Mr. Hines stressed that an outstanding need for the improvement of the Danubian system was the investment of capital at reasonable rates for both public and private purposes, and noted that until international friction was lessened foreign capital would not be attracted to the area. The international political situation was here once more found to be an obstacle to the promotion of general human welfare.

The Rhine.—The Rhine is another great international river. Until 1814 a large number of local arrangements were made, but at the Congress of Vienna the principle that international rivers should be administered in the interests of international commerce was enunciated. A Rhine Commission was established to put these principles into practice along this waterway. Changes were made in 1831 and 1869, but in general it may be said that the Commission comprised one member from each state along the river and that each state had one vote—except that in certain administrative and technical matters votes were given according to the length of the river which passed through each state. The Commission developed navigation facilities and special courts for interpreting the regulations which were adopted. Appeals were possible to a court in each Rhine state, or to the Commission.

After 1918 the Allied Powers changed the constitution of the Commission to include four French members and a French chairman. Chamberlain criticizes the latter appointment, and suggests that French interests in the Rhine were so far overshadowed by German and Dutch interests that no valid reason existed for giving France undue representation.

Mr. W. D. Hines also reported for the League on Rhine navigation, and found that certain obstacles to traffic had developed because of a French tax on goods which were subject to rebate in case the cargoes went through Antwerp. This provision involved discrimination against Rotterdam and other ports. German customs authorities were alleged to have discriminated against French traders who used a certain warehouse at Cologne. But the most serious question arose from competition between railways

and river vessels. The League committee considered the problem and made a number of recommendations concerning this question, including the interesting proposal that the ports, railroads, and waterways of a country should be placed under a single governmental authority in order that a harmonious development of communications could be effected.

Other Rivers (German).—By Article 331 of the Treaty of Versailles, the Elbe, the Oder, and the Niemen were declared to be international rivers. International commissions were established for them. Unfortunately Germany had sufficient ground for believing that political feeling as well as the desire for efficiency in transport dictated this step, and in 1936 Hitler denounced the arrangements and proclaimed Germany free from the hated foreign domination.

The Scheldt.—The problem of the river Scheldt has exercised the statesmen of Western Europe for a considerable length of time. The 1814 Treaty of Paris provided for the freedom of navigation of the Scheldt; after a troubled period a conference of five powers met in 1831 and drew up rules providing for the joint supervision by Belgium and Holland of the pilotage and buoying of the estuary.

Because the navigable channel shifts, the bottom must be constantly dredged and the sandbanks removed. By a treaty signed in 1839 the two nations agreed that each should control its own part of the river, but certain provisions were inserted to safeguard Belgium's navigation interests in the stretch from Antwerp to the sea which was under Dutch sovereignty. Belgium claimed that the safeguards were inadequate and continually requested Holland to undertake the engineering works necessary to keep the channel open. The competition between the two cities, Antwerp and Rotterdam, added to the complexities of the problem, and until the World War of 1914–1918 the question of the Scheldt remained a source of irritation to Dutch-Belgian relations.

In 1919–20 representatives of the two countries met at Paris and devised a scheme by which the river was to be kept in suitable condition for navigation by a commission composed of equal numbers of Belgian and Dutch members. This commission was to make rules for navigation; in emergency it might make decisions without referring to the respective governments; in other cases, the governments must approve or reject its decisions within two months; and if the commission or the governments should disagree, the matter must be referred to an arbitrating body. In

urgent cases three referees were to give decision within one week. Thus a type of international control was envisioned. However, the treaty remained unratified owing to unbridgeable differences: (*a*) the dispute as to whether the Wielingen Channel is part of Belgian territorial waters or "part of the estuary of the Scheldt and therefore subject to the sovereignty of Holland" continued;[24] (*b*) the fear persisted that Antwerp might gain at the expense of Rotterdam; (*c*) complicated questions over canal construction in neighboring parts of Holland and Belgium did not help to simplify this particular problem. Pintor observes that there is much to be said on both sides, but it would seem that the establishment of an international commission with adequate authority would benefit the two countries.

The Peace Treaties.—The 1919 Peace Conference followed the precedent established in 1814, and drew up a number of general principles regarding river transportation. Article 23 of the League Covenant provided that League members would take steps toward greater freedom of communications and transit. Pintor[25] claims that the Treaty of Versailles constituted a remarkable step forward in acknowledging the principle of freedom of river navigation and asserting the interests of the international community as against those of the sovereign states. McClure suggests that the attitude of the French prevented the adoption of the "liberal and far-reaching proposals" of Great Britain for freedom of communications, and that, while exacting this policy from the enemy powers, they were unwilling to "bind themselves to grant on their part similar rights either to friend or former foe."[26]

The League of Nations summoned a General Conference on Communications and Transit to meet at Barcelona in March 1921. The Conference laid down special rules for the Danube River, but its larger task was to lay down more general rules for river and other forms of communication. The problems were not easy. Much time was consumed in discussing what constituted an international waterway, and finally for the term was substituted the phrase, "waterways of international concern"—a change which Pintor believes marked the triumph of the nationalist over the internationalist viewpoint.[27] The states through which rivers passed desired

[24] G. W. T. Omond, "The Scheldt and the Wielingen," *Transactions of the Grotius Society*, 1921, p. 87.

[25] M. S. Pintor, "Le Régime International de L'Escaut," *Académie de Droit International, Recueil des Cours*, Vol. XXI (1928), pp. 320–21.

[26] Wallace McClure, *op. cit.*, p. 80. [27] Pintor, *op. cit.*, p. 324.

to minimize the amount of international control, fearing that they would be forced to expend overburdensome amounts in keeping the navigable channel open for traffic. "It was necessary therefore to work out a formula under which such states could demand contributions from other riparians towards the upkeep or construction of works, or other riparians even demand the right to undertake such works at their own expense."[28] Conflicting interests manifested themselves—irrigation against transport, and hydroelectric power against the others. States demanded that their own subjects enjoy the exclusive right of *petit cabotage,* i.e., intra-national transport of passengers' goods. Moreover, states claimed the right to object to the building of works on rivers if they threatened "vital interests"—an exception which destroys much of the value of the convention, in the opinion of H. A. Smith, who points out that very few states have ratified the convention. It therefore would appear, he writes, that the convention is not "a very valuable contribution to the general body of international law, either upon the problem of navigation rights or in connection with the other uses of rivers."[29] A somewhat more favorable estimate is made by G. E. Toulmin, who suggests that the general Barcelona Conventions constitute "a respectable if unambitious code to govern commercial movements throughout the world." And "hedged around by compromise and conditions, the right of navigation of vessels of all flags is safely guaranteed, though the task of simplifying the Statute will be a worthy object to which future generations of international lawyers may devote themselves."[30]

It is important to note that rivers serve many other purposes as well as that of transportation, and statesmen must harmonize the interests of irrigation, hydroelectric power, fisheries, public health (problems arising from the pollution of waters), and navigation. Rather than attempt a survey of even a relatively few of the international bodies which have been established to deal with these questions, it will be preferable here to concentrate attention upon an outstanding example, in order to show the methods employed and the possibilities of this type of international government. The example selected is that of the International Joint Commission established by the United States and Canada in 1909.

[28] G. E. Toulmin, "The Barcelona Conference on Communications and Transit and the Danube Statute," *The British Yearbook of International Law,* 1922–23, p. 176.

[29] H. A. Smith, *The Economic Uses of International Rivers* (P. S. King & Son, London, 1931), p. 192.

[30] G. E. Toulmin, *op. cit.,* pp. 177, 178.

We may note in passing that an international technical commission has been doing admirable work in allocating the waters of the Nile River in such a manner as to afford the maximum benefit to the Sudan and to Egypt. H. A. Smith lists about fifty bilateral and multilateral treaties, some of them more successful than others, which deal with joint proposals, and methods adopted, to permit co-operation in matters of irrigation, power, transportation, etc., affecting more than one state.[81]

The International Joint Commission of Canada and the United States.—This Commission was established by the 1909 Treaty (ratified in 1911), which provided that the navigation of all navigable boundary waters shall be free and open to both parties; this right extends to the waters of Lake Michigan and all canals connecting boundary waters. Each country maintains its jurisdiction and control within its territory over the use and diversion of waters flowing across the boundary or into boundary waters; however, should any action within the United States or Canada injuriously affect the welfare of citizens in the other country, remedies are provided; for Canadians may seek redress in the courts of the United States, and United States residents may appeal to the courts of Canada. In this way international co-operation sets up more adequate machinery in order to protect private rights. Any diversions of boundary waters or obstructions or uses, must have the approval of the International Joint Commission. Both countries agree not to permit the construction or maintenance, on their respective sides of the boundary, of any remedial or protective works which would affect the natural level of waters on the other side, unless with the approval of the Commission. Provision is also made for prohibiting pollution of boundary waters and waters flowing across the boundary. Diversion of water from the Niagara River above the Falls is permitted at the rate of 20,000 cubic feet per second for the United States and 36,000 cubic feet per second for Canada. The St. Mary and Milk rivers, which rise in Montana and flow across the boundary into Alberta, the latter returning to Montana after about one hundred miles, are to be treated as one stream for purposes of irrigation and power, and the waters are to be apportioned equally. An International Joint Commission of six members, three from each country, is appointed. Jurisdiction is conferred on the Commission to act in cases arising under Articles III and IV. The Commission in considering the allocation of water is to

[81] H. A. Smith, *op. cit.*

consider public needs in the following order: Public Health, Navigation, Power, and Irrigation.

Questions involving rights, obligations, or interests, or inhabitants along the common frontier may be referred to the Commission, which is authorized to report on such questions; but the reports shall not be regarded as decisions. Any question of difference between Canada and the United States may be referred to the Joint Commission. The governments have not, in practice, utilized this article, which could be invoked to cover a wide field of disputes.

The Commission of six members has its permanent offices at Ottawa and Washington; the two secretaries act as joint secretaries of the Commission when it sits in joint session. Regular sessions are held at Washington in April and at Ottawa in October; and provision is made for special meetings when necessary. A majority of the Commission may undertake hearings; but all the Commission must be present in order to give a final conclusion in any matter or proceeding. Neither section can act independently of the other. The Commission, of course, acts only when the United States or Canadian governments submit complaints or requests, either on their own behalf or on behalf of individual or corporate interests.

The Commission has dealt with a wide range of problems, of which some are here given. Furthermore, it considered the possible injury to settlers in Idaho upon an application in 1927 from the Creston Reclamation Company for permission to construct certain permanent works in the channel of the Kootenay River, which begins in British Columbia and flows south into the state of Idaho. It dealt with the setting up of rules concerning the establishment of gauging stations for portions of water from the St. Mary's and the Milk River to be delivered to each party during particular seasons; and it recommended a joint irrigation scheme to be constructed partly in the United States and partly in Canada. An application from the Greater Winnipeg Water District in 1913 to divert for domestic and sanitary purposes waters from the Shoal Lake was approved to the extent of 100,000 gallons per day, in order to meet the needs of the Winnipeg District without injury to navigation and power interests on the Lake of the Woods and the Winnipeg River.

As regards the Lake of the Woods:

In June 1912, the two governments requested the Commission to investigate and report upon certain questions relating to the levels

and overflow of this Lake through which the international boundary passes. As a great many interests, national and international, were affected, including those of navigation, agriculture, forestry, fisheries, and waterpower, the matter was gone into with unusual care. The Commission submitted its report in 1917, recommending certain levels which it was believed would best serve all the interests concerned in both countries. Provision was made for an International Board of Control, and also for a Domestic Board to look after purely Canadian interests. At the request of the two governments, the Commission drafted a treaty which was subsequently signed and put into operation.

The Commission investigated questions relating to the levels of Rainy Lake. St. Mary's River, which connects Lake Superior with Lake Huron, is the outlet of Lake Superior, some 34,000 square miles in extent. Congress and Canada had both authorized certain diversions for power purposes. Since many conflicting interests were affected, the Commission held hearings in 1913, and then ordered diversion of waters for power purposes and compensatory works to safeguard the interests of navigation. The whole scheme was placed under an international board of engineers, which reported periodically to the Commission.

In 1912–13 the Commission investigated projected works in the Livingston Channel in the Detroit River to "prevent cross currents dangerous to navigation." The two governments agreed to widen the channel and to guard the levels of the waters. In December 1916 the United States government applied to the Commission "for approval of the dredging of the channel in the St. Clair River near the town of Port Huron, Michigan." Approval was granted on condition that a submerged weir be constructed. (The St. Clair River connects Lake Huron and Lake St. Clair.)

An extensive investigation on the extent and causes of the pollution of boundary waters occupied the Commission for about six years. It was perhaps the most thorough search of its kind ever attempted. The regulations concerning pollution of waters which it drew up were embodied in a draft treaty. The Commission presented a long report in December 1921 on the problem and possibilities of a St. Lawrence River navigation proposal. In 1925 it granted the application of the New Brunswick Electric Power Commission for authority to develop power at Grand Falls. In 1926 the St. John River Power Company, having taken over the rights of New Brunswick Electric Power Commission, sought and obtained authority to carry out the same work. As to the St. Croix River, the Commission approved an application made

in 1914 for certain power works at Grand Falls, and in 1923 the state of Maine requested authority to erect and repair fishways in this river. The application was approved.

In 1944 the governments of the United States and Canada signed an agreement authorizing the International Joint Commission to determine whether further development of the water resources of the upper Columbia River basin would be practical and in the public interest "having in mind (*A*) domestic water supply and sanitation; (*B*) navigation; (*C*) efficient development of water power; (*D*) control of floods; (*E*) the needs of irrigation; (*F*) reclamation of wet lands; (*G*) conservation of fish and wild life, and (*H*) other beneficial public purposes." The Commission was also to investigate and report on existing dams, hydroelectric plants, navigation works, and other works or projects located within the Columbia River system.

The United States and Canada also entered into an arrangement in 1944 providing for additional emergency diversion for power purposes of the Niagara River above the falls.

Other examples might be given. But these show that the Commission has had to regulate not merely traffic problems but also problems involving health, power, and conservation of waters. Its great significance lies in the fact that two nations have created an international body on which they are equally represented and to which they have transferred a considerable amount of authority. It is an instrument of government more in keeping with the modern needs of Canada and the United States than the old-fashioned method of treaty negotiations between sovereign powers could have been.

Summary.—H. A. Smith has suggested a number of principles which should govern the international law of rivers. The following summary is based upon his analysis: (1) Since every river system is an indivisible physical unit, it should be the duty of all governments concerned to co-operate as far as possible in developing the river to serve the whole community, however many political jurisdictions there may be, although no nation should be compelled to endanger its vital interests or to sacrifice its other interests without full compensation. (2) No state should take unilateral action to use the waters of an international river in such a way as to endanger the interests of another riparian state. (3) No state should oppose the action of another state in utilizing river waters unless its own interests are appreciably threatened. (4) If the interests of one state are greatly served, and of another

state are only to a small extent injured, the latter should acquiesce in the project, subject to compensation. (5) If a proposed use of waters by one state threatens the vital and legitimate interests of another, the latter is justified in opposing the step; but "any difference as to the existence or nonexistence of such vital interests should be regarded as a justiciable dispute, suitable for arbitration, judicial settlement, or reference to the Council of the League of Nations." (6) Differences of a technical nature, if no direct agreement is possible, should be referred to competent technical international commissions. (7) If a river system is such that disputes are likely to be frequently permanent, international commissions should be constituted. (8) Disputes concerning the priority between navigation and other uses should be settled by reference to arbitration, judicial settlement, or the League Council. (9) All riparian states should consult freely and fully with each other.

These principles[82] in Smith's judgment do not imply that state sovereignty over its territories and waters in the territories is "in any way divided or qualified," or that other states have "any rights in the nature of servitudes," but only that states should not unilaterally exercise their sovereign power in an unfriendly and improper way.

To no small degree the International Transit and Communications Organization of the League and the Permanent Court and the League itself provided much of the machinery suggested by the principles just outlined. The Barcelona Convention of Navigable Waterways of International Concern, as we have seen, provides an unambitious statement of international law. Steps have been taken to unify river law and to unify tonnage measurement in inland navigation. The investigations of Mr. Hines and others have been of value in clarifying certain technical problems relating to the Danube and other navigable waterways of Poland. The advisory and technical committee of the Transit and Communications Organization acted as a conciliation body in disputes arising out of conventions. And this section of the League Secretariat acted as a continuing body to prepare for future conferences. Theoretically, a great advance had been made, but unfortunately some of the achievements still remained on paper, owing to many obstacles of a political and technical nature.

It is important not to swing to an opposite extreme and become unduly captivated by the concept of internationalization. J. P. Chamberlain utters a note of warning when he suggests that the

[82] H. A. Smith, *op. cit.*, p. 152.

opening of a river to vessels of all nationalities might not have entirely beneficial effects: "Whether freedom of river navigation to all flags is advisable depends on whether the practical value outweighs the consequent interference with the individual rights of the riparian states to regulate their interior navigation." He suggests that one should not draw an analogy between river and ocean traffic; that the open sea connects many countries, but that a river "is a pathway of trade only to the states bordering it and can be of interest only to them and the countries to which they traffic"; and that any undue extension of the rights of freedom of river navigation might involve excessive interference with the legitimate interests of national states.

At the moment of writing, little headway has been made in restoring the international agencies which in the years prior to Hitler's conquests administered several of the European rivers. Indeed, the differences between the Soviet Union and the United States on this issue which appeared at the Potsdam Conference in 1945 at the meeting of foreign ministers, later in London, and at the Moscow Conference of December 1945 showed no signs of lessening. The United States proposed free navigation for the Danube, the Rhine, the Elbe, and the Weser rivers. The Soviet Union took the view that control over the river Danube should be exercised by riparian states only, included among which would be the Soviet Union since its acquisition of Bessarabia in 1940. It urged the regional as against the universal principle.

American traffic was forbidden along the river in countries east of Vienna; it would appear as if Russia were attempting to develop not only a political but an economic sphere of influence in this area. In March 1946 the Soviet-Hungarian agreement provided for a joint-stock company for navigation, "an arrangement similar to other 50-50 companies Russia has established in the Danube region." The United States, however, had under its control about 800 Danube ships "whose masters, aided by Axis satellite governments, had rushed them upstream from the eastern countries in the fall of 1944 and early 1945 to prevent them from falling into the hands of swiftly advancing Russians."[88] The United States for a time refused to return several hundred ships to Czechoslovakia, Hungary, and Yugoslavia, apparently holding them as a bargaining weapon in order to attain its goal of "free navigation of the Danube under international control, in

[88] Blair Bolles, "United States and Russia Contend for Influence in Danubian Basin," *Foreign Policy Bulletin* (May 31, 1946), p. 4.

which non-Danubian countries would participate." In November 1946, however, Secretary Byrnes announced a plan to transfer 600 ships to their owners.

Until the fundamental question of international security is solved, until we know whether this is to be one world or two worlds, we may expect a deadlock on this issue. Theoretically the case for international administration of the European rivers is unanswerable but the difficult question remains, what kind of international control, world-wide or regional; and if world-wide, whether the same principle should be applied to rivers and straits, railroads and roads, in other areas. On these questions no adequate agreement had been reached. The United States and Great Britain had pressed for clauses to insure nondiscriminatory administration of the Danube to be inserted in the Rumanian Treaty, but withdrew their demand September 30, 1946. The Peace Conference, however, on October 10, approved the provision in the Rumanian Peace Treaty calling for free navigation of the river and next day adopted the Bulgarian Treaty containing provisions to internationalize the Danube. On the other hand, the Soviet Union, Czechoslovakia, and Yugoslavia, declined a request sent by Secretary-General Lie of the United Nations to several nations to attend a Danube conference.

LAND TRANSPORTATION

RAILROADS

The considerable amount of daily railroad traffic which takes place across national boundaries in time of peace necessitates much technical and political railroading co-operation in order to avoid delays and consequent financial loss. In a valuable article,[34] Ruth D. Masters shows how international co-operation has increased railroad efficiency in Europe, and has lessened some of the difficulties which a strict adherence to the doctrine of sovereignty would involve. The following section, based upon her study, describes the situation as of 1937.

Europe is criss-crossed by political frontiers, and one wonders how the great network of European lines "could ever have been built, and, particularly, how railway services can function smoothly

[34] Ruth D. Masters, "International Organization of European Rail Transport," *International Conciliation*, May 1937. For a discussion of co-operation on the American continent see William J. Wilgus, *The Railway Interrelations of the United States and Canada* (Yale University Press, 1937).

over it, when national frontiers seem to exist principally for the purpose of obstructing traffic in persons and goods." National states, supreme in their own borders, decide upon the directions and gauge of the lines, the organization of the companies, and the relations between carrier and public. They may even refuse to permit foreign trains to pass over their territory. And yet today "to the traveling public, Europe's railroads appear to act as if they were part of a single administrative unit." Were it not for frequent customs examinations and passport inspections, one would be little aware of frontiers. Not only do passengers move with relative ease, but "we may ship goods from Budapest to Stockholm on a single bill of lading which is in all essentials subject to a single code of law."

As Europe's economic life long ago expanded beyond the confines of national boundaries, hindrances to transport became a serious threat to her general welfare. Nevertheless, national states hugged their sovereignty; there was no guaranty that railroad lines would be built of the same width, or that rolling stock could be used on different lines. The fact that a single nation, England, constructed many of the continental lines in the early and middle nineteenth century made for some uniformity; but the possibility of different gauges, different rails, and unco-ordinated timetables increased with the growth of the number of independent states. Those who have known the inconvenience of changing trains can appreciate the immense importance of avoiding undue transshipment. But such an avoidance presupposes standardized equipment; if cars of one company or country are to run on the lines of another, the companies "must agree on uniform rules concerning compensation for the use of hired cars, liability of the railroads for damage to such cars, methods of tracing cars, etc."; in other words, "a considerable degree of technical and administrative unity is essential merely to eliminate the delays incident to transshipment."

Moreover, companies and countries, if they insist on an unqualified independence, will require a new bill of lading at every frontier; and this procedure is likely to cause considerable delay and expense.

The organization which did much to establish European railroad co-operation was the Association of German Railroads (VDEV); twenty-one Prussian railroad companies by June 1847 had formed a permanent union, which other lines joined later. Subsequent conferences drew up uniform rules relating to bills of

lading, the division of freight receipts, and the payment of compensation for damages sustained by goods in transit. Tracks and rolling stock were standardized, and an 1850 Conference adopted "basic rules for the construction of German railroads, which dealt with the gauge, curves, rails, sleepers, minimum distance between double tracks, grade crossings, safety tracks, sidings and switches, the permanent way, construction and dimensions of locomotives, tenders and cars, safety devices, etc. It also submitted "uniform regulations for transit traffic" in which minimum technical conditions were laid down for cars in inter-VDEV traffic. The basic rules and the uniform regulations were subsequently combined in a single document, the "Technical Agreement of the VDEV for the Construction and Administration of Railroads"; this became binding on all members in 1867 and "served to insure technical uniformity of VDEV railroads."

In 1881, the members drew up a convention for the more effective interchange of railroad cars by standardizing railroad equipment, and "regulating the methods to be used to locate freight cars which were intended to pass custom barriers under seal." A 1907 conference appointed experts to study the problem of brakes on international freight trains, and devised "uniform specifications for the transverse dimensions of freight cars." A convention, "Technical Unity of Railroads, 1913 Text," at present applies to almost twenty European nations; it prescribes in detailed manner the rules which apply the principles just mentioned.

The benefits of co-operative action induced many railroad companies outside of the German Confederation to seek membership. At the outbreak of the war in 1914 the Association of German Railroads included most of the main lines in Germany, Austro-Hungary, Luxemburg, the Netherlands, some in Belgium and Rumania, and one Russian line. Although the war adversely affected it, there are still nearly 50,000 miles of track which belong to its members. In 1929 it changed its name to the Association of Middle European Railroads. This organization had great influence on railroad development in other countries, and itself developed into a more powerful and unified agency.

At the beginning, its members accepted only the rules which they all wished to adopt; decisions had to be unanimous. Later they agreed to accept the verdict of the majority, and after 1875 a nine-tenths vote became binding on members "unless after notification of the decision one-tenth of all members protested in writing." In the earlier years the general conference drew up and

altered rules; subsequently, various committees took over "much of the semilegislative function of the conference"; by 1875 they had become permanent, and in most cases their decision on a majority vote was final. The railroads in the union also agreed that their disputes should be settled by arbitration, so as to avoid the costs of litigation. At first a neutral railroad had power to give a final decision, but after 1881 permanent committees adjudicated disputes by majority decision. Even when the nationalization of railroads took place in the latter part of the nineteenth century, the international organization continued to function.

Other international organizations exist to promote more efficient railroad service: (1) The International Rail Congress Association, founded in 1885, which acts as a clearinghouse for technical information; (2) The International Railroad Union. founded in December 1922 to find remedies for the European rail organization which had become completely disrupted by the war, and to serve purposes similar to those of the Central European Union, but on a wider European scale; (3) The International Chamber of Commerce, with its railroad committee, and (4) the League's Advisory and Technical Committee on Communications and Transit, set up by the Barcelona Conference in 1920, also work toward similar ends.

Ruth Masters discusses the developments of railroad administrative unity. The International Railway Wagon Union, founded April 1920, "regulates the exchange of freight cars," and the International Union for the Use of Carriages and Vans in International Traffic, founded in October 1921, "regulates the exchange of passengers, baggage, ambulance, and mail cars." The author points out that it was a remarkable achievement to have founded two such European unions, including victor and vanquished powers, soon after 1918 when national hatreds were so intense.

For many years experts had attempted to draw up a convention for a uniform bill of lading; success finally came in 1893. The rules which were adopted prescribed the responsibility of carriers, the collection of charges, and methods of paying damages for injury to goods or delay in transport. The signatory powers formed the Berne Union for the Transport of Goods by Rail, and "established a central office for the union." The railroads agreed to give up their autonomy and accept the "principle of collective responsibility" for damages. This step resulted in lessening the amount of litigation and eliminating the former tedious and irritating border inspections. Improvements in the Berne Convention were

made; its provisions were later extended to steamship and motor lines; and a new expert commission was set up.[35]

Up to this time, international agreements had been reached on freight traffic, but did not cover passengers. In 1924 the states which were members of the Berne Union met and drew up a passenger convention which went into force in October 1928.[36] It applied to damages to the passengers' baggage, and in its general principles, resembled the freight provisions just summarized. However, as with air traffic, the states could not agree on uniform rules relative to the responsibility of the carrier for injury or death of passengers, and the laws of individual states where injury or accident occurred remained applicable in each case.

For over sixty years international conferences to integrate the timetables for passenger trains had been held, and in January 1923 a permanent organization was set up for that purpose. Also a new organization was formed, in January 1930, to arrange semi-annual timetable conferences for freight trains. International clearinghouses balanced railroad accounts, and in 1936 another step forward was taken when, after the expenditure of five million dollars, train ferries across the English Channel were introduced, enabling passengers from London to Paris to remain in their railroad berths. The inconvenience of having to dismount from the train, catch a boat at an English port, and reboard a train in France has been eliminated.

Europe had become highly organized internationally for railroad purposes; but much remained to be done. For example, each railroad company still continued to charge its own passenger fares and freight rates, leaving open the possibility of ruinous cutthroat competition which, because of the close relationship existing between railroad transport and national security, might have serious international consequences. Perhaps Europe will find it desirable to set up a body resembling the United States Interstate Commerce Commission, which has jurisdiction over charges which can be made by railroads.

The League of Nations also attempted to develop and codify international law on communications. It summoned the Barcelona Conference of 1921 to deal with the problem of freedom of transit,

[35] *League of Nations Treaty Series*, Vol. 77, No. 1778, p. 367. The 1924 Treaty, Annexes and Signatures occupy 166 pages in two languages.

[36] *Ibid.*, Vol. 78, No. 1779, p. 17. In order to revise these two conventions, two new conventions concerning the transport by rail of (*a*) passengers and baggage and (*b*) goods were signed at Berne on November 23, 1933, and came into force November 17, 1937. *Ibid.*, Vol. 192, Nos. 4483–4484.

and the 1923 Geneva Conference, which drew up a convention and statute on the international regime of railways. The International Convention and Statute on Freedom of Transit was designed to guarantee freedom and equality to international transport in transit: i.e., transport which crosses one state, "its points of departure and destination being outside that state." If country A, situated between B and C, obstructs traffic between B and C, it can inflict injury upon these two countries; and in the past many disputes have arisen over transit questions. The convention provides that countries shall facilitate through transit by rail or waterway on routes in use for international transit. "No distinction is to be made on grounds of nationality of persons, the national flag flown by vessels, or the place of origin, departure or destination of goods or persons." Such traffic in transit shall not be required to pay any special dues, but only those dues intended to defray necessary expenses of supervision and administration. Some delegates noted that freedom of transit would remain merely a theoretical matter as long as nations could charge heavy rates for through or transit traffic. If a country charged less for local traffic than for through traffic, it would penalize the latter, and perhaps in practice deny freedom of transit. Other delegates claimed that, since their governments supported their railroads by taxation, they not only must have control over their own rates but must also possess the right to grant special rates designed to foster national industry or national ports. "The Italians, for example, wanted to retain their specially reduced rates for fruits from southern Italy shipped to the north for export and the Germans their low rates to Hamburg and Bremen, through which they hoped to build up their own North Sea ports at the expense of Rotterdam and navigation on the Rhine. These special rates were in effect burdens on the transit traffic, inasmuch as they favored national routes over international routes."[37] In other words, governments looked at their own railroads "not merely as means of transportation, but also as instruments of economic policy, if not of economic war." The conference, therefore, had to adopt a compromise resolution agreeing that governments should maintain the right to impose differential rates, "provided these were based on economic considerations." Exceptions to equality, then, were permitted in the name of emergency, vital interest, national security, and the need to adapt the convention to local conditions.

[37] Ruth D. Masters, *op. cit.*, p. 524.

The hopes that transportation might primarily serve economic rather than military purposes died with the approach of World War II. The destruction and disorganization which resulted from six years of hostilities need not be detailed here. It suffices to point out that independent national efforts could not bring about even the beginnings of reconstruction on any adequate scale. For this purpose the governments of the United States, Belgium, France, Great Britain, Luxembourg, Netherlands, and Norway signed an agreement at London, May 8, 1945, establishing a European Central Inland Transportation Organization as a co-ordinating and consultative organ to help successfully complete the war and restore normal conditions of economic life.

The organization consists of a Council and an Executive Board with the necessary headquarters, regional and local staff. Each member has one representative in the Council which meets not less than twice a year. The Executive Board consists of seven members appointed by the Council and appoints a Chief Officer to direct the technical and administrative work. The organization collects information on transport equipment and technical material, helps governments in meeting their requirements, allocates and distributes resources, assists in restoring the governments' transport materials found outside their territories, undertakes a census of rolling stock in Continental Europe, makes recommendations concerning traffic and concerning the rehabilitation of transport systems, and provides a unified clearing system for international traffic operations.[37a]

These measures, however, are emergency in character. For permanent restoration more fundamental steps will be required, and in this connection the suggestions of Sir Ralph Wedgwood and J. E. Wheeler have some importance. They point out that railways are essentially regional in their activity. A world-wide organization could play a useful part "in a consultative or advisory capacity, and as a center for information and discussion," by investigating particular problems of rail transport, compiling information and statistics, and offering services as an arbitrator, but the more active and effective organizations would be regional in character. In Europe a great deal might be done. Indeed the present time would be an extremely favorable one because of the

[37a] See *European Inland Transport* (Executive Agreement Series 458, Department of State, Washington, D.C., 1945) and *European Central Inland Transport Organization* (Executive Agreement Series 494. Department of State, Washington, D.C., 1945).

vast destruction which railways have suffered as a result of the war, 1939–45.

Old railway-stock has been destroyed to an incalculable extent in the course of military operations. On the other hand, so far as any new railway-stock has been built, it is probably of some standardized patterns. In any event, there will be a vast work of new building and of heavy repairs to be undertaken.[38]

They note the admirable work done by the American Association of Railroads which, representing 300,000 miles of line, has reduced the number of sizes and kinds of freight-car axles from fifty-six to one standard design in five sizes and made other desirable standardizations of railway stock. If the International Conference for Promoting Technical Uniformity on Railways and the Berne Union—with its organ, the Central Office for International Railway Transport—could be combined as one international conference, it could undertake to formulate standard designs for vehicles and fittings of all kinds; it could promote standardization "of systems of refrigeration and heat-control" which would be of immense importance in promoting the shipment of fruit from the Mediterranean to northern countries and of fish and other products from north to south; it could assist in standardizing electric tracks where a great deal of wasteful variation in voltages has thus far existed. Such a body could promote a more efficient distribution of railway stock, even though, as the authors believe, each Administration would possess its own stock of wagons. A European conference could promote uniformity of conditions of carriage, profiting by the excellent work done by the Berne Union during the last fifty years. It could do much to standardize the description and classification of merchandise and promote stability and uniformity of railway tariffs. Finally, an international body should be given the power to set up "machinery of negotiation and impartial arbitration" to deal with railway problems which will arise out of the peace treaties. Without doubt many disputes will arise, and these should not be left to the slow workings of diplomacy, for rapidity of decision is of the utmost importance in transportation.

The solution of the transportation problems of the next peace treaties would therefore appear to lie in constituting a strong and simple machinery of arbitration, capable of handling transportation questions of

[38] Wedgwood and Wheeler, *International Rail Transport* (Oxford University Press, 1946), p. 34.

all kinds, and supported by the full prestige of the new international authority . . . . Reasonable time (say two years) should be allowed for settlement by agreement; after that period, or earlier by consent of both parties, the arbitral body should hold itself ready to act and to decide the issue, on the appeal of either disputant.[38a]

ROADS

The advent of the automobile restored the importance of highway transportation which had been eclipsed by the railroads. Motor vehicles "created a demand for greatly improved roads, and improved roads, in turn, greatly increased the possibilities of the new means of transportation."[39] In the United States local bodies had complete control over building and financing of roads until 1891 when New Jersey introduced the principle of state aid; by 1917 every state in the Union had a state highway department. But the needs of interstate travel and commerce called for federal action, and in 1916 Congress enacted a federal aid law. The development from exclusively local to state and federal aid has some significance for Europe: the difference is that, whereas in the United States the federal government has a constitutional power to act in assisting road-building programs, in Europe any co-ordination of road-building involves the action of sovereign states.

The construction and financing of roads constitutes only one side of the picture. After the highways have been built, governments must take steps to protect them and keep them in repair by prescribing weight limitation of vehicles, etc. They have to introduce safety regulations concerning brakes, lights, and accident insurance. They find it necessary to regulate the business of transportation for hire in the matter of stability of rates, prevention against discrimination, financial responsibility, dependability of service and co-ordination of transportation.[39a] The growing scope of these problems finally led the United States Congress to pass the Motor Carriers Act of 1935, which places carriers by motor vehicle engaged in interstate and foreign commerce under the jurisdiction of the Interstate Commerce Commission. Continental transportation had required regulation on a continental scale.

Europe experienced the same growth of highway transporta-

[38a] Wedgwood and Wheeler, *op. cit.*, p. 142.

[39] D. Philip Locklin, *The Economics of Transportation* (Business Publications, Inc., Chicago, 1938), p. 750.

[39a] *Ibid.*, pp. 786–88.

tion, although at a slower rate, and it also realized the need of wider planning and regulating than independent national action alone could supply. But, whereas in the United States national unity obviated questions of national defense in highway matters between the states, in Europe the military aspects had to be kept constantly in mind. Nevertheless, much international co-operation on that continent was helping to promote plans for trans-national road construction and to free highway traffic from obstacles, dangers, and undue frontier formalities. Although some action was taken before the World War of 1914–1918, the really significant efforts did not begin until after it had ended.

A Permanent Committee on Road Traffic which was established within the Transit and Communications Section of the League of Nations spent much time preparing the ground for the first European Conference on Road Traffic which met at Geneva, March 16–30, 1931, and kept the delegates to the General Conferences and Communications and Transit Conferences informed on road matters. One cannot summarize in a short space the many technical problems which were discussed, nor do more than pay tribute in general terms to the great ability and reputation of the experts who were in attendance. A perusal of the documents compels one's admiration for the quality of the discussions carried on.

The 1931 Conference adopted a Convention on the Unification of Road Signals, providing for danger signals (△); signs prohibiting passage (○); and information signs (□). Those who have motored in foreign lands will appreciate the significance of a uniform set of symbols, for it is unlikely that motorists will know more than one or two languages; and safety as well as convenience indicates the need of as nearly universal agreement as possible on road signs. Within this threefold classification many other problems arose and were discussed—signaling by traffic police, instruction of school children, signs indicating direction to be followed, parking space, paths for cyclists only, prohibited passage, caution signs (for schools, churches, hospitals, etc.), and proximity to customs houses. The Conference requested the Permanent Committee on Road Traffic to continue its study of road signs and consider the possibility of establishing an international code of signals.

The Conference also adopted a Convention on the Taxation of Foreign Motor Vehicles which provided that touring cars visiting a foreign country shall be exempt from taxes and charges for a period of ninety days in the year. Vehicles which are used commercially for the public conveyance of passengers for payment or

for transportation of persons and goods on a commercial basis are not to enjoy exemption. The minutes of the Conference reveal that the same fundamental problems had to be faced internationally as had been considered locally and nationally. Who should pay for the construction and upkeep of highways, the user or the person along whose property the road lay? Could a general rule be adopted in view of the divergent tax systems? Should not agreements be made on a bilateral basis as the German representative claimed? On the other hand, the desire of stimulating tourist traffic made it obviously important to attract foreigners by reducing formalities and expense to a minimum. The Conference was unable to agree upon a convention on international commercial motor transport. Some delegates believed that the complexities of motor versus railroad competition made any attempt at a general international agreement premature, although the Belgian representative indicated that his country with one of the densest railway systems in the world thought that a multilateral convention was possible and desirable. But the delegates realized that many different legal problems were involved and decided to postpone the matter until further investigations had been made. The Conference recommended that, "pending the conclusion of an international convention, separate agreements should be made between States on as liberal a basis as possible."

The Conference concluded an agreement between customs authorities to facilitate the procedure relating to undischarged or lost triptychs (the identifying documents) in order to remove "certain practical difficulties" of automobile tourists.

The Permanent Committee on Road Traffic considered many other matters. It urged the abolition of level-crossings in the interests of safety of traffic. It did considerable work on the unification of statistics relating to road traffic accidents. It investigated the possibility of unifying the direction of road traffic by the adoption of the rule of traffic on the right side, and recommended that those countries which keep to the left should when renewing transport material—tramways, motor omnibuses, etc.—"take the necessary preparatory steps in order that the direction of traffic might be changed with a minimum of expense when the time came." It proposed the standardization of national driving licenses and national registration cards (which had been urged by the International Association of Recognized Automobile Clubs).

As travel increases, the question of insurance of motorists against payment of damages to third parties becomes more impor-

tant. Some countries compel foreigners to take out compulsory insurance, others exempt foreigners and treat them more formally than national tourists. The task of drawing up an international convention on this question bristles with legal difficulties. A Committee of Enquiry for the civil liability of motorists was set up by the International Institute for the Unification of Private Law, and was requested to continue its study. Undoubtedly the matter will come up for reconsideration at the end of the present war.

The League of Nations Organization for Communications and Transit afforded technical assistance to the Chinese government in road-building, in transportation by road, and in hydraulic works, and sent out an elaborate questionnaire to the governments of the world concerning the co-ordination of rail, road, and inland navigation. The document comprises 348 pages and gives a valuable picture of the methods being adopted by governments to meet one of the most serious problems in present-day transportation.

This section may close with a reference to certain other bodies. The Permanent International Association of Road Congresses which began in 1908, and which at the close of 1937 had fifty-five member states, held its eighth Congress at The Hague in June 1938. A permanent international committee for the London–Istanbul Highway was created in 1935. The International Chamber of Commerce has three committees: (1) on barriers to international commercial motor transport, (2) on automobile insurance, and (3) on highway transport. A committee of experts for the codification of road law held its first meeting at Geneva in 1938. Mention must be made also of the growing importance of the Pan-American highway, which bids fair to become a factor of major importance in the relations of the countries of the American continent.

AIR TRANSPORTATION

Although the French used a balloon in the war against Austria in 1794, and balloons figured in international conflicts during the nineteenth century, the great problems of air traffic have developed only in recent years.

No one can fail to appreciate the extraordinary aeronautical progress of the last thirty years; nor can he be insensitive to the grave risks which technical achievement has brought. The airplane has introduced new factors in warfare and helped to intensify the race in armaments; it has brought new problems in empire com-

munications and further complicates the imperialistic struggle for power. Great Britain, France, the United States, Italy, Holland, Japan, and the Soviet Union realized the extreme importance of adequate and efficient inter-empire air forces, and all spent huge sums for that purpose. And the airplane and the airship have provided new forms of service transport, and are becoming increasingly important in surveying and developing inland areas, bringing medical aid to hitherto inaccessible parts, opening up Arctic regions, maintaining order in outlying sections, speeding up mail deliveries, and increasing the tempo of life generally. Hundreds of millions of dollars have been invested, and the industry is now an indispensable part of economic life. Finally, the new airways intensify the need for renewed vigilance in the realm of public health; continents are brought closer together, and disease may be more easily spread, unless national and international health authorities redouble their precautionary efforts.

Thus air transportation has international significance, and requires analysis as an international problem.

The first international air congress met at Paris in 1889. The delegates did not have official status, but they considered many questions which later were to demand the attention of governments in the fields of both public and private law. Other conferences were held in Paris (1900), Milan (1906), Brussels (1907), Nancy (1909), and Turin (1911). Private organizations, such as the Institut de Droit International, the International Law Association, the Congrès Juridique d'Aviation, and the Comité Juridique International de l'Aviation, held several meetings in the prewar years.

The basic question that arose was whether the air was universally free or whether nations possessed sovereignty over the air space above the land within their own boundaries. One school of thought claimed that the air was free. It argued from analogy: since the sea was open to all nations, the air also should be free; and air is necessary to life, irrespective of state or nation. Defenders of state sovereignty over the air replied that there were fundamental differences between air space and the sea—the force of gravity enters into air travel, and airplanes constitute a potential danger to the land below, which is not true of ships at sea. "Other things being equal, the potential menace of a war vessel at sea decreases with its distance from shore. The reverse is true of war aircraft. The threat from war planes is far too serious to permit the development of the idea that the air can be universally free."

Further: "Civil air transport involves greater danger to innocent life and property below, and because of the speed and height of air travel it is more difficult to establish facts concerning responsibility for aerial than for marine accidents; and also, civil planes may threaten the safety of people in so far as there is need of forced landing." For these reasons many jurists asserted that a state has the right of sovereignty over the air space above its soil. Some international lawyers suggested that the nation should possess air sovereignty up to a certain height, beyond which the air space should be common to all nations. But critics pointed out that it would be almost, if not absolutely, impossible to determine whether a foreign plane was or was not at a given moment beyond the established height. Other writers declared that the nation should exercise sovereignty over its air space but should grant the right of innocent passage to foreign airships and planes. This doctrine found expression in the International Air Conference of 1919.

Even before the World War of 1914–1918, governments tended to ignore the theories of jurists, and the British, French, and Austrian legislatures proceeded on the assumption of absolute sovereignty over the air above their soil. And at the International Conference on Air Navigation in 1910 the jurists of the world were so divided on the question that the Conference broke up without reaching any agreement.

That war dealt a still heavier blow to the theories of internationalism in matters of air transport. Any lingering hopes of a world-wide view were dissipated by the immediate necessities of military action. The movement toward a national theory of air space coincided with the tremendous impetus to air transport during the war period. Before 1914 relatively few planes were in use. During the war, the possibilities of air attack were not fully realized, and the air force remained merely an auxiliary unit; nevertheless, the years of conflict witnessed rapid progress in engine construction and other technical matters, the number of machines built, and the number of pilots trained. By 1918 it was clear that a new and powerful factor had appeared in international relations.

In March 1919 an Aeronautical Commission of the Peace Conference began to draft the air clauses of the Peace Treaty and also a general convention for international aviation. Five great powers and seven powers "of limited interests" were represented on the Commission, which drew up the 1919 International Air Conven-

tion. The Convention formed the basis of much subsequent national air law and of bilateral treaties and served as the model for the Ibero-American and the Pan-American air conventions.

It lays down three fundamental principles: (1) each state possesses sovereignty over the air space above its territory; (2) other nations have a qualified freedom of innocent passage which, however, "is granted as a privilege instead of being conceded as a natural right"; (3) nations may proclaim prohibited zones over which foreign aircraft may not fly.

Each aircraft possesses the nationality of state on the register of which it is entered and must bear a nationality mark. It must belong wholly to nationals of that state or to a company therein registered. Every month states must notify the other signatory powers as to new registrations or cancellations. The signatory powers agree to recognize the validity of certificates issued by each other.

The fourth chapter of the Convention deals with the important problem of admission to air navigation above national territory. Article 15 provides that "every aircraft of a contracting State has the right to cross the air space of another State without landing. In this case it shall follow the route fixed by the State over which the flight takes place." It must land if ordered to do so by officials of the government over whose territory it may be passing. No aircraft of a contracting state capable of being flown without a pilot shall, except by special authorization, fly without a pilot over the territory of another contracting state. The sixth chapter concerns the question of prohibited transport, Articles 26–29 forbidding the carriage by aircraft of explosives and arms or munitions of war; also states may prohibit or regulate the use of photographic apparatus.

Chapter viii of the Convention sets up an International Commission for Air Navigation, which is to have important powers: (1) Administratively it is to receive proposals for amending the convention and to collect and publish information of every kind relating to international air navigation, especially wireless, meteorology, maps, etc. (2) Legislatively the Commission may propose changes in the articles of the convention, but it may itself modify the first seven annexes to the convention which are the technical regulations. (3) The Commission acts in a judicial capacity; it may settle disputes of a technical nature—disputes arising from the articles of the convention themselves go to the Permanent Court of International Justice. (4) The Commission has advisory

powers, since it must give its opinion on questions which the signatory powers may send it for examination.

This convention represented a distinct step forward; in some respects it was a remarkable piece of work. Nevertheless a number of factors militated against its full success. The Peace Treaties contained clauses directed against the defeated enemy powers—Germany, Austria, Bulgaria, Hungary, and Turkey. Neutral powers labored under disadvantages, and not until certain modifications were made in 1926, and also later revisions of several articles became effective in May 1933, were the difficulties finally removed.

The International Civil Aviation Conference at Chicago in November 1944 set up an organization which was to become permanent when adopted by twenty-six states. An Interim Council was to study information on air-traffic problems. The Canadian government proposed an international body with power to "allocate routes, determine frequency of service, control rates, and govern other phases of international flying."[40] Australia and New Zealand proposed an executive international air line owned and operated by all nations. The United States desired an international body with powers over technical matters but having no authority to operate air lines. The draft convention represented a compromise; the Australia–New Zealand proposal was rejected; but a permanent council was given considerable authority over technical matters, being able to amend or annul technical annexes to the convention by a two-thirds vote.

> These annexes deal with such subjects as rules of the air, air way systems, communications procedure, traffic control, air worthiness requirements, licensing of personnel, aircraft registration, weather reporting, maps and charts, local books, customs procedure, and investigation of accidents.[41]

This is the first time that there has been "world wide acceptance of practices in the technical fields" which also includes the most recent developments in aviation.

The convention included two important agreements: (1) the transit agreement, often called "the two-freedoms agreement," under which signatories agreed to grant rise of transit and non-traffic stop, and (2) the five-freedoms agreement which included

[40] Joe D. Walstrom, *The Chicago Air Conference, Department of State Bulletin,* December 31, 1944, p. 844.

[41] *Ibid.,* p. 844.

the right of transit and service landing and the right to carry goods and passengers from the country whose nationality the aircraft possesses to any other country signing the instrument. The technical explanations of these arrangements cannot be discussed here. Despite the wide disagreement between the United States and Great Britain in the stages of discussion, the Chicago Conference reached important compromises and justifies Walstrom's judgment that the agreements "offer a simple means of attaining a degree of freedom in air transportation comparable to that achieved in ocean shipping only after centuries of effort."[42]

In order to appreciate certain other developments arising out of the 1944 Conference it is necessary to examine some problems of international private air law. Differences in state and national laws may seriously injure trade and commerce. Manufacturers, exporters, and wholesale dealers need accurate knowledge of economic and legal conditions. The wider the area of their business connections the more they benefit from uniformity of law. Conflicting state requirements in wages and working conditions place many obstacles in the way of commerce. In a similar manner, diversity of national laws relating to contracts, insurance, damages, and other matters will adversely affect international trade. Uniformity of legislation, therefore, is a matter of great importance, particularly in the field of transportation.

In 1910 the Comité Juridique International de l'Aviation was formed for the purpose of developing a code of private air law. The World War of 1914–1918 increased both military and commercial aviation; and after 1919 especially many problems arose, the most acute of them being in the realm of insurance and the legal position of the carrier. Colegrove cites a typical example:

> . . . . a firm in Berlin consigns a case of surgical instruments to a London physician by way of an air traffic company. En route over Holland the consignment is damaged through the negligence of the pilot. Who, then, stands the loss, the Berlin firm, the London physician, the shipping company or the insurance company?[43]

National laws relating to the liability of the shipper differ in many respects and cause great inconvenience to commerce. In 1922 the League Advisory and Technical Committee for Com-

[42] Joe D. Walstrom, *loc. cit.* See also Edward Warner, "The Chicago Air Conference: Accomplishments and Unfinished Business," *Foreign Affairs* (April 1945), pp. 406–21.

[43] K. W. Colegrove, *International Control of Aviation* (World Peace Foundation, Boston, 1930), p. 16.

munications and Transit suggested the desirability of considering whether an agreement, "if only of a very elastic nature and in the form of recommendations or a model code," might not be possible. The International Chamber of Commerce Air Transport Committee also urged an international conference, pointing out the serious inconveniences arising from conflicting judgments of national civil courts. The French government took the initiative and, as a result, the first International Conference on Private Air Law met in Paris in October and November, 1925. Representatives from forty-three states attended and evolved a draft convention dealing with the liability of air carriers. The Conference expressed the wish that a special committee of experts with headquarters at Paris should be empowered to continue the work in greater detail and study the following questions: damage caused by aircraft to property and persons on the ground; compulsory insurance; establishment of air registers; ownership of aircraft, vested rights, and mortgages; seizure; renting of aircraft; air collisions; legal status of the commanding officer of an aircraft; bill of lading (air-consignment note); uniform rules for the determination of the nationality of aircraft.

This committee, the Comité International Technique d'Experts Juridiques Aériens (C.I.T.E.J.A.), was set up in Paris on May 17, 1926, with representatives from twenty-eight countries. At its first session it established its bylaws and set up four commissions to deal with: nationality of aircraft; air register; ownership, co-ownership, construction, and transfer; vested rights, mortgages, privileges, and seizure; category of transport (commercial, touring, etc.); bills of lading; liability of carrier toward consignors of goods and toward passengers; jettison of cargo and general average; renting of aircraft; damage and liability toward third parties (landing, collision, and jettison); limits of liability (contractual limitation, abandonment); insurance; legal status of commanding officer and crew; accidents to the crew and insurance; status of passengers; law governing acts committed on board aircraft.

The committee first considered the question of the responsibility of the carrier for passengers and goods, for efficiency in transport depends upon establishing conditions binding upon the responsible parties throughout the whole of the transaction. It compared the drafts submitted by interested parties, after which the Polish government convened the second private air law conference in October 1929. Twenty-three states signed the Warsaw Convention for the unification of certain rules relating to the car-

riage by air, which came into force in February 1933 as between eight nations and was subsequently ratified by several other governments. The convention "applies to all international carriage of persons, baggage, or goods performed by aircraft for hire" and also to "gratuitous carriage by aircraft"; it establishes the liability of the carrier and the amounts which must be paid. It is impossible here to summarize the many technical articles, or do more than refer to the third International Conference on Private Air Law which met at Rome in May 1933 and adopted two measures: (1) relating to a precautionary attachment of aircraft, an act

whereby an aircraft is seized, in a private interest, through the medium of agents of justice or of the public administration for the benefit either of a creditor, or of the owner, or of the holder of a lien on the aircraft, where the attaching claimant cannot invoke a judgment and execution, obtained beforehand in the ordinary course of procedure, or an equivalent right of execution. . . . .[44]

(2) a convention for the unification of certain rules relating to damage caused by aircraft to third parties on the ground. One country might exact very heavy damages, and another impose only a relatively small fine. With such different laws, air companies would have to have legal advisers to study the legal systems and court decisions of all the countries over which their airplanes passed. The present convention is designed to remove some of these complexities and uncertainties.

A convention which accepts the principle of absolute liability and prescribes the general amounts which may be recovered, depends for its wide acceptance on the settlement of insurance:

The most deplorable deficiency is the lack of any international regulation of insurance made by the convention . . . . the texts of policies vary between states and, whereas in one country many restrictive clauses are allowed in the policy, in another country there are only a few . . . . It is unsupportable that the chances of the injured person to secure compensation depend on the nationality of the aircraft which caused the injury.[45]

To remedy this defect representatives from many European insurance companies met in June 1934 and formed the International Union of Aviation Insurers.[46]

[44] L. C. Tombs, *International Organization in European Air Transport* (Columbia University Press, New York, 1936), p. 137.

[45] *Ibid.*, p. 140.

[46] For an excellent discussion see Charles H. Rhyne, "League Rules for International Aviation," 31 *Virginia Law Review*, 1935, and for a technical dis-

Another aspect of international air navigation is the International Sanitary Convention for Air Navigation, signed at The Hague in 1933. It prescribes the special precautions to be taken against the carrying of plague, cholera, yellow fever, typhus, and fariola. In the same year the International Office of Public Hygiene set up a quarantine commission on air navigation.

Other international agencies which have been fulfilling the requirements of air navigation include: (1) the International Meteorological Organization, formed in 1872, which, in 1929, adopted an international code for meteorological messages; (2) the International Commission on Illumination, formed in 1913, with a secretariat in England, which in recent years has been studying such problems as international standards in signaling, light strength, and color and type of illumination for airport and airway lighting; (3) The International Hydrographic Bureau, set up in June 1921 under the League of Nations, which is doing important work in standardizing maps used in air navigation.

Unfortunately, these developments, excellent in themselves and along sound lines, were offset by the exaggerated sense of nationalism which generally stood in the way of a fully efficient international civil air transportation system.

But the remarkable developments in world aviation during World War II showed the need of a more effective organization than was represented by the foregoing arrangements. The 1944 Chicago Conference, in addition to passing the agreements described above, also provided for a permanent international civil aviation organization which was to come into being when ratifications were deposited by twenty-six nations. Between 1944 and March 1947, when sufficient ratifications were received, a provisional organization, PICAO, operated after June 6, 1945. In the assembly which met annually, each member state had one vote and decisions were taken by a simple majority. The assembly elected representatives to sit on the interim council comprising twenty-one persons representative of the major states in air transport and certain other categories. During its twenty months of existence the PICAO accomplished many things. It helped to create and maintain ground organizations along international air routes. It promoted the exchange of information on development and research work and, by conferences held under its auspices,

cussion of present problems see Stephen Latchford, "Pending Projects of the International Technical Committee of Aerial Experts," 40 *American Journal of International Law,* April 1946.

enabled representatives to decide upon standard equipment around the world for reliability and safety of air transport. It sponsored regional air navigation meetings as, for example, the North Atlantic Regional Meeting, which recommended the establishment of ocean weather observation stations mentioned above. Meetings were also held or planned for European, Mediterranean, Caribbean, the Middle East, the South Pacific, South American, South Atlantic, Southeast Asia, North Pacific, and African–Indian Ocean regions. Out of these meetings has come the move to compile regional route manuals as well as the collection of much statistical, economic, and legal information on air transport. By May 1947 important progress had been made.

PICAO also has been active in attempting to promote standards, practices, and procedures for entering and leaving national territories so as to minimize the delays caused by undue hindrances arising out of passports, visas, and customs inspection. The permanent organization will have powers beyond those of previous bodies since, in addition to its technical responsibilities, it will have the duty of collecting and publishing information relating to the operaton of international air services and may investigate, at the request of the member state, any situation appearing to present avoidable obstacles to the development of international air navigation. It is working toward a multilateral agreement on commercial air rights and is preparing maps to assist in extending the range of aviation routes.

At Bermuda, in February 1946, the United States and Great Britain signed an agreement which became the model for similar agreements with France and Belgium. In some respects the Bermuda plan represents a remarkable advance in that, for the first time, "foreign air carriers are granted fixed routes across the United States,"[47] and, in the words of John C. Cooper, "air transport is now a business in which a foreign commodity is sold in the local market in competition with domestic sellers and without the protection of a tariff."[48] Moreover, if the two parties cannot agree on a proposed rate, the PICAO may be asked to give an advisory opinion and to that degree an international authority will have some voice at least in fixing rates where governments cannot agree. In other words, "the United States has accepted international rate regulation as part of its civil air policy."[48a]

[47] John C. Cooper, "The Bermuda Plan: World Pattern for Air Transport," *Foreign Affairs* (October 1946), p. 63.

[48] *Ibid.*, p. 64.

[48a] *Ibid.*, p. 66.

Other aspects of the Bermuda agreement need not be analyzed here. It will be sufficient to note two typical conferences which give evidence of the growing necessity for international agreement in the field of transportation.

At the London Radio-Radar Conference, held in March 1946, proposals were made for an international organization for radar control. Great Britain suggested a chain of radar beacons throughout Europe. Civil authorities might take over the existing chain, add ten other chains, and in a relatively short time at a little expense cover Western Europe with a system of navigational aids for passenger air liners. British experts regarded this beacon network "as a very limited first step toward running the air routes by radar." The second and more important step will be the radio-radar control of airlines in much the same manner and on much the same scale as the wartime control of military flying operations.[49] The United States Department of State invited representatives of sixty nations to attend an international meeting on marine radio aids to navigation, to be held for a period of two weeks beginning April 28, 1947.

The meeting will consist of a series of lectures and technical discussions on the developments in the field of radio aids to marine navigation and the demonstration of the latest types of equipment, including loran and radar. Actual tests will be carried out at sea on board vessels made available by the United States Maritime Commission, the United States Coast Guard and the United States Coast and Geodetic Survey.

The aim of the meeting is to inform the world delegates of the United States policy in this field and to demonstrate the progress which the United States has made in the development of marine radio aids to navigation. Accordingly, it is expected that the meeting will inform the delegates regarding the adoption of new radio aids to navigation by this government and the availability, type and quality of marine radio aid equipments produced by United States manufacturers. In addition, should it appear that fruitful conclusions and resolutions leading to world standardization of marine radio aids can be evolved during the progress of the meeting, such conclusions and resolutions will, of course, be recorded for future reference and utilization when the nations of the world meet to consider standardization of equipment in this field.[49a]

[49] *Christian Science Monitor,* March 16, 1946, p. 9.

[49a] The Department of State Register of Visitors on March 3, 1947, pp. 21, 22, No. 239.

THE INTERNATIONAL POSTAL UNION

The situation which led to the establishment of the International Postal Union has often been described. Business men and others who wished to communicate with people abroad had to face a bewildering variety of regulations which combined to produce uncertainty and delay. A person in the United States sending a letter to a foreign destination would pay the domestic rate, plus "sea postage," plus a transit rate imposed by each government through whose territory the letter passed, plus the domestic rate in the country of destination. Nor was that all—he had to pay different rates according to the sea route used. A letter from the United States to Austria cost 15 or 30 or 42 cents per half-ounce according to whether it went via Hamburg direct or via England or via France. There were six different rates to Australia, five to Greece, Turkey, Egypt, or Hongkong.

These conditions were typical. Dr. Reinsch wrote that "mail service was by no means frequent, but the fact that a letter was prepaid for a certain route often prevented it from taking advantage of a quicker means of transportation. It might just have missed the mail for which it was prepaid by a few hours, but would have to wait until another mail left by the same route before it would be forwarded." Units of weight varied, and it was therefore difficult to calculate postal rates in three or four countries through which the mail would pass. This confusing array of complications produced still others; every country had to keep a set of accounts for each country with which it had postal relations; each had to be credited with its portion of the sum prepaid on *each* article (not on the aggregate weights of the mails). Little wonder that men and firms engaged in international trade concluded that national sovereignty in postal matters was too expensive a luxury to be retained. They also realized that bilateral treaties could not bring a sound solution and that, if postal communication was to help and not hinder international trade, it would be necessary to regard the world as one great postal territory.

The International Postal Convention was not the result of the development of an international outlook so much as that of a more realistic conception of national interest. This is significant because it reveals the fact that international organization of international interests may be the only satisfactory way of conserving the national interest.[50]

[50] H. M. Vinacke, *International Organization* (F. S. Crofts & Co., New York, 1934), p. 405.

Postmaster-General Blair of the United States, in August 1862, proposed an international conference to discuss the postal problems of the world. In May 1863, delegates of several governments met at Paris, not to conclude a binding convention, but rather to discuss general factors. Nevertheless, the conference adopted a number of principles designed to facilitate postal relations between countries and to serve as a basis for international conventions in the future. For the next decade, improvements went on slowly. Rates were reduced, but little progress was made in overcoming the serious handicaps due to lack of uniformity. After considerable delay, the Congress of Berne, attended by representatives of twenty-two states, met on September 15, 1874, and formed what later was known as the Universal Postal Union.

Members of the Union constitute a single area for purposes of postal communication; each one guarantees freedom of transit through its own territory. The national sovereign states no longer impose transit charges on foreign mails which they carry, and the Postal Union authorities fix the rates according to the weight of the mails and the distance to which they are carried. For this purpose "the mails are weighed for a period of six weeks during each sixth year." International postal disputes come before an arbitral board set up according to provisions of the Postal Convention.

The actual machinery of the International Postal Union need not be considered here. The Union has adopted the important principle that decisions are made by majority vote. Theoretically, each nation must ratify a decision made by a Postal Congress; but in practice the national postal authorities appear to accept the decisions of the International Congress and do not wait for their confirmation by the several governments.[51]

The amount of international organization required to insure the efficiency of our everyday postal arrangements is not generally appreciated. Turkel remarks that an International Postal Congress is attended by "about 180 delegates representing all nations of the world" who

> consider between 200 and 2,000 propositions embodying technical rules for the exchange of letters, parcel post, letters with value declared, money orders, air mails and two other auxiliary services, the so-called "collection of bills" service (*virements postaux*) and the service of subscription to journals.[52]

[51] *Ibid.*, p. 407.

[52] H. R. Turkel, "International Postal Congresses," in *British Year Book of International Law, 1929*, p. 171.

These proposals, about one year prior to a congress, are sent to the various national postal authorities for consideration; counter proposals and other communications produce such a mass of material that a new "study commission" has been appointed to prepare a digest and draw up projects which can be more efficiently considered at the general congress, which usually passes from ten to fifteen "acts" each session.

The same general problems of representation arise in the Postal Union as in the major international conferences (disarmament, tariffs). The governments of the small powers complain that they do not receive adequate representation on the committees, and the question of votes for Dominions and colonies has caused controversy. In 1878 British India and the French colonies were admitted. In 1895 Canada obtained a vote and Portugal succeeded in gaining voting power for her colonies. Two years later the states of Australia came in, and Germany, Denmark, Spain, and the Netherlands received votes for their colonial possessions. "The race for votes was on." It was natural for countries without colonies to protest against the increased voting powers given to powers which had colonial possessions. Turkel quotes from the document of the 1924 Congress:

> Many of the countries without colonies, among whom are some very important ones, begin to feel a certain unrest. The atmosphere which results from this situation aroused certain protests and painful discussions at Madrid which disrupted the harmony of the common work and finished by having a disorganizing effect.[53]

The question of letters in transit continues to create difficulties. In the early days of the Union nations agreed to grant "liberty of transit" to foreign letters passing through their territory. But not all of them wished to grant "gratuity of transit." It was obvious that international postal efficiency would be heightened by the elimination of the varying rates of transit postage described above. But was it fair that a country (France or Belgium, for example) which had previously gained much revenue from carrying foreign mails on its railroads should now have to transport these mails for nothing? If they are so geographically situated that a great amount of foreign mail goes through their territory, they will "perform far more services for other countries than they receive in return." If they form crossroads of international communication they will wish to receive some recompense for the effort imposed upon them

[53] Turkel, *op. cit.*, p. 177.

in transporting foreign mails, and will oppose the gratuity of transit which many countries advocate. In practice, transit rates have been lowered; and in some parts of the world, notably in Latin America and the United States, gratuity of transit (except for Panama) is accepted. Turkel writes: "It is impossible to predict what the outcome will be . . . . all one can say for the future is that this question is bound to occur again and again."[54]

The arbitration machinery which has been established by the Union has been successful in settling disputes which inevitably arise in an organization of such dimensions. The Union, however, has not been able to find a solution for the problem of neutral mails in wartime. Twenty of the American republics signed a declaration to the effect "that closed despatches and open correspondence in transit are inviolable both at sea and on land, and that consequently no country in the Union may submit them to the censor or sequestrate them in time of war." The European Powers and Japan opposed the declaration "on the ground that a Postal Congress is not competent to deal with the questions of military censorship."[55]

After fifty years the Universal Postal Union reported that over 3,000,000,000 pieces of postal material were handled each year, an increase of more than 2,000 per cent in a half-century. The insured articles rose from 685,000 to more than 4,000,000 and the money orders from 918,000 to approximately 20,000,000 a year. Sharp and Kirk comment upon these figures thus: "It is no exaggeration to say that the conduct of the business, social, and political life of the present-day world would be impossible without that degree of interstate co-operation which is necessary for the maintenance of efficient postal service."[56]

The advent of the airplane brought new technical problems in mail transportation. The Paris Peace Conference did nothing effective, in spite of an Italian proposal to include an annex "dealing with postal questions" to the 1919 Air Convention.[57] The next year, at the Madrid Congress, the Universal Postal Union considered the problem of airmail but, regarding it as "an extraordinary service," left details to the member states. The next few years witnessed a great expansion of air transport, and conse-

[54] *Ibid.*, p. 175.

[55] *Ibid.*, p. 180.

[56] W. R. Sharp and G. Kirk, *Contemporary International Politics* (Farrar & Rinehart, New York, 1940), p. 174.

[57] L. C. Tombs, *International Organization in European Air Transport* (Columbia University Press, New York, 1936), p. 161.

quently the Stockholm Congress in 1924 added several provisions —airmail rates were not to be the same as ordinary mail rates but were "to be uniform in all countries which used the service without sharing the working expenses"; and rules were made "for the transfer of mails carried by more than one service and for warehousing before further transmisison."[58] These regulations proved to be inadequate, and the International Chamber of Commerce petitioned the Postal Union to call a special conference at The Hague. This conference drew up an optional agreement which, in turn, was adopted in 1929 by the Postal Union Congress. The major improvements effected (1) unification of surtaxes to be charged the public and (2) the simplification of remuneration to the carrier.[59] Meanwhile the International Chamber of Commerce investigated many subjects which included:

Transmission of mail by the most rapid route; rapid and direct transmission of air mail; through transmission of mail by air and rail; rapid transmission of mail before it is sent by air; increase in aerodrome post offices and rapid transmission from city to aerodrome; publicity for air mail facilities; priority for telephone and telegraph communications in case of forced landing; simplification and unification of extra mail rates; collective agreements for the transmission of parcel post; constant study of the development of air transport in order to provide both administrations and carriers with indispensable factors for mutual agreements; night flying; closer co-operation between air navigation companies and postal administrations; postal prohibitions; samples; enclosure, in single envelope, of letters, invoices, etc., addressed to third parties; postal money orders and C.O.D. packets; technical facilities; rate uniformity; payment of claims for lost parcels; and general acceptance of the C.O.D. system.[60]

Meetings of national officials were held at Brussels in 1930 and 1931; and at Prague, in June of the latter year, eleven countries sent representatives which considered the possibility of creating a regular nightly airmail service. For various reasons the Conference agreed that only a summer months' program could be initiated in the immediate future, and it believed that although a number of governments desired to abolish the special air fee it was not yet possible to do so. It acknowledged with regret that government subsidies were still necessary for the airmail service.

[58] K. W. Colegrove, *International Control of Aviation* (World Peace Foundation, Boston, 1930), p. 110.

[59] K. W. Colegrove, *International Control of Aviation*, p. 111.

[60] G. L. Ridgeway, *Merchants of Peace* (Columbia University Press, New York, 1938), pp. 306, 307.

At Cairo in 1934 a convention was adopted which reduced the maximum charges for airmail service and even permitted countries to abolish the surcharge altogether. But it did not act upon several recommendations of the International Chamber of Commerce relating to lower rate levels, improved provisions for liability "for loss, damage and delay," and other technical matters too detailed for consideration here. In spite of advances, the regulation of airmail is, as Colegrove notes, "still in an experimental stage." Both he and Ridgeway pay tribute to the work of the International Chamber of Commerce, and Colegrove speaks of the collaboration between the I.C.C. and the Universal Postal Union as "a conspicuous example of effective co-operation between a private and a public international agency.[61]

Since World War II, the Fifth Congress of the Postal Union of the Americas and Spain has met at Rio de Janeiro with delegates attending from twenty-three countries, September 2 to 25, 1946, and the Transport and Communications Commission of the United Nations at its first session, February 6, 1947, took note of the progress of preparations to bring the Universal Postal Union as well as the Permanent International Court Aviation Organization and the International Telecommunications Union into relationship with the United Nations.

CABLES, TELEGRAPH, AND RADIO

The evolution in communications has not been limited to ships, roads, railroads, mail, and airplanes. The cable, the telegraph, and the radio have added to the complexities of international relations by producing what Charles Hodges has picturesquely described as "the staccato impact of events." Two illustrations will suffice: The message which opened the British Empire Exhibition in 1924 was cabled around the world in eighty seconds; and radio can circle the earth seven and one-half times per second. This "instantaneous transmission of the spoken word" has intensified the political problem of communications to even a greater degree than the also relatively recent cables and telegraphs. Modern states are battling not only to gain control over goods and power but also over the very thought and soul of man.

Great Britain early recognized the vital importance of cables to international commerce and took the lead in laying and controlling transoceanic lines. As Hodges and Riegel both point out,

[61] Colegrove, *op. cit.*, p. 102.

its monopoly of gutta percha, the raw material used in cable insulation, gave it an initial strangle hold. London became the center of the cable world, as it had already become the center of the world's stock market and currency quotations; financial control and news control in combination provided an instrument of unparalleled strength.

Other governments might lament this monopoly; but until 1898 the British supremacy remained unchallenged. From that time American competition became important across the Atlantic, down to Latin America, and to a lesser degree in the Pacific.

Efforts to mitigate the rivalry and friction due to national control of telegraph and cable communications met with little success in the prewar period. An international conference held in St. Petersburg in 1875 adopted a convention dealing with the operation of cables in peacetime, but it did little to guarantee international freedom of cable communications in the face of national censorship. Subsequent conferences, at least five of them, brought relatively little additional success. Although the 1884 Berlin Convention made provision for penalties for those who deliberately or negligently injured a cable, it contented itself with laying down the broad principle only and left specific legislation to individual governments. It is not surprising that little effective progress was made.

The Hague Convention of 1907, relating to laws and customs of war on land and the rights and duties of neutral powers, dealt with the protection of international cables during wartime but merely expressed the hope that cables would not be destroyed or seized "unless absolutely necessary," a loophole which permitted belligerents in the World War of 1914–1918 to do whatever they pleased, especially as the Convention made no provision for compensation in the event of seizure and interruption of cables during hostilities.

During that war the vital importance of cables was soon illustrated. Four hours after Britain had entered the war she isolated her enemy by cutting the German cables. Within three months the British government informed Mr. Hearst that he must print all dispatches exactly as they were released to him by the British censor, otherwise the British-controlled cables and mails would be closed to him. Hearst's reply was characteristic: "I am going to tell them to go hell"; apparently he did so, for he had to secure his news from other and more devious channels! Allied control of cables meant that Germany could not influence public opinion in

the neutral countries—the United States, Latin America, and the Far East—which thereafter had their attitudes and opinions molded according to Allied propaganda.

The nations which had so deeply experienced the strategic importance of cables in wartime met soon after the peace to consider the future of the twenty thousand miles of cables previously owned by Germany. The Versailles Treaty made provision for an international conference on communications, which was held in Washington in 1920. Despite lip service to internationalism, and the establishment of the League of Nations, the Washington Conference did nothing to rescue cables from the clutches of national policies. Great Britain obtained the cable from the Azores to Halifax, and France the line from the Azores to New York as well as the German–South Atlantic system. In the Pacific a bitter rivalry developed. President Wilson hoped to internationalize the Island of Yap where three German lines met: one from the Dutch East Indies, one from Shanghai, and one from Guam which connected with a cable between the United States and China. But Japan had already obtained a mandate over the ex-German islands north of the Equator and flatly refused to consider the internationalization of "this cable crossroads of the Pacific."

Subsequently, the United States and Japan effected a compromise. The United States recognized Japan's mandate; and Japan, in turn, agreed to the United States' demand for equal cable and radio rights at Yap. Not until a further conference in 1922 was the final disposition of the German cables made. Japan gained the cable from Yap to China, the United States took the line between Yap and Guam, and the Netherlands obtained the Dutch East Indies part. Hodges has summarized the results thus:

> America's trans-Pacific influence was hindered; Japan tightened her grip on the admittedly inadequate communications between China and the outside world; and the Mikado's Land, with the support of the British, cleverly opposed all efforts to open the closed door in Far Eastern communications. The much-needed extension of trans-Pacific cable facilities has remained in abeyance because of Tokyo's apparent intention to control any further development as the middleman in ideas between the East and the West.[62]

The invention of radio had far-reaching effects upon cable com-

[62] Charles Hodges, *The Background of International Relations* (John Wiley & Sons, New York, 1931), p. 477; see also L. B. Tribolet, *The International Aspects of Electrical Communications in the Pacific Area* (The Johns Hopkins Press, 1929).

munications and indeed upon the whole of international life. Although an international radio-telegraphy conference was held in 1912, it concerned itself mainly with technical matters and did little to restrain the nationalism which was already making ominous claims. Nationalist rivalries which were to become so intense in the postwar period had begun. However, since technical developments had not reached their present high standard of efficiency, the prewar rivalry was somewhat confined to the realm of theory.

The World War of 1914–1918 left the United States practically isolated, or at the mercy of Allied cables for news service. American inventors therefore redoubled their energies to develop the radio. After long research, scientists produced the Alexanderson high-frequency alternator, which introduced great technical improvements and gave to the United States a new and unprecedented advantage: "American business saw the end of its commercial isolation and wanted to compete aggressively for world markets. It was in no mood to accept a 'party line' arrangement in international communications," as stated by O. W. Riegel.[63]

President Wilson realized the strategic importance of the radio. When the British Marconi Company placed a five-million-dollar order, Wilson requested General Electric not to sell the new high-frequency-alternator invention to a foreign company. Admiral Bullard, Director of Naval Communications, interviewed the high officials of General Electric, and the British offer was declined. Imperialism had entered into the realm of radio. By way of reply, the British Marconi developed "beam," or directional wireless, which by the use of short waves could be operated over a distance of more than two thousand miles. Hodges notes that this beam-wireless system was able to handle thirty-five million words annually and at rates which made it difficult, if not impossible, for the cables to compete. In order to straighten out intra-imperial rivalries and to strengthen British communications in a highly competitive world an imperial wireless and cable conference in 1927–28 was held. Out of it came a unification of cable and wireless under the title of Cable and Wireless, Limited, which brought into one great monopoly the leading telegraph, cable, and wireless companies of the British Empire.

This British consolidation move caused many people in America to press for a similar merger in the United States. President Hoover proposed that such a plan be studied, and the Roper Report

[63] *Mobilizing for Chaos* (Yale University Press, 1934), p. 44.

emphasized the "requirements of national defense" and urged the establishment of a central governmental agency which should regulate all the communications systems. The Dill-Rayburn bills introduced into Congress had a similar objective.

Government control has been strengthened in most countries of the world. And the use of radio by the dictator countries is too well known to need further description at this point. The radio rivalry indulged in by great powers in South America is mentioned in the section dealing with Pan-Americanism; and radio propaganda in the Middle East became a problem of major importance between Great Britain and Italy.

Telegraph and wireless, however important for military purposes, serve wider interests which themselves necessitate international action. The demands of ordinary trade and commerce required at first bilateral treaties between neighboring countries. In 1850 Austria and Prussia signed a telegraph treaty; other countries followed, and in 1852 several of the European states adopted a multilateral convention. In 1865 twenty states were represented at an international conference at Paris which established the International Telegraphic Union and set up a permanent bureau at Berne, Switzerland, in order to gather information concerning telegraphic activities. The convention was revised in 1875 and again in 1908, and provides for the guaranty of telegrams being transmitted from one country to another and for setting aside special wires for international telegraphic service. As with other technical unions, periodic conferences are held in order to revise the agreement as necessity arises.

We have already mentioned the international agreements relating to cables, and refer here to the efforts made to organize international wireless communications. In 1906 twenty-nine states attended a conference at Berlin and signed a convention setting up the International Radio Telegraphic Union. Many rules were adopted, including the rule that coastal wireless stations and ship radios must exchange radiograms and providing for periodic conferences of revision. The second conference met in 1912—the year the steamer "Titanic" sank through colliding with an iceberg in the North Atlantic—and devoted special attention to wireless communication on ships. Until these conferences were held radiotelegraphy was a matter of private contract so that in the event of a crisis stations were unable to communicate with one another unless the message was sent by the Marconi system; each state attempted to keep a monopoly of radio communication. But the

logic of events clearly showed the advantage of co-operation in these matters. The remarkable development of broadcasting in the United States and Europe immediately after 1918, led to great confusion. Companies jammed the programs of rival companies, and it became clear that international as well as national regulation had become necessary if commercial radio was to play a useful role in international society.[64]

The United States government, which had consistently refused to become entangled in international political arrangements, called together the Washington Conference of 1927 to draw up a new convention to allocate radio wave lengths to various services. Seventy-four governments signed the agreement, which covered all "forms of radio communication, from ship to ship and from land to land." Wave lengths were assigned to the different radio services (aviation, amateur broadcasting, fixed, maritime, and mobile). The signatory states might assign any type of wave to any radio stations within their jurisdiction, but undertook not to cause interference with the radio service of other nations. Before assigning frequencies as to stations likely to produce interference the signatories agreed to give notice to the International Bureau at Berne, which was then to notify other interested parties. In the event of actual interference provision was made for arbitration.

In 1929 a conference of experts met at The Hague to adopt a plan for allocating wave lengths on an international basis for Europe. Several American countries have signed a regional agreement establishing frequency assignments, and in 1937 the first inter-American Radio Conference was held at Havana. It drafted an Inter-American Convention and signed an agreement for the establishment of an Inter-American Radio Office which is designed "to facilitate co-operation on technical and legal matters." American countries are reported to be planning the establishment "of an international police radio system," an important step in the prevention of crime and the promotion of order.[65]

International telephone communications have come into prominence within the last generation. More than 37,000,000 telephones were in use in 1937, and by using radio, submarine cables, and land wire the United States could converse with practically every part

[64] The international aspects of radio control in China caused much debate at the Washington Conference, 1921–22.

[65] For description of the Havana Conference (1937) and the North American Regional Radio Engineering meeting (Washington, 1941), see *The American Journal of International Law*, Vol. 32 (1938), p. 569, and Vol. 35 (1941), p. 363.

of the world over seventy-four different telephone circuits. The use of radio for telephone as well as for broadcasting suggested the need of bringing these two services under one set of international regulations. The 1932 Madrid Conference of the Telegraphic Union undertook this task and revised and expanded the conventions already in force. Regulations for telegraph, telephone, and radio communications were attached to the new convention, to any one of which the signatory powers might adhere. The International Bureau at Berne was to prepare for subsequent conferences, provide technical information, and publish a monthly journal of telecommunication.

The next Telecommunication Conference, held at Cairo in 1938, had to consider the effect of the rapid expansion of broadcasting services and the great demand for additional radio frequencies which necessitated "a further tightening of existing rules to make the most economical use possible of facilities at present available." The Conference

adopted a plan for radio channels for the world's seven main intercontinental air routes; widened the high frequency broadcast bands to a total of 300 kilocycles; fixed special bands for regional use in the tropics; extended the allocation table for the European region; and brought up to date the regulations relative to maritime and aeronautical services.[66]

At the Bermuda Telecommunications Conference, held November 21 to December 4, 1945, governments of the British Commonwealth of Nations and the United States discussed and agreed upon the solution of two outstanding problems which have long caused difficulties: First, the improvement of international telecommunications by the institution of direct radio telegraphic service wherever possible so as to eliminate "traffic bottlenecks at central points in other countries where messages, coming in too fast to be quickly handled, were held up."[67] Second, the adjustment of rates "between commonwealth points and points outside the commonwealth.

The example most cited is the fifty-nine cent rate from San Francisco to Australia, while from Vancouver to Australia the same message could be sent for 30 cents a word. Similar differences existed else-

[66] Sharp and Kirk, *op. cit.*, p. 183.

[67] See Helen G. Kelley, "The Bermuda Telecommunications Conference," *Department of State Bulletin*, January 20, 1946, to which article I am indebted for the material in the section above.

where. For example, from Singapore to London the rate was 30 cents, while from San Francisco to Singapore it was $1.05."[68]

On both these questions a large measure of agreement was reached, and a number of technical questions were discussed looking forward to further co-operation and understanding in these fields.

That further co-operation is an urgent necessity appears from the evidence of Mr. Gerald Gross, Vice-Director of the International Telecommunications Union, who appeared before the United Nations Temporary Transport and Communications Commission in May 1946 and urged the immediate reallocation of radio frequencies between broadcasting stations and shipping and flying services so as to permit orderly international and national communication. Many advances have been made in developing and using new frequencies since the 1938 telecommunications conference at Madrid; available frequencies have been oversubscribed and unless redistribution by an international conference is soon effected the situation will become critical.[69] A beginning was made at the Moscow Telecommunications Conference, September 28–October 21, 1946. Representatives from Great Britain, China, France, United States, and Russia adopted a recommendation for two world conferences, one on radio communications in May 1947 and one on telephone and telegraph regulations in 1948, and also drew up a preliminary draft of a new convention on telecommunications.

WORLD COMMUNICATIONS AND WORLD ORDER

During and after World War II the paradox of international communications was deepened. On the one hand the obstacles to communication, whether of travel (apart from the necessities of war) or of news and pictorial representation, grew more formidable as governmental restrictions tended to increase. It became difficult to get news into countries some of which prohibited certain kinds of news entirely; even more difficult was the problem of getting news out of countries, as correspondents eloquently testified in describing the hardships imposed by the censor in direct and indirect ways. Moving-picture firms and book pub-

[68] Helen G. Kelley, *op. cit.*, p. 59.

[69] An excellent study containing much technical information and describing the great complexities of the problem is contained in John D. Tomlinson, *The International Control of Radiocommunications* (J. W. Edwards, Ann Arbor, Michigan, 1945.)

lishers complained of restrictions on every hand, and many devices were established to prevent people from listening to international short-wave broadcasts.

These restrictions became more striking because, on the other hand, the technical improvements had made possible an astounding advance in communications. Wireless transmission up to 800 words a minute, the reduction of static, the development of scrambling messages which are kept secret from all but the interested parties, the remarkable development of Army and air express service which carried films, newsreels, and pictures to many parts of the world; the deluge of inexpensive books and magazines; the short-wave broadcasting improvements which have enabled countries to broadcast many thousands of miles by means of powerful transmitters—these represented some of the achievements of science. White and Leigh suggest that with the end of the war the "network of more than three hundred and sixty transmitters in more than fifty national states, sending around the world more than two thousand words a minute in forty-odd languages and manned by thousands of skilled linguists and script writers, became available for the more constructive purposes of peace."[70]

What may be done to overcome this dilemma of unparalleled facilities and unparalleled hindrances? The Commission on Freedom of the Press, for whom White and Leigh have written, set forth a number of general recommendations which the two authors have expanded into a series of particular recommendations. The following paragraphs represent a summary of their analysis, which is the most comprehensive thus far to come to the notice of the present writer. The authors point out that effective mass communications will demand organization which goes beyond the profit motive of individual companies and corporations, for means must be found of reaching millions of people who can pay little or nothing; therefore, the principle of co-operative nonprofit service which "is the basis of the Associated Press and several similar agencies" must be expanded. Moreover, government and industries must co-operate in forming nonprofit foundations, societies, and corporations or in enlarging the scope of existing ones.

Clearly, the task of stimulating understanding among peoples through the mass-communication media is one that must be shared by governments and private agencies.[71]

[70] Llewellyn White and Robert D. Leigh, *Peoples Speaking to Peoples* (University of Chicago Press, Chicago, 1946), p. 11.

[71] *Ibid.*, p. 16.

The physical facilities and operating mechanisms must be so improved "so as to bring about the communication of words and images across national borders as abundantly, as cheaply, as quickly, as efficiently, and under as wide an area as possible."[72] To this end, United States cable and radio-telegram companies should be merged with certain government facilities to establish a global telecommunications network. Certain exemptions from the merger should be permitted. Also the United States should acquire automatic relay stations "for multiple-address newscasts and short-wave voice casts from the United States to Europe, Africa and Asia." The United States should join the International Telecommunications Union so as to make possible "an orderly observance of international frequencies," to eliminate discrimination in rates, and to build up international co-operation in voice broadcast and multiple-press transmission, "including the possibility of setting up powerful regional transmitters for general use under the United Nations machinery."

The importance of a widespread exchange of books and printed magazines cannot be overestimated in these days of prodigious circulation of magazines and inexpensive books. Certain difficult problems however must be faced. Standard books and magazines are heavy and their transportation is costly. Technical means will doubtless overcome these obstacles to an increasing degree. The two authors suggest that publishers and other firms should make a special effort to produce "genuinely international publications and genuinely national publications designed, purely as a by-product function, to inform those foreigners who can read the language and understand the idiom."[73] Moreover, business groups which have offices abroad might join in erecting centers in the principal foreign cities which could include library and reading-room facilities and free supplies of foreign magazines and newspapers as well as of foreign books. In addition, an international book publishers' scheme could be devised under which a special committee of each country would annually select certain national books likely to be useful abroad; publishers' associations might undertake to print sufficient quantities of these books at cost; and dealers might undertake to sell these volumes on a cost-plus-handling basis in an effort to supply nations of the world with the best literature of other nations. One recalls the work of the Society for Economic Culture in Mexico City, which was en-

[72] White and Leigh, *op. cit.*, pp. 51–52, 105–7. [73] *Ibid.*, p. 89.

gaged in translating some of the more important Anglo-Saxon works on politics, philosophy, and economics, the authors having foregone royalties. The extension of this principle along the lines that have been suggested by White and Leigh would be a signal contribution.

For moving pictures it is suggested that much better work will have to be done by Hollywood if that center is not to continue to be a national and international liability. The major moving pictures should expand the documentary films and other short subjects. In the field of short-wave radio it is suggested that interested American companies should form "a nonprofit, non-executive federated association" with a code of standards dealing with program material and advertising under the direction of a board of directors and with the assistance of an outstanding chief executive. While this federation would work in co-operation with the United States government and would facilitate the appearance of government-originated programs, no government censoring of scripts would be permitted.

These national bodies could do a great deal but they need to be co-ordinated into a wider international association; hence the two writers suggest an autonomous unit in the United Nations Educational, Scientific, and Cultural Organization. This unit should, among other things, serve (*a*) to scrutinize the observance of the provisions of a multilateral treaty which should be adopted to suggest changes in it from time to time, and to publish its findings and recommendations for the information of the United Nations Assembly; (*b*) to assist in the formation of professional foreign correspondents' corps as described above; (*c*) to receive, to consider carefully, and to report on individual or collective violations of the multilateral treaty; and (*d*) to investigate (by aid of monitoring of broadcasts, examination of printed material, and pictures) areas in which distortion of facts and fomenting of international discord are being carried on, and to report to the Assembly on such dangers to peace and understanding.

A multilateral treaty is required to deal with government discriminations which take the form of arbitrary censorship. Bilateral treaties might help in lessening the evil of flat prohibition of printing or circulating foreign works. The British Commonwealth and the United States have problems to iron out: pirating, varying royalty rates, and differences in manufacturing and costs. These should be settled on a sensible basis and then Britain and America, suggest White and Leigh, might stand together at an

international copyright and reprint conference "for some formula designed to increase the flow of the books of all nations."

The simplest, most forthright formula that suggests itself would involve a rule-of-thumb determination that any piece of literature would remain for a period of years (author's life plus fifty years) the joint property of the author and the original publishers, in all languages and in all countries; effective means to curb pirating; the abolition of block sales, tie-in sales, introductory discounts, and all other unfair competitive devices; establishment of the principle that any publisher has the right to place any original product in any language on any bookstall in any country, subject only to the circumstances governing native publishers—i.e., his ability to persuade the dealer to handle the book at the agreed-on price and discount; a strict limitation on the categories of books that may be sold abroad at below cost or through any other form of dealer subsidy, plus an equally strict limitation on the number of copies of any one title that may be so offered; and an agreement to confine government-inspired gifts of books to schools, libraries, and learned societies."[74]

Kent Cooper and others for many years have labored to break down the barriers confronting the gathering of news in foreign countries. It is not necessary here to summarize the many obstacles which foreign correspondents have had to meet at attempting to send their dispatches to their homeland. The problem is complicated by the suspicion in certain countries, the Soviet Union for example, that not all correspondents observe sufficiently high personnel and ethical standards in obtaining and sending their news. White and Leigh suggest that an international press agreement:

. . . . might cover guaranties of the right of all authorized telecommunications companies to operate everywhere with the same lack of discrimination as is accorded movement of the mails; guaranties of equal access at equal rates to all telecommunications and air-mail facilities; guaranties of access of accredited foreign observers to news and other information sources on an equal basis with nationals; satisfactory revision of existing copyright and reprint law and practice; and abolition of all forms of indirect censorship. It might also cover guaranties against arbitrary expulsion; a pledge that all governments will plainly label media owned and operated by them and that they will refrain from the more flagrant forms of propaganda.

The balance—abolition of direct censorship; abolition of discriminatory taxes, tariffs, quotas, and fees; and guaranties of the right of

[74] White and Leigh, *op. cit.*, pp. 77, 78.

any authorized dealer in mass media to buy and sell without interference from his government—might for the present better be left to bilateral treaties."[75]

They emphasize that, in order to guarantee the high quality of reporting, the papers and their representatives must realize the grave responsibility for accuracy and freedom from bias. They suggest that if there be organized in the principal news centers of the world foreign correspondents' corps with "strict self-administered codes of ethics," all newspaper, magazine, and radio reporters, authors, and photographers should be members of these corps, which should have authority to handle disputes with "host governments" and possess the right of appeal to a unit of the United Nations Economic and Social Council. Countries should agree to guarantee that they will not "expel a member of the foreign correspondents' corps or interfere with his normal activities pending final recommendation in such cases by the unit of the United Nations Economic and Social Council."

It is clear that no adequate system of international or supranational "government" is possible as long as the peoples of the world have not a sustained consciousness of their belonging to a world community. Modern science has created a world community—the evidence for this statement is so voluminous as to render it impossible even to present the outlines here—but the average person does not realize the extent of this community. Consequently his horizons are narrow, his loyalties restricted, and his sense of the urgent need of knowing the conditions outside of his own country which bear upon his own welfare is little developed. No durable united nations can exist under these conditions. The task of creating this consciousness is an important one.

Another situation must be faced. At present the citizens of the respective countries have no means of coming to an informed decision on international disputes. Take for example the British-American-Soviet differences in the last twelve months. The effect of these crises has been to strengthen the suspicion of Americans against the Soviet, of the Russians against the British and the Americans, all because there are no means of having the disputing governments place their views simultaneously and without comment before the world. Mr. Byrnes gives a half-hour speech on his return from London and millions of Americans get the im-

[75] *Ibid.*, pp. 82, 83.

pression that the breakdown at London was due to Russian tactics, but no corresponding official Russian statement was made at the same time. Presumably Mr. Molotov or some Russian speaker presented to the people of the Soviet Union the official Soviet views concerning the London Conference, but undoubtedly the Russian people had no chance of hearing Mr. Byrnes's statement. The partial manner of reporting and the unsystematic character in which citizens of nations acquire their knowledge constitute a grave drawback, and a remedy must be found if evidence is to be placed before presumably intelligent human beings so that they may be able to take a constructively critical attitude toward their own government's as well as other governments' policies and attain that condition of mind which is essential if substantial justice is to replace competitive propaganda unsifted by the judicial temper.

Can such a method be devised by which it will be possible to present to the citizens of disputing governments and indeed to the peoples of the world the official statements of these governments so that persons may be in a position to estimate the merits of the case? It is submitted that such a system can be devised. It should be possible for the United Nations organization at its headquarters to establish a comprehensive radio system divided into four major departments: the political, the social sciences, the humanities, and the physical sciences. The last three divisions would be concerned mainly with informing the world of outstanding contributions to the world of thought in ways presently to be described. The Political Department would be concerned to do two things: (1) adequately to report political and other disputes; and (2) to provide for the systematic reporting of economic, educational, labor, and other conferences.

If two governments, A and B, bring a dispute before the U.N., that organization should require that each party present a thirty-minute statement of its position. This statement should be read by U.N. announcers in both languages for the benefit of the inhabitants of the two contending countries. Equally important should be the reading of these statements in all the languages of the member countries so that world public opinion could receive the almost simultaneous presentation of the two viewpoints. At a suitable interval, two or three days or longer if necessary, each of the governments should have the right to have broadcast a thirty-minute statement of its counter-reply, and if still necessary in the opinion of the U.N. Security Council a third and conclud-

ing statement could be made. No comments should be permitted. In this way the peoples of the world would have a clear and presumably reasonable presentation of the respective viewpoints.

Each of the four divisions of the U.N. Radio should be under the control of a Board on which each nation should have a representative, the Board to have control over an expert executive staff. A central U.N. Radio Commission should guide the general policy, but the four subordinate committees should be necessary because of the highly detailed nature of the work.

Each member state of the United Nations should undertake to permit the broadcasting of these disputes and the broadcasting of the major conferences either by means of national facilities—in the case of those countries which have a national monopoly over broadcasting, or by other means, in the case of those countries where radio is under private or semiprivate control. In the United States presumably the Federal Communications Commission would play an important part. Perhaps each member state should undertake to permit a U.N. Radio Office in its own territory for purposes of seeing that adequate time is given to these broadcasts and to act as a channel for information coming from the member states to the U.N. This office would be particularly valuable, for example, in receiving nominations from the special radio committees in the member states whose task it would be, through subcommittees, to supply the U.N. with information concerning the outstanding publications in the social sciences, physical sciences, and humanities.

The importance of providing the world with the facts of the best thinking, writing, and scientific discoveries from every country cannot be overestimated. In the three nonpolitical divisions of radio, we could have mobilized the outstanding contributions of the leading scientists, playwrights, novelists, art critics, historians, etc. Mr. H. G. Wells talked of the necessity of a World Brain and urged the creation of an encyclopedia which presumably would be brought periodically up to date, this encyclopedia to provide the minimum amount of information required by an intelligent citizen of the world; but the printed word is very static. There would be the innumerable difficulties arising out of the multiplicity of languages, and the time factor would present many obstacles. This is a rapidly changing world, and it is submitted that the radio method here outlined would permit the almost continuous stimulation, over a very wide area of human experience and would at the same time develop a world-consciousness on a

highly practical and yet imaginative basis. The League of Nations intellectual co-operation failed in a large measure because of its inability to reach the masses of the people. Here, on the contrary, we have the possibility of good summarization, dramatic presentation when necessary, the benefits of the spoken word, and the gradual organization of the whole of the national and domestic radio to meet the new opportunities. Add to this the development of television, and we may expect that citizens in America would not only hear a Persian poet but see him, and the peasants in China could hear and see Professors Compton, Oppenheimer, Lawrence, and the other giants of atomic energy.

The scholars of the world, the great business executives, the statesmen, the politicians, the workers would become more nearly household names than they can possibly be at the present time.

We might expect that the radio companies would throw themselves with enthusiasm into the production of inexpensive radios so that people in even lands of very low standards of living could enjoy entertainment and enlightenment. The opportunities for international radio careers would be many, and the impetus to the study of languages very great. Also this method would to no small extent overlap the barriers of illiteracy, for people must learn to read before they can understand books, but in this proposal the battery of translators would form the great funnel, as it were, through which the information could be poured.

The effects upon education conceivably would be very great. For some time I have thought that it should be possible for a state educational system to provide an authoritative commentator upon the outstanding political events of the day for high-school social science classes. If in the state of Washington such a commentator appeared for one half-hour a week and the high schools that wished it could have their classes listening, we would have a free but widespread participation in problems of the day. Clearly such a method is open to serious abuse, as we have seen in the case of Germany and the other totalitarian countries, but if democracy cannot work out such a system of co-ordinated and critically constructive information with the right of question and objection from the students themselves, the outlook is not promising. In a similar manner, though of course much more difficult to organize, we might expect that thousands of groups would receive simultaneous stimulus just as they do today in the case of the Chicago Round Table and other outstanding educational programs. We must devise a system by which more specific information can be

shared in common. This radio organization one hopes would to some degree meet that need. Two outstanding difficulties among many others which the critical reader will undoubtedly note must be mentioned. First we might well expect serious opposition from those countries where radio is not only a government monopoly but a government monopoly in the interests of one party. This difficulty may be very serious, but it should not prevent the establishment of the system in the remaining countries of the world, which surely would form the great majority and the example of which undoubtedly would create pressure in the other countries to come in on the scheme. A second great difficulty concerns the possibility of having criticisms against a government aired internationally over the radio by minority groups who feel that they have not been fairly treated. Take, for example, the situation created by the Senate filibuster on the Fair Employment Practices bill. Surely the world should know that the Senate filibustered. Nevertheless the opportunities for minority manipulation might be very great and the responsibility placed upon the United Nations Radio Commission and its four subordinate commissions would be a heavy one. Not less would be the responsibility of the national governments to permit the freest possible expression of differences. All of these, however, would have to be carefully weighed in the light of the welfare of the whole. If we can find learned judges to act, or courts and administrators who hold the scales of impartiality in administration, surely there must be throughout the world a sufficient number of men and women of all nations who can be trusted to weigh these matters in the large-minded, detached spirit which will be essential for its successful operation.

It remains to describe what the United Nations has done in the field of Communications. The Economic and Social Council early in 1946 set up a temporary Transport and Communications Commission to review the general problem "and to advise the Council on inter-governmental machinery required both within the United Nations and within specialized agencies."[76] The Commission surveyed telecommunications, postal services, inland transport, shipping, and aviation, and recommended to the Council the establishment of a permanent Transport and Communications Commission. The new Commission began its work by examining the question of a world shipping organization in the technical field

[76] *United Nations Weekly Bulletin,* Vol. 1, No. 5, September 2, 1946, "Transport and Communications," p. 8.

and was requested by the Council to recommend machinery required to co-ordinate activities "in the fields of aviation, shipping, and telecommunications in regard to safety of life at sea and in the air."[77] As mentioned above, it took steps in February 1947 to bring the Universal Postal Union, the Permanent International Civil Aviation Organization, and the International Telecommunications Union into relationship with the United Nations.

The United Nations also has organized the Department of Public Information under an Assistant Secretary General for the purpose of informing the peoples and governments of the world concerning the program of the organization. The Press Division releases news "through all major news agencies of the world and already more than 800 special correspondents are accredited." It answers inquiries from the press, arranges press conferences and informal interviews with officials, and is setting up field offices in various countries to serve the vast number of small newspapers which are not serviced by news agencies.

The Radio Division "has as its long range objective, the operation of a station or stations owned by the United States on the necessary wave lengths for communication with Members and branch offices, and for originating United Nations programs."[78] As already emphasized, a world organization must have its independent radio and news agencies if the world is to be knit into a genuine world community. At present its radio work is through existing networks. Plans are being enlarged to increase the scope of documentary progress, not only dealing with the activities of the United Nations and its allied institutions but also adapted to various age and cultural groups.

A Film Division "already supplies full facilities for independent newsreel companies to film all meetings of the General Assembly and other organs, and of their activities."[79] The Division is making a survey of potentialities of films and is assisting those who wish to make use of documentary and other newsreel material.

The Department of Public Information has a visual information section which is preparing exhibitions "for all types of audiences" in many of the languages of the world. It has a Reference and Publications Division which co-operates with individuals and

[77] *United Nations Weekly Bulletin, op. cit.*, p. 11.

[78] Benjamin Cohen, "The United Nations Department of Public Information," *The Public Opinion Quarterly* (Vol. 10, No. 2, Summer, 1946), p. 147. I have drawn excessively upon this article in the section above.

[79] *Ibid.*, p. 149.

groups and government agencies that desire to produce material dealing with the United Nations; it is also building up its own publications "to supplement the official documents issued by various organs and departments of the United Nations."[80]

The Public Liaison Division co-operates with organizations which seek more knowledge concerning the United Nations and is working to promote the ideals of the organizations. Within the Public Liaison Division there is a special section on voluntary organizations, for the United Nations officials realize the vital importance of general popular support. Other divisions need not be described, but reference should be made to the Field Information Centers which are to be established in various countries (in 1946 a center had been established at London). The purpose of these national regional centers will be to give factual information concerning the United Nations. "The staff will be international but would include nationals of the country in which the office is located and, in the case of a regional office, nationals of the countries served" (page 154). A system of rotation is to be established so as to insure healthy circulation of officials.

On October 23 the United Nations began its own system of world-wide broadcasts. These broadcasts are beamed to Europe from four high-powered short-wave transmitters on the east coast of the United States, and to China from west-coast transmitters, beamed to the Far East in Chinese and to Latin America in Spanish. The United Nations Russian programs are broadcast on two transmitters made available by the Canadian Broadcasting Corporation.

> The programs include eye-witness accounts of meetings, background talks on the organization, and interviews of members of the Secretariat. They are broadcast daily except Sunday even on days when the Assembly itself is not meeting.[81]

Extensive arrangements for press, films, and television have also been made and these should enable the United Nations to come more immediately before the attention of the peoples of the world.

In 1946 Carlyle W. Morgan of the *Christian Science Monitor* proposed a "People's Section" for the United Nations, so that private individuals who wish to do so might acquire a personal membership. Morgan realized the necessity of having govern-

[80] *Ibid.*, p. 151.

[81] *United Nations Weekly Bulletin* (Vol. 1, No. 13, October 28, 1946), "United Nations Calling," p. 12.

ments associated in the United Nations but believed it possible to develop "a wider and more direct participation of the people, in addition to their governments, in the United Nations smaller organizations."[82]

Many groups and individuals have supported this idea, partly because they realize that such a section would symbolize the close association of the United Nations with the peoples of the world and partly because they believe that it could be more directly associated with the groups and organizations attempting to bring the United Nations clearly before the general public. For some time, Morgan admits, such a section would have very little authority, but as new techniques of organization are worked out, it is not impossible that some day the United Nations might "include another assembly in addition to the present General Assembly . . . . It would consist of delegates elected by the people appointed, as today's delegates are, by the governments. To set this up and to get an article legalizing it written into the Charter may take a very long time."[83]

The significance of these proposals lies in the realization that there is still so much unexplored ground in devising political institutions adequate to modern needs, institutions which, if democracy is to be real, cannot be confined to relations between so-called sovereign states in the realm of international affairs. Indeed, as emphasized so often in this volume, private and group representation along functional lines has spread very widely; it remains to be seen whether the principle of popular participation must remain confined within national boundaries or whether international as well as national political institutions may be representative of the popular will. Following Morgan's suggestion the American Association for the United Nations has formed a people's section for the United Nations; it has invited private individuals to join in an attempt gradually to realize the plan of a people's assembly which in due time will have a recognized status in the United Nations itself.

The Department of Public Information of the United Nations sponsored a conference of international organizations, February 10–14, 1947. It was directed by the section for nongovern-

[82] Carlyle W. Morgan, "A 'People's Section' for the United Nations," *New York Herald Tribune Forum,* 1946, p. 88.

[83] *Ibid.,* p. 88. The same writer has urged the importance of providing facilities in the United Nations headquarters for ordinary people who might wish to read in a library, hear lectures from officials and others, see exhibits, and in other ways participate in the organization.

mental organizations and was attended by approximately 250 delegates from over 100 bodies interested in international organization. The conference discussed the possibility of encouraging the development of local citizens' groups for the study of world problems and recommended that the United Nations Department of Public Information appoint "advisers" from nongovernmental organizations to assist the Department in influencing public opinion. United Nations information centers have been established in London, Washington, Copenhagen, New Delhi, and Geneva, and several others have been planned. The *United Nations Weekly Bulletin* at present is published in the English, French, and Spanish languages.

Another interesting development which bears witness to the growing realization of what will be implied in a world community is the resolution, by the Conference of Public Opinion Agencies of North America at Central City, in June 1946, calling for the establishment of a World Association of Public-Opinion-Reporting Agencies and also for an international conference of opinion agencies in Canada sometime in 1947. A committee was appointed to make plans for and to organize the World Association.[84]

Such an association, as Stuart C. Dodd points out, may make international surveys; in countries where public-opinion-surveying agencies are under government control, the agency may become part of the government; in more democratic countries, it would operate along the lines of the Gallup Poll and other such bodies. "International inspection and accrediting would follow adoption of the scientific technic of sample surveying but might not follow until long afterwards in some cases. In short, the policy would be to establish a simple surveying agency well within a nation before drawing it into international functioning."[85] Such an Association would further research, publish a journal, maintain a records office, arrange conferences, become a clearing house for the services of specialists, and especially it would aim to serve the United Nations. "World surveys can amplify the voice of people in the councils of the United Nations, which is an organization of governments at once removed from the peoples of the world. Most UN agencies and commissions will need international surveys as part of their job and should have experts in sampling, questionnaire construction, interview organizing, and

[84] See Stuart C. Dodd, "Toward World Surveying," *The Public Opinion Quarterly* (Vol. 10, No. 4, Winter 1946–47, pp. 470–83).

[85] *Ibid.*, p. 472.

other technical aspects of survey, available to any United Nations agencies. . . . ."[86]

Already there is a network of ten Gallup-affiliated Institutes of Public Opinion which unites ten countries and is in the process of enlarging its coverage; the Roper International Public Opinion Research does public opinion work and market research in nine South and Central American countries, and the J. Walter Thompson Company does opinion surveys in several countries. Dodd suggests that the association might have a board of governors representing the practicing public-opinion experts, the scientists, and the public; a director, an assistant, and several secretaries. Its headquarters would probably be that of the United Nations. "Aside from any other consideration, the mechanical problems of translation into the world languages, the necessary contacts with official representatives and experts of all countries can be best secured there."[87]

One further comment must be made, repeating an idea which persistently occurs in these pages, namely that this system of exchange of ideas can be firmly grounded only when ideas are not primarily or even largely instruments of psychological warfare. The system can work only if the United Nations agrees on such a basic organization of security and disarmament that the world is safe for differences and hence safe for democracy.

[86] Stuart C. Dodd, *op. cit.*, p. 474.

[87] *Ibid.*, p. 483. For a discussion of UNESCO's program of mass communication, see *The Public Opinion Quarterly* (Vol. 10, No. 4, Winter, 1946–47), pp. 518–39.

Chapter X

THE PROTECTION OF NATIONALS ABROAD, THEIR PROPERTY AND INVESTMENTS

GOVERNMENTS, as economic interests spread to wider fields, have to decide whether, and how far, they will protect their citizens who engage in foreign trade and investments. On the one hand, it may be argued that an individual in going to a distant part of the world should trade at his own risk and not involve his government; if he is willing to search for higher profits, well and good, but he need not expect to have the protection of his government in what is, after all, a private venture. On the other hand, it may be claimed that the investor at home enjoys the benefit of law and order and should be guaranteed at least certain minimum conditions of justice and security when he goes abroad. Moreover, countries cannot remain in watertight compartments and the resources of the world should be exploited for the benefit of the human race. Backward countries, so this argument runs, ought not to lock up their raw materials and let them go to waste or remain unused. They have rights, of course; but, since nature has distributed raw materials unequally, people must go beyond their political boundaries for the satisfaction of their economic needs. From this angle the trader or investor in foreign lands is not a mere profit-seeker venturing abroad for private gain when he should be investing his money at home; he is the enterpriser who by taking risks makes available the products of distant forests and mines, of far-flung plains and the seven seas, to make possible a higher standard of life for others. He is also part of a nation which requires economic wealth in order to maintain its political power and security. If, therefore, in going to countries with less-organized governments, he suffers unjust treatment, or is threatened with violence and danger, it is only right and just that he receive adequate protection.

We consider elsewhere[1] how the rights of the native inhabitants should be protected against abuse by foreign investors and traders. That is a problem of great magnitude; unfortunately, the imperialist powers have engaged in many ugly and indefensible methods in acquiring wealth which should have been made available for mankind as a whole. For the moment, we shall assume that capital is being invested in countries where law and order are either absent or inadequate, and that legitimate economic activity there is being hindered by conditions of political disorder and defective organization. Imperialist powers, in order to overcome these obstacles to the extension of trade and commerce, may take measures (1) to prevent disorder and revolution and (2) to guarantee fairness in the content and method of law.

In the attempts to maintain political stability the more powerful governments can bring pressure to bear upon the smaller and less-organized countries by refusing recognition to a government which comes into power by violence and revolutionary means. Modern commerce depends upon the stability of political and economic conditions; fighting and disorder disrupt the normal processes of daily life. Investors become frightened; capital is withdrawn, property is endangered, and markets are disturbed. President Wilson, in an effort to discourage political revolutions in Central and South America, and to encourage democracy—"ballots for bullets"—adopted the nonrecognition policy which was not reversed until the Franklin D. Roosevelt administration. Unfortunately such a recognition policy of itself does not distinguish between revolutions which are mere struggles for political power, the "ins" versus the "outs," and legitimate popular revolts against the injustices of a corrupt and oligarchic rule. In South and Central America many governments maintained themselves in power by dishonest means, and in the absence of fair elections it was impossible to dislodge the tyrannical officeholders by legal and constitutional methods. The United States finally reversed the Wilson recognition policy, having experienced too much difficulty in trying to distinguish between the legitimate and the mere "in versus out" types of revolution; it had become the arbiter of internal affairs of other nations, laid itself open to the charge of meddlesomeness and partisanship, and provoked resentment from nations jealous of their independence and national sovereignty.

Governments may refuse recognition to revolutionary governments not because they are revolutionary but because they repu-

[1] See chapter xiv, pp. 698–710 below.

diate the obligations of previous governments. Such a policy was directed against the Soviet Government, which had canceled the debts of the Czarist regime and prior private loans. In 1922, at the Conference of Genoa, the Allied Powers attempted to reach an agreement with the Bolshevists by which the latter would acknowledge debts contracted by the Czarist regime and in return the Allies would recognize the new government. The United States refused diplomatic recognition to the Obregon Government which assumed power in Mexico in 1920 on the grounds that it had not resumed debt payments which had been suspended in 1914, and that Article 27 of the 1917 Constitution empowered Mexico unjustly to confiscate certain lands and oil properties which had been acquired by American citizens. In 1923 an agreement was reached over the land and oil questions; the governments also signed two claims conventions, after which the United States extended recognition to Obregon.[2]

Recognition is a matter of great importance to weaker countries; without it financial loans are usually more difficult to obtain and private contracts and loans are on a less secure basis; investors and traders for that reason hesitate to make large commitments. Capital responds very rapidly to political conditions, welcoming security, and becoming extremely nervous at the first signs of disorder.

The protection of commercial interests abroad in areas where political disorder and inefficiency are rife has frequently brought strong action from the creditor countries, which may: (1) send naval patrols to places where piracy has not entirely disappeared (the Persian Gulf, China, and the Indian Ocean) to insure that ships of commerce shall not be attacked; and (2) land military forces in areas in which foreign lives and property are endangered. All the great powers have indulged in this practice. The United States at different times sent troops or marines into Nicaragua, Haiti, the Dominican Republic, and Cuba; Great Britain took similar action in Egypt and in China; France made disorders in Morocco the excuse for a military occupation which proved to be the forerunner of a protectorate; Russia landed troops in North Persia and in China; and the recent actions of Japan are too well known to need comment. These illustrations are but a few of many which might be quoted.

[2] See G. H. Stuart, *Latin America and the United States* (D. Appleton-Century Co., New York, 1938), pp. 162–66. The oil question was even more important than the land problem.

The landing of troops is a more drastic step than the use of naval patrols. In 1861 France, Great Britain, and Austria claimed that Mexico "had defaulted in its foreign obligations" and jointly intervened. In 1902 Germany, Great Britain, and Italy, on the plea that Venezuela was deliberately refusing to meet the legitimate claims of their nationals, blockaded Venezuelan ports and seized gunboats; the German ships even resorted to bombardment. And in 1913 "Great Britain threatened to send a warship to Guatemala if the latter government continued to misappropriate the coffee duties which in an agreement of 1895 it had promised to set aside as security for a British loan."[3] Military occupation involves an unpleasant and dramatic affront to the sense of national dignity and national sovereignty, which is lively enough in all countries and not least among the weaker powers. Moreover, there is always a possibility that some of the occupying forces will get out of hand, become unruly, or at least offend the feelings of the inhabitants by inconsiderate and sometimes rude behavior. And there is no guaranty that the extent of the military occupation will bear any just relation to the amount of danger which threatens the foreign inhabitants or will not be used as a pretext to cover imperialist aims of a far-reaching kind. Two examples will suffice here. The French taking of Fez in Morocco in 1911 and the Japanese invasion of Manchuria in 1931 were believed by many people to have been unwarranted by the facts of the case; certainly the scope of the military occupations was out of all proportion to the protection needed by French and Japanese citizens in those parts.

Small and weak countries may be subjected to another form of intervention—the declaration of neutral zones by foreign governments. If a civil war breaks out in a country, and threatens the security and safety of the foreign inhabitants, the government of the latter may inform the government of the strife-torn country that the conflict must not extend to towns or other areas in which the foreigners live. Such a measure of neutralization gives protection to the non-native residents and in theory is sound enough. But it may be that in a civil war a particular town is of great importance to one side or the other and its possession may be a decisive factor. In that case the foreign action may appear as an unjustifiable piece of partisanship and be deeply resented by at least one of the contending factions. In 1910, for example, the

[3] R. L. Buell, *International Relations* (Henry Holt & Company, New York, 1929), p. 415.

United States declared the Bluefields area in Nicaragua a neutral zone and by this step assisted the conservatives and handicapped the liberals. It is difficult to formulate a general rule, since circumstances vary so much in periods of civil disorder. The two conflicting viewpoints—that of the foreign inhabitants demanding protection, and caring little for legal niceties of the sovereign status of the country in which they live, and the view of the national government anxious to preserve its independence and jealous of its political dignity—stand out clearly enough. We shall inquire later whether methods exist, or may be devised, to resolve them.

Landing parties and naval patrols are in reality only emergency measures. They do not provide a permanent method of preventing disorder and instability in a weaker country. Hence it is not surprising that countries which possess economic interests in other lands may feel that a temporary intervention designed to meet an immediate crisis will not be enough and may consequently take steps to prevent the recurrence of such outbreaks—by insisting upon helping to create an adequately trained constabulary or gendarmerie capable of maintaining order and security. An outstanding example is provided in the 1914 Treaty between Haiti and the United States.

Similar arrangements were made for American officers to take charge of native constabularies in the Dominican Republic, in Nicaragua, and in Panama. The last-named government in 1910 and 1913 asked the United States for assistance in training its local police force. These examples are typical of many instances of foreign aid in reorganizing native constabulary forces. In so far as the experiments are successful, they result in building up an efficient local body animated by a sense of *esprit de corps* and able to maintain order. When this happy result is achieved, foreign governments may feel that they can withdraw their supervision of police organization, knowing that their citizens are assured of adequate protection.

European traders living in less-developed countries have reason to be conscious of the dangers of disease; the absence of sanitation, the liability to epidemics, and the inadequacy of medical facilities make life in these parts a matter of some risk. Again we may draw examples from the experience of the United States. At the end of the last century yellow fever in Cuba rendered Havana notoriously unsafe for foreigners and a constant menace to near-by ports of the United States. The United States, there-

fore, insisted upon inserting into the Platt Amendment of 1901 Article V, which reads:

That the Government of Cuba will execute, and as far as necessary, extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented thereby assuring protection to the people and commerce of Cuba, as well as the commerce of the Southern ports of the United States and the people residing therein.

In 1915 Haiti agreed to execute measures necessary "for the sanitation and public improvement of the Republic under the supervision and direction of an engineer or engineers to be appointed by the President of Haiti upon nomination by the President of the United States and authorized for that purpose by the Government of Haiti." The Haitian Public Health Service under American supervision did extraordinarily fine work. It built modern hospitals, established rural clinics, set in motion infant welfare work, vaccinated school children, distributed quinine, drained and filled swamps, cleaned streets, and performed a great number of other services.

We have given only one or two examples of this type of protection of foreign interests abroad. Of all the services rendered, the medical contribution has probably aroused the least criticism among the smaller powers and has often given splendid results in the improved health of the native community.

The great powers may also attempt to stabilize economic conditions in small debtor countries by imposing, with or without the consent of the latter, various types of financial supervision. They may justify this enforced assistance by arguing that the more-experienced countries have developed efficient economic and financial methods and that their financial control, if well and honestly exercised, may not only save the smaller countries from financial difficulty and even bankruptcy but also provide a valuable education in modern business methods; the assisted country may thereby be ultimately enabled to take over its own affairs and manage them more efficiently.

Williams describes[4] five main types of foreign financial control. The first of these is customs collection or receivership. A great deal of the revenue obtained by smaller countries is derived from customs revenues. Inefficient collection will lessen their value as

[4] B. J. Williams, *American Diplomacy* (McGraw-Hill Book Company, New York, 1936), pp. 234–39.

security for foreign loans. Hence the creditor country often stipulates that an agent of the banking house which makes the loan, or an official appointed by its government, shall supervise the collection. The agent deducts from the total receipts the amount needed to pay for the actual collection of the duties and for the interest and sinking fund on the foreign debt; the rest goes to the native government.

A second type of government control may be described thus: Collection of internal revenues may be taken over by a foreign power. So many influences affect international trade that in some years the income from duties on imports may be so small that foreign creditors who have relied upon this source for their interest and sinking fund may not receive payment. The debtors will be unable to meet their obligations. Naturally, a foreign investor wishes to have adequate security and will inquire if other revenues may be pledged by a debtor country as an additional guaranty. Hence we find that certain portions of the internal revenue may be handed over as security, as were the proceeds of the Portuguese tobacco monopoly in 1891 or those of the 1890 Persian tobacco monopoly, or the duties collected from a salt tax or from public lotteries, or taxes on mining proceeds, and so forth.

A third such control may be needed. A foreign banker, in his search for sound opportunities for profitable investment, will not be entirely reassured, even when the control of customs and of internal revenue receipts of a financially backward country are placed under the supervision of agents named by himself or his government. He will be interested not only in the adequacy of that income but also in the amount of expenditure undertaken by the debtor country. In these days of unbalanced budgets, of huge public expenditures, and wholesale defaults on foreign loans, we can readily appreciate the fact that a cautious investor and his protecting government will ask for some control both of revenue and of indebtedness and expenditure. Unwise expenditure may ruin the results of sound income collection. Foreign control over a government's expenditure was provided for under Article II of the Platt Amendment, signed in 1901, by which Cuba promised not to increase its public debt until its ordinary revenues were sufficient to guarantee the payment of interest and sinking funds. The United States thereby claimed the right to be consulted before Cuba borrowed abroad.

A fourth such control was tried. In order to insure that expenditures should not be excessive, the United States claimed the

right to supervise the framing of budgets in the Dominican Republic and in Haiti, although in the latter case, the right of supervision was withdrawn in 1931. An American officer exercised this type of control in Liberia, under the provision of a 1926 loan agreement between the two countries.

And, fifth, to supervise the budget may not be sufficient, because governments may divert funds "from the purpose for which they were appropriated." To prevent such action in most modern countries an auditor is given the power to examine an account before it is paid and thus to make certain that the numbers within the authorization are of valid appropriation, his signature to the warrant being necessary for the disbursement of funds. This system has been applied by the United States: to the Dominican Republic, although now discontinued; to Haiti from 1918 to 1931; and to Liberia under the loan contract of 1926. Similar arrangements were made in the case of Nicaragua and Panama.

If, in spite of the measures described, debtor countries default, or if no previous controls have been imposed, and no other means are available, the stronger powers may have resort to military measures in order to compel payment.[5]

The action of Germany in sinking Venezuelan ships in 1902 brought to a head the question of armed force in the collection of debts. The question was, and still is, one of peculiar difficulty. The creditors are acutely aware of the losses which they sustain through the inability or unwillingness of debtor countries to meet their obligations. But the debtor governments are even more conscious of a sense of injury. Forcible measures against them appear as violations of their sovereignty, likely to weaken internal authority and thereby promote local disorder; the feeling of resentment may even cause the debtor to evade payment as much as possible. On the other hand, if a country is permitted to escape its normal obligations, respect for contracts will decline and governments will be encouraged to persist in a course of irresponsible behavior. If creditors would limit themselves to a just demand for reparation for real damages sustained, the problem would be relatively easy. Unfortunately, the stronger powers have often used coercive measures in order to gain advantages out of all proportion to the original grievance, and weak debtor countries are led to believe that these coercive demands are part of an imperialistic system of extortion.

[5] See above, pp 555–56.

Several methods have been proposed by which both creditors and debtors will obtain justice. Dr. Luis Drago, the Argentinian Minister of Foreign Affairs, on December 29, 1902, wrote a note which has since become famous. In it he argued that creditors know in advance the financial condition of the borrowing country and the amount which they pay for securities depends upon their estimate of a government's financial soundness. Professor E. M. Borchard writes: "The investor . . . . buys with full notice and assumption of the risks, and has weighed the probabilities of large profit against the danger of loss." It is therefore unfair "that the government of the creditor should make the breach of such a contractual obligation to a citizen who accidentally holds a foreign public bond a cause for armed international action involving the whole nation in the burden."[6] Drago believed that governments should meet their obligations but that they should be permitted to choose the occasion—if economic adversity should place upon them an over-heavy burden they ought to be able to "default respectably," to use a phrase uttered by Professor T. E. Gregory a few years ago. Debtor countries, Drago continued, do not willingly default; they realize that such action damages their credit and reflects upon their national honor. Normally they will pay when they can. Therefore, to collect debts by force is wrong. It threatens the sovereignty of the debtor country, inasmuch as a forceful collection "presupposes territorial occupation to make it effective and occupational authority signifies the suppression or subordination of the local governments." Drago concluded that public debts should give no occasion for armed intervention nor for the actual occupation of the territory of American nations by European powers.

Authorities on international law differ as to the extent to which governments of creditor countries may go in forcibly collecting debts from defaulters. Their judgments vary according to the fundamental meaning which they attach to the idea of "sovereign states." Does sovereignty mean primarily that governments possess complete freedom of action even to the point of repudiating promises, or does the fact that sovereign states belong to the family of nations mean that they owe duties toward one another, that they must perform these duties, and that, if they are unable or unwilling to do so, it may be justifiable for other states to use

[6] E. M. Borchard, *The Diplomatic Protection of Citizens Abroad* (The Banks Law Publishing Co., New York, 1927), pp. 308–9. The following sections are based upon this excellent work.

force against them? Most scholars agree that more than a "mere non-payment of public debts" must be present in order to justify armed intervention. If a country is honestly in default, the creditor should not take military action. Only "when *bad faith* may be considered the moving cause of the non-payment" are governments justified in enforcing their demands. Unfortunately, governments have often used their armed forces against debtor countries without observing this principle and they have exerted pressure on behalf of outrageously exaggerated claims.

The United States has attempted to avoid using armed force for the collection of ordinary contract debts due to its citizens by other governments. But no general convention exists to cover debts of a nonpublic character. Borchard notes that this latter type of claim is often unjust and that it is desirable, as the number of international transactions and obligations increases, that their fulfillment and enforcement should be divorced from matters of high politics—private claims should not have to depend upon the international situation, with its conglomeration of alliances, diplomatic situations, incidents, and general considerations of political and strategic advantage. For these reasons he gives emphatic support to the proposal which several German authorities had urged in the years immediately before the World War of 1914–1918 for an international court to adjudicate claims between the debtor state and the unpaid creditor.

> The individual should be given the right to bring suit against the debtor nation before this international tribunal, as has been done in the convention for the establishment of an international prize court and in the treaty of Washington for the establishment of a Central American Court of Arbitration. The creditor will thus be assured of a hearing, the debtor state will be secured against the pressure of exorbitant claims accompanied by disagreeable diplomatic coercion, the government of the claimant will avoid what is always a potential germ of international difficulty and ill-will, with the incidental expense of pressing a diplomatic claim, and the peace of the world will be fostered by the removal of one great source of international conflict.[7]

The South American international lawyer, Calvo, also opposed the recovery of debts and the pressing of private claims by the armed intervention of governments. He proposed to obviate such intervention by making a foreigner who was about to enter into a contract with a government sign a statement that he would

[7] E. M. Borchard, *op. cit.*, pp. 328–29.

not call upon his own government for diplomatic protection but would accept as final the decision of the local courts in all cases of dispute which might arise. Several South American countries have incorporated this provision into their constitutions, and some international lawyers have expressed their approval on the ground that a sovereign country has complete jurisdiction over individuals within its own boundaries. Certainly, strong, well-established governments do not hesitate to assume jurisdiction over aliens within their territory, and seldom do serious complications arise in consequence. The smaller and less powerful governments wish to enjoy the same power; but, because they are physically weaker, they must attempt to buttress their position by invoking the aid of legal theory and obtaining from foreign investors and concessionaires an explicit declaration that they will renounce all claims of diplomatic protection. They hope in this way to take from imperialist governments the traditional right of intervening on behalf of their subjects.

The stronger nations have not taken kindly to this attempt to force the individual to renounce the privilege of receiving protective aid from his government. They argue that a person is more than a person. He is a citizen; and, while he may be prepared to renounce any assistance which his own government may render to him personally, he cannot bind his sovereign government to forego its allegedly "inalienable" right to protect him as a citizen. For an injury to a citizen may affect the welfare and prestige of his government; and it is a matter of public policy for that government to maintain and defend its fundamental interests. The citizen as an individual may be relatively unimportant, but he is the symbol of a national state which far transcends his wishes or desires.

Some international tribunals have accepted the renunciatory clause and upheld it as valid; other tribunals have denied its validity; and some governments, while they consider that the renunciation will weaken "the moral if not the legal right" of the government to intervene, nevertheless have accepted the Calvo clause as binding. Borchard mentions that we have an analogy in municipal law: a provision in a private contract which renounces judicial remedies will be held invalid; "as in municipal law the private agreement cannot oust the jurisdiction of municipal courts, so in international law the private agreement cannot oust the interposition of international remedies." And the same writer states that the more authoritative opinion among international lawyers seems

to be "that the renunciatory clause is without any effect so far as any changes or modifications in the ordinary rules of international law are concerned."[8]

The problem is a difficult one, and we may expect that the debtor states will continue to object to the use of armed force for the collection of claims and that creditor countries will still be disinclined to trust the courts of the less stable governments abroad. Two general methods will help to reconcile these opposing views: (1) greater stability and better government in the weaker countries will remove complaints concerning denial of justice and lessen the occasions for armed intervention; and (2) suitable international machinery for impartial arbitration when disputes between debtor and creditor arise may be established.

The foregoing analysis has shown how diplomatic protection is used as an instrument of promoting and safeguarding the rights of citizens abroad. But, as Eugene Staley points out, the method is inadequate and unsound for the following reasons:

a) National diplomatic protection violates the fundamental requirement of justice that an interested party shall not be a judge of his own cause. A government which protects its citizens abroad without submitting the matter to a third party may force a weaker country to make reparations by reason of power and might and not of right. The danger is not all on one side, however: a weak government may be able to inflict injustice on foreign citizens because the government of the latter may be

> unwilling to incur the trouble and expense, perhaps the political risk and the odium, of effective *ex parte* enforcement of its rights . . . . In either case the orderly and equitable adjustment of conflicts is impeded by this vital defect in the method of diplomatic protection.[9]

b) National diplomatic protection frequently complicates a quarrel and leads to more serious disputes; commercial differences of private parties become mixed up with questions of national prestige.

Thus the institution of diplomatic protection operates to enlist on the two sides of a conflict, which may be basically the clash of rival private economic interests, all the formidable apparatus of armed sovereign powers, with their bellicose manifestations of nationalism, their

[8] E. M. Borchard, *op. cit.*, pp. 809–10.

[9] Eugene Staley, *War and the Private Investor* (Doubleday, Doran, New York, 1935), p. 442.

jingoistic presses, their sensitive prides, and their constant concern for the maintenance of prestige.[10]

Thus a clash between unscrupulous traders in Samoa "brings battleships to the scene and becomes a conflict between the Great Powers." What is needed is an institution which will mitigate rather than intensify differences, and which will *minimize the influence of extraneous factors* by "localizing" and "dissociating" the point at issue. This is precisely what diplomatic protection does not do.

c) Closely related to this defect is the fact that questions of high policy and political expediency may jeopardize the chances of individual redress for injury sustained. A government may decide that it is not expedient to back the claims of its citizen abroad; even after presenting a claim to a foreign government, it may decide to abandon the claim or take other steps which cannot be predicted. The private citizen, relying upon his government, may obtain less than he is entitled honestly to expect because his claim, if pressed, might compromise a delicate political situation. His private interests will therefore be sacrificed for a governmental advantage not in any way connected with the question of his individual rights. On the other hand, a government may take advantage of a private claim to take an arbitrary stand, pressing the claim unduly because it

> desires to pick a quarrel in order to complete a territorial conquest, because internal opposition to the party in power seems to call for a foreign diversion, or because a navy bill is about to come up and it seems desirable to impress the legislature with the usefulness of naval power. Legal rights may provide the formal basis for diplomatic protection, but political expediency has in practice been a more than significant motivator.[11]

d) Diplomatic protection depends upon the discretion of a national government, and cannot be invoked automatically or as a matter of right by an injured party; consequently interested or aggrieved private parties engage in press and radio propaganda to stir up popular emotion and bring pressure to bear upon the government. A private dispute abroad may thus lead to the creation of mutually hostile national feelings, which become inflamed by distorted and unfair criticism. It is true that govern-

[10] *Ibid.*

[11] Eugene Staley, *op. cit.*, p. 445.

ments have set up claims commissions on which both sides are represented and to this extent the danger of disputes is lessened; but too frequently the delay in establishing the commissions and the slowness of their deliberations have worked injustice upon individuals seeking redress for injury sustained.

e) Often the stronger powers have utilized the plea of protecting private investments abroad in order to strengthen their policies of "political penetration." The history of modern "imperialism" is full of examples of governments employing disputes involving private corporation interests as excuses for enlarging their political empires: Italy's conquest of Abyssinia; the German acquisition of Sudetenland; the Japanese control over North China; and, in earlier days, British expansion in Egypt, and in East, West, and South Africa; America's policy in Central America and in Hawaii; and Russia's designs in China and Persia. A survey of imperialist expansion gives ample evidence, and fully bears out Staley's judgment: "Needless to say, an institution which operates so frequently in such a way is seriously defective as a device for orderly adjustment of investment conflicts."[12]

f) The danger of political intervention by strong powers has caused the weaker powers to attempt self-protection by introducing measures designed to keep foreign capital from entering their country or to permit it to come in only on condition that the investor renounce his country's protection. In the absence of satisfactory alternatives the great powers have at times been unwilling to permit their private investors to divest themselves of diplomatic protection. This action, while understandable, has actually interfered with legitimate nonpolitical enterprise and, as Staley puts it, "stimulates injurious treatment of aliens and generates causes of controversy" because in their attempts at self-protection the weaker countries create obstacles and intensify difficulties for business men "who are citizens of a state whose political power is feared."

g) The last weakness of diplomatic protection arises from the fact that, while it "takes the form of a legal process" cast in the terminology of international law, there are too few legal categories and precedents and inadequate legal machinery to embrace the differences of culture and the complexities which arise.[13] The fundamental fact is the discrepancy between the kind of problem

[12] Eugene Staley, *op. cit.*, p. 447.

[13] O. J. Lissitzyn, "The Meaning of Denial of Justice in International Law," *The American Journal of International Law*, October 1936.

to be solved, and the "institutions of adjustment." The conflicts are international, sometimes extra-governmental, often supra-national; but diplomatic protection is a national instrument only. To attempt to settle supra-national problems by the use of national instruments is manifestly unwise. A sound solution demands other methods which will approximate more closely the basic condition of justice in the settlement of disputes—that no party be a judge in his own cause.

It was logical to hope that rules might be developed which would be satisfactory to both debtor and creditor nations in the matter of protection of citizens abroad, and that gradually international law would be able to devise methods and procedures which would eliminate arbitrary action by the strong and insure adequate justice by the weaker powers. We have already touched upon certain of the proposals—the Calvo, Drago, and Porter resolutions. But it is desirable to put the problem in the more general setting of international institutions.

Frederick Sherwood Dunn suggests that Grotius wrote little concerning the protection of foreigners and their property interests abroad, because international law in those days governed personal sovereigns and not impersonal states, and because these sovereigns ruled over subjects who "for the most part stayed at home."[14] Vattel developed the thesis that an injury to a person constituted an injury to his state, which must protect that citizen; but since commercial relations in the eighteenth century took place between European states which constituted a "fairly homogeneous international society," no great difficulties arose. Foreigners going abroad met substantially the same legal ideas as at home, and their protection gave rise to comparatively few disputes. Moreover, there was still not a great deal of international trade and commerce.

When European citizens and European investments invaded South American states during the nineteenth century, a new and complicated problem arose. The Latin-American countries were unsettled and subject to frequent revolutions and the domination of the judiciary by the executive. Naturally enough, the foreign powers complained of inadequate legal protection, and sought to attain the ends of justice by diplomatic and, if necessary, armed intervention. But, as we have already seen, the Latin-American countries had reason to believe that the stronger countries were

[14] Frederick Sherwood Dunn, *The Protection of Nationals* (The Johns Hopkins Press, Baltimore, 1932), p. 48.

taking advantage of the situation to further imperialistic aims and not merely to protect individual rights.

The fundamental basis of Calvo's doctrine was that foreigners should not expect any better legal treatment than that enjoyed by the citizens of the local state, and that therefore they should regard the judgments of the local courts as final. The European and United States' view was that there existed an international standard of justice to which the local governments must conform and in the absence of which foreign powers might insist upon redress. Dunn writes that the diplomatic protection of citizens abroad, while it undoubtedly gave rise to abuses, did under the circumstances serve "as a substitute for territorial conquest in bringing the Latin-American states within the orbit of international trade and commerce."[15] Such negative virtue did not satisfy those who desired a sounder basis, and many jurists attempted to refine the system and purge it of its abuses. Outstanding works appeared by Heilborn, John Bassett Moore, Treipel, Tchernoff, Anzilotti, and later by Borchard, and Eagleton, who attempted to systematize the subject and set forth its rules and principles.

Such efforts seemed all the more desirable in view of the growth of international arbitration for the settlement of claims arising out of injuries suffered by foreigners. Many treaties with this end in view were signed between the Latin-American states on the one hand and the European powers on the other, as well as between the United States and Great Britain, the commissioners acting as judges and supporting their decisions by references to international law. It seemed imperative to clarify these rules and principles.

After 1918 the League of Nations appointed a committee to consider the progressive codification of international law. One of the subjects selected by the committee was that of the responsibility of states for injury to foreigners within their borders. The rapporteur, Señor Guerrero, from Salvador, brought in a report which substantially followed the views of Calvo and called for a great reduction in the sphere of diplomatic protection. At the first Conference for the Codification of International Law held at The Hague in 1930, the committee was unable to agree upon the fundamental question already mentioned—that is, whether foreigners should enjoy a greater measure of protection than native citizens, and also upon the question whether or not a definite standard of

[15] F. S. Dunn, *op. cit.*, p. 58.

"due diligence" could be found by which to measure the extent of alleged failure to give a foreigner adequate protection and reparation.

The matter has remained at substantially the same level since the Hague Conference and, as suggested above, there is little hope that agreement will be reached until the creditor countries cease using the diplomatic protection of nationals abroad as an excuse for pursuing other ends, and until the smaller and weaker countries so improve their internal judicial systems as to take away from foreign residents and their governments a sense of legitimate grievance. Legal reforms within and political restraint without, together with an appreciation of the fundamentally common interest that all parties have in the peaceful settlement of all disputes by arbitration instead of by force or evasion, will combine to produce a recognition of the larger aspects of the problem. Dunn is undoubtedly right in suggesting that, without denying the importance of legal studies, and attempts to systematize legal principles, what is most needed today is to clarify the practical ends and common interests of nations, "to make these common interests articulate, and to look upon international law simply as an instrument for fostering and safeguarding them."[16] Presumably for the better, the United States, under its "good neighbor" policy, has definitely obligated itself not to intervene under any circumstances in the internal domestic politics of the Latin-American republics.[17]

PRIVATE INTERNATIONAL LAW

It would be a mistake to assume that diplomatic protection constitutes the only method of obtaining justice for merchants and others engaged in business and enterprises abroad. So great is the amount of international economic and social intercourse that the diplomatic agencies of government would be overwhelmed by the amount of work to be done. Moreover, a regular system based upon rules and one capable of speedier justice is essential for the requirements of commerce. Carter well writes: "For eight hundred years merchants have cried for speedy justice. Mercantile men must be about their business, for trade will not wait."[18]

Indeed, even in early medieval times, the merchant could not

[16] *Ibid*, p. 203.

[17] G. H. Stuart, *Latin America and the United States* (1938), pp. 30–37.

[18] A. T. Carter, *A History of English Legal Institutions* (Butterworth & Co., London, 1906), p. 270.

afford lengthy and costly formal proceedings of the courts of law. He would rather "cut his loss than have his case hung up indefinitely." Merchants therefore developed a mercantile law which was truly international and was administered in local and popular courts of *mercatores et marinarii.* The famous Laws of Oleron contained judgments concerning the rights and duties of ships and their personnel, and other divisions of the Law Merchant dealt with other phases of trade and commerce. It was administered, not by professional judges belonging to a particular nation, but by tribunals of experts in trade matters. Despite many variations, the law was essentially the same in different parts of Europe: "the same people met each other in succession at the great fairs where the same questions must have constantly arisen. . . . . To the great fairs such as those at Lyons, Besançon, Antwerp, Winchester, Stourbridge, and St. Ives, merchants came from afar."[19]

The Courts of Pie Powder (*Piepoudre*) attached to the fairs gave speedy justice. The guild merchants developed a remarkable system of mutual arbitration which enabled commerce to be carried on more easily. But with the rise of national courts and the decline of the guild merchants, the local courts lost ground. The Courts of Admiralty usurped their jurisdiction, and the Courts of Common Law were to eclipse both the local mercantile courts and the Admiralty Courts. The result was not an unmixed blessing. Lord Campbell wrote that the English courts of the eighteenth century were so ignorant of many legal questions concerning commercial affairs that merchants often settled their disputes by private arbitration.

Mention of national courts brings to the front the new factors which were to influence trade and commerce. We have referred to the many differences of language, custom, religion, art, and other forms which characterize modern nations. It would be surprising if these differences did not include marked differences of law. As national sovereignty asserted itself, the desire to be free from the legal control of outside authority became pronounced. Territorial law, i.e., complete jurisdiction within the boundaries of a state, gained in power, and personal law based upon blood relationship tended to decline. Now no theory can be carried out without making allowance for other principles. A state claiming absolute control over persons within its own boundaries (including foreigners who are residing or trading there) cannot claim control over its own citizens if they reside within the jurisdiction of another

[19] A. T. Carter, *op. cit.*, p. 266.

state. But states claim that their citizens still owe allegiance even when they are abroad. And out of the conflicting claims of jurisdiction (those of allegiance and of territory) arise the problems of private international law frequently designated the conflict of laws.

A few of the problems may be summarized. Which national law should prevail in determining the domicile of a person who has a residence in more than one country? What principles shall be adopted to regulate the conflict of laws? Countries have different rules concerning legal procedure, as for example, the evidence required in order to constitute legal proof. Rules of evidence differ. The period of limitation of legal action is not the same. Some countries require stricter proof of foreign law when introduced as evidence. The weight given to judgments of foreign courts constitutes another problem. Persons may have the legal capacity to marry at one age in one country and at another age in other countries. Forms of marriage differ; what is deemed incestuous marriage in one part is not so regarded in another. Property rights connected with marriage show many variations. Divorce is easier to obtain in one country than in another; alimony constitutes a problem because of different requirements. The capacity of corporations to carry on business is a matter of extreme importance in these days, but the differences of national laws provide many obstacles. National laws differ concerning the rights and duties of parents and children in such things as custody, support, legitimacy, adoption, and guardianship. In property matters questions concerning ownership and transfer of land, of jurisdiction over and rights in vessels, the assignment of foreign debts, and the use of negotiable instruments raise a bewildering maze of problems. National requirements in the realm of contracts, show marked variations; form of contracts, legality of performance, and rights of action are urgent questions as international agreements grow in number and in scope. The list might be widely extended did space permit.

In order to overcome the delay and confusion which result from differing and often contradictory requirements of the respective national systems, two general lines of approach have been made: (1) international conferences and bilateral treaties to bring greater uniformity, or to make clearer the rules which should prevail in the event of disputes; and (2) movements toward unofficial arbitration and conciliation by merchants and others engaged in foreign trade and commerce—a modern edition, as it were, of the Law Merchant of medieval times.

In 1893, 1894, 1900, and 1925 conferences were held in Europe to consider the adoption of conventions dealing with private international law, and a number of measures were agreed upon. A convention signed in November 1896 and effective in May 1899 concerned questions of civil procedure, such as judicial assistance in the service of documents, security for costs, and the execution of judgments for costs. The Hague Conference on Private International Law considered the questions of divorce and separation. The 1902 Convention, ratified in 1904, dealt with the conflict of laws in regard to (1) marriage, (2) divorce and separation, and (3) guardianship of minors. These conventions regulated many of the conflicts in ways[20] too technical for present consideration.

The 1910 and 1912 Hague Conferences for the unification of the law of negotiable instruments drew up a protocol which was not ratified because of the ensuing World War. But in 1930, after considerable work by the League of Nations, a conference at Geneva adopted three conventions dealing with the unification of the law of bills of exchange and promissory notes. In the following year three conventions were adopted relating to checks (the provisions are too technical to be presented here). Governments have also adopted uniform legislation in the matter of transit. International conferences drew up rules for the prevention of collisions by ships at sea, the unification of rules relating to collisions and salvage (1910), the unification of rules relative to the limitation of liability of owners of vessels (1924), to maritime liens and mortgages (1924–1926), to bills of lading (1924), and to immunities of government-owned vessels (1926). We have referred elsewhere to the developments in international air navigation and railroad communications.

Efforts to codify private international law rules have also been prominent on the American continent. In 1889 seven Latin-American governments attended a conference at Montevideo and drew up conventions dealing with conflicts in civil, commercial, and penal law and the law of procedure, but relatively little further action was taken for several years. At Rio de Janeiro in 1906 the Third Inter-American Conference appointed a committee of jurists to work out projects for codification. It was not until 1925, when the great Cuban jurist, de Bustamante, published his *Projet de Code de Droit International Privé,* that a considerable advance

[20] See A. K. Kuhn, *Comparative Commentaries on Private International Law, or Conflict of Laws* (The Macmillan Company, New York, 1937), pp. 59–60.

was made. The code with some modifications was adopted by the Pan-American Conference in 1928, and was ratified by fifteen American states.

The difficulty of obtaining multilateral conventions, in view of the great differences between national legal systems, has led countries to sign bilateral or regional treaties for the purpose of reciprocal aid in overcoming the many divergencies. Typical of these is the Anglo-French treaty of 1934 for the reciprocal execution of judgments. A 1931 Inter-Scandinavian Convention unifies the private international law rules dealing with marriage, adoption, and guardianship. Admirable work has also been done by law societies and other bodies in attempting a restatement of the law of the conflict of laws. This latter movement has been especially important within the United States.

Despite the progress made in these matters, a considerable amount of diversity, complexity, and uncertainty still remains to create many obstacles to merchants and others engaged in international trade and commerce. Change has been slow, and something more was needed if the rapidly developing international economic relations were not to be seriously impeded. Sir Cecil Hurst wrote in the 1925 British *Yearbook of International Law* an article entitled, "Wanted an International Court of Pie Powder." Other writers took the same view and the movement toward nongovernmental arbitration and conciliation about to be described have in view the same essential purpose, namely, speedy justice with the minimum of formality and expense.

COMMERCIAL ARBITRATION

The many disadvantages of an international system in which the protection of industrial and commercial interests abroad rests with national diplomacy must now be evident. Governments have often used the plea of obtaining justice for their subjects as a cloak for imperialist designs, and smaller countries have suffered unfair treatment at the hands of great powers. But the latter have not been invariably in the wrong, and business interests have frequently suffered from the long delay in the presentation of their claims because politically it might have been inexpedient for their government to take action at the time. The same business interests also were unable to obtain substantial justice, because it was often impossible to secure the enforcement of foreign judgments after an award had been made. The disadvantages and complexities of private international law have also been mentioned.

Naturally, individuals and organizations engaged in foreign trade sought ways to remedy these defects. Even before 1914 some steps had been taken toward the development of private commercial conciliation and arbitration. The London Court of Arbitration, the London Corn Trade Association, the Liverpool Cotton Association, and certain French and German organizations existed for the purpose of settling commercial disputes without becoming involved in governmental and diplomatic formalities. In 1914 an International Congress drew up a resolution concerning proposed rules of private business arbitration and the desirability of securing legal sanction for the decisions of foreign arbitrators. Unfortunately the war interrupted these developments, but after the cessation of hostilities the International Chamber of Commerce again took the matter in hand.

Sir Lynden L. Macassey has summarized the present machinery of international commercial arbitration under six heads: (1) Means developed by treaties and international agreements, such as those between France and Belgium (1899), Austria and Italy (1922), Italy, Yugoslavia, and Czechoslovakia, etc., providing for reciprocal enforcement of arbitral awards; (2) international agreements between nongovernmental organizations, the most important of which is the Inter-American Commercial Arbitration Commission established by the Pan-American Union; (3) organizations established by national chambers of commerce to promote international commercial arbitration among their members (especially notable is the Bradford Chamber of Commerce in Yorkshire, the organization of which became the basis of the International Wool-Textile Arbitration Agreement of October 27, 1926, which covers English, French, Belgian, German, and Italian woollen and textile manufacturers and merchants; several other such organizations exist); (4) arrangements by merchants of different countries for adopting forms of contracts which provide for commercial arbitration (forms used by the London Corn Trade Association, the Liverpool Cotton Association, the Merchants Silk Union of Lyon, etc.); (5) several courts and tribunals which determine cases in accordance with procedures, agreed upon internationally, as, for example, the court of arbitration of the International Chamber of Commerce in Paris (which has national committees in many countries in Europe, the United States, and Japan; it recommends that in all contracts an article be inserted providing that disputes arising out of the contract should be settled under the rules of conciliation and arbitration of the International

Chamber of Commerce); (6) arbitration, by arbitrators appointed *ad hoc,* or by some specified appointing authority, accounting for the settlement of a growing number of international commercial disparities.[21]

It will be seen that two types of commercial arbitration exist. One is the national system referred to above. The London Corn Trade Association, for example, might set up a committee which would render a decision in a dispute between nationals of different countries engaged in the corn trade. Such a national system, although it marks a step forward and is suited to disputes concerning the quality of merchandise or similar questions of a technical nature, is open to the charge that it operates to strengthen the position and influence of the economically stronger states—a national agency does not possess a sufficiently broad character for permanent international needs.

Arbitration and conciliation machinery on an international basis can avoid the charge of serving a particular national interest, and for that reason has gradually grown in importance. Indeed at first sight there seems to be no reason why business interests should not set up their own private associations for the settlement of commercial disputes; yet on closer examination we find several formidable obstacles: The first is the problem of enforcement. Various governments have accepted the principle that an arbitral award has no binding force without confirmation by a court. Some examples drawn from the *International Yearbook on Civil and Commercial Arbitration*[22] will illustrate this point. In 1892 the German Reichsgericht upheld an action to obtain judgment on a foreign award made by an arbitration body. But the English High Court of Justice in 1911 ruled that a German arbitral award which was not declared executory in Germany was not enforceable in England. An English firm had failed to comply with the award of the Bremen cotton merchants, and the latter applied to the Liverpool Cotton Association to expel the defaulter from its ranks. The firm in question brought action in court to set aside the award and to establish the invalidity of the expulsion. The German firm counterclaimed for an order to comply with the award. The Court had to determine whether or not the award was a decision which it could recognize as a foreign judgment; the learned judge wrote

[21] Sir Lynden Macassey, *International Commercial Arbitration: Its Origin, Development and Importance (Transactions of the Grotius Society, 1938,* Sweet & Maxwell, Ltd., London), Vol. XXIV (1939), pp. 193–96.

[22] Edited by Dr. Arthur Nussbaum (Oxford University Press, 1928).

that in his opinion it was not, and accordingly he refused to issue an order of expulsion. An Italian decision in 1925 laid down that an arbitration clause agreed upon in Italy by which all disputes arising from a contract were to be decided by a foreign arbitral award was contrary to articles in the Italian Code of Civil Procedure and was therefore invalid. The Supreme Court of Austria in 1904 considered the case of an Austrian merchant who had contracted to deliver eggs to a Berlin merchant and had failed in his delivery. He was sued by the Berlin merchant before an arbitral tribunal in Berlin. The tribunal declared itself competent, but the Austrian Supreme Court ruled that the decisions of German arbitral tribunals were not final and refused to enforce the award. Similarly the Supreme Court of Czechoslovakia in 1925 ruled that a German arbitral award needed an order for enforcement granted by the German court before the Czechoslovakian court could in turn issue its order for enforcement of the award.

These examples show the uncertainty which confronts merchants engaged in foreign trade when they attempt to set up their own commercial arbitration and conciliation system.[23] Until the awards of the commercial arbitral bodies are recognized by the law courts of the land, a merchant may disregard the associational decisions and thereby bring arbitral agencies into disrepute; for if he chooses to break his contract, knowing that the law courts will not uphold any arbitral judgments rendered against him, he can render the whole system largely ineffective.

The International Chamber of Commerce in 1920 set up a committee to study ways and means of gaining legal recognition of arbitration awards.[24] The findings of the committee were discussed by a congress held at London in 1921, which passed a resolution urging governments (1) to secure legal recognition of the validity of arbitration clauses and of persons designed as arbitrators without distinction of nationality, (2) to develop uniform national legislation to render executory the awards of foreign arbitrators "regardless of the nationality of the parties," and (3) to adopt uniform national rules of procedure in commercial arbitration.

Meanwhile the International Chamber of Commerce had also considered the possibility of drawing up regulations to organize

[23] For a good discussion of this question, see P. Brachet, *De l'Execution Internationale des sentences arbitrales* (Rousseau et Cie, Paris, 1928).

[24] R. Vulliemin, *De l'Arbitrage commercial* (Librairie Arthur Rousseau, Paris, 1931), pp. 184–215.

international commercial arbitration on a more comprehensive basis. In facing this problem the Chamber met two conflicting theories. The Anglo-American group placed emphasis upon "moral sanctions"; the Continental representatives stressed the importance of "legal sanctions." Mr. Owen D. Young put the case strongly for procedures based upon persuasion. He suggested that there were three different methods which should be discussed: (1) Arbitration within the law, where national laws already enforced the decisions of private arbitration bodies; the International Chamber of Commerce could formulate a more complete code which would then have legal sanction. (2) Arbitration outside the law; here it would be necessary to establish a separate code of arbitration based upon moral sanctions exercised by the International and the various national Chambers of Commerce "with all the force that business men of a country can bring to bear upon a recalcitrant neighbor." This type of arbitration should be adopted only in cases where there were well-organized national business groups capable of dealing with a member guilty of taking advantage of legal technicalities to disregard the award of an International Chamber of Commerce tribunal or a similar body. (3) A system of conciliation to be developed by the International Chamber of Commerce, under which it would "tender its good offices," to see if the differences between the two parties could not be resolved by persuasive means. It was pointed out that in many cases involving disputes between United States and Argentine merchants conciliatory measures had sufficed to settle the matters quickly and inexpensively. Mr. Young therefore urged a cautious program of conciliation outside the law. Progress should come as a result of experience and not be based on mere theoretical reasoning.

As a result of these deliberations in 1920–1922, the Council of the International Chamber of Commerce published its rules of conciliation and arbitration in July 1922. They formed a compromise between the moral-sanction and the legal-sanction schools, with a strong leaning toward enforcement by moral means. Ridgeway regards the foundation of this world court of arbitration as one of the great achievements of postwar economic statesmanship.[25] The Court held its first case in June 1923, and by the end of that year forty-eight disputes had been submitted to it. Since that time it has continued its excellent work.

[25] G. L. Ridgeway, *Merchants of Peace* (Columbia University Press, New York, 1938), p. 325.

The International Chamber of Commerce then turned its efforts toward promoting national legislation which would recognize the validity of arbitration clauses inserted in international commercial contracts, and passed a resolution to that effect at its Rome Congress in March 1923. The League of Nations Economic Committee summoned a meeting of a Committee of Experts in July 1922 and, after accepting its recommendations, prepared a draft protocol which on September 24, 1923, was approved by the Assembly.[26] Within two years twenty-eight nations had signed and ten had ratified the protocol, by which the signatory powers undertook to enforce arbitral awards which were made "within the territory of the state in which execution is sought"; that is, if a Chamber of Commerce "court" in country A made an award, the government of A would see to it that the judgment was enforced within its own territory.

A third problem remained to be settled, that of enforcing arbitral awards made in a foreign territory. It will be recalled that the Supreme Court of Czechoslovakia ruled that a German arbitral award needed an enforcement order from a German court before it would grant the order for enforcement in Czechoslovakia, and that the Austrian Supreme Court had refused to enforce in Austria an award which had been rendered by German arbitral tribunals. These two incidents were typical of many which brought home to business men the necessity of reaching an international agreement which would guarantee enforcement of awards made in a foreign land. We should carefully note the distinction between a foreign award of private arbitrators and foreign judgment of a court, and the International Chamber of Commerce realized that two separate questions were involved. The legal systems of the world differ considerably, and to reconcile them is a difficult matter. The International Chamber believed that it could develop a system of arbitration which would avoid many of the complications arising from these differences.

In March 1926 the Economic Committee of the League studied the question exhaustively and concluded that a great deal of effort and study were still needed. The World Economic Conference in 1927 considered the matter and the League set up a committee of jurists to draft a protocol, which the Assembly adopted in September of that year. Article I of this protocol states that the contracting parties will recognize as binding an arbitral award made in

[26] *Report on the Economic Work of the League of Nations, Economic and Financial Section* (1927. II, 43. C.E.I. 41), pp. 30–32.

another contracting state, and that it will be executed in accordance with the laws of that state provided (1) that the arbitration is valid and the award is capable of settlement under the laws of the state, (2) that the award has been given by the arbitral tribunal in the manner agreed upon by the parties, (3) that it has become final in the state in which it has been made, and (4) that it is not contrary to public policy.[27]

Ridgeway well summarizes the situation:

> The importance of a functioning International Court of Commercial Arbitration in the evolution of this regime of international arbitration can readily be seen. The founding of the I.C.C. Court of Commercial Arbitration, the steady extension of its usefulness and its authority in the business world, the growth of national legislation favorable to international commercial arbitration, and the final drafting and ratification of two great multilateral treaties mark successive steps in the extension of peace-making in international commerce. The ratification of the protocol by leading commercial states firmly establishes this privileged regime of international arbitration over against the chaotic territory of legal judgments preempted by conflicting national systems of law.[28]

One further judgment may be added, that of James S. Carson, vice-president of the American and Foreign Power Company, who in a radio address on December 6, 1937, said:

> The maintenance of peace between governments is the highest achievement that may be expected from arbitration. In order to attain it, we should recognize that one cannot begin to build at the top. A wide, sound basis of national knowledge of arbitration is necessary before the international field can be developed to its fullest capacity. A man who will not arbitrate small questions, will not arbitrate big ones. The man who does not arbitrate at home, will not arbitrate abroad. An aggregation of men who will not arbitrate, make for a government that will refuse arbitration. Two such governments in conflict lead to war.[29]

Nussbaum, an outstanding authority, appears to have modified his views concerning the results to be expected from international commercial state arbitration. The last few years he thinks have

[27] *Report on the Economic Work of the League of Nations* (cited above), p. 32.

[28] G. L. Ridgeway, *op. cit.*, pp. 330–31; R. Vulliemin, *op. cit.*, pp. 123–27.

[29] Quoted in James S. Carson, "Can International Arbitration Work?" *The Arbitration Journal*, Vol. II (1938), p. 56.

been disappointing, despite impressive achievements on paper. The 1923 protocol and arbitration clauses and the 1927 convention on the execution of foreign arbitral awards appear to have constituted a great step forward (although in Nussbaum's judgment some of their principles and methods had been set forth in The Hague Conference of 1912); also not a little supplementary national legislation has been enacted, but in practice the treaties have not led "to any sizable increase in international commercial arbitration."[30] Indeed, Nussbaum notes that the tendency in England has been almost to ignore the Geneva Treaties; Cheshire's standard work on *Private International Law*, 1938 edition, makes scarcely any reference to them. And other English writings make but slight mention. Nor has the Court of Arbitration and Conciliation, founded in 1921 by the International Chamber of Commerce, exercised substantial jurisdiction. In eighteen years it settled only 77 cases by award and 120 by conciliation. And almost one-third of the parties were French. Nussbaum believes that the Inter-American Commercial Arbitration Commission, established in 1934, has done very little. "In the light of all these developments, it would seem that the men who have set the course of the League of Nations in the matter of commercial arbitration, misjudged the situation. Many others were mistaken also, including the writer, who harbored great hopes for the progress of international arbitration."[31] The reasons for ineffective arbitration he sets forth as:

1. Looseness of arbitral proceedings.
2. Relative lack of authority of the arbitrators.
3. "The absence or uncertainty of effective judicial compulsion."
4. The nationals of weaker economic nations tend to find themselves having to agree "to stand on contracts conferred in jurisdiction upon arbitrators of countries economically more powerful."[32]
5. Arbitration is not a simple matter; it "is tied up with the basic concepts, institutions, and techniques of the diverse national laws by countless bonds,"[33] and hence is probably not suited to treatment by multilateral treaties.

Nussbaum indicates that a draft prepared by the Roman In-

[30] Arthur Nussbaum, "Treaties on Commercial Arbitration—A Test of International Private-Law Legislation," 56 *Harvard Law Review*, 1942, p. 237.

[31] *Ibid.*, p. 239.

[32] Nussbaum, *op. cit.*, p. 240.

[33] *Ibid.*, p. 243.

stitute for the unification of the international law of arbitration is not likely to be adopted. And his analysis would lead to the conclusion that this is more or less inherent in the nature of the case. This view, however, would be strenuously challenged by the American Arbitration Association, which points to recent developments in inter-American arbitration history, the official agreements signed, the work of the Inter-American Bar Association, organized in May 1940, and the number of cases settled.

DOUBLE TAXATION

Taxation has become increasingly important in recent years. The costs of government have been rising rapidly because of added expenditure made necessary by the tremendous increase in armaments and the unprecedented extension of social services. Old-age pensions, sickness insurance, primary and secondary education, relief programs, and the expansion of the civil service and of public control have necessitated ever mounting government budgets. And there has been growth in the variety as well as the amount of taxation—personal income taxes, company income taxes, death duties, inheritance taxes, stamp duties, customs duties, and many others swell the list.

The growing burden of taxation is felt by almost everyone, but it causes special difficulties to those engaged in international trade. Suppose that A has a factory in the United States; he sets up a branch factory in England, which nets him an annual profit of $10,000. If he has to pay income tax to both the English and the United States governments, he will suffer a double burden. If he lends money to a foreign country and is taxed on the income from it both at home and abroad, he will be put at a double disadvantage. The problem is complicated by the fact that it is not always easy to say precisely where income is earned. If A lives in one country and his money is invested in another, can we say with certainty just where the income arises? If his wealth is derived from foreign oil wells, it is obvious that the place is the important factor; but if he gains his income from profits derived from shipping between Canada and Japan, which government should tax him? The differences between tax laws in different countries have made the whole problem an extremely difficult one, although, generally speaking, foreign businesses are not specially taxed and they enjoy the same status in taxation matters as domestic companies.

But more is needed than an absence of discrimination in order

to enable international trade to function satisfactorily, and governments have for some time realized the necessity of lightening the burdens which arise from double taxation. Unfortunately they have found it difficult to agree upon the general principles which should be adopted, and some have acted independently without reference to the policies of other countries. Great Britain, for example, granted certain exemptions to citizens who paid taxes on income earned abroad; and the United States in 1922 passed the China Trade Act exempting companies from paying income tax in the United States on profits derived from their business in China. The Revenue Act of 1926 exempted Americans residing abroad from taxes on income which was earned abroad; and to Americans at home who paid income taxes to other governments it allowed that if the foreign tax were less than the American tax the United States government would merely collect the difference. Belgium taxed only one-quarter of the incomes derived from abroad if they had already been subjected to a foreign tax.

Such independent action on the part of governments, although in the right direction, did not go far enough. More systematic methods were required. The first step was for governments to enter bilateral agreements. For example, Great Britain and the United States, in an attempt to assist shipping interests which had suffered a heavy setback after 1918, agreed each to exempt the earnings of vessels registered under the flag of the other, thus adopting the principle of reciprocal exemption. Other countries followed suit. The bilateral method marked an improvement over the previous unilateral action; but, as Seligman points out, there are several basic differences of principle, and "it was high time that the matter should be taken up in a broad way." Various international conferences, private and governmental, adopted resolutions; and in 1921 the League of Nations instructed its Financial Committee to take up the problem. The committee appointed four experts to prepare a report, out of which grew a series of recommendations. Conferences of experts then produced model drafts of conventions to serve as a guide to countries contemplating the adoption of an agreement to minimize double taxation.

After the experts had produced their report and provided a theoretical basis for further action, the League Financial Committee collaborated with government experts whose practical experience in taxation made them valuable allies in working out the details, and also with the International Chamber of Commerce. It drew up four draft conventions covering income and capital taxes,

succession duties, assistance in collection of taxes, and assistance in preventing fiscal evasion.

In October 1928 a Conference at Stockholm considered these matters at greater length and produced a series of model bilateral conventions. These were the first steps toward the realization of a multilateral convention which at the moment was not possible because of the great differences in national tax systems and the complexity of modern economic organization.

An analysis of the collection of international agreements and internal legal provisions for the prevention of double taxation and fiscal evasion published by the League of Nations in 1936 shows that, although taxation is one of the highest prerogatives of a sovereign state, modern conditions of economic life have rendered it imperative for governments to enter into international treaties so as to limit the power of sovereign states to tax enterprises engaged in international trade and commerce. Theoretically national governments may do as they please in the realm of taxation; in practice it would be destructive of economic welfare if such theories were applied.

The document divides the international agreements into two major groups—those concerning double taxation and those relating to mutual assistance in tax collection and the preventing of tax evasion. Under the heading of avoiding double taxation are certain general agreements, including those between Switzerland and Germany in 1931, between Belgium and the Netherlands in 1933, between France and Germany in 1934, and between Sweden and the Netherlands in 1935, and a number of agreements designed to prevent double payment of succession duties and duties on gifts. In addition there have been agreements concerning (1) profits of commercial or industrial undertakings, the signatories agreeing not to tax the profits or gains which arise through an agency of a commercial or industrial undertaking situated in their territory; (2) profits of maritime shipping enterprises, governments agreeing to exempt from income tax any profits which accrue from a shipping business carried on by an individual or a company resident or registered in the territory of the other contracting party; (3) prevention of double income tax from air-transport profits; (4) prevention of double taxation in the turnover tax and single or substituted duties; and (5) exemption from taxation on motor vehicles from the country of a contracting party while temporarily within the country of the other party, on condition that the vehicles are used only for the conveyance of passengers without hire or reward.

The second part of the collection of League documents dealt

with mutual assistance in collecting taxes and preventing fiscal evasion. Between 1926 and 1935 eight such bilateral treaties were signed; they form a complement to the measures designed to avoid double and multiple taxation. It is important to avoid overtaxing individuals; but it is equally necessary for governments to obtain their revenues and to prevent individuals from escaping their just share of national burdens.

The League of Nations Economic Section and the International Chamber of Commerce also worked toward a multilateral treaty. Bilateral treaties and domestic legislative acts are important; but an international code to unify the principles of tax legislation is urgently needed. For this purpose the League Secretariat undertook a world-wide survey of tax law. An American official, Mitchell B. Carroll, directed the project, which finally resulted in a comprehensive five-volume report. The fiscal committee in June 1933 drew up a convention which was based upon the recommendations set forth by Carroll in the fourth volume of the survey and was designed to form the basis of a comprehensive system of principles of international taxation and of what Carroll calls a new field of "international tax law."

In 1935 Carroll wrote that "despite the incredible difficulties in the various systems fair concepts of fiscal jurisdiction were being established, uniform definitions were being formulated, the predominant kinds of income were being classified, and an international tax language was being developed." The convention accepts the principle that the signatory shall tax only the income which is directly "allocable to" a permanent establishment within its territory; it defines business income more carefully; and it embodies the principle of "treating the local establishment of a foreign enterprise as an individual enterprise and taxing it, wherever possible, on the basis of its separate accounts." It contains special provisions concerning the allocation of income of banking enterprises and prescribes that income from shipping shall be taxed only by the country in which the company has its fiscal domicile.

IMMUNITY OF STATE-OWNED PROPERTIES

According to the rules of international law, the courts of a country will not entertain suit against a foreign hereditary ruler, on the theory that to submit so exalted a personage to legal trial is inconsistent with his dignity and, in all probability, will produce political complications. The idea of the sovereign, moreover, expanded to include not merely a king but also a sovereign state or

government. These and their instrumentalities, the most important of which are diplomatic representatives and a nation's warships, have enjoyed traditional immunities.

The growing preoccupation of governments with commerce and their entry into the carrying trade raise serious problems. Governments have assumed commercial, industrial, and banking functions also, and have claimed, by virtue of their sovereign status, the privileges and immunities referred to above.[34] These claims place private enterprise at a serious disadvantage. If, to take only two illustrations, the state is exempt from the necessity of paying taxation, or if it will not submit to legal processes, should one of its government-owned commercial ships collide with a privately owned vessel and do it damage, it obtains advantages which, in the words of the 1927 World Economic Conference, "constitute an infringement of free competition by making a discrimination between enterprises carried on side by side." The Conference therefore recommended

> That, when a Government carries on, or controls, any commercial, industrial, banking, maritime transport or other enterprise, it shall not, in its character as such, and in so far as it participates in enterprises of this kind, be treated as entitled to any sovereign rights, privileges, or immunities from taxation or from other liabilities to which similar privately owned undertakings are subject, it being clearly understood that this recommendation only applies to ordinary commercial enterprises in time of peace.

Not all governments have taken advantage of their theoretical legal rights. Some of them adopt a liberal view, and their national courts will accept suits brought by private individuals against government-owned vessels. The French courts have distinguished between government-owned ships used for "distinctly public purposes" and those used in "ordinary commercial operations," but they will not order the attachment of vessels which have had judgments rendered against them; thus it remains highly uncertain whether or not the judgment can be executed. The courts of Belgium have ruled that foreign ships engaged in ordinary commerce must submit to ordinary processes; but, like the courts of France, they have not been willing to order the attachment of vessels. On the other hand, the Italian courts go the full length and permit "both prosecution and execution of judgments." When the United States set up the National Shipping Board it apparently did not

[34] See *Immunities of State Enterprises* (League of Nations, Economic and Financial Section, 1927), II, 32.

intend that its public vessels should at all times enjoy the traditional immunities accorded to the agencies of a sovereign power. To make the matter clearer, the Secretary of State sent instructions to American representatives abroad that they should notify foreign governments that the United States would not claim immunity for vessels of the Shipping Board engaged in commercial activity, although it might in exceptional cases claim exemption from arrest.

The courts of other countries, however, and the Supreme Court of the United States, have followed the customary rule. In 1880 the English Court of Appeals, in the famous Parlement Belge Case, refused to hear an action brought against a Belgian public ship which was used as a mail packet and also carried passengers and goods. In 1924, the English Court of Appeals, when the United States Shipping Board claimed that its ships should be immune from legal action in foreign courts, ruled that the Shipping Board was a department of the United States government and as fully representative of the United States as an ambassador himself. In 1926 the United States Supreme Court in *Berizzi Brothers Co.* vs. *S.S. "Pesaro"* took the same stand.[85] The steamship "Pesaro" had failed to deliver a consignment of artificial silk accepted by her at an Italian port for carriage to New York. The vessel was arrested and later was released after giving bond that she would return or pay the claim if the court had jurisdiction and the claim was established. During the trial the Italian ambassador to the United States testified "that the vessel at the time of her arrest, was owned and possessed by that government, was operated by it in its service and interest, and therefore was immune from process of the courts of the United States." The Supreme Court ruled that government-owned ships in the carrying trade "are public ships in the same sense that warships are." The ruling continued: "We know of no international usage which regards the maintenance and advancement of the economic welfare of the people in time of peace as any lesser purpose than the maintenance and training of a naval force." And the Supreme Court affirmed the decree of the inferior court which had dismissed the action for want of jurisdiction.

Professor J. W. Garner, in a comment in the *American Journal of International Law,* pointed out that the principle underlying the decision went counter to the practically unanimous opinion of

[85] Manley O. Hudson, *Cases on International Law* (West Publishing Co., St. Paul, Minnesota, 1937), pp. 232–34.

jurists, the judgment of the International Maritime Committee, the subcommittee set up to deal with the question which later was to be submitted to the International Conference for the codification of international law, and the opinions of two judges of the Permanent Court of International Justice. He added that this judgment, coming from the highest court of a great power, "only serves to accentuate the necessity of an international agreement[36] which will remove the anomalous and unjust inequality which, in the opinion of the Supreme Court of the United States, is still the law of the United States, if not the law of nations. . . . ." Professor Dickinson in the following year expressed his disappointment that the Court felt constrained to adhere strictly to precedent, but suggested that he was "not entirely confident that the Supreme Court would have been well advised to embark upon a different course."[37] Like his academic colleague, he believed that it was essentially a matter for international action by governments.

Already many criticisms had appeared against the prevailing rule. Years ago, the great international lawyer, Bluntschli, stated that governments, by going into ordinary business, to that extent waived their sovereign dignity; if they could stoop to such ordinary activities, they should be prepared to accept the ordinary consequences and at least meet the claims of their creditors. Many private interests had suffered heavily from the governmental claims to immunity from suit. They were probably unimpressed by a United States Court judgment that it was "far more important for citizens of the United States to recognize the rule of international comity that an independent sovereign cannot be personally sued . . . . than it is to take cognizance of private rights, if by so doing that rule is violated." Both elementary justice and the future of private enterprise called for a reconsideration of a rule the expanded application of which was inflicting much injury.

Discussions took place at meetings of the International Maritime Committee at Gothamburg and Genoa. At the former conference it was proposed to abolish the immunity which state-owned and state-operated vessels and their cargoes had previously enjoyed and to place them on the same footing as privately owned vessels and cargoes. The conferences attempted to draw a distinction between public and private functions; but the effort failed,

[36] J. W. Garner, "Legal Status of Government Ships Employed in Commerce," *American Journal of International Law*, 1926, p. 767.

[37] Edwin D. Dickinson, "Immunity of Public Ships Engaged in Trade," *American Journal of International Law*, 1927, pp. 108–9.

for there is no final line which can be drawn. What is private today may become public tomorrow. Accordingly the conferences accepted the principle that all vessels should have to appear before courts which were empowered to try cases against private ships. But several questions arose and were decided as follows:

1. Should foreign courts be permitted to try cases involving government warships and cargoes used for "governmental work?" It was decided that these vessels should appear only before the competent courts of their own states.

2. Should state-owned or state-operated ships be liable to attachment? One set of authorities believed that although state ships should be liable for damages they should not have to submit to arrest and attachment. The device of attachment originated to make certain that a private owner who might not otherwise have sufficient funds to pay the fine would at least be forced to use his vessel or his goods as a surety. A state would not be in such a position because it obviously would have sufficient funds to pay. Moreover, to attach a public vessel might seriously interfere with the public interest; for example, in an international crisis, a government would wish to have all its war vessels and mercantile marine in hand in case of outbreak of war. Other authorities believed that all ships should submit to the same legal processes without distinction, and that the reasoning cited was not conclusive enough to justify even the exemption of war vessels. The rule finally adopted by the Genoa Conference was that warships, state yachts, patrol ships, hospital ships, and their cargoes should not be liable to attachment but that other state vessels should be so liable.

3. The Genoa Conference added a further article to the effect that the proposed convention should not be binding on a belligerent state over claims arising during a period of war. That is, the convention was to apply only to peace time.

In 1926, after much thought and discussion, a Convention was signed at Brussels in which the principles described above were incorporated. The Convention, of fourteen articles, provides that all sea vessels owned or operated by states, and nongovernmental cargoes and passengers carried by the ships while engaged in commercial service, are to be subject to the same rules of liability and the same obligations as privately owned ships. Ships of war and vessels owned or operated by a state on noncommercial services are subject to a limited surrender of immunity. They may be sued for (*a*) collisions and other accidents of navigation, (*b*) salvage and general average, and (*c*) repairs, goods supplied, or

other contracts relating to the vessel. If the court is doubtful as to whether or not the vessel or cargo is of a governmental and non-commercial character, a certificate from the diplomatic representative of the state will be sufficient to have the vessel freed from arrest, seizure, or detention. A state may suspend the application of the Convention in wartime, and is not required to take measures inconsistent with its rights and duties as a neutral.[38]

After several years, during which time the Belgian government was in communication with other governments which had declared themselves prepared to ratify the convention, the instrument came into effect on January 8, 1937. At that time it had been ratified by eight countries: Belgium, Brazil, Chile, Estonia, Germany, Hungary, the Netherlands, and Poland.

It is clear that if state-owned enterprises are exempted from taxation, they will have a great advantage in competition with private enterprise, and should be able to work at lower costs. Such an advantage, in the opinion of many people, constitutes an unfair form of competition. For this reason, some authorities and many business groups object to the claims of the state to immunity from taxation. For example, a state-owned butcher shop, which did not have to pay taxes, competing with a privately owned butcher shop, might be able to undersell the latter, not through more efficient organization, but by reason of its tax exemption. Or take competition between state-owned ships and privately owned vessels: The differences in cost by reason of state claims to immunity may be very great, and may work a hardship upon the private company, causing it to charge higher fares and cargo rates. The British Imperial Economic Conference of 1923 considered the Colwyn Report, which recommended: (1) that governments within the Empire engaging in trade should be liable to taxation in any other country of the Empire in which it owned property for trade purposes or in which it made trade profits, and such liability should be "coextensive with a liability of a private trading corporation in similar circumstances"; and (2) that foreign governments trading within the Empire, and Empire governments trading abroad, should not be treated "as entitled to any sovereign immunity from taxation, either directly or through the claim of superiority to the jurisdiction of Municipal Courts." The Conference agreed with the recommendations of the Committee, and

[38] Manley O. Hudson, *op. cit.*, p. 234. Also League of Nations, Economic and Financial Section, *Documents for the International Economic Conference* (1927, II, 32), pp. 10–14.

invited the parliaments of Great Britain, the Dominions, and India to pass legislation to that effect, and favored opening negotiations with foreign countries with a view to reciprocal agreements calculated to bring the governments within the scope of taxation on the same footing as ordinary commercial and industrial enterprises. Several of the governments of the Empire passed legislation along these lines.

Other states might adopt similar legislation to resume jurisdiction over agents and property of foreign states within their borders, and thereby effect a needed reform. This problem is part of the broader question of the relation of state to non-state enterprises discussed in the chapter dealing with international trade (pp. 444–46).

PROTECTION OF INDUSTRIAL, ARTISTIC, AND LITERARY PROPERTY

To a degree not generally appreciated, modern trade and commerce depend upon protection guaranteed by law. It is doubtful whether our business civilization could long exist without the security afforded by patent rights, trade-marks, trade names, marks on goods to indicate the place of origin, and measures designed to insure fair competition. These things have become accepted as indispensable safeguards within nations; but, as trade and commerce become international in scope, the enterprising business man may find that an unscrupulous competitor is using his patent in a foreign country. The patent may be a simple device or it may be an invention which has involved the expenditure of millions of dollars. Or he may find his trade-mark and his trade name exploited by a foreign firm. Designs may be pirated, and authors find their books printed in lands where no copyright protection exists to give them a fair reward for their work. Firms of world-wide reputation find that their names (or ones very similar to them) are used on bottles and containers which contain inferior types of whiskey, gin, catsup, and a large number of other articles of consumption. Protection of economic rights has thus become an international question. As long as the world recognizes private property it should afford it adequate protection.

Because of the variety of conditions and different rates of industrial progress, nations adopted legislative protection at different rates. In some countries the law was defective; in others the foreign merchant suffered discrimination, and enjoyed less pro-

tection than the nationals of the country. Moreover, the divergencies in laws relating to patents, trade-marks, trade names, and designs made it risky for a merchant to establish himself abroad.

Countries differed in their definition of patentable inventions and the conditions and formalities for granting patent rights. Some governments required a detailed preliminary examination of the proposed patent, while others were satisfied with no more than a registration of the invention. Patents were granted for periods ranging from three to twenty years; the amount of fees to be paid was seldom the same, and different rules existed concerning penalties for delinquency in tax payments. Some countries obliged the patentee to work his patent within a given time; others were more or less generous.

The combined effect of these differing regulations was to place great burdens upon the applicant. A foreign inventor had to obtain the services of a local attorney expert in patent law, to prepare his documents. The inventors were forced "to prepare as many different applications, drawings, models, etc., as the countries in which they wished to have their inventions patented. This caused them a great loss of money and time.[39] The obligation of a patentee to work his patent within a given period often worked much hardship because many inventions required "long experiments and many improvements which may require much time. . . . . These experiments, moreover, are very costly and may not result in anything worth while."[40] Few countries afforded any protection to foreigners in industrial designs and models. Laws were very diverse, and the risk correspondingly great. Trade-marks were freely pirated, and foreigners found it a tedious and costly undertaking to obtain adequate protection. Nor was the situation much, if at all, better in the matter of trade names and unfair competition.

The first steps in international protection of industrial property took the form of bipartite treaties. A signatory agreed, usually on condition of reciprocity, to protect the trade-marks and designs of the nationals belonging to the other signatory power. Most governments set up patent systems which gave protection to inventions, and (China, Persia, and Siam *et al.* excepted) signed international treaties and conventions which provided for

[39] Stephen P. Ladas, *The International Protection of Industrial Property* (Harvard University Press, 1930), p. 228.

[40] *Ibid.*, p. 330. I am greatly indebted to this work.

"the mutual protection of the patent rights of their nationals.' One instance may be given: the 1911 Treaty between Japan and the United States provides that

the citizens or subjects of each of the High Contracting Parties shall enjoy in the territories of the other the same protections as native citizens or subjects in regard to patents, trade-marks and designs, upon fulfilment of the formalities prescribed by law.

But such theoretical equality does not solve all problems. Donaldson notes that the patent laws of the United States are more liberal, provide for a longer monopoly to the inventor, and have fewer conditions attached than the patent laws of most other countries. Whereas several foreign governments require that a person must work his patent in order to retain it, the United States does not have a compulsory working clause. Consequently foreigners who take out patents in America may receive greater privileges than Americans who take out patents in other countries:

For example, a foreign patentee may manufacture his product at home, and, without manufacturing in America, hold a valid American patent. The American patentee in order to insure the validity of his foreign patent frequently must maintain an expensive factory in the foreign country.[41]

So, with trade-marks. The purpose of a trade-mark is to "insure a kind of fair play in trade." The United States has the rule that anyone who wishes to use a certain mark may bring forward proof that he has used this mark before anybody else, even though the latter may have registered at an earlier time. Other countries follow the contrary principle, that of "priority of registration." From this difference of systems many hardships may occur. To quote Donaldson again:

an American individual or concern may have employed a trade-mark for many years at home and may even have used it in a foreign market for some time, but if the precaution has not been taken to effect prompt registration within such foreign country a coincidental or piratical use of the same mark by a national of that country or a national of a third country is possible without liability for legal procedure on the ground of infringement.

Sometimes nations included special clauses for granting patent or other industrial property protection in their general treaties of commerce; these were liable to denunciation at the end of a given

[41] J. Donaldson, *International Economic Relations* (Longmans, Green & Co., New York and London, 1931), p. 308.

period, and in that case trade-marks, designs, and other matters lost the benefit of treaty arrangements and pirating could recommence.

Bilateral treaty methods were not adequate to meet the growing need of protecting property rights on an international scale, and an international congress on industrial property which met in Paris in 1878 discussed whether it was desirable to form a general union for purposes of industrial property protection or whether efforts should be made toward obtaining uniform legislation by various governments. One group held that uniform action was needed and that this end could be realized only by nations surrendering their independent policy-making powers and acting together as one body; the other group, more wedded to the ideal of national sovereignty, was unwilling to take even these small steps in the direction of international "government." Another conference at Paris, in 1880, paved the way for the famous international conference of 1883. Here was adopted a convention which forms the basis of the existing organization for concerted international action to protect patents, trade-marks, trade names, and marks of origin, and to eliminate unfair competition throughout the territories of the signatory powers.

The conference set up an international bureau which was to provide a permanent administrative organ. Its function was to gather information relating to protection of industrial property, to study the laws, legal decisions, and administrative practices of various countries, to supervise the working of the convention, and to propose improvements. During the sixty years since then the bureau has done excellent work in publishing its monthly magazine, preparing conferences for revision purposes, and acting as a central office where trade-marks, etc., are deposited. We have seen elsewhere that international institutions have sometimes led the way toward more adequate national organization; and this phenomenon appears in the case of industrial property. For, by Article XII of the 1883 Convention, each of the contracting parties undertook to establish a special service to deal with industrial property and a central office to communicate to the general public and interested parties all information concerning patents, designs, and trade-marks.

Any international conference must make provision for alteration and revision in order to meet changing circumstances and to correct any defects which experience may show to exist in the original instrument. These conferences of revision have been held at Rome in 1886, at Madrid in 1890–91, at Brussels in

1897–1900, at Warsaw in 1911, at The Hague in 1925–26, and at London in 1933.

The conferences have established an important principle, namely, national and unionist treatment of industrial property within the countries that were members of the Union. Citizens of each signatory state enjoy within the other countries of the group a most-favored-nation position and, except for some slight "procedural discriminations," they enjoy a status of equality. In addition to the national-treatment principle (which may not give adequate protection to citizens of countries with more advanced legislation concerning industrial property protection) the Convention agreement affords other advantages:

> By various provisions constituting a common legislation for all the members of the Union, it laid down a number of rules and principles purporting to furnish an equitable solution of the problems arising from the diversities of legislation and the need for protection of vested rights of industrial property having a really international character.[42]

Some examples, taken from Ladas' excellent work on which this section is based, will illustrate the "unionist" principle:

1. Applicants for patents, utility and industrial designs, and models or trade-marks within the Union have a right of priority for twelve months in the case of patents and utility models, six months for trade-marks and industrial designs and models. In this way a citizen of country A may be protected for a longer period of time in country B than the domestic law would have allowed. "Unionist" treatment thus gives more favorable privileges than "nationalist" treatment.

2. Applicants do not have to apply in all countries at once, and are thereby saved considerable anxiety and expense. Their application holds good throughout the whole Union.

3. An inventor will enjoy what is called "independence of patent." If he loses his patent right in one country, he does not forfeit it elsewhere in the Union. Thus he will not suffer universal loss by discontinuing his taxes on a patent in one land or in any other way ceasing to maintain its validity.

4. Inventors no longer forfeit their patent for importing into the country granting the patent patented articles manufactured abroad. They are thereby enabled to test out sales possibilities within a new country and to ascertain whether it would be profitable for them to market the invention there.

[42] S. P. Ladas, *The International Protection of Industrial Property*, p. 210.

5. The convention considerably lightened the task of inventors by lengthening the time which may elapse before they must work their patents. Inventors are thereby permitted to experiment and adapt their inventions to the needs of the country and to overcome technical defects without the threat of immediate forfeiture.

6. The convention agreed upon a time of grace (extended by the 1925 Hague Conference) within which taxes may be paid in order to prevent forfeiture of patents.

7. By admitting a regularly registered trade-mark from one country into other countries of the Union, the convention and its subsequent modifications removed several obstacles to the acquisition of trade-mark rights in foreign countries, made easier a more universal protection of trade names, and provided for special measures to protect parties from the fraudulent use of trade names and marks of origin.

8. Finally, it made general reference to, but no specific provision for, measures which should be taken against unfair competition.[43]

International problems have arisen from the desire to protect not only industrial property rights but also what has come to be known as literary and artistic property—a term which covers the copyrights of authors, the rights of translation of dramatic and musical performances, copyrights of mechanical musical instruments, moving-picture rights, radio-broadcasting rights, and articles in newspapers and periodicals. Within recent years the spread of education, the growing passion for the cinema, and the development of the gramophone and radio have extended the market for all kinds of creative cultural products; and authors and composers are naturally anxious that they shall obtain some benefit from the enjoyment of their works by people in foreign countries as well as in their own land.

In early days there was little question of protecting the authors' rights;[44] rather the emphasis was placed upon the protection of the printers so that they would not suffer from piratical competition. Indeed, for some time it was debated whether or not authors really possessed property rights[45] in their creations and

[43] *Ibid.*, chapter xxxi.

[44] See Stephen P. Ladas, *The International Protection of Literary and Artistic Property* (The Macmillan Company, New York, 1938) for an exhaustive treatment.

[45] F. Ruffini, "De la protection internationale des droits sur les œuvres littéraires et artistiques," *Académie de Droit International, Recueil des Cours*, Vol. II (1926), Tome 12.

whether or not the government should give them a grant or privilege for what they had produced. Determination of the fundamental nature of literary and artistic rights involves abstruse philosophical and legal analysis which cannot be dealt with here,[46] except to note that in 1936 the French courts departed from the idea that authors had a property right and upheld the theory that they possessed a moral and pecuniary right based upon the idea of *droit d'auteur,* a concept *sui generis.*

In the first period before 1800 governments granted privileges to individual authors. Then followed a period of general legislation to protect authors' rights, begun in Great Britain in 1709, in Denmark in 1741, in the United States in 1790, and in France in 1793. In the nineteenth century a movement to protect foreign as well as national authors arose because the great spread of popular education had brought the need for copyright legislation on a wider scale. A number of Belgian publishers piratically reprinted French books, exported their products to foreign countries, and competed with books legitimately produced in France.[47] The United States was also the scene of much literary piracy. In 1852 the French government took a momentous step by declaring that the counterfeiting within France of works published abroad and the exportation and transportation of counterfeited works were unlawful. By its action France gained a strong moral position; other countries followed its example, and within the next ten years over twenty treaties for the protection of authors' rights were signed. Other bilateral treaties were entered into, and by 1886 thirty-three such agreements were in force. Unfortunately, they lacked uniformity in the definition of the works protected, the amount of protection granted, and the length of the period of protection, and in several other detailed and technical respects. The time was ripe for a comprehensive attack upon the whole problem and at the Berne conference in 1886[48] the delegates drew up a comprehensive convention which constitutes a landmark in the history of literary and artistic property.[49]

The convention provided: (1) foreigners should enjoy the

[46] Ladas, *The International Protection of Literary and Artistic Property,* chapter ii.

[47] Ruffini, *op. cit.,* p. 446: "La Contrefaçon finit par constituer une véritable branche de l'industrie nationale dans certains pays ..."

[48] Ruffini tells how the Conference decided to form a Union rather than to try to obtain uniform legislation by governments: "L'exemple des Unions déjà fondées [Télégraphe, Géodésie, Postes] avait porté ses fruits" (p. 454).

[49] The Union, it was claimed, would cover territory inhabited by about five hundred million people, and would include all the principal European countries.

same advantages in each country of the Union as the nationals of that country; (2) no formalities were required except those prescribed by the country of origin; (3) translation rights were fixed at ten years; (4) newspaper and periodical articles might be reproduced unless reproduction was explicitly forbidden; (5) dramatical and musical works were protected on the national-treatment principle; (6) other detailed provisions too technical for treatment here.

Conferences of revision were held in Paris in 1896, in Berlin in 1908, and in Rome in 1928. The Union established an international bureau, which was placed under the administration of the Swiss government. Its functions were to collect and publish information relating to the protection of the rights of authors, make general studies, edit a periodical, and prepare conferences of revision. The same general problems of unanimity, reservations, and partial revision which confront international conferences in other fields concern conferences which deal with literary and artistic property.

With the growth of mechanical musical instruments, such as musical boxes, mechanical pianos, phonographs, and gramophones, the problem of protecting the rights of composers grew in scope. The 1886 Convention had stated that the manufacture and sale of devices for the mechanical production of musical works which are copyrighted should not be considered an infringement of musical copyright. Within the next few years so many developments had taken place that modifications had to be introduced, since it was not fair to exclude authors and composers from participating in the profits made from the use of their works on so large a scale. It was finally agreed that manufacturers of gramophones and phonographs, pianolas, etc., should be permitted to reproduce musical compositions on payment of royalties to the composer. The 1908 Berlin Convention provided that authors of musical works should have the exclusive right to authorize the adaptation of their works for musical reproduction, as well as the public performance of their works by means of such instruments.

The moving picture had not come into existence when the 1886 Convention was adopted. At Berlin in 1908 the Conference adopted the proposal of the French government that authors be granted the exclusive right to authorize the reproduction and the public exhibition of their works by means of motion pictures. Many technical problems arose—whether cinematograph work was mainly photographic or involved a creative element; what

constituted reproduction and what constituted adaptation; whether cinematograph works could be circulated outside of a given territory with special authorization; the relation between sound and talking films, etc.—problems too intricate to be dealt with in this volume.

Radio broadcasting did not become a subject for international treatment until after many years had elapsed. An International Telegraph Convention had been signed in Berlin in 1906, and a new convention was adopted in London in 1912. These conferences dealt mainly with the more technical aspects of radio, and not until 1925 occurred the first international congress to deal with the rights of radio authors and artists.

At Rome in 1928 a proposal was made to recognize the author's exclusive right to permit his work to be broadcast by radio. The French and Italians led the delegations which supported this policy; but some countries urged that radio should be regarded as a cultural and social instrument for public welfare and that national educational objectives should take precedence over the rights of authors. They feared that monopolistic tendencies would develop and that excessive royalties might be demanded. The conference finally reached a compromise. Authors of literary and artistic works have since enjoyed the exclusive right to permit radio diffusion of their works to the public; but the national legislatures of the respective countries can regulate the conditions for the exercise of this right within their own territory, although they may not "adversely affect the moral right of the author." The Rome Conference did not attempt to regulate rebroadcasting, an omission which Ladas believes to be "rather unfortunate."[50] He suggests that the Convention should be expanded to include regulation of the public diffusion by receiving sets and recording radio diffusion on mechanical instruments; this and the adoption of a rule that the author has the sole right to authorize the recitation of his literary works over the radio are desirable. Other technical problems too intricate to discuss here remain to be dealt with by international agreement.

The 1886 Berne Convention permitted the reproduction in other countries, by translation or in the original, of articles in newspapers and periodicals except when authors or publishers expressly forbade it. It did not prohibit headline news of the day and other material which did not possess the "character of

[50] Ladas, *The International Protection of Literary and Artistic Property*, p. 480. For protection of performers' rights, see above, pp. 357–59.

intellectual creation," but it placed literary and artistic creations under copyright protection. At Paris in 1896 the conference made more specific provision for the protection of authors' rights. The Convention was revised to protect serial novels and fiction, including their reproduction and translation, to permit reproduction of current news and political discussion, and the reproduction of newspaper and periodical articles, provided that the authors or publishers did not forbid the reproduction. Other modifications were adopted at Berlin in 1908 and at Rome in 1928.

The evidence in this chapter should have made clear that the welfare of a growing number of people—merchants, bankers, investors, consumers, authors, inventors, performers, and many others—depends upon the development of adequate international machinery for the promotion and protection of their rights. The same kind of political and legal methods which have been found necessary within nations are becoming indispensable over a wider field of human intercourse. International organization is obviously a natural outgrowth of new conditions and not an artificial addition to national government.

If, however, world security cannot be obtained, we may expect to see a revival of diplomatic and possibly of armed support of private interests abroad. If the Soviet Union and the United States should develop an unchecked rivalry, not only will competition take place in atomic and other military weapons, but a struggle will develop for strategic raw materials and for all economic supplies important to a country in wartime. In such an event it may be difficult to see whether a vigorous oil policy in the Middle East, for example, will be justified by an appeal to the necessity of protecting American private interests abroad or in terms of national security. We have discussed above the proposals which arise out of the impact of state-trading and nonstate-trading systems. Unless the utmost care is exercised, the world may find an intensification of dollar diplomacy of governments assuming responsibility for assuring the safety and security of investments abroad. Indeed, the Assistant Secretary of State for Economic Affairs late in 1946 declared that American capital invested in strategic minerals in foreign countries would obtain the protection of the United States government so that America might maintain access to such minerals as oil, bauxite, tin, copper, nitrates, chromium, and uranium in time of war.

If such a policy should be adopted, it would undoubtedly

arouse great antagonism on the part of the peoples of other countries and their governments, for as we have already seen, the Calvo and Drago Doctrines were but two expressions of protest against the doctrine of diplomatic and military protection of citizens abroad. Such a policy would also bear witness to the growing influence of military factors upon foreign policy, even though certain economic interests associated with military power should appear to gain by the partnership of industry in the building up of national power.[51]

[51] Herbert Feis, *Seen from E.A.* (Alfred A. Knopf, New York, 1947), gives an interesting account of the interaction of private and public interests in recent international relations.

Chapter XI

CONSERVATION OF RESOURCES

SOMEWHERE H. G. Wells has remarked that the most urgent task which confronts the world today is to prevent the frightful wastage in the raw materials and resources of mankind. We are using up minerals, timber, and soil at an appalling rate, and are letting water power run to waste in a criminal fashion. The neglect is bad enough in time of peace; the intensified destruction is only too evident in time of war. It is true that the necessities of war impel men to better organization, even at the cost of liberty; but Wells is surely right in suggesting that mankind cannot go on trusting to the inventiveness of science to safeguard it against its follies. Fortunately, many nations have seen the necessity of engaging in programs of soil conservation, of reforestation, of preventing unjustifiable exploitation of oil, coal, and other mineral resources. The United States has undertaken remarkable schemes of hydroelectric power development, and undoubtedly Europe will have to engage in close international, and even federal, co-operation to make best use of its raw materials and resources, if it is to repair the damage done to its economic and social system by the present and the previous world wars. And in Lord Hailey's excellent *An African Survey* are several examples of the need for international co-operation to prevent soil erosion, to develop water supply, and to make mineral surveys.

We propose in this chapter to concentrate primarily upon the resources of the sea, partly by reason of the accessibility of evidence and partly because of consideration of space. The same general principles, however, will apply to the problem of conservation of resources in other realms of human activity.

RESOURCES OF THE SEA

Until recent times, people assumed that the resources of the sea were inexhaustible, and the thought of conservation seldom troubled them. The spectacle of intensive fishing with modern gear aroused little or no apprehension. Fishermen obtained large catches

and recklessly wasted the smaller fish and the parts not easily usable. Then unmistakable evidence of decline in the fisheries began to appear. The same catch involved greater effort per man and per unit of gear and an increased operating cost. The development of more efficient gear, of larger boats, and of better accessory equipment led to more intensive fishing. Because of the greater technical efficiency required, the better and more expensive ships came to be regarded as a normal cost, and this mounting cost of operations became a major factor in producing economic difficulties. According to Dr. W. F. Thompson, the 1914–15 crisis in the Pacific halibut industry and the general crisis in European fisheries resulted, at first, not so much from the lack in the quantity of fish as from the marketing of a poorer quality of fish which had to be obtained from a great distance at a high cost. The overhead expenses drove people farther afield in an attempt to avert losses, and the cost of expansion in turn became an extra charge against the fishing industry. Intensification of fishing led naturally to depletion of grounds and in some cases to their ultimate abandonment. It also was responsible for an international overlapping of zones of interest. Iceland, the North Sea, the Grand Banks of Newfoundland, the Bering Sea, the Arctic, and the Antarctic all witnessed the beginning and the intensive development of international competition, which hastened the depletion of fishing areas in those regions.

Unfortunately little or no preparation had been made to deal with the problem of international regulation and conservation. A rapidly developing crisis found the world unorganized, and unaware of the need not only for preventive but also for positive measures. Within national territorial waters and streams measures of conservation have been taken. But even here the decline of fish has been heavy, and national conservation policies have not yet been wholly successful. The decline has not been due merely to intensive fishing. Where industrialization has taken place many streams and rivers have become polluted, with disastrous consequences for the fisheries. Cities use rivers for sewerage purposes; ships discharge oil, and mills their waste products; factories pour out chemicals. Electric power projects, like Grand Coulee Dam and Bonneville Dam, place obstacles in the way of fish which proceed up stream in order to spawn. Irrigation projects have also had adverse effects. In order to meet these situations, governments have taken remedial action. In some cases special runways have been created for the fish. In other places, the authorities have set

up hatcheries. Conservation measures now require better scientific investigation and economic regulation. The collecting of biological and statistical data will make possible an accurate determination of the amount of fish which may be caught, so that society may maintain a balance between the human need and the source of supply.

These measures on a national scale, excellent in themselves, are proving to be inadequate because fish which inhabit the ocean beyond the boundary limit of territorial waters (usually three miles) are *res nullius* and can be taken by anyone. Fishing by foreigners on the high seas may thus threaten national fisheries, and fishing becomes an international problem (1) when rival national fishing fleets meet on the same open-sea fishing areas, (2) when the intensive fishing depletes the supply and international conservation and regulation become recognized as a necessity, (3) when open-ocean fishing outside the three-mile limit has repercussions upon the national industry.

The North Sea.—We need not trace here the early history of the complex fishery problems in the North Sea, which involved questions of maritime jurisdiction, striking of the flag, issuance of fishing licenses, and even commercial supremacy at sea.[1]

We have noted elsewhere in this book that governments in former times claimed sovereignty over large expanses of ocean; in the nineteenth century most of these claims disappeared and the question shifted to the extent of a country's jurisdiction over its territorial waters. The 1839 Anglo-French Convention was the first international bilateral agreement to fix the three-mile limit. It also provided for a ten-mile opening for bays, and a three-mile distance out to sea from that line, with special exceptions for oyster beds which extended for some miles. Fulton, while praising the treaty suggested that "the selection of so narrow a strip of the adjacent sea was in some respects unfortunate, and has probably acted injuriously on the interests of the sea fisheries."[2] The Anglo-French treaty did not end all disputes, because it did not settle the boundary limits relative to the fishermen of other nations. Belgians, for example, invaded the three-mile zone and even anchored vessels in the harbors and bays of Scotland. It was necessary to sign a convention in 1852 between Great Britain and Belgium to regulate the situation. These and other bilateral

[1] T. A. W. Fulton, *The Sovereignty of the Sea* (W. Blackwood and Sons, London, 1911), gives a good historical survey.

[2] *Op. cit.*, p. 316.

treaties helped to bring order into the realm of fisheries; but they proved to be insufficient. They could not deal with the banks in the North Sea where the fish spawned, because these banks lay outside of any national jurisdiction. Moreover, the fishermen of the various countries in the North Sea and elsewhere quarreled. They accused each other of cutting and stealing lines; the "Belgian Devil," a sharp instrument hung overboard to cut through fishing nets in the sea which impeded boats, created much discontent. The problem demanded a more comprehensive settlement than could be reached by bilateral treaty methods.

An inquiry by Mr. W. H. Higgin in 1880 revealed a most unsatisfactory state of affairs in the North Sea. British, Belgian, French, and Dutch boats operated under conditions which produced dissension and disorder, and Mr. Higgin suggested that some measure of international organization was urgently required. Great Britain thereupon invited France, Belgium, Holland, Sweden and Norway, and Denmark to consider possible remedies. Holland proposed the adoption of one joint convention instead of relying upon a series of bilateral agreements. A conference of the North Sea powers, including Germany, which had requested to come in, met at The Hague in 1881. Prolonged discussion ensued over the definition of territorial waters for exclusive fishery purposes. Britain and Belgium opposed, and France advocated, the adoption of three geographic miles from the low-water edge and a three-mile limit beyond the ten-mile wide bay. The French view finally prevailed. The German delegate showed praiseworthy foresight in urging that international measures be taken to prevent the destruction of small fish; but France and Great Britain objected, and this proposal, unfortunately, was not adopted. Nor did the suggestion that fishing vessels be regarded as neutral in time of war meet with approval.

The Convention was designed to regulate the policing of fisheries outside of territorial waters.[3] It stipulated the limits of the North Sea; made provision for the numbering and lettering of vessels; regulated the different methods of fishing, especially trawling and drift nets; prohibited the use of gear-destroying apparatus; drew up rules for the salvage of derelict gear and for freedom of navigation and anchorage in territorial waters; and empowered ships commissioned by the signatory powers to seize a fishing vessel found violating the treaty provisions and to de-

[3] C. B. V. Meyer, "The Extent of Jurisdiction in Coastal Waters," *A. W. Sijthoff's Uitgeversmaatschappij* (N.V., Leiden, 1937), p. 109.

liver it to the government of its own country for trial. The Convention was to last for five years subject to one year's notice of termination. It was "an international document of high importance to the sea fisheries," and was followed by national legislative action. Norway and Sweden did not sign the treaty because they were not satisfied with the clause providing for a three-mile limit—they wanted a four-mile limit—but they were empowered to join later.

New methods of fishing which followed the introduction of trawling (dragging of huge nets along the bottom of the sea), improvements in marketing of fish, the use of steamships instead of sailing vessels, and the growth of the number of the ships engaged led to the impoverishment of the North Sea and other traditional fishing grounds. The trawlers thereupon sailed to more distant areas, and Iceland, the Bay of Biscay, the Moroccan Coast, and even the Arctic Circle witnessed the invasion of the energetic foreigner. Governments passed measures to limit the use of trawl fishing; but the native inhabitants had to face the fact that trawlers could fish outside the three-mile limit and in this way threaten domestic supplies. Not only that, but the foreign vessels threw away "thousands of tons" of fish, mature and immature. One Iceland correspondent wrote that "the ground, which is valuable for fishing, is completely rotten with the refuse of the trawlers . . . . the ground is fairly poisoned."[4] Fishermen demanded international action to deal with the growing danger. They realized that the optimistic view concerning the unlimited resources of the sea was unjustified, and in 1883 and later attempted to find some remedy. English fishers petitioned Parliament after unsuccessfully trying the policy of voluntarily refraining from using certain areas. A select committee in 1893 recommended that an international conference of North Sea powers be called to extend the three-mile limit for fishery purposes. Little was done before 1914; and Fulton, at the end of his excellent volume, published in 1911, hoped that an international conference would soon be convened to consider how to make the regulation of fisheries more effective.

Several authorities warned that the species of fish most useful to man would soon become extinct if not safeguarded by regulatory and conservation measures. Accordingly Sweden invited representatives from the North Sea countries to meet at Stockholm in June 1899 and at Christiania in May 1901 to arrange a program of international scientific investigation of the North Sea, the Nor-

[4] T. A. W. Fulton, *op. cit.*, p. 714.

wegian Sea, and the Baltic in the interests of the fisheries. The conferences set up the International Council for the Exploration of the Sea, which held its first meeting in July 1902. The Council gathered together much valuable scientific information, but at the time of the appearance of Fulton's book it had apparently produced no report concerning possible conservation and regulatory measures; and Fulton himself lamented that "meanwhile, the condition of the fishing-grounds in the North Sea is described as serious by those who ought to know most about it—the trawlers who are working daily there; and if no remedy is timously applied, the measures which will eventually be necessary will transcend those which are now proposed."[5]

The Permanent International Council for the Exploration of the Sea divided its investigations of the North Sea fisheries among the member countries. Norway concentrated upon herring, cod, haddock, and coal fish; Great Britain, Belgium, Denmark, Sweden, and Holland concentrated upon plaice; while hake was assigned to France, which had some help from research vessels supplied by Britain and Ireland. Howell, commenting upon this international work of investigation, suggested that much of its excellent material was not made available in popular form to the owners and officers of the fishing vessels, and that it was necessary to take energetic steps to bring the findings of science to those most immediately interested.[6]

The development of steam trawlers, especially after 1911, "alarmed the herring-drifters," who found that their methods of fishing were being endangered by the new equipment. By 1913 nearly 80 per cent of the landings of trawled herring were made in the North Sea. Deputations waited upon governments and urged that the trawlers were using such small meshes that "large numbers of undersized herring and whitefish" were destroyed. Swedes complained that haddock and whiting were suffering as a result of the spread of the herring trawl, and in 1912 the International Council decided to investigate the herring trawlers, in so far as they affected the destruction of undersized fish of other species.[7] The World War of 1914–1918 led to an interruption of the Committee's work as well as of plans for co-operation among English,

[5] Fulton, *op. cit.*, p. 738.

[6] G. C. L. Howell, *Ocean Research and the Great Fisheries* (Oxford University Press, 1921), chapter iii.

[7] J. Travis Jenkins, *The Herring and the Herring Fisheries* (P. S. King & Son, London, 1927), p. 147.

Scottish, Dutch, German, French, and Russian herring interests to protect the herring fisheries.

After 1918, efforts were resumed; and the International Council, in 1920, in view of the pressing nature of the plaice problem, suggested a temporary program of research and co-operation. Dutch and Danish representatives presented studies upon this problem which brought out the same principles as investigations elsewhere had revealed, i.e.: that restrictions upon vessels would be justifiable only if it could be shown that they would prevent depletion; that to be effective they must be enforced; that to be enforced the fishermen must believe that conservation measures were necessary.

In 1921 the United States, Canada, Newfoundland, and France founded the North American Commission for Fisheries Research. An International Commission for the Exploration of the Mediterranean Sea had already been established in 1911.[8] But it was not until 1937 that the countries around the North Sea signed a general convention for the conservation of the fisheries in that area. In that year Belgium, Denmark, Germany, Great Britain, Iceland, the Irish Free State, Netherlands, Norway, Poland, and Sweden agreed to establish a permanent commission which was to have the power to recommend extensions and alterations of the Convention itself. The agreement limited the size of mesh to be used in the fishing nets and prescribed the minimum sizes of fish which might be landed and sold. The present war has undoubtedly interrupted the work of the Commission, and one may say that the intense political rivalries of Europe have been responsible for the lagging behind of the North Sea countries in international organization for the conservation of fisheries.

The following example will illustrate the need for international co-operation in the North Sea fisheries. Norwegian fishermen set out nets and lines which stretched underneath the water; the men left the gear and came back next day to haul it in. The British, however, dragged the bed of the sea with their trolls, and thereby frequently damaged the Norwegian gear. Heavy financial losses ensued, and much bitterness developed. Much time was consumed in determining the extent of the losses, and if the men were arrested and taken for trial their catch was likely to deteriorate and be

[8] The Commission's first meeting was interrupted by the Italo-Turkish War of 1911; the World War of 1914–1918 prevented a meeting planned for 1915; but gatherings were held regularly during the postwar period. See P. Jessup, "L'Exploitation des richesses de la mer," *Académie de Droit International Recueil des Cours*, Vol. XXIX (1929), p. 427.

ruined. More efficient and rapid methods of settling disputes were urgently needed.

Such a method, it was hoped, was provided for by the agreement of November 5, 1934, which established a special tribunal to deal systematically and expeditiously with claims for damages. Each of the British and Norwegian governments nominates two persons on the tribunal, which possesses no compulsory powers but will consider any dispute submitted to it. The governments encourage the use of the Commission because it is quicker and less expensive than the ordinary law courts, to which, of course, parties can resort, if they so desire. The Commission is to operate in Norwegian waters; and, for purposes of formal equality, a similar tribunal has been set up to deal with disputes arising in British waters, although authorities did not anticipate that this second Commission would be very fully occupied "as it is quite exceptional for Norwegian vessels to fish in English waters."[9]

Here we find another instance of efficient dealing with the fishery question from what has well been described the causal rather than spatial point of view, when national boundaries have become inconsistent with the essential needs of fisheries control both inside and outside of territorial waters.

Seal Fisheries.—Of the fur seal, which constitutes an important source of the world's fur supply, over 90 per cent are to be found in the herds which frequent the Pribilof Islands. In 1867, when the United States acquired Alaska, it was estimated that there were about 5,000,000 seals in the surrounding sea area. Some forty years later, the number had been reduced to approximately 150,000, and it seemed likely that the seals would "suffer the same fate of extermination at the hands of greedy hunters that had overtaken animals of similar species elsewhere."[10] Fortunately, an international agreement, which followed a long period of controversy, was at length successfully negotiated.

In 1868 Congress forbade the killing of certain fur-bearing animals "within the limits of Alaska territory, or in the waters thereof." Congressional acts of 1869 and 1870 proclaimed the Pribilof Islands a government reserve, and prohibited the killing of fur seals upon the islands or in adjacent waters except in June,

[9] *British Yearbook of International Law, 1935.*

[10] L. M. Buchanan, "History of the Fur-seal Industry of the Pribilof Islands" (unpublished thesis, University of Washington, 1929), p. 3; J. H. Latané and D. W. Wainhouse, *A History of American Foreign Policy* (Odyssey Press, New York, 1940), pp. 461–72.

July, September, and October; forbade the use of firearms; and authorized the Secretary of the Treasury to lease for twenty years the right of taking fur seals up to the number of 100,000 annually.

Two decades showed clearly that the measures taken were insufficient to prevent an alarming decline in the fur seals—the number dropped from over 3,000,000 in 1874 to 951,000 in 1890. The main reason was that foreigners from British Columbia, Hawaii, and even from the South Seas, attracted by the prospect of great earnings by reason of the increase in the price of sealskins (from $2.50 in 1870 to $30 in 1890), engaged in "pelagic" sealing, i.e., capture of seals in the open ocean. The newcomers, using spears and firearms, made no attempt to distinguish between the male and female of the herd, with the result that not only were mothers and potential mothers killed but thousands of young seals were destroyed through being left to starve on the rookeries.

For over thirty years disputes between the United States and Canada and Great Britain prevented any agreement; in consequence the decline in the number of seals became so serious as to threaten the species with extermination. Fortunately a multilateral treaty was signed in 1911 between the United States, Great Britain, Japan, and Russia. The treaty provided that no person might engage in pelagic sealing in the North Pacific Ocean, and that anyone so doing might be seized by the proper naval forces. The signatories undertook not to permit any part of their territory to be used in connection with illegal sealing. The United States promised to hand over to Canada and to Japan 15 per cent of all the seals taken on the Pribilof and other islands belonging to the United States. Japan agreed to deliver to the United States 10 per cent of the sealskins taken on the islands of her jurisdiction. The Convention was to remain in force for fifteen years and thereafter, subject to twelve months' notice.

Congress ratified the treaty in 1912, and after an animated discussion suspended all killing of fur seals on the Pribilof Islands for five years. It prohibited vessels from being equipped for pelagic sealing within any harbor of the United States or its possessions; nor could skins obtained from pelagic sealing be sold in this country.

The seals increased from 132,000 to more than 400,000 during the closed period. Since that time careful conservation and protection measures have succeeded in rehabilitating the fur seals. The United States Coast Guard maintains a patrol during the spring and fall migrations. Cutters remain in the Bering Sea

while the seals are in the Pribilof Islands. And the government stamps every sealskin which is sold in the markets of the United States. It maintains a medical establishment, schools, and other social services for the inhabitants of the Islands, who number approximately four hundred. The officials of the Bureau of Fisheries make elaborate tables concerning the number of seals, the annual killings, and the shipment and sale of the skins, and deliver the skins to the Fouke Fur Company at St. Louis, Missouri. In 1935, 57,290 fur seals were killed. It was estimated that the herd then totaled 1,550,913, an increase of 120,495 over the previous year.

In this area international agreement has succeeded in preserving an industry which unrestricted competition had been on the point of exterminating. Governments, instead of continuing to use the doctrine of sovereignty to prevent constructive measures, wisely adopted a quasi-international solution; the United States does the administrative and scientific work; the other countries share in the benefits.

In 1941 Japan gave notice of its determination to denounce the treaty. The Canadian and United States governments then made a temporary arrangement to protect their rights and interests in the fur seal resources of the North Pacific Ocean and in the fur seal herds in the Pribilof Islands. The provisional agreement was signed late in 1942, and Congress passed an act to give effect to the agreement in February 1944,[11] which came into force on May 30, 1944. Under its terms, Canada's share of the fur sealskins was increased from 15 to 20 per cent; provision was made for pelagic sealing under emergency circumstances; and nationals of either party might obtain a special permit to take fur seals for purposes of scientific research subject to appropriate conditions.

Halibut.—The halibut provides another of the fisheries problems.[12] This species, which inhabits the North Pacific and North Atlantic Oceans, has yielded about 90,000,000 pounds annually, of which the Pacific halibut accounts for about 60 per cent; its value amounts to perhaps $7,000,000 a year. In the Pacific active fishing operations began about 1888 near Cape Flattery and gradually reached northward along the coast until now it extends to a distance of about eighteen hundred miles. The area traversed in

[11] *Public Law 237, 78th Congress.*

[12] This section is based upon the *Reports of the International Fisheries Commission,* No. 1 (1928), No. 2 (1930), No. 5 (1930), No. 6 (1931), and No. 7 (1930)

order to maintain the present output has thus increased enormously, and much more intensive effort is needed. The 1928 report of the International Fisheries Commission shows that the amount of gear then used on the older banks was about two and a half times the quantity previously required, but that the catch in the same area was only about 40 per cent of the previous yield. The Commission also noted that six times as much gear was necessary in order to maintain the catch of that year; it reported an increase in the number of undersized fish and concluded that the halibut fishery faced a serious situation. In 1930 it reported a fall in abundance on the older grounds from a yield of about 300 to 35 pounds per unit of gear.

The problem becomes an international one because it cannot be dealt with by one government alone. Most of the fishing is done beyond the limits of territorial waters; Canada and the United States might each impose restrictions on their own citizens or vessels operating on the high seas; but these restrictions would not apply to the citizens of the other country. Should only one government take action to limit its own fishermen, the rivals from over the border would be given an unfair advantage. Dr. W. F. Thompson, former Director of the International Fisheries Commission, well remarks: "The interests of Canada and the United States in this high seas fishery are too intimately related to one another. They cannot be separated."

At the 1918 conference on fisheries, Canadian and United States representatives recommended a closed season of three months and a joint scientific investigation for the purpose of ascertaining more details concerning the life history of the halibut; it dealt also with questions of reciprocal port privileges and tariff duties on fish. The treaty, however, was too complicated and cut across too many interests. Authorities realized that it would be better to concentrate on fewer objectives, and especially to attempt to limit the fishing to a nine months' period and thereby provide an extended closed season. This step was successfully accomplished by the United States–Canadian Treaty of 1924.

The immediate purpose of the treaty was to offset the consequences of overproduction. From 1905, when gasoline engines were installed and vessels could go farther afield, until 1914, technical improvements revolutionized the fisheries. The installation of the Diesel engine, the adoption of electric lights on deck enabling fishing to take place twenty-four hours of the day, the utilization of steel cables for anchoring in great depths, and the

further development of cold-storage plants gave a great impetus to fishing and led to overproduction. Prices were forced down at a time when the greater cost of the fishing boats and the decline in the yield of halibut made the expenses of production higher than ever before; these factors threatened heavy loss to the industry. The treaty was designed to curtail fishing during the most difficult and expensive time of the year, from November to February; its origin lay, then, in the desire not primarily to conserve the halibut but to lessen the costs of production.

The treaty, however, went further, and its terms may be thus summarized:

1. An annual closed season from November 15 to February 15, inclusive, which may be modified at the conclusion of the third season if the international commission set up by the treaty so recommends. Any halibut incidentally caught outside of this period during other fishing operations must either be used as food for the crew or be handed over to the public authorities of the United States and Canada to be sold for the public benefit.
2. Vessels of either United States or Canada may be seized by the public officers of either country, except that within their own territorial waters they are subject to the exclusive jurisdiction of their own national officials, offenders being handed over to their own country for trial.
3. A commission of four members, two from each country, is established in order to study the life history of the halibut and to make recommendations concerning its preservation and development.
4. The convention is to last for five years; and shall remain in force thereafter until two years following the notice of denunciation by either party.
5. Both parties agree to implement the treaty by suitable legislation. This has been done and includes the closing of ports for illegal fishing or illegal preparation to fish, patrolling of all the fishing grounds, and penalties for violating the convention.

The international history of the halibut since 1924 centers largely in the work of the Commission which was set up by the treaty and the scientific investigations of the experts who work under the director (first Dr. W. F. Thompson and now Dr. H. A. Dunlop). With them are associated scientific and other assistants, a librarian, and a captain and crew of the boat which is chartered for the purpose of making investigations at sea. The expenses of the staff are met by appropriations made by each government; the total has varied from $15,000 to $25,000 a year.

The scientific staff has done extraordinarily valuable work in determining the present condition of the fisheries by means of collecting as complete statistics as possible. Within the records of the International Commission are to be found the logs of fishermen operating for the past twenty to thirty years; and, although these statistical data were not complete, they helped to give results sufficiently accurate to enable certain tentative conclusions to be reached. It is impossible for a layman to reproduce the impression made upon him by the careful collection of statistics, the plotting of graphs, and the special studies of the distribution and mobility of the halibut. One small illustration may be given: Many thousands of small fish have been tagged and then thrown overboard. Several thousand have been recovered by fishermen, who collect a reward for each tag returned to the International Fisheries Commission. From an examination of the date, locality, depth, and total catch made at the time, the Commission obtained a history of the fish which revealed clearly "the tremendous growth in the amount of fishing, the great increase in total catch, and the resultant ominous decline from overfishing."

After nearly five years of work, the Commission concluded that any further increase in the intensity of fishing must be prevented. Dr. Thompson suggested the need of an additional control, which must be flexible and direct, based upon "constant and long-continued observation of rate of growth, abundances as artificially and naturally affected, and the yield of the stock." The 1924 Treaty, which gave the Commission power of investigation only, should be enlarged to give it power of control.

The International Fisheries Commission in 1928 recommended the limitation of the catch in certain defined areas to a predetermined percentage annually. The closed season provided by the 1924 Treaty had not resulted in a reduction in the total annual catch but had only made for less expensive operation costs. The decline in the halibut had been general, but it occurred in varying degrees on different parts of the coast. For this reason, and because it is necessary to keep enough young fish to produce spawning adults in each area, regulations to produce and protect such a spawning reserve must be adapted to different conditions in different areas.

No uniform protection of a single class of fish, such as the spawners, no closed season, no size limit or limit on gear, will be found to apply equally and efficiently, and while a limitation of area and catch is recommended, close study would be needed, and frequent revision

of the rate of reduction, varying with the need in various areas, which implies the formation of such areas for administrative purposes.

Therefore, the Commission urged the permanent closure of small fish grounds, and the prevention of gear regarded as unduly destructive. The halibut varies from two or three pounds to over two hundred pounds, and it grows so slowly that at twelve years only about 50 per cent of the fish are mature; and since very small fish are of little commercial value, it is economically desirable to protect them. Of the various methods suggested toward this end, the Commission feels that the closure of young fish grounds is superior to imposing a size limit on catchment or to the prohibition of small-sized hooks, though the latter might help in certain cases.

The Commission recommended also: (1) the extension of the closed season by two weeks, with the right to alter the period if necessity should arise; (2) the licensing of vessels fishing for halibut in treaty waters, licenses to be granted under conditions which would enable the Commission to enforce the collection of statistical data necessary for its scientific work; and (3) drawing attention to "the very serious condition of this great fishery, and the necessity for prompt action to rehabilitate it."

The two governments embodied several of the recommendations in a second Halibut Treaty, which was signed in 1930. In 1937 a third treaty clarified some points. The results have been extremely gratifying. International scientific control has increased the abundance of halibut upon the banks. "The same amount of halibut is caught with just one-half the work that was required before regulation. This has tended to reduce the cost of production." The quality and size of the catch have improved. And yet

> the total amount of fish taken each year has not been reduced by the Commission from that which formerly was landed before regulation. On the contrary, it is considerably larger than it would have been had the decline been permitted to continue. . . . . Still more important from the standpoint of the future is the fact that the number of spawning fish is being gradually increased. This will ensure permanency and high productivity of the resource to the people of the United States and Canada.

In some respects, the methods and work of the Halibut Commission illustrate international organization at its best: (1) It has grown out of the needs of two countries, and it has been adapted to these needs. (2) It embodies a happy co-operation of political

and scientific elements. Without the scientific data assembled by the experts there undoubtedly would have been a continual decline in the halibut; and without the prior political agreement, the scientific work would not have been possible, as is seen in Europe, where the scientist has been unable to do much in conserving the fisheries because of the failure of governments to reach a political understanding. (3) The successful outcome has been due also to the co-operation of the Canadian and American fishermen as well as their governments. The men have given considerable assistance to the Commission in the collection of scientific data and have supported each other in working out plans for the efficient marketing of the fish. "This voluntary control of the production by the industry is under the direction of the Halibut Production Control Board of the American fleet and of the Canadian Halibut Marketing Board for the Canadian."[18] In a highly specialized economic world, it would appear that the threefold co-operation of governments, scientific experts, and trade interests, including labor and capital, will produce the maximum results.

This international experiment has had a remarkable success within certain limits; but a number of awkward questions arise. What if other countries which have not been parties to the treaty come in, and attempt to fish in the open sea in such a manner as to threaten the whole conservation program which has been developed by American and Canadian effort? These two countries are building up the fisheries on the high seas, and establishing a right of ownership in which the moral claim can scarcely be disputed; but how may that moral claim be translated into effective legal form? The two countries have taken a step toward building up "sanctions," by refusing to permit the importation of halibut which is not caught in conformity with the treaty provisions. But will it be possible to say to Russia that her nationals cannot fish in these parts of the open ocean unless they observe the conditions prescribed by the International Commission? Gregory and Barnes put the matter thus:

The danger of possible interruption to the halibut conservation work cannot be too greatly stressed. At present the Pacific halibut banks are unquestionably being rehabilitated. This is a very delicate process, however; the reserve so far built up is small, capable of being swept away in one year of unregulated fishing. To bring the banks

[18] H. E. Gregory and Kathleen Barnes, *North Pacific Fisheries* (American Council, Institute of Pacific Relations, New York, 1939), p. 240.

back to anything like their former state of abundance will require years of careful regulation.[14]

Sockeye Salmon.—In 1872 the German Emperor in an arbitration award drew the western section of the boundary line between the United States and Canada and gave the San Juan Islands in Puget Sound to the former country. His decision was later to give rise to the protracted problem of the sockeye salmon.[15] This fish comes from the ocean north of the boundary line, passes to the south of the boundary into American waters, turns northward, and re-enters the ocean on the Canadian side before going up the Fraser River to spawn. After their period of spawning the small fingerlings make their way to the ocean. In their wanderings the salmon come under two political jurisdictions, and from this fact arises an international problem which has lasted for fifty years.

The sockeye-fishing industry started in the early 'fifties at Point Roberts; by 1890 many people had come into the business. The development of more efficient gear, the increased use of machinery in canneries, the introduction of refrigeration, the growth of transportation facilities, and the extension of markets resulted in intensified fishing and the beginning of the decline of the sockeye. Even by 1899 warnings were sounded, but no regulatory or conservation steps were taken. Canadian and United States fishermen quarreled, each national group accusing the other of obtaining an unfair percentage of the catch. The state of Washington and the province of British Columbia each made regulations providing for closed seasons and prohibiting certain kinds of gear. In 1905–6 a joint conference worked out a possible solution, but opposition from fishing interests in Washington rendered the attempt abortive. For several years the matter dragged on, until 1916, when Canada, weary of the delay, denounced a proposed treaty. Thus ended a determined effort to reach an international agreement on the sockeye problem.

In 1913 a great catastrophe occurred on the Fraser River. A rock slide caused the current to become so rapid as to prevent a fish from passing up the stream to spawn. The fish perished in countless thousands, and the economic loss was tremendous. Complaints of nonenforcement of regulations added to the bitterness

[14] Gregory and Barnes, *op. cit.*, p. 242.

[15] See M. W. Cox, "The Sockeye Salmon Controversy, an International Problem" (unpublished thesis, University of Washington, 1922).

between the two national groups, which a gentleman's agreement between the two states did not suffice to bring to an end.

At length commissioners were appointed to investigate the general problems. Once more the same differences arose: the time and length of the weekly and the annual closed season, the question of entirely closing the fisheries for a period of years, and the complicated problems of the use of traps and purse nets. A treaty was proposed which would have set up an international commission with effective powers to deal with closed seasons, gear, hatcheries, etc. Unfortunately, after Canada had approved the treaty, President Harding withdrew it, in August 1921.

So serious had the position become that the late Dean Cobb wrote that only a total cessation of fishing for several years could have "the slightest beneficial effect," and that the closed season proposed in the treaty could do little to rehabilitate the sockeye salmon. Nevertheless nothing was done for several years, until in May 1930 Canada and the United States signed a Convention. It was to apply to the Fraser River, to certain streams and lakes, and to other defined parts. Both nations undertook to have charts prepared and buoys and marks set up. An International Salmon Fisheries Commission of six members, three from each country, was to be established, and to continue in existence during the life of the Convention. It was to investigate the natural history of the sockeye, hatchery methods, and spawning-ground conditions, and might stock the waters with the sockeye by methods it deemed advisable; it might recommend to the governments the removal of obstructions to and improvement of the conditions for the ascent of the fish in the waters covered by the Convention. It was to report annually to the two governments. The cost of the Commission was to be borne equally by both countries. The Commission might prohibit the fishing of sockeye salmon at any time between January 1 and August 20, and its ruling was to have full effect until the Commission itself modified or set aside its determination; and it could prescribe types of gear and appliances. Any proposal of the Commission must receive the affirmative vote of at least two commissioners from each country in order to be effective. Thus action affecting either Canada or the United States could be taken only with the consent of the majority of the respective national members. The two countries were to make joint efforts to establish and expand the fishery. The Commission was to regulate conditions so as to enable each nation to obtain as nearly as possible an equal portion of the fish. Each party was to be responsible

for the enforcement of the regulations prescribed by the Commission. The treaty was to come into force after the exchange of ratifications and was to last sixteen years and for an additional year after notice of termination.

The 1930 Convention was held up first by Canadian opposition and then by the failure of the United States Senate to ratify until June 1936. At that time it inserted three reservations. Canada thereupon reconsidered the measure which it had meanwhile ratified. After further discussion the treaty entered into force in 1937.[16] A commission of three Americans and three Canadians is to investigate the sockeye salmon for eight years and then issue regulations for their preservation. The Commission may then limit or prohibit the taking of sockeye in the convention waters between June 1 and August 20 in any year. During the fishing period, inhabitants of the state of Washington may use any gear that is legal in that state, and a similar privilege is to be enjoyed by the inhabitants of British Columbia. The Commission is given authority to improve the spawning grounds, to develop fish culture, and to recommend methods of improving conditions in the streams.

In 1945 the Commission reported at the end of the eight-year period during which it was empowered to undertake scientific investigation but not to promulgate or enforce regulations. In this period it developed a system for gathering accurate statistics in order to regulate the fishery better during each season; it studied the spawning populations and explored the whole Fraser River watershed. The most important work was the almost complete removal of the block at Hell's Gate.[16a] Plans were made to eliminate other barriers. As the result of the Commission's work it could report an increase in sockeye in 1945 in some of the most depleted runs of the watershed.[17]

Alaska Salmon.—The Pacific salmon fisheries constitute one of the great natural resources of the world. The salmon pack is worth over $75,000,000 a year, of which Alaska's share amounts to nearly $45,000,000. The industry, which began in the 1870's and grew rapidly, was for many years unregulated, and canneries

[16] "Sockeye Salmon Fisheries," *United States Treaty Series* (Washington, D.C., 1937), No. 918.

[16a] William F. Thompson, "Effect of the Obstruction at Hell's Gate on the Sockeye Salmon on the Fraser River," *International Pacific Salmon Fisheries Commission Annual Report,* New Westminster, B.C., Canada, 1945.

[17] *International Pacific Salmon Fisheries Commission Annual Report* (1945), p. 4.

vied with each other in merciless competition. The intensive fishing and excessive numbers of traps had disastrous results on the fish which proceeded upstream to spawn; the resulting decline in the abundance of salmon forced the abandonment of several canneries.

In 1924 Congress placed the Alaskan fisheries under the Secretary of Commerce and gave supervisory and enforcement powers to the Bureau of Fisheries. It provided that at least 50 per cent of the salmon entering the rivers must be permitted to go upstream to spawn. The Bureau might close a badly depleted run for a period of years and might regulate the kind of gear, the time of the year, and the days of the week for fishing. Under these regulations it closed ninety-three fish-trap sites in 1934, and in 1935 prohibited commercial fishing in the Bristol Bay region. Gregory and Barnes called the Act "a landmark in conservation philosophy and technique."

The Bureau has undertaken a remarkable series of conservation measures, and spends thousands of dollars annually in clearing streams to enable the fish to proceed to the spawning grounds, in providing ladders to enable them to climb difficult streams, and in collecting and redistributing salmon eggs. As a result the Alaskan fisheries have been stabilized and given a permanency impossible under the old conditions of unregulated competition: "In short, salmon conservation has been raised to a fine art, and it is hardly to be wondered that the fish so conserved by the United States should be felt by some to be a possession of this country."[17a]

Meanwhile the international aspects of the problem had come into prominence. Japan, "the most important fishing country in the world," has important fishing interests throughout the Pacific. Over one and one-half million people are engaged in her fishing industry; more than ten thousand vessels of over ten tons are used; and Japanese fishermen are active in their own waters and in waters belonging to the Soviet Union, and carry on their work in the direction of Mexico, Argentina, the Philippines, and Australia.

The Soviet fishing grounds are extremely important to Japan. In 1875 Japan received most-favored-nation-treatment fishing rights off Kamchatka, and under the 1905 treaty gained the right to "fish in Russian waters along the Pacific Coast." A 1907 Convention set forth the method of leasing fishery lots. This agree-

[17a] Kathleen Barnes, "The Clash of Fishing Interests in the Pacific," *Far Eastern Survey*, November 18, 1936, p. 245.

ment expired in 1919, but in 1925 a general treaty was signed which provided that the 1905 treaty was to hold good. The Soviet Union recognized the right of Japan to fish in its waters. In 1928 a new fishery convention was signed:

The annual auctioning of the fishing lots which had been a feature of the earlier convention was continued. Fishing in the mouths of rivers and in the streams themselves was restricted to Soviet citizens, and some 37 bays and gulfs were likewise exempted from the provisions of the Convention.[18]

Many disputes arose over the payment for leases, the option systems, and other questions. Political difficulties after 1936 interfered with the fishing problem, and in 1939 no working arrangement was reached.

The fishery question is entangled in the general mesh of Soviet-Japanese relations, which have grown progressively more strained since the end of 1936. While not denying Japan's rights to fish in its waters, the Soviet Union was not willing to conclude a new long-term agreement and also refused simply to extend the old one in 1939 as in previous years. A new temporary agreement was offered which restored the general auctioning of the fishing lots and closed about 40 grounds for strategic reasons. Japan for a long time refused to accept these terms and the opening of the season was in sight with no agreement as to how Japan should exercise its fishing rights. Finally at the beginning of April the agreement was signed.[19]

Gregory and Barnes point out that Japan's expansion in Soviet waters seems to have reached its limit, that Soviet fishing has increased, and that Japan's relative share has declined.

The application of science to fishing methods has given rise to a new and serious problem. Large floating factory ships have been invented which use nets several miles in length. They have been catching salmon in the ocean waters, and threaten to inflict permanent injury upon salmon runs. The Japanese government has used influence to consolidate several companies into one large concern. Coincident with this rapid centralization of control in the Japanese salmon fisheries has gone the evolution of new fishing techniques.

If these floating canneries station themselves a few miles outside of the territorial waters of, say, the Soviet Union or Alaska, they may do serious damage to the salmon runs in those parts. We

[18] H. E. Gregory and Kathleen Barnes, *North Pacific Fisheries* (American Council, Institute of Pacific Relations, New York, 1939), p. 290.

[19] H. E. Gregory and K. Barnes, *op. cit.*, p. 290.

have seen that the United States government has spent considerable sums in rehabilitating the salmon fisheries in Alaska. The question arises whether it is right for nationals of another country to take advantage of the doctrine of the three-mile limit, fish in the open seas, and by so doing threaten to ruin an important experiment in conservation.[20]

On September 28, 1945, the President of the United States issued proclamations dealing with (1) the natural resources of the subsoil and the sea bed of the continental shelf, and (2) the coastal fisheries in certain areas of the high seas. The first proclamation provides that the government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf on the high seas but contiguous to the coasts of the United States as subject to its jurisdiction and control. The government justified its action on the ground that its experts believe that new sources of petroleum and other minerals might underlie parts of the continental shelf and that jurisdiction over such natural resources by the contiguous nation is reasonable and just because the shelf may be regarded as an extension of the land and mass of the nation; the resources frequently constitute a "seaward extension of a pool or deposit lying within the territory"; and self-protection justifies a close watch over activities off its shores.

The proclamation concerning coastal fisheries provides that the United States government "regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale." If these activities are undertaken by United States citizens alone, the regulation and control will be exercised by the United States. If the activities have been developed jointly by nationals of the United States and nationals of other countries, agreements may be established for conservation purposes. This action was justified on four grounds: (1) the inadequacy of present arrangements to protect and perpetuate fisheries resources near the coasts; (2) the special importance to coastal communications of the fishing industry; (3) the development of new methods and techniques which have contributed to intensified fishing over wide areas and in certain cases seriously threatening fisheries with depletion; and (4) the need of protecting coastal fishery resources from destructive exploitation.

[20] See J. W. Bingham, *Report on the International Law of Pacific Coastal Fisheries* (Stanford University Press, 1938).

Those who support the action of the President claim that the three-mile limit has not been part of the international law and point to the failure of the Hague Codification Conference in 1930 to agree on a territorial waters convention—the proclamation therefore does not contravene international law. Proponents also claim that the proclamation foreshadows plans of conservation which outstanding fisheries experts in Europe and elsewhere have advocated for a long period of time. They say that the small nations of Europe which particularly depend upon fisheries will gain from the adoption of a similar policy of extending control beyond the three-mile limit, since it will permit them to exercise a more certain control over the fisheries which are so important to their economy; and it will limit the exploitation by foreign fishermen of larger as well as smaller countries. Lastly the proclamation will forestall "incidents" which threaten good relations between governments and peoples by making clear the limits of jurisdiction as well as by making possible an arrest of the decline of fisheries which results from uncontrolled exploitation.[21]

American fishermen have generally hailed the proclamation, but many on the West Coast feel that more must be done, since in their judgment the series of State Department reorganizations "by replacing certain officials with others who did not seem to grasp the difference between fishery products and fishing" meant that the Department did not give sufficient attention to the important problems of conservation. Edward W. Allen, for many years connected with the International Fisheries Commissions, has urged that the Department of State give effect to the following principles so that the President's proclamation may be adequately implemented: (1) a deeper realization of the importance of fisheries in international affairs; (2) recognition that international fisheries disputes relate primarily to international law and diplomacy and not to economics; (3) the creation of a Division of Fisheries in the Department "under the direct personal charge of an official at least as high as an Assistant Secretary";[22] (4) an assistant of high standing familiar with both sides of the Pacific; (5) "immediate contact on a high level with Canada and other

[21] The proclamation has caused difficulties with Mexico, whose President issued a similar document soon after. The effect was felt by California fishermen, who realized that their position off the Mexican coast was threatened. The matter is being discussed by the two governments, presumably in an attempt to offset the disadvantages of the two unilateral proclamations.

[22] Edward W. Allen, *International Fisherman and Allied Worker* (November 1945), p. 5.

interested nations; (6) immediate establishment of zones as contemplated by the proclamation."[23]

Allen directs attention to an important problem. As mentioned below, conservation measures are required in the Great Lakes, but also the emergency is becoming more pronounced in the Atlantic and in the Gulf of Mexico. Moreover, the existing Sockeye Salmon Commissions deal with only one species of salmon. The question, therefore, arises whether international regulation will not be required over a number of areas and to embrace more species than at present are controlled. It would seem logical to establish "a genuine and adequate international agency . . . . with real policy-making power" so that "men of real caliber will be attracted, long term projects may be planned, subordinate commissions appointed, and unnecessary duplication avoided."[24]

The view of Mr. Allen, stressing the necessity of "contact on a high level" and in a systematic manner, will be supported by students of the fisheries question. If this step is not taken

> . . . a serious danger exists that haphazard development will result in a vast repetition and overlapping of functions, unnecessary multiplications of commissions, unwillingness, and decline in efficiency. A number of relatively low-class organizations may well be the outcome with a deterioration in the quality of experts attracted to the work.
>
> Unless great care is taken, national government departments will tend to regard the representatives on the international commissions as subordinate officials and perhaps to treat the commissions themselves as a subdivision of their own national organizations. In time an excessive power may grow up around a subordinate official within the department since there is a temptation for harried heads and chiefs to turn over all but important questions to men under them. In this way, minor officials may come to gain real power of decision over the international commissions. It is important therefore to insure that the commission should always have direct access to the highest national authorities and continue to enjoy the maximum autonomy.[25]

Whales.—In recent years the necessity for international action in order to preserve the rapidly diminishing number of whales has

[23] *Ibid.*

[24] Linden A. Mander, "The Future of International Commissions," *The American Journal of International Law* (January 1943), p. 129. Kline R. Swygard in an unpublished doctoral dissertation on the International Salmon and Halibut Fisheries Commissions describes several fisheries of the northeast Pacific, salmon, pilchard, herring, mackerel, sharks, sole, anchovies, striped bass and shad, tuna and others, and quotes a number of authorities who urge the need of further regulation.

[25] *Ibid.*, p. 129.

been clearly recognized. The day of the whale may be almost over; for new methods have enabled vessels to kill many more of the great mammals than previously. The invention of the harpoon attached to a cord and fired from a cannon (the harpoon gun) made possible easier catches than with the old hand harpoon. The Norwegians invented a system of filling the body with air so that it could float more easily. The development of floating factories at sea enabled ships to treat many more whales and abstract more oil than was possible when they had to take the carcasses ashore for treatment.[26] The number of whales killed rose from about one thousand in 1900 to between twenty and thirty thousand in 1927 and to over forty thousand in the Antarctic alone in the year 1930–31.[27]

National measures to protect excessive whaling were made more difficult as pelagic whaling became widespread, because no nation had jurisdiction over the open sea. Many experts called attention to the need of international control, in order to prevent the "veritable butchery," to protect young whales, to create reserves for adults, and to insure full industrial utilization of all parts of the captured whale. M. Suarez, in his report on the "Exploration of the Products of the Sea,"[28] recommended the calling of a conference of experts in marine zoölogy and in international law to draw up a convention which would embody general and local principles for rational control, such as the creation of reserved zones, the limitation of catches to certain zones in rotation, closed periods, and effective methods of supervising the measures adopted.

Jessup suggested that regulation could take place with respect to four matters: (*a*) the zone where whales might be killed; (*b*) the season during which they might be killed; (*c*) the kind of whales to be taken; and (*d*) the proceeds of the catch, involving insistence upon the complete utilization of the carcass.[29] The British Empire attempted some regulation in 1923 and Norway passed a whaling act in 1929; but the evidence showed conclusively that international action was required. Representatives of interested governments met at Geneva in 1931 and drew up a convention

[26] P. Jessup, *op. cit.*, pp. 484–86.

[27] *Ibid.*, p. 491; and B. Bergersen, "The International Whaling Situation," *Le Nord* (1938), p. 113.

[28] Reprinted in *American Journal of International Law*, Vol. XX (1926), pp. 231–40.

[29] Jessup, *op. cit.*, pp. 494–95.

which, however, applied only to baleens, or whalebone whales. Under Article 5 the taking or killing of suckling and immature whales and female whales accompanied by calves was prohibited. Article 6 provided that the fullest possible use must be made of the carcasses of whales. The remuneration of gunners and crews was to depend not only upon the number of whales but also upon such factors as size, value, and yield of oil. Vessels must fly the flag of their country and obtain a license to engage in whaling. The signatory powers undertook to collect the most complete biological information on the whales and to communicate statistical information regarding whaling operations to the International Bureau for Whaling Statistics at Oslo.[30]

During the next few years intensified whaling developed. Expeditions carried out activities along ice barriers, and twelve companies were formed for pelagic whaling in the Antarctic between 1925 and 1930. Between 1932 and 1936 the number of whales killed increased enormously, and the number of immature Blue whales in the catch rose considerably.[31] Moreover, during 1936–37 there were indications that Germany, Japan, and the United States were about to engage in extensive whaling operations. "Under these circumstances it became a matter of urgent necessity to get an international whaling convention as soon as possible, in order that the previous years' efforts to preserve this unique source of raw stuffs for the world's market should not be thrown away."[32]

Obviously a convention was needed which would protect most if not all species of whales instead of one only, and would stiffen up conservation measures. Such a step was taken by the interested powers, including South Africa, the United States, Argentina, Australia, Germany, Great Britain, the Irish Free State, New Zealand, and Norway, in an international agreement signed at London on June 8, 1937. It provided that the contracting governments would maintain at least one inspector of whaling on each factory ship under their jurisdiction. In this manner the supervision of the treaty was considerably strengthened. It was forbidden to take or kill Gray whales and/or Right whales, as well as Blue, Fin, Humpback, or Sperm whales below specified lengths, or to take or kill calves or suckling or female whales accompanied by calves or suckling whales. It prescribed a closed period of nine months per year for factory ships or whale-catchers in waters south of 40° South latitude, forbade the taking or treatment of

[30] *League of Nations Treaty Series,* Vol. CLV (1934–35), No. 3586, p. 349.

[31] B. Bergersen, *op. cit.*, p. 118.

[32] *Ibid.*, p. 119.

whales in any area for more than six months per year, and set aside certain prohibited areas which need not be mentioned here. Article 11 directs that "the fullest possible use shall be made of all whales taken." By Article 12, ships must not take more whales than can be treated efficiently within a period of thirty-six hours after being killed. As with the 1931 treaty the signatory powers undertake to insure that gunners and crews are paid according to the total results of their work and not merely according to the number of whales caught, and that they will communicate to the International Bureau of Whaling Statistics all information possible.[33]

In 1938 a second conference, held at London, adopted certain amendments

in an attempt to tighten the restrictions. It added a one-year closed season for humpback whales in water south of 40° south latitude, forbade the use of a factory ship employed in antarctic waters in other waters during the same year, forbade keeping whale carcasses in the sea for more than 33 hours, and somewhat changed the territories closed to pelagic whaling.[34]

Nine countries signed the agreement; but Russia, Japan, and Chile abstained. Karl Brandt, in his able study, speaks of the limited results of the conventions, not because of the difficulties of law enforcement, or of ignorance of the steps which should be taken, but because of conflicting economic interests. He points out that a struggle exists between the interests of Britain and Norway on the one hand and those of Japan and Germany on the other. "While the Norwegian and British companies have to compete on their own account and can survive only with net profits, the German and Japanese industries are strongly fostered by the two governments and serve first of all the purpose of saving foreign exchange[35]—an interesting commentary upon the influence of power politics upon economic activities. Brandt is not hopeful concerning the future. He admits that certain technical progress has been made in avoiding unnecessary waste, but points out that the fundamental purpose, i.e., "the prevention of over fishing," has not been realized. But, given international stability, conditions may exist for better results in the future.

[33] *League of Nations Treaty Series,* Vol. CXC (1938), No. 4406, p. 79.

[34] Karl Brandt, *Whale Oil, an Economic Analysis* (Food Research Institute, Stanford University, 1940), p. 99.

[35] *Ibid.,* p. 81. See also L. L. Leonard, "Recent Negotiations toward the International Regulation of Whaling," *The American Journal of International Law,* January 1941, pp. 90–113.

GREAT LAKES

Early in March 1938, representatives of the United States and of eight states of the United States, the government of Canada, and the province of Ontario met to consider measures to preserve the fishing industry of the Great Lakes, which was threatened with extinction. In Lake Ontario the annual production had dropped from 3,000,000 to 500,000 pounds; between 1924 and 1934 Lake Erie cisco production had declined from over 21,000,000 pounds annually to a mere 135,000 pounds. Perch and whitefish of Lake Huron also suffered decline; the yellow perch "are only half as abundant in Lake Michigan and one-fourth as abundant in Lake Huron as they were a few years ago" and lake sturgeon are "virtually extinct."

The reasons are the same here as elsewhere in the world: improved boats, improved gear, increased number of fishermen, and movement of fishers from one area to another. Michigan complains that seven of the neighboring states, which control one-third of the lakes, take two-thirds of the fish. Little wonder that authorities on both sides of the boundary line met to consider remedies for this alarming state of affairs. The superintendent of Michigan fisheries, Mr. Fred A. Westerman, suggested to the conference the following regulations, which are typical of the measures adopted in other parts. He proposed: "(1) uniform methods of measuring fishnet mesh; (2) proper size mesh to prevent taking undersize fish; (3) closed seasons during the spawning periods; (4) regulations of the amount and size of gear; (5) control of the movements of fishermen; (6) complete statistics; (7) well-organized research; (8) control of marketing conditions."[36]

The negotiations resulted in the establishment of an International Board of Inquiry for the Great Lakes Fisheries in February 1940. The Board was to comprise four members, two from each country, and was to undertake a study "of the taking of fish in the Great Lakes, such study to be undertaken as soon as practicable," and was to make recommendations as to methods for preserving and developing the fisheries of the Great Lakes. In 1940–41 it held twenty-nine joint hearings, listened to the testimony of some 1,500 persons, and made its additional surveys and studies. In October 1942 the Board recommended a common investigation of the fisheries of the Great Lakes, regulations to be formulated and

[36] *Christian Science Monitor*, March 9, 1938.

tested by a common or joint agency, that where investigations were not conclusive common regulations be applied and carefully studied, and stressed the need for accurate statistics for each species of fish and for each of the districts as might be defined in the agreement. On April 2, 1946, the United States and Canada signed a convention for the development, protection, and conservation of the fisheries of the Great Lakes, and on April 22 the President submitted the treaty to the Senate for ratification. The measure provides for three commissioners from each country, one representing the federal service, one selected from a list submitted by the states and provinces concerned, and the third representing the public at large. The Commission is required to publish reports at least every two years and has a limited power of revising and amending certain provisions.

GENERAL CONCLUSIONS

The principles which should govern the general policy of international conservation have been well set forth by Sir John Fischer Williams and Professor George Grafton Wilson in a report to the Institut de Droit International on *Les Fondements juridiques de la conservation des richesses de la mer.* They point out that the species of fish differ so much in their habits, number, and distribution that each of them requires a special study: "On ne peut pas légiférer pour les poissons en général." Their economic value differs, and species with a high individual value are in greater danger of extinction than those of a general mass value. The conservation of fish in the high seas is an international problem. and the nineteenth and twentieth centuries show a slow but developing organization along these lines. The world now possesses enough scientific international organization for the study of the problem.[38] What it needs are rules for conservation which should be applied before the resources are too greatly depleted and some species disappear.

There are two problems: (1) To establish rules. These should be based upon scientific research carried out according to the highest traditions of academic work. That this is not merely a theoretical hope is seen in the work already being done by the United States and Canada under the auspices of the International Fish-

[38] Quoted in J. W. Bingham, *Report on the International Law of Pacific Coastal Fisheries* (Stanford University Press, 1938), p. 63.

eries Commission. (2) The institution of sanctions to enforce the rules adopted. These can come about only by treaties and conventions ratified by governments and applied to their own nationals. There is the difficulty of what to do with countries which do not come into the agreement. Nevertheless, the rules should be drawn up, and it is not necessary to treat the questions of sanctions first. The history of the slave trade shows that the problem is not insoluble. "Ce problème de sanctions internationales contre un abus de la liberté des mers n'est pas insoluble." It will not be possible, or desirable, to draw up detailed legal rules in advance. The law must follow experience.

L. Larry Leonard, in an able study published in 1944, noted that general agreement had been reached on three points: (1) the inadequacy of the three-mile limit to give protection to fisheries; (2) the need of developing protective measures as soon as possible; and (3) the necessity of protecting fisheries' resources. But, he went on, the writers on the subject might be divided into two broad groups, those who regard fisheries as a world resource "to be maintained and protected for the general use of the peoples of the world" by means of multilateral agreements, and those who regard fisheries as belonging to the riparian states which should have a monopoly for their own benefit and protect the fisheries by a "unilateral assertion of rights."[39]

It would appear that some fisheries come more naturally under exclusive control of separate states; some are better regulated by joint action of two or possibly three neighboring countries; while others, notably in the case of whales, are best handled on a world basis. The last group comprise those species which are widely dispersed and the conservation of which is not primarily to be attained within the three-mile limit or within a reasonable distance thereof. Leonard points out that vessels from six countries now fish the cod in the western North Atlantic, and we have seen that several nations are interested in the North Sea fishing. It would appear therefore that several methods of protection and regulation are possible—unilateral action in certain cases, bilateral agreements in others, while for the widely dispersed species and for general purposes of co-ordination, a comprehensive international fisheries organization might be set up.

In 1927 Schucking proposed the establishment of an International Waters Office which should compile a register of the

[39] L. Larry Leonard, *International Regulations of Fisheries*, Carnegie Endowment for International Peace (Washington, D.C., 1944), p. 163.

rights "which particular States consider they possess in the fixed zone of foreign Riparian States or which such Riparian States consider that they possess outside their own fixed zone." The Office might appoint mixed commissions of experts and jurists to settle differences with ultimate appeal to the Permanent Court of International Justice.

Leonard proposes that the same principles might apply to fisheries in the creation of an International Fisheries Office along the following lines. It should have (1) a central office and secretariat comprising two members from each of the maritime nations. This office would have many duties such as considering the basic policies in conservation programs, registering conservation measures, considering requests from nations to participate in fisheries not previously participated in, submitting scientific questions to a central scientific board which it should establish and maintain, organizing special committees on whaling and fur seals. The central scientific board should carry on independent research on the important fisheries of the world and report to the Central Office and to the various governments through the Central Office. A Central Fisheries Commission, made up of seven jurists, should consider disputes submitted to it by the Central Office and render decisions according to law and equity and the general principles of fishery conservation. Regional Fishery Boards, such as the Northeast Pacific Fishery, the Northwest Atlantic Fishery, the North Sea Fishery, the Mediterranean Fishery, etc., should be established. These regional boards should make regulations for conserving fisheries under their respective jurisdictions and furnish all help possible in aiding the functioning of the Central Fisheries Commission. Regional scientific boards responsible to the regional fishery boards should be created to deal with the particular problems of the area in which they operate and should keep in constant consultation with the Central Scientific Board on conservation problems. Specialized fishery committees should be established where necessary to deal with particular species of sea life. Leonard believes that the establishment of such an organization would enable a more rational approach to be made to the conservation of valuable world resources and could prevent depletion of fisheries and also controversies between nations over the use of the fisheries. The organization, he believes, "represents a compromise between monopoly for the Riparian State and complete freedom from control on the high seas . . . . Given the desire to perpetuate the fisheries for the benefit of the indus-

tries which depend on them and for the food supply of the world, this form of regulation has much to commend it."[40]

We have analyzed the fisheries problem at some length but in conclusion we should indicate the widespread interest recently shown in the broad question of development and conservation of resources on an international scale. Authorities have emphasized the serious problem posed by soil erosion in various parts of the world. The percentage of productive land "already damaged or ruined for further cultivation is 50–60% in North America, 25–35 in South America, 20–35 in Europe, 40–60 in Asia, 35–60 in Africa, 25–40 in Australia." About 40 million acres have been "ruined or seriously affected by soil erosion in ten countries of South America," about 134 million acres in China and perhaps 167 million in India.[41]

W. C. Lowdermilk has written eloquently upon the same subject and other United States soil conservationists have recently visited South America in an attempt to develop soil conservation programs. Lowdermilk also has urged the establishment of a Jordan Valley Authority for the purpose of reclamation and power development in Palestine.[42]

Cooke urges the establishment of a "non-profit international institute of river valley developments, standing aloof from the diplomacy handicaps of a governmental agency" and gives several examples of areas in which such agencies might serve important functions. S. v. Ciriacy-Wantrup urges the importance of a mineral resources organization of the United Nations, which he suggests is fully as much needed as a Food and Agricultural Organization. The same author believes that a World Conservation Conference similar to the North American Conservation Conference called by President Theodore Roosevelt at Washington, February 18–23, 1909, could serve a useful purpose without necessarily

[40] *Ibid.*, p. 186. Leonard's proposals have been criticized by Mr. Edward W. Allen, Chairman of the International Pacific Salmon Fisheries Commission, as giving inadequate consideration to regional factors, but Professor Edward Ackerman, in the *Harvard Law Review* of September 1945, suggests that, while Leonard's plan may be somewhat elaborate, the world would profit if the United Nations created an institution akin to an International Fisheries Office. It is interesting to note that the United Nations Food and Agricultural Council has included fisheries in a proposed study of food resources.

[41] Morris L. Cooke, "Regional Development Projects Abroad," *World Economics*, Vol. III (Nos. 11–12, Oct.–Dec., 1945), p. 120.

[42] W. C. Lowdermilk, *Palestine, Land of Promise* (Harper and Brothers, New York, 1944), chapter 11.

attempting to establish a permanent international agency concerned especially with conservation.[43]

Considerable discussion has taken place concerning the possibility of a Danube Valley Authority and early in 1947 the Food and Agricultural Organization of the United Nations listed forty-four major water-development projects vitally important in building up a more adequate economy in Greece. These dams would enable the mineral resources of the country, which at present are undeveloped, to be tapped and would give Greece new irrigated farmland for food production. Finer notes that

> a very large part of the mineral, water power and soil resources of the world are actually unknown. Nor is that all. Where they are known, often only casual and quite superficial attention has so far been given to their exploitation . . . .
>
> A geological power and soil survey for all countries which are under-developed would form a "Domesday Book" of existing resources, and make available data on which decisions upon development and priority could be based. Such a world survey might be undertaken by international action.[44]

Finer then considers the possibility of united development plants, the financing of development authorities and problems arising from development schemes, first within a single country and, second, those which cross national boundaries. Lest it be thought that the foregoing examples represent armchair theorizings, one should point to the proposal made by the United States on September 14, 1946, for a United Nations Scientific Conference to consider the conservation and effective utilization of natural resources. By February 1947, seventeen governments, the Food and Agricultural Organization, and the International Bank for Reconstruction and Development had acknowledged the receipt of the letter. We can thus see that the question of the conservation of resources is closely tied to that of the development of resources.[45]

[43] S. v. Ciriacy-Wantrup, "International Cooperation in Conservation Policy," *World Economics*, Vol. III (Nos. 9–10, March-June, 1945), pp. 83–102. See the same author's "Resources Conservation and Economic Stability," *The Quarterly Journal of Economics*, Vol. 40 (No. 3, May 1946), pp. 412–52.

[44] Herbert Finer, *The TVA, Lessons for International Application* (International Labour Office, Montreal, 1944), p. 222.

[45] Other aspects of conservation are dealt with in Charles A. Timm, *The International Boundary Commission, United States and Mexico* (University of Texas, Austin, 1941); Sherman Strong Hayden, *The International Protection of Wild Life* (Columbia University Press, New York, 1942); Edgar Glesingar, *Nazis in the Woodpile* (Bobbs-Merrill Company, Indianapolis, 1942). See also references on p. 654 and pp. 768–69.

Chapter XII

INTERNATIONAL AND WORLD ASPECTS OF POPULATION PROBLEMS

OPINION on probably no other subject has changed with such rapidity in recent years as on the question of population. Within a short time experts and others who had been writing of the dangers of overpopulation, and painting gloomy pictures of international rivalries that must ensue, began to talk in terms of population decline and race suicide. Probably this new tendency will not eliminate the population factor as a cause of international friction, but it will at least considerably alter its emphasis.

Gunnar Myrdal would suggest that this sudden change of emphasis in population theory is not accidental. In his view the political element in political theory has been a basic, though often hidden, factor, and there has existed a close relation between the mercantilist theory and the seventeenth- and early eighteenth-century population doctrines, between the conservative reaction after the French Revolution and the theory of Malthus, between the growing radicalism of the nineteenth century and the reaction against Malthusianism, and today between (*a*) neo-mercantilism and the politics of force and (*b*) recent doctrines of the need of population increase: "Each population doctrine has in the main been correct only if we grant the major premises of those advocating it." "Population theory is part of the grand tradition of political economy." "I deliberately choose to discuss the problem of population frankly as a political problem of social goals and planned political action."[1]

The world's population increased but slowly before the seventeenth century. Carr-Saunders writes:

If we regard history as a whole, a stable rather than increasing population has been the rule . . . . during those periods when popula-

[1] G. Myrdal, *Population: A Problem for Democracy* (Harvard University Press, 1940), pp. 19, 24, 31.

tion was increasing, as when it was stable, there has always been some system in operation which has had the effect of preventing the inherent power of multiplication being realized to the full.

In the Middle Ages the relation between the number of people and the amount of arable land was a matter of great importance. Because communications were bad, certain areas seemed to be "overpopulated," and, when famines occurred, as they frequently did, little could be done to relieve them. It was natural that colonies came to be regarded as important as areas of settlement accommodating an adequate population necessary for political power.[2]

In a later volume[3] Carr-Saunders estimates that the world population was approximately 545,000,000 in 1650; 728,000,000 in 1750; 906,000,000 in 1800; 1,608,000,000 in 1900, and over 2,000,000,000 in 1933. A marked increase thus began less than two hundred years ago, since which time both Asia and Europe have gained heavily.

Within the last century populations have mounted with special rapidity, owing not to an increase in the birth rate, although this is observable in some countries, but rather to the lessening of the death rate. What have been the causes of the latter phenomenon? The establishment of political order has played its part, also each of the following: the development of social agencies to care for the sick and needy; the rise in the average provision of food and clothing and shelter; the development of sanitary organization, including the supply of pure water and the disposal of sewage; vaccination against disease; and generally the rapid advancement of medical science.

Even before the nineteenth century had given to the world the benefits derived from applied science, the prospect of overpopulation had concerned many thinkers. The theory of Malthus is well known. This clergyman in 1798—in opposition to Godwin and Condorcet, who claimed that a just distribution of wealth and the establishment of rationally conceived social institutions would permit indefinite population increase—argued that population would grow at a geometric rate of progression while foodstuffs would increase only in arithmetical proportion. Population would mount in the ratios 1, 2, 4, 8, 16, 32, etc., whereas foodstuffs would mount by only 1, 2, 3, 4, 5, 6, etc.

[2] A. M. Carr-Saunders, *Population* (Oxford University Press, London, 1925), p. 21.

[3] A. M. Carr-Saunders, *World Population: Past Growth and Present Trends* (Clarendon Press, 1936), pp. 17–45.

Ricardo preached the law of rent and the iron law of wages: Good land would become progressively scarcer, more and more marginal lands would have to be used, and an increasing effort would be necessary to get food from the poorer soil. Malthus did not believe that the great masses of people could, or would, progress morally, and considered that they must always exist near the level of poverty.

The next hundred years brought to light forces and theories which seriously challenged Malthus' theory: (1) Science revolutionized production and communications; it prevented the law of diminishing returns from operating with the intensity forecast by Malthus. (2) Despite the proofs of the pessimistic economists of the early nineteenth century, social legislation helped to raise the standard of living of the masses. (3) Karl Marx's theory that no "natural law" of population existed, but that its increase or decrease depended upon the organization of society, had a powerful influence. Capitalism, he preached, produces unemployment and overpopulation, and socialism, by providing a greater purchasing power for the people, would enable a population increase to take place. (4) John Stuart Mill enunciated the theory of optimum density, i.e., the maximum number of people which the most efficient combination of all wealth-producing agencies would enable to live at the highest average standard of life; three other economists—Cannan in 1888, Wolf in 1901, and Wicksell in 1911—further developed the theory. (5) The Belgian mathematician, Verhulst, in 1838, suggested that the rise and fall of populations obeyed "cyclical rhythms," and in the twentieth century Gini has also elaborated this idea. (6) Higher standards of living, rising levels of morality, and advances in the general values of society have resulted in a marked decline in the birth rate.[4]

Nevertheless, the nineteenth century continued to fear overpopulation, and an apprehensive state of mind continued even until after 1918. One prominent authority suggested that governments should conclude an international agreement to limit their populations and to spread information concerning methods of birth control. H. M. East published his *Mankind at the Cross Roads* in 1923, and a world population conference held in Geneva in 1927 considered possibilities of increasing popular knowledge concerning methods of limiting the size of families.

Curiously enough, the belief in overpopulation exerted two

[4] Imre Ferenczi, *The Synthetic Optimum of Population* (International Institute of Intellectual Co-operation, League of Nations, Paris, 1938), pp. 16–22.

distinct and diverging influences upon international relations. Countries which felt the threat of overpopulation seized upon the idea of colonization as a remedy. To fill the empty spaces of the New World seemed to them a necessary method of preventing excessive population and a decline of the standard of living at home. But the idea worked in another way: Population increase did not take place at the same rate in all parts, and countries with a smaller rate of increase became alarmed that a mounting population differential would menace their security. Large populations mean large armies, and a large army is important in dealing with neighboring countries. France realized that it had lost ground during the last hundred years in man power, a fundamental factor in the Franco-German problem. Most Frenchmen did not stop to think that the more rapid German increase was largely "justified by economic conditions"; they thought only in terms of security. As Clemenceau put it, "There are twenty million Germans too many." To offset her relative decrease in population and to acquire greater man power, France sought colonies.

Overpopulation is an easy term to bandy about.[5] It is far less simple to analyze scientifically. When *is* a country overpopulated? Is it merely a matter of area? Or can we say that there is overpopulation when there is a large amount of unemployment? It is obvious that the amount of territory is only one factor in the population problem. The development of superior methods of agriculture, the application of large-scale machinery and the specialization of labor, the improvement in communications of all sorts, the maintenance of a sound currency system, and the development of a high degree of technical, intellectual, and moral efficiency, all contribute to make possible a great increase in material resources. Conversely, a decline in the efficiency of national and world economic organization will affect the optimum density of a nation's population. Given an economic system whereby great fluidity of labor, capital, and goods is possible, the mere territorial factor becomes only one of many forces combining to affect human welfare. The optimum density, i.e., the density of population which will enable a country to make the best use of its resources in a world of international trade, depends upon a number of conditions, of which the extent of homeland and colonies is but one. Ferenczi writes: "The economic density of a country cannot, then,

[5] F. C. Wright, *Population and Peace* (International Studies Conference, International Institute of Intellectual Co-operation, League of Nations, Paris, 1939), chapter iv.

be studied in our day, generally speaking, without taking into consideration at least the total amount of national income much of which is obtained by international trade."[6]

In the early nineteenth century, before the economic revolution had led governments to seize colonies, a great amount of emigration took place in an unregulated fashion. Millions of people left Europe and went to the United States, Canada, South America, Australia, and New Zealand to seek their fortunes. These "empty spaces" provided a population outlet for several decades. Sauer writes that the last hundred years were part of the period 1492–1918 which witnessed the greatest migration of man and the most rapid population increase since neolithic times, and adds that the expansion was principally due to the invasion of lower and weakly resistant cultures by the overflow from higher, aggressive cultures. But recently, he says, a "marked stabilization of world population" has come and pronounced shifts in its relative density will become the exception.[7]

Without question, opportunities for unregulated mass migrations will be much rarer than formerly. International immobility has set in: (1) The new countries which have received immigrants have encountered labor and other economic difficulties. The United States, which grew from 8,000,000 in 1800 to over 130,000,000 in 1930, now has serious unemployment problems. Other lands by reason of climatic and other factors are unable to support large populations. They all seek to raise immigration barriers against foreigners. (2) The question of assimilation has become more urgent. Immigration brought with it not merely the problem of economic but also that of cultural absorption. The United States toward the end of the nineteenth century realized that the task of welding millions of people from different cultures and historical backgrounds was enormous. Differences of race added to the difficulties of assimilation, and immigration barriers took the form of quotas, racial discrimination, health and dependence tests, and even inquiry into political convictions. (3) Sauer points to the decline in mineral prospects, and believes that, while there may be metallurgic advances, these are not likely to produce any great "relocation of industrial peoples" and that heavy industry will remain in much the same geographic situation as now. The

[6] Ferenczi, *op. cit.*, p. 40. Myrdal severely criticizes the "optimum density" concept.

[7] Carl O. Sauer, "The Prospect of Redistribution of Population," in Isaiah Bowman (Editor), *Limits of Land Settlement* (Council on Foreign Relations, New York City, 1937).

mining boom, he suggests, is largely eliminated "from major significance in future population shifts." (4) It is doubtful if the discovery and distribution of new crops will be sufficient to form the basis of large population changes. (5) There has been even a shrinking of resources because of destructive exploitation. Some countries have expanded agriculture at the expense of forest and pastoral lands; erosion has become a major problem and conservation a matter of urgency. The task is to preserve the basis for existing populations. (6) The spread of European colonization in the nineteenth century took place, in part at least, at the expense of native peoples, whose numbers declined because of imported diseases and cultural dislocations. With the spread of medical knowledge, sanitation, and sound educational policies, native populations will increase more rapidly than the whites, making it more difficult for the European element in colonies to hold its own as time goes on. (7) Technological invention may enable many of the new lands to support greater populations, and the revival of international trade based upon international order will serve the same end. Sauer writes that the areas of advanced technology will more rapidly benefit from technological advance than the more distant quarters of the world. And he adds the striking judgment, which should be deeply pondered, that "the areas of great accumulation of population are areas of great and persistent economic advantage and cultural energy."[8] Note the importance of the word "persistent." In a reasonable world the average European is "likely to benefit most by the elaboration of skill in his own land." Ferenczi remarks that owing to the growth of economic rigidities "men have become less and less mobile" and in consequence

> there is a strong tendency for human migration to be replaced by migration of capital toward overpopulated countries, provided it is possible to create a local market in those countries or to ensure the exportation of the products of those countries at relatively low prices. In this sense it is possible to speak also of an optimum distribution of capital.[9]

If nations regain their sanity, lower international barriers, and restore confidence, Europe can perhaps still be "of all parts of the world the best suited to support a larger population." In the present economic and technological condition of the world, then, colonial settlement and migration may be less efficient methods of solving population pressure than the restoration of unfettered

[8] Sauer, *op. cit.*, p. 22.

[9] Ferenczi, *op. cit.*, p. 61.

trade, commerce, and capital investment, and the elimination of political tension.

In summary, there are serious obstacles to overseas settlement as a general solution for relieving overpopulation. We shall examine elsewhere how relatively unimportant are colonies as population outlets. To attempt to conquer and maintain colonies involves costly wars and enormous expenditures upon armaments; the result would not justify the effort.

The difficulties of mass migration in modern times were clearly revealed in the British Empire. After the World War of 1914–1918 Great Britain found in her unemployment position a heavy burden, and in 1921 she invited Dominion representatives to a conference to consider "the possibilities of state-aided settlement within the Empire." The conference recommended Imperial co-operation to secure a comprehensive policy of population settlement, especially in connection with land settlement. The Dominions possessed the land; the home country had the surplus population; the question remained, on paper, merely one of organizing transfer machinery. The recommendations were considered favorably by the 1921 Imperial Conference; the British government then passed an Empire Settlement Act in 1922, which gave it power to co-operate with any Dominion in mutually acceptable schemes. Britain was to be responsible for not more than one-half of the expense of any arrangement, which was not to exceed £1,500,000 for the first year nor £3,000,000 in any later year; nor was it to be liable for more than fifteen years after the passing of the Act.

The outstanding experiment under this agreement was the Western Australian group-settlement scheme,[10] under which, according to an agreement signed in 1923, the state proposed to settle 75,000 new immigrants there.

The first report was enthusiastic; but soon difficulties developed, due, according to Shann, to

(1) failure to select as group members those only who had proved their aptitude for farming; (2) degeneration of group clearing under sustenance economy into "government stroke" on day wages, virtually

[10] For information on this scheme, see E. Shann, "Group Settlement of Immigrants in Western Australia," *The Economic Record,* November 1925, and *Report of Overseas Settlement Committee,* 1926. See also A. H. Charteris, "Australian Immigration Policy," *International Conciliation,* December 1927; A. B. Keith, *Responsible Government in the Dominions* (1928), Vol. II, p. 1213, in its general treatment of the Colonial and Imperial Conferences, gives a summary of the migration problem as it developed at each conference.

unchecked by fear of dismissal; (3) the placing of a number of groups on unsuitable land; and (4) the attempt to do by mass action on the initiative of the State what has previously been done by individuals.

The result was disappointing; and, while the group scheme might encourage newcomers to work together, there was much more to be said for individual and family migration, with the result that the scheme was not energetically forwarded. Mass movement of people did not offer much promise on a voluntary basis.

A new method was evolved in the form of an agreement in April 1925 between the Imperial and the Australian Commonwealth governments, by which £34,000,000 was to be loaned to the state governments at low interest rate for the purpose of furthering settlement on public works likely to assist in that direction: for each £75 advanced, one assisted migrant was to sail from the United Kingdom; and the scheme was intended to settle 450,000 people within a period of ten years. It was in furtherance of this plan that the Development and Migration Commission was formed in Australia in 1926, on the principle, as Mr. Bruce, the Australian Prime Minister, said, of the interdependence of development and migration: "We cannot develop unless we have more population, and we cannot absorb more migrants unless we develop." Keith, however, was not optimistic, and wrote:

> The success of the agreement rests on the efforts of the States to carry it out: and the dislike of assisted immigration expressed by Labour in Australia, and resentment at the assurances contained in the agreement that assisted migrants are to be secured work, render the future of the agreement in actual operation extremely dubious.

In this sentence is contained one of the fundamental problems confronting Imperial migration. The Dominions, on the whole, need agricultural laborers and settlers on the land. Most, if not all, of the Dominions can do little to help the industrial unemployment in Britain, because they themselves have a similar unemployment situation; nor is Britain able to satisfy the Dominion needs for agricultural labor, for her supply for her own needs is inadequate and the absorptive capacity of the Dominions is limited by (1) the nature of the unoccupied lands (according to Professor Griffith Taylor about 42 per cent of Australia is arid, 34 per cent is good pastoral country, 21 per cent is fair, temperate farming country, and 3 per cent is suited for tropical agriculture); (2) climatic conditions (whether or not white settlement is possible in the Australian Tropics is a debated question, with many opinions

on both sides); (3) the need of capital;[11] (4) resettlement, since the best lands in Australia are already alienated, as Charteris points out, "is not a question of unlocking new territory, but of subdividing and resettling existing occupied land," which is a costly and relatively slow process; (5) the finding of markets for increased agricultural produce resulting from increased settlement, which is by no means an easy task, in view of the growth of economic nationalism.

From these considerations, which only suggest in broad terms the difficulty of placing migrants on the land in Australia (and the same type of reasoning will hold for New Zealand, and in some measure for Canada),[12] it will be seen that anything approaching "mass action" in Imperial migration is not possible.

This fact was definitely recognized by the special subcommittee on Overseas Settlement, set up by the 1926 Imperial Conference.[13] The Committee especially wished to disassociate itself "from the idea that the mere transfer of large numbers of people from Great Britain to the open spaces of the Dominions would afford a solution of the problem of overseas settlement." It affirmed, however, "the importance of accelerating the distribution of population" in the interests of the Empire as a whole and, while recognizing the obstacles, indicated a determination to press forward with the existing machinery.

It is clear from this account that, despite the advantages of a common Imperial sentiment and Empire organization, mass migration cannot be a solution of "overpopulation" under modern conditions.

The popular habit of thinking of population problems in terms

[11] An economist writes: "Experience shows that in the absence of unprecedented opportunities, Australian capacity is not likely to exceed 35,000 per year. In order to absorb this number we require an equivalent in flow of new capital such as accompanied our immigration before the war. The present capital per head of population is about £300. To equip 35,000 people . . . . we need at least the same value per head, and we cannot do more than equip our own natural increase from our own savings. To absorb 35,000 a year we need at least £10,000,000 a year in new capital imports. The present unemployment in Australia cannot be disassociated from the fact that we have been accelerating our imports of men and retarding our imports of our capital." See J. B. Brigden, "The Limits of Australian Immigration," *The Economic Record,* November 1925, pp. 145–48.

[12] Charlotte Whitton, "The Immigration Problem for Canada, 1924"; Griffith Taylor, "The Frontiers of Settlement in Australia." Reprinted from the *Geographical Review,* January 1926. The Union of South Africa, owing to its peculiar situation in reference to its Negro population, can give little or no openings to labor.

[13] *Imperial Conference, 1926, Summary of Proceedings and Appendices,* Section X.

of agricultural extensity and of colonial expansion still persists. Into this mental climate has come a new factor of extraordinary importance. This factor is the decline in the rate of population increase. Northern and western Europe is failing to reproduce itself at the same rate as in former years; the surplus of 600,000 births over deaths is diminishing, and France, Sweden, Belgium, Germany, and Great Britain face a serious problem. In Italy, Portugal, and Spain there has been recently a surplus of 780,000 births over deaths, but this surplus is not being maintained, and a decline has set in. The reasons for the decline, which is causing great concern to statesmen and population experts alike, is the adoption of the small family; and this in turn is traceable to the fear of maternal mortality, the inconveniences incident to childbirth, the influence of writers on eugenics and others who have spread an anxiety complex concerning hereditary factors, economic insecurity, and the prevailing habit of thought which causes many married couples to regard larger families as an incumbrance. These factors and, above all, the spread of birth control have caused the reproduction rate to fall. The full effects will not be felt for some years; but unless some drastic changes occur to arrest the downward fertility trend, important sections of the world will experience a serious population decline.[14]

National governments today are therefore thinking, not in terms of international conferences to consider means of limiting population growth, but of devising methods to insure an increase in the national birth rate. Parliamentary and other commissions have conducted inquiries in Great Britain, Japan, Sweden, Denmark, etc. Italy has taken energetic action (especially after 1927), taxing bachelors and childless couples, giving preference in goverment positions to married men who have several children, and reducing taxes on large families. Germany has modified the law of inheritance so as to favor large families, giving preference in government employment to married men with children and by means of marriage loans encouraging couples to marry earlier than might otherwise be possible. France has adopted the family-

[14] R. R. Kuczynski, "World Population"; H. D. Henderson, "Economic Consequences," *The Population Problem* (George Allen & Unwin, Ltd., London, 1938); Enid Charles, *The Twilight of Parenthood* (W. W. Norton & Co., New York, 1934); A. M. Carr-Saunders, *World Population (1936);* Jacques Marchand, *La Renaissance du mercantilisme* (1937). The population curve has risen in the period following World War II. Industrial countries which had shown a declining increase in birth rate now revealed a rate which in some countries has established new records. It is still too early to decide whether this is a short-run phenomenon.

allowance scheme in its wage scales, as have New Zealand and New South Wales to a limited degree. Whether or not these attempts to raise the birth rate will be successful remains to be seen. Undoubtedly the threat of serious population decline hangs over many countries, pointing to the possibility of an underpopulation which will have profound effects upon the economic system (fewer consumers in an age of increased technological capacity, fewer renters for houses and offices, a greater percentage of old people, with a consequent increase in the burden of social services, etc.), and upon the political system (decline in man power, with its repercussions upon the problem of national defense), and all this at a time when the opportunities for mass migrations of the nineteenth-century type are not likely to recur.

Nevertheless, if the foregoing description is not to lead to overhasty conclusions, it is important to consider two qualifications: (1) The beginning of population decline does not mean that certain countries are not suffering from congestion. Even the more economically fortunate lands possess too many people who are undernourished, judged by the standards prescribed by social and medical authorities. But a number of other areas—India, Japan, Italy, Hungary, Poland, and southeastern Europe—show definite evidence of overpopulation in that a high percentage of their people "are unable, by any kind of economic activity, to secure the food supplies and other minimum conditions which are indispensable to physical life (i.e., for the maintenance of biological energy)."[15] Emigration would assist these countries in some measure at least to relieve the pressure, particularly if international tension continues to drive governments to still greater uneconomic expenditures on armaments. (2) Although many countries have increased their barriers against excessive immigration, there are still lands which need more people if they are to build their economic life to a plane of greater efficiency and welfare. If these countries suffer a decline of birth rate and insufficient immigration opportunities, they will be in danger of serious underpopulation.[16] For these reasons migration is still necessary.

[15] Ferenczi, *op. cit.*, p. 39.

[16] J. E. Meade, in his *The Economic Basis of a Durable Peace* (Oxford University Press, 1940), pp. 153–54, writes of "the lack of balance which exists in the divergent trends of population in certain regions of the world. Some of the important countries in which there is relative overpopulation are still threatened with a considerable increase in numbers; in some of the important countries in which there is relative underpopulation the population will soon cease to grow and will probably decline."

But in view of the closer-knit nature of modern society, and the interrelation of land, labor, capital, markets, and political sentiment, the matter requires consultation and co-operation among governments and an accurate analysis of possibilities and conditions of settlement within each country.

We may summarize as follows: (1) Certain countries in southern and eastern Europe are still congested and would be helped by emigration of the right kind. (2) Some of the New World countries, notably South America, the United States, and to a lesser degree Canada, Australia, and probably some islands of the Pacific, could receive more immigrants if international order were restored and international trade resumed. (3) The conquest of colonies is not worth the cost, and the attempt to plant families in colonial areas may result in an uneconomic use of capital which could be better expended in developing a more efficient economic organization at home. (4) The day of mass migrations is over, and the time for carefully regulated migration schemes has arrived. (5) Migration under these circumstances involves co-operation among governments; to allege the theory of sovereignty as a justification for exclusive action is under modern conditions indefensible—immigration ought no longer to be considered merely as a domestic problem. (6) The fundamental task is to place the greatest number of people in the environment which will promote the greatest amount of individual and general welfare.

A certain number of steps along these lines have already been taken. The 1919 International Labor Conference adopted a resolution requesting its governing body to set up an international commission "which while giving due regard to the sovereign rights of each state shall consider and report what measures can be adopted to regulate the migration of workers out of their own states and to protect the wage earners residing in states other than their own." The Commission, on which were represented nine European and nine non-European countries, issued a report in 1921 outlining remedies for the many abuses which occur in relation to emigration and immigration. The Brazilian delegate suggested the establishment of a Permanent Immigration Commission which might direct migration "in a reasonable manner from countries where work is scarce to countries where work is required; it should act as a conciliator in the event of governmental disputes." The proposal was not adopted, because of the fear that the existence of such a commission would constitute a threat to national sovereignty.

The 1922 International Labor Conference recommended that governments periodically send to the International Labor Office as much information as possible concerning immigration; and in 1924 the governing body of the International Labor Organization set up the Permanent Migration Committee.

These were the beginnings of an international organization to deal with migration problems. The organization was based on the assumption that, although the general world situation seemed to make impossible any great mass movements of the nineteenth-century type, the need for immigration and emigration still remained an important even though a less extensive issue. The International Labor Organization realized that its efforts to raise labor standards throughout the world by means of international labor conventions were rendered much more difficult by the existence of overpopulation in some countries and underpopulation in others. Declining standards of living due to either one of these factors constituted a threat to workers, employers, and governments alike. International policies to insure a better equilibrium of the factors of production by means of an organized redistribution of labor appeared to be an economic necessity.

The general truth was clear, but its application was less simple. Political and organizational difficulties arose between immigrant and emigrant countries. The latter desired to retain the citizenship of their departing subjects, while the immigrant countries naturally desired to assimilate them. In 1921 the emigration countries held an international conference; three years later immigration countries met to consider a general policy. Some uncertainty existed as to how far the International Labor Organization possessed the authority or competence to discuss emigration matters; because of this fact, and owing to the need for Italian emigration, the Fascist government called the International Emigration and Immigration Conference at Rome in 1924. The International Labor Organization sent representatives; at the same time it insisted that the conference could not in any way invalidate the right of the Labor Office to consider migration problems. It is interesting, in the light of subsequent events, to note that Mussolini in opening the conference urged that emigrants should not be considered as mere commodities and that they should be entitled to enjoy the same rights as nationals of the receiving countries. The conference drew up a number of resolutions recommending the adoption of "an international sanitary code, the insurance of emigrants, a thorough medical inspection, the laying down of

minimum requirements for emigrant ships, and other means of safeguarding the interests of emigrants during the voyage."[17] It recommended that governments supervise lodging houses for emigrants and provide legal aid for them, and considered such matters as "undesirable emigrants, simplification of passport formalities, principles underlying labor contracts, measures against secret emigration, and the exchange of labor information." It also adopted principles "concerning equality of treatment of emigrants, and the admission of foreign workers to conciliation and arbitration committees."[18]

In 1928 a second emigration conference was held at Havana, in order to clarify some of the general principles adopted at Rome in 1924. Unfortunately, the number of delegates was smaller (only thirty-seven states were represented in contrast to fifty-nine states at Rome); Brazil, Canada, and Ireland refused to attend, and Great Britain sent only auditors. The Japanese delegates took a strong stand, and in general the emigration countries were found to be in opposition to the immigration countries. The conference had only a very limited success.

The economic depression which followed the slump of 1929, and the change in attitude of the Fascist government, which reversed its stand on migration and after 1927 adopted a policy of encouraging the birth rate and discouraging emigration, reduced the opportunities for international co-operation. National immigration restrictions were multiplied; foreign migrants found few opportunities to go abroad; and the unemployment problem, already intense enough in many countries, grew still more severe.

Nevertheless the International Labor Office and the economic committees which were set up in accordance with a resolution of the 1929 League Assembly continued their studies. They realized that the basic problem was to enable migration to respond quickly enough to economic changes in different lands, and to work out an efficient means of putting "the jobless man in touch with the manless job." For several years the League as an instrumentality in migration matters must have appeared dormant, if not dead. Such, however, was not the case.

Meanwhile a number of regional agreements had been made concerning labor and seasonal migration. France required a considerable amount of foreign labor, and had made several inter-

[17] R. L. Buell, *International Relations* (Henry Holt & Company, New York, revised edition, 1929), p. 173.

[18] *Ibid.*, p. 174.

national agreements for the regulation of collecting recruiting. We may note the Franco-Polish arrangement, which was similar to those made with Austria, Belgium, Czechoslovakia, and Italy. Under it the two governments agreed to afford "administrative facilities" to migrant workers, and to co-operate in the collective recruitment of workers. Each government undertook to advise prospective migrants of the economic conditions prevailing in the other country and, if necessary, to take preventive steps in unfavorable periods. It is manifestly important for the country of the emigrant to retain the right of deciding in what areas recruiting shall take place; otherwise serious labor dislocations may result. France and Poland therefore agreed on the number and occupation of the workers to be recruited. A special joint committee met in regular session to determine these matters. The Polish Emigration Office in Poland and the National Employment Office in France enrolled workers. The emigrants received medical examination before they left, and might be accepted or refused by either government. That is, the emigrant government might refuse to let the would-be emigrant go, and the receiving government might refuse to accept him. The agreements included the principle of equality of treatment of foreign and national workers in matters of social insurance, wages, and right of association. The governments drew up a standard application and a standard labor contract. These precautions guaranteed the French workers against competition from imported sweated labor, and at the same time insured to the Polish migrants a fair set of conditions when they arrived in France. D. Christie Tate writes that under this system nearly half a million workers were introduced to France in the postwar period from five different countries.[19]

The need of regulating seasonal agricultural laborers also led to international agreements between Czechoslovakia and Austria, Czechoslovakia and Germany, Poland and Germany, and Poland and France.[20] Germany and Czechoslovakia in May 1928 concluded an agreement concerning the recruiting of Czechoslovakian seasonal workers. The governments undertook to engage the laborers only on a "contract of employment" basis; and the contract, drawn up by experts of the two countries, was not to be

[19] D. Christie Tate, "The International Organization of Migration," *International Labour Review*, February 1930, pp. 202 ff.

[20] D. R. Taft, *Human Migration* (The Ronald Press Co., New York, 1936). Chapter 18 contains a useful summary of the measures adopted by Poland and France in bilateral agreements.

changed by Germany until the Czechoslovakian government had had an opportunity of giving its views. The workers were to be medically examined and vaccinated at governmental expense, and were to enjoy in Germany an equality of treatment with German workers in labor legislation, trade union membership, the right to public assistance, and regulation of labor conditions by conciliation arbitration. Under this system Germany could make certain of obtaining workers of known quality, and the migrant laborers were guaranteed certain standards and protection, and were better protected from the hostility of German workers. Because matters were regulated in systematic fashion, it was possible to examine the effects of the population movements more clearly.

The world-wide depression which followed the political and economic crises of the period following 1931 have lessened the number of foreign workers employed in European countries, as well as the amount of international seasonal migration. If, and when, the present political tensions ease, and mere economic movements function again, the methods already worked out will prove of valuable assistance in providing an orderly system of labor employment on an international scale.

The attempts of international organization went beyond the European continental scene, and included efforts to facilitate labor migration to South America. Poland and São Paulo in Brazil began negotiations and agreed upon certain general principles. The agricultural laborer was to be selected in Poland by a Polish emigration officer and a representative from the labor department of São Paulo. The conditions regulating transportation of the migrants were drawn up in detail. São Paulo agreed to grant the Polish immigrants equality with Brazilian citizens in labor legislation, social insurance, education, trade union organization, etc., and to set up societies and social agencies which would assist the newcomers. Standard contracts were adopted for workers engaged by the year and for those on a seasonal basis; the application of the agreement was to be supervised by two officials, one representing each government. The number of immigrants was to be determined by the São Paulo authorities each year; they would then notify Poland of this number and of the agricultural land available for settlers. If new areas were opened, São Paulo undertook to give priority to Polish families who had worked for two years on São Paulo plantations. Practical difficulties stood in the way, but the general lines of the agreement were sound.

Possibly nationalism commenced to yield a little to the logic

of necessity in the field of migration when the American states held a labor conference in Santiago, Chile, in January 1936, and passed a resolution requesting the International Labor Office to undertake special inquiries into the possibilities of emigration from Europe to America, with particular reference to conditions necessary for successful colonization. The governing body of the International Labor Organization directed its experts to study the question, not merely from the angle of integrating the three factors of production—labor, land, and capital, but also as a regional problem. An International Labor Organization mission visited Brazil, Argentina, and Uruguay and joined the national authorities of these countries in studying the possibilities of migration settlement. The report of the mission and a general International Labor Organization report came before the Migration Committee in November 1936. They showed clearly that some of the American countries were ready to receive immigrants, but that it was necessary to work out carefully the financing of the transportation of emigrants, and their settlement on the soil. The Committee recommended that a conference of experts on migration for settlement investigate what practical measures might be possible; when their report was ready, another conference could be held. After a year's study the conference of experts met at Geneva, February 28 to March 7, 1938. Delegates from ten South American "immigration countries" and eight "emigration countries" (including Japan) and representatives of the governing body of the International Labor Organization, the Economic Committee of the League, and the Economic and Financial Sections of the Secretariat were present.

The Conference considered the International Labor Office report, a document of eighty-seven pages, and, on the basis of its findings and the evidence presented by the government delegates, unanimously adopted certain recommendations.[21]

It recommended that governments of immigrant and emigrant countries which desired to promote migration for settlement should exchange regularly and promptly all information possible. The former should make available information on the general conditions of admission of immigrants proposing to settle on the land, the facilities which would be granted (transport rates, customs dues, etc.), the land laws of the country, the types of settlers

[21] Technical Conference of Experts, *Technical and Financial International Co-operation with Regard to Migration for Settlement*, International Labour Office, Studies and Reports, Series O (Migration), No. 7 (Geneva, 1938).

which it desired, the conditions of acquiring land, what organizations exist to assist settlers, where suitable land is located, what taxes are due from settlers, etc. The emigrant governments should collect full information as to the number of families or unmarried persons available for migration, their technical qualifications, their farming experience, and the measures in force to facilitate migration for settlement. The governments should exchange this information and also communicate it to the International Labor Office which could serve as a clearinghouse. The governments should set up an official or semiofficial service to furnish information and to assist prospective settlers in the choice of land; these services in the emigration and immigration countries should establish "permanent co-operation"; and emigration countries might appoint emigration attachés to their diplomatic and consular representatives in the immigration countries.

Thus immigration countries should establish official, technical, financial, and other organizations responsible for immigration and settlement; but private organizations also might be set up to this end. Land intended for immigrants should "not be in litigation, mortgaged, or subject to any other charge." Before any group settlement by immigrants is undertaken, the government should take certain steps concerning

(*a*) the preparation and equipment of the land; (*b*) the organization of production and marketing; (*c*) the preparation, reception, and establishment of the settlers and their families; (*d*) the period of employment that the immigrant might serve on a farm in the immigration country before setting up as an independent farmer, in order to familiarize himself with the agricultural practices, language, customs, climate, food and other aspects of the country in which he intends to settle; the wage claims of immigrants so employed should take precedence over the employer's other obligations and the produce of the farm should serve as security for their settlement; summary judicial procedure should be available to the immigrant to enable him to recover his wages; (*e*) the financing of the expenses to be borne by the State, the settlement organization, and the individual settler respectively.

The Conference recommended that governments consider the possibility of affording free vocational and general training to prospective settlers, exempting them from consular dues, and their effects from customs duties, granting temporary relief to them and to settlement organizations from certain taxes. Governments might also pay part or all of the cost of the sea voyage, supply

land, tools, and equipment free or at a reduced price, and perhaps grant subsidies; and grant loans and credits.

Because of the instability in national currencies the problem of transferring the assets of emigrants becomes a serious one, since the emigrants would probably have difficulty in obtaining the necessary foreign exchange. The Conference therefore recommended inter-governmental co-operation to facilitate the transfer of emigrants' assets "by means of exports of goods, including products needed for the preparation of the settlement . . . . and tools and equipment." It realized that perhaps further international financial co-operation would be necessary in order to permit a country to enable its emigrants to take their assets with them, and requested the officers of the Conference to study the possibility and desirability of setting up an International Credit Institution for this purpose. It concluded with a resolution instructing the International Labor Organization to continue its technical researches into the general problem and requested the governing body to "proceed with the consultations and other steps necessary for the establishment of a Permanent International Committee on Migration for Settlement."

It now remains for governments to act upon these excellent recommendations. Whether they will do so or will treat the migration experts as governments have treated the economic experts in the matter of tariffs, and substitute short-term expediencies for sounder principles, time will tell. The evidence given in this chapter should suggest the advantages of both bilateral and multilateral arrangements and the changing nature of population and migration questions. Whatever may be the legal theory concerning national sovereignty in these matters, the fact remains that today immigration problems have become international in scope and the population question will increasingly demand international co-operation. Government agreements can obviate frauds in recruiting, insure the quality of migrants, safeguard the workers of the receiving country, prevent the newcomers from getting into debt slavery, and save much confusion and disappointment. International organization, when more adequate and experienced, will be able to do something which unregulated individual migration and unilateral national regulation can no longer guarantee, namely, combine order with flexibility in the transfer of people from one land to another.

A heavy blow at immigration plans and policies has been dealt by the activities of "fifth column" agents of foreign powers. What

country can now trust its foreign arrivals and assure itself that they really intend to become citizens devoted to the welfare of their adopted land? What guaranty is there that they will not be advance agents of a power bent upon ultimate conquest? The experiences of Norway, Denmark, and Holland may well make other countries pause before receiving people who may turn out to be "rats in the larder." In this, as in many other fields, German military methods which carry to a logical conclusion the implications of modern warfare will have had profound repercussions upon international life. The damage done to confidence upon which normal international activity depends has been tremendous.

Indeed, it may be confidently asserted that, unless the threat of war is abolished, international migration will practically cease. For if wars are to continue, and military action is to be merely the cutting edge of policies of conquest planned in all departments of modern life, then it is obvious that migration, like trade, intellectual interchange, propaganda, etc., will become primarily an instrument of war, a preliminary to the seizure of other countries, and not primarily a method of increasing human welfare.

PROBLEMS ARISING OUT OF WORLD WAR II

The population question has reassumed a prominent place in world affairs by reason of three major developments: (1) The unprecedented displacement of peoples deliberately undertaken by the Axis powers and also resulting from the fortunes of war. (2) The bearing of economic security measures, proposals for industrialization, and other methods of making full use of natural resources in countries which could thereby support larger numbers of people. (3) The part played by the national feeling in re-establishing or preventing the re-establishment of national or religious groups, a factor not unconnected with point one.

In a study sponsored by the International Labor Organization, Kulischer has described migration movements in Europe resulting from Nazi policy and the effects of the war. Over 750,000 people were removed or were to be removed from various European countries back to Germany in the years from 1939 to 1941 with the object in part of attaining the racial aims of the Nazis, who presumably wished to encourage the development of a purely German stock. On the other hand, over two and one-half million Germans were moved from the Reich to Alsace-Loraine, to other parts of France, to Belgium, the Netherlands, Denmark, Nor-

way, Czechoslovakia, and to parts of Poland and other eastern European territories. This movement was accompanied by considerable dislocation, and great suffering was endured by the nationals of the affected countries. The purpose of this movement was "to form the basis of the future German economy and to consolidate Germany's military conquests."[22]

The mere tabulation of movements of non-German populations, covering two closely printed pages, lists some seventy groups ranging from two thousand to several millions. The total number of uprooted Jews amounted to over four millions, the number of foreign laborers employed in Germany between 1940 and 1943 amounted to over six and one-half millions; and, in all, Kulischer estimates that "more than thirty million of the inhabitants of the continent of Europe have been transplanted or torn from their homes since the beginning of the war,"[23] but that if other groups are counted such as the millions of German and Italian refugees who "have fled or been evacuated from heavily bombed cities in increasing numbers," the number might exceed over forty millions.

Clearly the question of the displaced persons was to be a major problem of international concern and Kulischer accurately forecast that the permanent settlement of these uprooted peoples would be one of the most urgent tasks of postwar reconstruction.

Repatriation formed the first and most obvious solution but, as the armies of occupation and UNRRA found, many difficulties stood in the way—dislocated transport systems, military priorities, problems of feeding, clothing, medical aid, and the necessity of building shelters for those who returned to bombed-out cities and towns. Moreover, because of this dislocation of economy, labor requirements in the various countries would not be the same as in prewar days, and redistribution of labor, it was foreseen, might have to be carried out on a wide scale in order to insure a maximum of employment. The problem was intensified by the continued immigration barriers which the non-European countries had erected. "The suspension of migration movements was a serious handicap to pre-war Europe. Unless these movements are resumed in an ordered manner, it will not be possible to solve the problem of war and of pre-war refugees, and this problem may be further aggravated by a fresh wave of enforced migration."[24] Kulischer recognized the impossibility of resuming unregulated

[22] Eugene M. Kulischer, *The Displacement of Population in Europe* (International Labour Office, Montreal, 1943), p. 28.

[23] *Ibid.*, p. 363.

[24] *Ibid.*, p. 170.

migration such as prevailed before the war of 1914 to 1918 for reasons which we have analyzed above. But he pointed to the possible bearing of the new economic philosophy of full employment and improved standards of living upon the question of immigration.

In the contracted world economy before the war government policy necessarily tended to be restrictive. If an expansionist economy is created after the war through international co-operation the Organisations canalising this collaboration will have to deal with movements of men as well as with movements of capital and goods.[25]

This extract from Kulischer brings us to the second factor bearing upon the population problems, namely, changing economic theory. If nations are to plan for expanded production, more jobs will be available and certain countries will be able to support larger populations. Eastern Europe could have supported many more people if the Danube River were harnessed along the lines of the Tennessee Valley Authority.[26] Various studies on Central and South America are being made in order to increase the productivity of those areas both by means of improved agricultural techniques and by the introduction of carefully planned minor industries. Industrialization may help to solve many of China's population problems and Alfred Bonné has produced a volume, *The Economic Development of the Middle East*,[27] in which a careful analysis is made of the opportunities for industrial expansion, capital investment, and population increase in such countries as Egypt, Syria, Palestine, Arabia, and Iraq. Dr. W. C. Lowdermilk, a noted American soil conservationist, in his volume, *Palestine, a Land of Promise*, has advocated the creation of a Jordan Valley Authority so as to make possible a more effective exploitation of the resources of the Palestine area and, incidentally, to permit a large increase in Jewish settlement in that disrupted territory. Before the Japanese attack on southeastern Asia, government-sponsored settlement activities had been undertaken by the Philippines and the Netherlands Indies. This work has been described by Dr. Karl J. Pelzer, in a volume dealing with land utilization and agricultural colonization in southeastern Asia.[28]

[25] E. M. Kulischer, *op. cit.*, p. 171.

[26] See Herbert Finer's *Study on the TVA and Its Bearing Upon the Danubian Valley Project*, published by the International Labor Office.

[27] Published by Oxford University Press.

[28] Karl J. Pelzer, *Pioneer Settlement in the Asiatic Tropics* (American Geographical Society, 1945).

In this volume he describes the resettlement programs, the work of the National Land Settlement Administration, and of the Commission for Migration and Colonization.

Another problem arises in that certain countries have what are called aging populations. In Great Britain and Ireland, for example, the average age of the population is rising, whereas in the Soviet Union, the average age is much less. The bearing of this age differentiation upon the political and economic effectiveness of countries over a period of years, in addition to the fact of numbers mentioned above, is receiving much attention. The rising age average is due not so much to lessening of birth rate, although in parts this is a contributing factor, but to the postponement of death as a result of the impact of modern science. The introduction of social security schemes may be expected to lengthen the average span of life still more. Critics claim that this policy will tend to throw a heavier burden upon the younger working generation and are alarmed at the prospect of the aging quality of certain national populations with their declining energies. Defenders of social security, however, claim that, with the introduction of labor-saving machinery and improved health due to national insurance schemes and the freedom from want and anxiety, people will be able to work, and with enjoyment, to a more advanced age. The answer to these questions lies in the future, but the bearing upon the population factor is obvious.

The third major factor in complicating the question of population is that of national prejudice and national hatred. Anti-Semitic prejudice dominated the whole of Nazi political thinking and policy. What might have been economically desirable in utilizing Jewish ability (which had been proved in almost every field of human endeavor) was discarded under the influence of a passion which preferred to vent itself on its victims rather than consider the economic consequences. Nazis refused to consider the population question as primarily an economic matter; it became for them a matter of international creed, a faith which refused to look at the material situation and insisted upon viewing the Jewish problem through the eyes of a pseudo-science. This attitude has persisted in Europe, and the few remaining millions of Jews face the prospect of bitter anti-Semitism despite promising steps taken by certain groups in Hungary, Poland, and elsewhere to lessen racial bigotry. The Jewish problem goes beyond Europe. Anti-Semitism prevents the introduction of more than a few Jewish people into many countries and the political or psychological factor once again

injects itself into what many people would seem to regard as an economic question. Above all in Palestine does the political implication of the population issue manifest itself. The Arab League is binding itself together to resist any substantial increase in the number of Jewish immigrants, and President Truman's proposal for the immediate admission to that country of 100,000 Jews (only a small number of those who desperately need relief) has stirred up intense opposition.

Nor have population and settlement in the postwar period involved only national reactions against Jews. Early in 1946 the Polish government announced that it planned to deport one and one-half million Germans from Poland in order to make way for its returning citizens, partly in order to allay the unrest in the country due to the presence of Germans and partly because the thousands of Poles returning from Russia needed houses and farms. Compared with the brutal methods used by the Germans in deporting the Poles in 1940 and 1941 the Polish policy was reported to be orderly and humane. Czechoslovakia had also served notice that it intended to oust Germans from within the borders of the reconstituted nation. These steps are understandable in view of the cruelties perpetrated by the Germans but they emphasize the extent to which political feeling has subordinated considerations of mutual welfare.

The same phenomenon appears in the differences which emerged between the Western allies and the Soviet Union concerning the pressure which should be brought to bear upon Poles and Russians to return to their homeland. The Soviet took the view that the displaced persons should be sent back with all possible speed; the Western allies claimed that those who would not wish to return for political reasons because of fear of persecution and discrimination should not be forced to do so. Reports from the United Nations Relief and Rehabilitation Association showed that political and national differences were responsible for a great deal of reluctance on the part of many national persons and groups to return to their former country. We thus see that tolerance constitutes an important element in the future population distribution of Europe. One may recall the statement above taken from Sauer that Europe still has the natural resources to build high economic standards for its people if it could be sanely organized. The sentiment of nationality and of race have done perhaps irreparable damage to the economic life of Europe, among other ways, by preventing the most rational distribution of population.

In order to take co-ordinated action in dealing with the emigration of displaced persons and others from Europe as a result of World War II, the Mexican government invited other American governments to a conference in Mexico City in October 1943. The 21 republics and Canada sent 71 official delegates, and several prominent international bodies were also represented. The conference passed 32 resolutions, two of which concerned the creation of an Inter-American Demographic Committee which was to take steps for the creation of an inter-American Demographic Institute. Each government was urged to create a special agency to study population and migration problems. The Conference also recommended that a census of the entire American continent be taken in 1950 and 1951, that studies be made of the economic capacity of each country to receive and utilize immigrants, and that it was necessary to develop adequate social standards if immigration was to play its full part.

The Conference gave attention to racial problems and especially urged that the native Indian and Afro-American peoples be given better opportunities for improved economic conditions. Public-health measures and assistance to immigrants were considered, and the Conference recommended to the governing body of the International Labor Organization the expansion of the work of the Permanent Committee on Migration for Settlement which has been referred to above, and it was resolved "that certain international conventions relative to immigrants and their equality of treatment approved by the International Labor Conferences held at Geneva in 1925, 1926, 1935, and 1939 be ratified and incorporated in the laws of the respective American nations."[29]

In August 1946, the Permanent Migration Committee of the International Labor Office met in Montreal to discuss postwar migration prospects, methods of international co-operation in resuming migration after the war, racial discrimination in connection with migration, and technical selection of immigrants. The Committee recommended to the Governing Body of the ILO that the 1939 convention should be revised and include a number of specific recommendations, too numerous to outline here, for facilitating the movement of groups and persons.[30]

The cure for overpopulation does not lie in moving millions of

[29] Sarah E. Roberts, *First Inter-American Demographic Congress* (*The Department of State Bulletin*, January 20, 1946), p. 69.

[30] See Murray Ross, "International Labor Office Permanent Migration Committee," *Department of State Bulletin*, January 19, 1947, pp. 120–22.

people from overcrowded areas. Rather it is to be found in better economic organization, the development of industries, major or secondary according to circumstances, improved methods of agricultural production and distribution, and the elimination of barriers to international trade. It is fantastic to imagine that emigration will meet the population problems of China, India, and southeast Asia for, indeed, the world does not possess shipping enough to transport the surplus numbers; nor is there any evidence at all that countries which might be in a position to receive newcomers will be prepared to accept more than a relatively few people. The unwillingness of the victorious allies to receive displaced Jews from Europe constitutes sufficient, even if disappointing, evidence. Nor can we expect that international organization will be permitted to take over direct control of the migration of people. States may be ready to surrender their power over atomic energy perhaps under a system of security to make another effort to reduce armaments; they may agree to plans for the more equitable production and distribution of food but present indications are that they will not surrender to any control over their emigration policy to a supernational organization.

This does not mean, however, that improvements cannot be made. An Australian writer has urged that the term "White Australia" be dropped out of deference to the sensibilities of Asiatic peoples and also that that country (presumably the principle would apply to others) might report to an international organization on its population situation. If this were done it would show the world that a country like Australia with its vast empty spaces does not constitute fertile ground for unlimited migration and, as mentioned above, carefully regulated schemes such as those proposed by the International Labor Organization may play a minor, but not necessarily on that account unimportant, part in promoting a certain amount of migration.[31] And also, certain emergency problems exist as a result of World War II.

While it is true that Europe could still maintain a very large population, given peace, adequate economic organization, and reasonable tolerance, the brutal fact stands out that with the present political disorganization, economic disruption, and national neuroses, hundreds of thousands of displaced persons cannot expect to find a home in that continent. Consequently, their fate will de-

[31] See Essay by Henry Pratt Fairchild, "World Population Movements and the United States," in Arnold J. Gurcher and Richmond Page (editors), *America's Place in World Economy* (New York University, 1945), pp. 137–52.

pend upon the immigration policies of countries outside of Europe and especially upon the attitude and action of the United States. Throughout its history there have been American citizens who have attempted to block immigration on the grounds that newcomers threaten the economic security of the American worker, that the character of the newcomers is undesirable, and that their intelligence is low. These arguments heard between World War I and World War II are being repeated. They have been often exposed and it is to be hoped that the United States "as the richest and most powerful country in the world" will "assume leadership in providing new homes for the displaced persons."[32] In the words of Earl G. Harrison,

> All will agree that our immigration policy must be gauged to the interests of the United States. But we shall be courting disaster if we take a provincial, short-sighted view of where our real interests lie. Our policy must be dictated by an enlightened self-interest, which will take full account of our leading position in the family of nations, and of our responsibilities in helping to establish a sound political and economic world order.[33]

[32] Earl G. Harrison, "Immigration Policy of the United States," *Foreign Policy Reports,* April 1, 1947.

[33] *Ibid.,* p. 20.

Chapter XIII

MINORITIES

HUMAN beings react to situations in different ways. A disappointed lover may give way to grief or indulge in hate. Opposition may call forth a man's determined will, or may crush his spirit. Individuals and communities may tolerate differences of opinion, or they may be roused to fear and hostility. And hostility may express itself in one of two ways: The orthodox will either attempt to convert the dissenter and bring him into the fold (for people seem to desire conformity and wish to "make people over") or else condemn him to endure discrimination and not infrequently segregation.

Tribal communities have insisted upon unity of religious observance because they fear that abstinence from tribal ceremonies on the part of even one person will call down the wrath of the gods. Individuals in a position of power find pleasure in making others bow to their will. Those with a sense of mission feel that they must save the doubter and the heretic. But if the conformist takes the other line and hates the dissenter, he will discriminate against him, ridicule him, impose legal and social disabilities upon him, isolate him as in a ghetto, and even burn or crucify him.

Political communities have had the problem of minorities for a long time, but the situation today has reached a stage of extraordinary tension. The reasons can best be appreciated by a brief reference to history. Under the feudal system the great majority of people lived in a subordinate and settled status and took little part in political affairs; hence the problem of minorities was of minor importance. When the modern state appeared the new monarchs had to assert their authority against the universal claims of the Pope and the supranational character of the Holy Roman Empire without and break the power of the nobles within, nobles who usually, though not invariably, spoke the same language and belonged to the same political group as their sovereign; while king and nobles fought, the minorities, who spoke a different language and professed a different faith, had a breathing space.

But the more the monarchs strengthened their power, the less room was left for dissenting minorities; all subjects, whatever their creed or language, owed obedience to their ruler. In the sixteenth century it was religion which first provided the great battleground between governments and dissenters. In Spain, the German states, England, Scotland, and elsewhere, monarchs attempted to impose religious uniformity, not only upon their subjects whose language, customs, and historical tradition were different, but also upon their own people. Since the monarch was an absolute ruler, all his subjects, whatever their language and customs, must profess his religion. The earlier form of the minorities question was therefore likely to be a religious rather than a political or "national" one.

When the idea of the state and of nationalism became more widespread, and when democracy arose, the problem of minorities began to appear in its modern form. If the majority of people were, say, German and insisted upon making the Poles into loyal Germans by enforcing the German language, German customs, and German law, they might treat the minority with more intolerance than an absolute monarch would have done. In short, the growth of the idea of nationality, with its emphasis upon similarity of behavior of all groups under a common flag, a national system of schools, (often) a national religion, and the attempt to translate this nationalism into a self-governing political state, sharpened the whole minorities problem.

Many parts of Europe had suffered from numerous wars in the course of history, and their conquerors had subjugated large areas and diverse groups of people. Turks conquered Bulgarians, Greeks, Albanians, Rumanians, and Serbs; Germans conquered Slavs; Hungarians conquered Czechs, Slovaks, and Slovenes; and so on. The fact of conquest meant national intermixture. Moreover, the dominant rulers undertook colonization: English kings planted Scotch Protestants in the north of Ireland; and the Hapsburg monarchs encouraged German colonists to settle in eastern Europe and invited Serbs to settle in lands which had been depopulated by Turkish armies. These colonists received certain privileges. They were a step above the conquered, as it were, even if they were not regarded as on an equality with their political masters. Now many of the peoples who had suffered defeat in war and had lost their freedom remembered their national history and dreamed of the glorious period when their ancestors lived in their "Golden Age." Greeks, Bulgarians, Albanians, Poles, Czechs,

and Hungarians reawoke to self-consciousness in the nineteenth century and responded to the doctrine of nationality.

Here, then, was the problem: The dominant people, animated by feelings of imperialistic nationalism, insisted that their minorities adopt the national language, education, customs, and law; at the same time the minorities, impelled by the same type of nationalistic desires, demanded their own institutions and resisted assimilation by the majority. What was to be the outcome? Was the majority to be the hammer and the minority to be the anvil, as one German statesman put it, or could a number of self-conscious nationalities live peaceably together within a single state? The answer would depend upon the temper of the national groups and whether or not they could and would tolerate differences. While nationality remained of the liberal type no great problems arose, since the liberal state permitted cultural differences to exist; but, as historians point out, the French people, under the influence of an exuberant nationalism, set the modern example of attempting to assimilate minorities.

It was in Hungary, perhaps, that the most intense struggle of nationalities occurred in nineteenth-century Europe. The Hungarians, who had come under Austrian rule after their defeat by the Turks in 1526, attempted to regain their old political institutions. After three hundred years of struggle, they succeeded in 1867 in obtaining a position of equality in the Austro-Hungarian Empire. Now, the Hungarians themselves had to face the problem of their own national minorities, especially the Slavs. The question was whether those who had struggled for their own freedom would grant it to their subjects. The 1868 law of nationalities provided the answer. Macartney well points out that it was a not illiberal law, if one accepts the fundamental assumption that Hungary was a Magyar national state and the non-Hungarians were merely minorities; but this was precisely the assumption which the other nationalities refused to admit.[1] They desired their own way of life, and did not relish the thought of becoming assimilated to Magyar customs, and living a social and political life under Magyar domination. They resented many of the Hungarian actions, refused to conform, and obstinately clung to their own habits. The Hungarians in turn treated the recalcitrant minorities as traitors to the state, and coercion became increasingly common. The Hungarians were not alone in their methods. Prus-

[1] C. A. Macartney, *National States and National Minorities* (Oxford University Press, London, 1936), p. 120.

sia and, later, Germany attempted to assimilate the Polish minorities; Russia tried to "make over" many of the non-Russians, and other nations were more or less guilty of the same policy of assimilation.

Such action by the politically dominant national state against its minorities aroused the anger of outside nations which contained representatives of the oppressed groups. Over 50,000,000 people of prewar Europe lived as minorities; and their fate was a matter of deep concern to their brothers over the border. The Serbs in Serbia flamed up in indignation at the thought of the sufferings of their fellow Serbs in Austria-Hungary. Irishmen in America hated England because of its policy in Ireland. Jews all over the world were sensitive to the treatment of fellow Jews in various parts of Europe. Western Europe listened with increasing anger to tales of Turkish oppression of non-Turks. Deep calling unto deep, resenting the oppressive treatment of minorities, became a major factor in international relations, and a not insignificant cause of the World War of 1914–1918.

Prior to 1914 several attempts were made to provide machinery to deal with the question of the minorities. The first method was that of internal constitutional guaranties. The Austrian constitution of 1867 provided that each minority might preserve its nationality and language; the 1868 Hungarian Law of Nationalities permitted the use of minority languages in legislatures and schools; the United States, by the Fifteenth Amendment, provided that no person might be denied his freedom by reason of race, color, or creed; Turkey, by decrees published in 1839, 1856, 1876, and 1908 promised certain political rights to non-Turkish subjects. Unfortunately these legislative and constitutional safeguards often proved to be broken reeds, inadequate to withstand the passions of intolerant national majorities.

Hence it is not surprising that foreign powers frequently intervened on behalf of minorities and as the nineteenth century developed, international treaties for their protection tended to become more extensive in number, and more detailed in character.[2] The Great Powers attempted especially to make Turkey treat its subject peoples fairly. In a firman (or decree) of 1876 Turkey once again made fair promises, and the governments threatened that, if it did not translate these paper reforms into actuality within a short time, they would endeavor to devise international methods to protect the minorities within the Sultan's empire. The

[2] C. A. Macartney, *op. cit.*

Armenian massacres in 1894–95 caused the powers to consider a proposal for "the European supervision of Christian minorities"; but the plan foundered on the rock of Anglo-Russian antagonism. Further Armenian massacres in 1904–9 caused the Conference of Ambassadors to draw up a plan dividing eastern Anatolia into two parts. Each part was to have a foreign inspector-general with powers of control over the administration and police authorities in those areas; these two inspectors-general were to be appointed by the Sultan, but in reality they were nominated by the great powers.

Turkish repression in Macedonia in 1903 led to international activity. The European governments intervened and forced the Sultan to nominate a Christian inspector-general and two civil agents (one Russian, one Austrian). Foreign experts were to reorganize the police force, and a financial commission represented by six powers was to supervise her revenues. This international organization brought some improvements in conditions, although Colonel Lamouche, a member of the French section of the International Mission for the Reorganization of the Ottoman gendarmerie, wrote:

> La lutte entre les nationalités devenait de plus en plus violente et se manifestait jusque dans Salonique. ... Pourtant l'activité des réformateurs n'avait pas été absolument sans résultats.[3]

His judgment agrees with that of Schevill, who noted that the international institutions

> achieved only a comparative success, since the pestilential Greek and Bulgar bands stubbornly persisted. . . . . If it was a gain that the Turks were largely superseded as rulers of the country, the fact stands out that the animosities among the component ethnic groups had become so unbridled that reason and common sense were set at naught, while the whole population indulged in an orgy of self-destruction.[4]

The Young Turk revolution of 1909, which many had hoped would initiate a more liberal regime, proved to be the beginning of a more intense program of Turkification and oppression. The great powers again protested, and in 1912 the Balkan States demanded that Turkey permit a superior council of Christians and Moslems, under the authority of representatives of the great powers and the four Balkan governments, to supervise a reformed

[3] Colonel Lamouche, *Quinze Ans D'Histoire Balkanique, 1904–1918* (Payot, Paris, 1928), pp. 60–61.

[4] F. Schevill, *History of the Balkan Peninsula* (Harcourt, Brace & Co., New York, 1922), p. 436.

administration. War intervened before anything could be done, and the question remained unsolved.

The criticism usually leveled against the prewar system for the protection of minorities is that it lacked permanency. The great powers met as occasion seemed to demand but did not provide adequate continuity of supervision. Moreover, the right of intervention given to, or taken by, the great powers was frequently distorted to serve selfish political ends; national self-interest rather than solicitude for the minorities was the real motive for the seemingly altruistic championing of the cause of the weak.

In the absence of internationally recognized judicial institutions the powers were free to interpret the treaties as they wished; and self-interested governments obviously could not constitute a satisfactory and impartial tribunal. Finally, the prewar system provided no means of enforcing the treaties, many of which remained a dead letter; and the 50,000,000 people who lived as political and cultural minorities in Europe provided ample material for international strife in a civilization which lacked all but the most rudimentry international institutions and mentality to deal with situations which were growing daily more serious.

The position of minorities did not figure in the war aims of the Allied Powers in the early years of the World War of 1914–1918, and it was not until 1917 that the question came into prominence. In that year the United States entered the war, and President Wilson's public utterances rang with the challenging faith that the morality of states should conform to the morality demanded of individuals and that justice should be guaranteed to smaller nations and to subject peoples. Some months later, soon after the Bolshevist Revolution, the Soviet authorities proclaimed the freedom of dependent nationalities and recognized the independence of Finland. The Czechs and the Poles, meanwhile, carried on strenuous propaganda in their struggle for national freedom. These factors—Wilson's speeches, Soviet pronouncements, and Czech and Polish propaganda—brought the principle of self-determination into the limelight.

At the Paris Peace Conference the statesmen redrew the map of Europe; they gave independence to Poland and Czechoslovakia, and agreed to the enlargement of Greece, Rumania, and Yugoslavia so as to include many of their compatriots who had previously lived under alien rule. But it was impossible to draw boundary lines so as to eliminate minorities entirely; and, in consequence, between 20,000,000 and 30,000,000 people remained in that un-

enviable category at a time when nationalist passions had been stirred even more violently than during most of the nineteenth century.

Under these circumstances a definite movement for the protection of minorities developed. The initiative came from some Jewish individuals and unofficial bodies which worked assiduously to have measures for the protection of their coreligionists incorporated into the peace treaties. Gradually their efforts, and those of others, bore fruit; the scope of the idea broadened to include other groups as well as Jews; and the League of Nations emerged as the new international institution for the protection of minorities. Within the next few years the following international arrangements were concluded:

1. Five minority treaties, signed by the Principal Allied and Associated Powers with Poland, Czechoslovakia, Greece, Rumania, and Yugoslavia
2. Four sections dealing with minorities in the Treaties of Peace with Austria, Bulgaria, Hungary, and Turkey
3. Five declarations made before the League Council by Albania, Esthonia, Finland, Latvia, and Lithuania at the time of, or soon after, their admission to membership in the League
4. Two special conventions, the German-Polish convention relating to Upper Silesia, and the convention for the Memel Territory

The General Minorities Treaties contained a list of rights which were guaranteed to minorities. They include the right to life, nationality, personal liberty, freedom of worship, also equality of all nationals before the law, equality of civil and political rights, and the use of minority languages. No persons because of racial, linguistic, or religious difference were to suffer discrimination in eligibility to public employment, and public honors, or in the exercise of their professions or industries or occupations. The minorities were to be permitted to establish their own charitable, religious, and social institutions and their own schools; and the signatory states solemnly promised (1) not to place restrictions on minority languages in commerce, in religion, in the press, or at public meetings and (2) that in areas where an adequate proportion of minority subjects resided they should receive an equitable share of state assistance in setting up their educational, religious, and charitable institutions.

In addition, certain special rights were guaranteed to minori-

ties in special positions, such as the Jewish minorities in Greece, Poland, and Rumania, the Valachs of Pindus in Greece, the non-Greek monastic communities of Mount Athos, the Moslem minorities in Albania, Greece, and Yugoslavia, "the Czeckler and Saxon communities in Transylvania, and the Ruthene territory south of the Carpathians (Czechoslovakia)."[5]

The minorities treaties not only set forth certain rights; they contained guaranties from the League of Nations. The signatory governments recognized their obligations as "fundamental laws" which they undertook not to alter by unilateral legislative or administrative action; they agreed that these obligations were to be a matter of international concern and might be modified only with the consent of a majority of the League Council.

This type of guaranty provided a threefold improvement over the prewar machinery: (1) a permanent control by the League Council, in contrast to the spasmodic interventions of the great powers in the nineteenth century; (2) a collective intervention instead of individual government action or interposition; (3) the introduction of a judicial procedure designed to remove the minority questions from the political sphere and so avoid a repetition of the prewar experience in which minority questions had become entangled with power politics.[6]

The governments which were bound by the minorities treaties accepted their new obligations under considerable protest. The Polish representatives in particular expressed their opposition in a most emphatic manner. They claimed that these treaties introduced unprecedented conditions as a price of national recognition, constituted an unwarranted interference in national affairs and infringed Polish sovereignty, and placed Poland in an inferior position unworthy of its national dignity; international supervision, they maintained, would humiliate Poland without helping the minorities, with whom the Polish government could develop more satisfactory relations if they were not subjected to external interference. M. Clemenceau, the President of the Peace Conference, in his reply to M. Paderewski asserted that the minorities treaties did not introduce any new restrictive principle, and that during the nineteenth century several nations had accepted minority obligations in return for their recognition as independent govern-

[5] League of Nations, *Ten Years of World Co-operation* (Geneva, 1930), p. 360.

[6] Julius Stone, *International Guarantees of Minority Rights* (Oxford University Press, London, 1932), chapter i.

ments; and he added that the principal Allied and Associated Powers "would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition." By their sacrifices in the war they had helped to establish Polish independence and consequently had a right to insist upon certain guaranties in order to prevent a recurrence of the prewar experiences. Such guaranties, he stated, however, did not cast any doubt upon Poland's desire to maintain the general principles of justice and liberty; but the minority guaranties were necessary because Poland and the other states were acquiring large populations

> speaking languages and belonging to races different from that of the people with whom they will be incorporated. Unfortunately, the races have been estranged by long years of bitter hostility. It is believed that these populations will be more easily reconciled to their new position if they know that, from the very beginning, they have been assured protection and adequate guarantees against any danger of unjust treatment or oppression. The very knowledge that these guarantees exist will, it is hoped, materially help the reconciliation which all desire, and will indeed do much to prevent the necessity for its enforcement.

This statement disposed of the Polish claim that the best way of treating the minorities problem was to trust to the nation itself and its own internal constitutional guaranties. Such a system had been tried in the nineteenth century and had been found wanting.

Sir John Fischer Williams suggests that the minority treaties were unpopular for the following reason:

> Essentially, ... the movement for the international protection for Minorities is merely one example of the movement to secure good government, and that is perhaps why it is so much opposed and disliked, for no Government, and more than that, no People, likes having what it considers to be its domestic obligations pointed out to it by outsiders. There are analogies for this dislike in the ordinary relationships of private and family life . . . .

He sets forth a second fundamental difficulty:

> The truth is that there is a certain artificiality in the separation of the treatment of a racial or a religious Minority from the general administration of a State. A State which has attained a high level of normal administration will treat its Minorities well as part of the ordinary functioning of the machine of government. The maltreatment of a Minority is as a rule an indication of a general disease; it is more than a separate and independent malady of one organ not affecting the whole of the rest of the body of the State.[7]

[7] Sir John Fischer Williams, *Some Aspects of the Covenant of the League of Nations* (Oxford University Press, London, 1934), pp. 194–97.

The League machinery thus attempted a very difficult task, namely, to effect some improvement in the position of minorities and afford them some guaranty against ill-treatment, and at the same time not to interfere unduly in the internal affairs of sovereign states. In order to succeed, the experiment would require: (1) an efficient League machinery, including not merely carefully devised procedures but also a fine sense of tact and a deep feeling for justice on the part of the League officials; (2) a favorable political temper in the governments which had undertaken minority obligations, since if they continually brooded over external interference and became more sensitive to their "sovereignty," "prestige," and "national unity" than to their international obligations, they would endanger the whole structure; (3) restrained conduct on the part of the minorities, for if they maintained a persistent attitude of hostility to their governments, and indulged in disloyal and even pin-pricking activities, they could easily wreck the fine balance of the new international experiment.[8] These three factors required further examination.

THE MINORITY MACHINERY OF THE LEAGUE OF NATIONS

The League guaranteed certain rights to "persons belonging to racial, religious, or linguistic minorities," and in order to make the guaranty effective the League Council devised the following procedure: The minorities might send petitions to the League setting forth evidence that their rights had been violated by their government. Such a petition had no legal effect but was merely a document of information. The minorities did not obtain

[8] The main minority groups in prewar Europe are described in L. P. Mair, *The Protection of Minorities* (Christophers, London, 1928). See also Dr. Otto Junghann, *National Minorities in Europe* (Covici, Friede, New York, 1932).

We shall see below that the United Nations did not provide anything like the elaborate machinery used by the League. Perhaps this development will come with the passage of time.

An appeal to the United Nations which undoubtedly will do much to determine methods and procedures to be followed in dealing with national minorities was made by India late in June 1946. The formal complaint charged the Union of South Africa with discrimination against approximately 250,000 Indians living in South Africa. The complaint filed by Sir Ramaswami Mudaliar called on Secretary General Lie to place the matter before the General Assembly, meeting in New York in October. The appeal suggests that India has given up hope that membership in a British Commonwealth is sufficient to afford its citizens adequate consideration before a British Empire body.

a legal personality, nor was the League to be an umpire between two equal parties—the government and its minorities.[9] To place the minorities in such a position would put the sovereign state on the plane of its subjects, a situation clearly not acceptable to governments.

Even so, the petition had to fulfill certain conditions before the Secretariat of the League would "receive" it: It must have in view the protection of minorities in accordance with the treaties; it must not set forth a request for political separation, and must therefore accept the present political status quo; it must not be written by anonymous or unauthorized persons; it must not be couched in violent language; and it must not repeat information which had been recently dealt with by the League.

The Secretariat did not pass upon the substance or the merits of the complaint; its task was merely to ascertain that the petition was formally in order. Approximately one-half of the petitions did not satisfy these preliminary requirements; but one should not assume that the Secretariat rejected a petition on mere formal and technical errors, for that body frequently assisted petitioners to rectify small matters and thus enabled them to have their petitions "received."

If the petition was in order, it was sent to the government concerned; for the League Council could not consider a complaint against a government without permitting the latter to examine and comment upon the charge made by the minority—otherwise the League would be judging a situation on inadequate evidence. By a 1923 resolution, the petition, after being examined by the government was circulated, together with the government's comments, among all the members of the Council. The petition was only in the stage of being information, and did not yet set the judicial machinery in motion. Julius Stone notes that the documents at this point were to go to the individual members of the Council rather than to the Council as a body.

In October 1920 the Council resolved that each petition should be considered by the President of the Council and two members selected by him. This procedure was adopted because, according to the minorities treaties, only members of the League Council possessed the right to bring before the Council any infraction or danger of infraction of treaty provisions. Now, if one state alone charged that a government had violated its minority obligations,

[9] Julius Stone, *op. cit.*, pp. 37–44.

it would lay itself open to the accusation of political interference, of ulterior motives, and even of unfriendly action. It was a serious thing for one government to accuse another of nonobservance or violation of treaties. Hence the Council agreed that each petition should be examined by a committee of the Council, which, in the words of Stone, juridically had no existence. There was no one permanent committee, but a new committee was set up for every petition to be considered. This committee of three, or perhaps five, was in reality a group of representatives of governments, which considered the evidence and decided whether or not the Council should be formally "seized" of the question. The committee method overcame the danger inherent in permitting one government alone to "seize" the Council.

The committee had first to evaluate the evidence contained in the minority petition; and for this task it relied heavily upon the Minorities Section of the League of Nations Secretariat, which had these important sources of information: (*a*) the minority petitions and the government comments, (*b*) a press information service which regularly received a great number of newspapers, (*c*) a weekly bulletin summarizing articles which had appeared relating to minorities, (*d*) materials gathered by its special research department, (*e*) information gathered by members of the Minorities Section on their journeys to various countries, and (*f*) information gained from official and unofficial people visiting Geneva.

If the committee found that the complaint was unfounded, it took no further action. If the complaint seemed well substantiated, it might attempt conciliation by entering into private conversations in order to persuade a government to remedy questionable policies; in this way it would avoid making a formal international issue of a minority complaint. It might suggest that the government refrain from certain actions relating to a minority which would clearly force the committee to bring the matter before the League Council, and might make specific proposals to remedy a difficult situation.

If the conciliation efforts of the committee broke down, it might bring the matter before the League Council, which, after having considered a report submitted by the rapporteur appointed for the particular case, had several alternative courses open to it: It might refer legal questions to the Permanent Court of International Justice. It might attempt to persuade the government to modify is policy. Theoretically it might exercise the greatest pres-

sure on behalf of the minorities by taking such action and giving such directions "as it may deem proper and effective in the circumstances."

How efficient has this machinery proved to be? What complaints have been leveled against it, and in what respects might it be improved?

1. Many people believed that the League guaranty should not be confined to specific complaints of minorities against their governments, but that the Council should undertake a "permanent supervision" over the minorities living under governments which have accepted minority obligations. Professor Gilbert Murray in 1921 proposed the establishment of a Permanent Minorities Commission along the same lines as the Permanent Mandates Commission. In 1929 Germany raised the same issue and proposed that a special permanent committee be set up which should meet at fixed intervals and handle minority questions upon a more definite and systematic basis. Those who favored a permanent committee assert that the committees of three lacked continuity, and that the statesmen appointed to them were too busy to give their undivided attention to minority questions, some of which were not particularly important, and often sent subordinate officials as substitutes. Also the committees of three had to judge on inadequate evidence; they were unable to interview petitioners, and in dictatorship countries where the freedom of the press is limited it is futile to rely upon the press as a supplementary agent of information.

Undoubtedly a permanent minorities commission could regularize and make more efficient the whole procedure. Delays and postponements are too frequent, and minority claims are apt to be pushed to one side; a group whose whole work was to consider minorities questions would build up an institutional permanency and a set of precedents of great value. The proposal, however, was not adopted. A committee of the League Council decided that the minorities treaties "contained no provisions permitting the Council to exercise constant supervision with regard to the situation of minorities . . . . Modifications in the treaties required the assent of the Council [acting by majority]." Various commentators severely criticized this judgment; but whether it was a satisfactory interpretation of the Treaties or not, it is undeniable that the attitude of governments made the early appointment of a permanent commission out of the question, however desirable it might appear to liberal theorists or to the minorities themselves.

Despite the assurance of the German government in June 1929 that it did not propose that such a permanent commission should have any power to interfere, or to investigate conditions, within the boundaries of any sovereign country, the prevailing national temper made impossible the acceptance of even this modified proposal.

2. Many critics pointed to the undue amount of secrecy which surrounded the working of the treaties. Until 1923 all the documents relating to minority petitions were circulated to all the League members. After that time, because of complaints from Czechoslovakia and Poland, the Council members alone received the documents, which were published in only exceptional cases. Lucy P. Mair writes that between 1922 and 1929 the Committees of Three did not even report to the League Council, which therefore exercised practically no control at all.[10] Moreover, petitioners had no means of ascertaining whether or not their complaints had ever been considered. As far as they knew, their communications might have been thrown into the wastepaper basket. And it was inevitable that the minorities would on this account lose faith in the League.[11] In 1929 the Council, in an attempt to remedy this obvious defect, ruled that the Secretary-General of the League should inform a petitioner when his petition was not receivable; send to all members of the League Council a report of all the letters sent by the Committee of Three to the Council; publish an annual statement showing (*a*) the number of petitions received by the Secretariat during the year, (*b*) the number declared nonreceivable, (*c*) the number accepted and referred to the Committees of Three, (*d*) the number of Committees of Three that had been formed and the number of meetings which they had held to consider petitions, and (*e*) the number of petitions which had been finally dealt with during the year. These steps were designed to correct the unfortunate impression resulting from inadequate publicity given to minority petitions during the period 1922–1929.

3. Some authorities suggested that the League machinery would be considerably strengthened if resident agents of the League could be appointed to the most important minority areas for purposes of observation and conciliation. Several years before,

[10] L. P. Mair, "The League Council and a Minorities Commission." *The Political Quarterly*, July–September, 1930.

[11] Gustave Köver, *Non, Genève ne protège pas les minorités nationales* (Editions du Bureau Central des Minorités, Genève, 1938)

Professor Gilbert Murray had urged this step for certain parts of Macedonia and Asia Minor; but the strong opposition of the Yugoslav delegate had caused the proposal to be dropped. C. A. Macartney believed that it was unfortunate that the League did not adopt some such method; he claimed that it was wrong to assume that impartial League observers on the spot would encourage restless minorities to multiply their grievances, "for if the agent is a responsible man, he will be able to detect the unreality of a complaint far more accurately than anyone in Geneva could do." Lucy P. Mair put the matter succinctly: "What is required is not so much more discussions at Geneva as more investigation on the spot." Minorities then would have confidence that their complaints were receiving attention; the method "ought also to reduce the number of frivolous petitions"; and it would make it possible "to verify the statements made." However, it was unlikely that governments which had unwillingly accepted minority obligations would agree to an extension of the investigating power of the League. The nationalistic temper abroad in Europe indicated that the powers would wish to weaken, and not strengthen, existing League methods.

THE ATTITUDE OF SIGNATORIES OF MINORITIES TREATIES

Indeed, several governments criticized the whole basis of international protection of minorities. They agreed with Poland in its plea to the Peace Conference that such measures were a violation of national sovereignty. Their attitude reflected a political fundamentalism which regarded sovereignty as so basic a thing as to be beyond external interference. To this objection was added the grievance that only a few states were obligated to the League of Nations in minority matters; other countries—Italy, France, Belgium, and Denmark—which had received territory after 1918 did not have to accept the system of international guaranty for minorities. Why, asked Czechoslovakia, Poland, and the others, should some governments have to accept, while others escaped, minority obligations? Why should not all states which possessed minorities undertake the same international duties?

There is point to these questions. Undoubtedly there were historical considerations which made the minorities question more urgent in some countries than in others; but the British treatment of the Irish, the Italian methods in the Tyrol, and even French

policy in Alsace-Lorraine suggested that minorities in all parts of the world are liable to harsh treatment and need international protection. Theoretically the case for generalizing minorities treaties was strong enough; practically the question arose as to whether or not it would be wise to attempt the difficult task of persuading the other governments to undertake international minorities obligations at a time when existing obligations were being so widely ignored. One might have argued that to generalize the obligation would remove the sting of alleged inferiority from the governments which make this complaint and cause them to liberalize their attitude and their policy toward their minorities. But a proposal to universalize minority treaties would, unfortunately, create resistance and tension. So strongly did Poland feel on the matter that Colonel Beck told the League of Nations, on September 13, 1934, that, "pending the introduction of a general and uniform system for the protection of minorities," Poland would refuse "all co-operation" with the international system for supervising minority protection. Representatives of the great powers insisted that a state could not release itself from its international obligations by unilateral action, and Poland consented, although unwillingly, to withdraw this threat, but in practice it continued to treat its minorities harshly.[12]

Critics of the minorities principle argue that the League treaties worked against the realization of national unity, tended to create a state within a state, and encouraged minorities to exaggerate their difficulties and to exploit their right of appeal to the League for selfish interests. We are rightly asked not to believe that the government is always wrong and that the minorities are always persecuted angels. Buell aptly observes that it is undesirable "to have minorities constantly appealing to an outside authority for redress of real or imaginary grievances." The Third Assembly of 1922 realized the force of the argument that the minorities treaties should be generalized, and passed a resolution expressing the hope that states not bound by international legal obligations would accept the standards contained in the minorities treaties. But it also recognized the other side of the problem when it added a declaration to the effect that, while minorities should be protected from oppression, it was their duty "to co-operate as loyal citizens with the nations to which they belong."

[12] For a brief but effective summary of the plight of minorities in postwar Europe, see B W. Maxwell, *International Relations* (Thos. Y. Crowell, New York, 1939).

As long as minorities give real or imaginary ground for the suspicion that they are using the privileges afforded to them by international treaties to weaken the state in which they reside, so long will governments feel the minorities treaties to be a liability and even a grievous burden. Czechoslovakia alleged that it could not treat the Sudeten Germans as an ordinary minority because they desired, not autonomy, but separation. How true the accusation was, time has shown. The mere fact that minorities may be used as a pawn in the game of power politics, or may wish to carry "self-determination" to a logical conclusion, i.e., separate statehood, will introduce a complicating and disruptive element into the working of minority treaties. For this reason the resolutions of the European Nationalities Congress were of great significance. This body, which represented many millions of minorities groups, accepted the existing boundaries as final and explicitly renounced any attempt to change their political allegiance. All they asked was cultural nationalism within the framework of existing political states. Such a declaration might have reassured the governments which had signed their minority treaties and encouraged them to adopt a more liberal policy toward their minorities. Unfortunately, such expectations were not realized, owing to deterioration of the general international situation.

In an effort to obviate, or at least lessen, the danger that petitions to the League might irritate relations between government and minorities, Count Apponyi proposed that the League Council should automatically consider petitions emanating from certain responsible bodies, such as supreme ecclesiastical organs or responsible cultural and economic institutions, which by reason of their acknowledged position would submit petitions to the League only after most careful consideration of minority complaints. This procedure, he claimed, would save the League from having to consider many small and trifling communications, and would introduce a greater element of responsibility in the submission of petitions. The Council felt that the proposal could not be accepted; for, although it would lessen the number of petitions coming before the League Council, the weight of accusation against a government would be increased by reason of the influential sponsorship on the part of ecclesiastical, cultural, or economic bodies and national authorities might find their authority more than ever challenged if well-known and respected bodies arraigned them before the bar of the League Council and of world opinion. Such procedures would still more definitely weaken national sovereignty.

THE ATTITUDE OF MINORITIES

The restiveness of national governments which are bound by minority treaties and their dissatisfaction with the system were more than matched by the disappointment of the minorities themselves. The latter complained of the long delay in considering their petitions, of the lack of notification to them of the fate of their petitions, and the tendency of the Committees of Three to sacrifice plain legal remedies required by the treaties to subterranean political negotiations with the governments concerned, which "makes possible various sorts of bargaining and hanky-panky at the expense of the minorities." The problem, however, goes deeper than methods. Macartney has convincingly shown that "no uniform treatment of the minorities as a whole is possible,"[13] because minorities range from numerically insignificant and culturally backward groups to self-conscious and politically minded peoples, and that their relations with their respective governments vary from deep-seated traditional hostility to relatively harmonious co-operation. No uniform pattern can embrace these varieties, which may be classified in four groups as follows:

1. The politically indifferent minorities, who maintain their national customs, celebrate their national holidays, and dress in the fashion of their forefathers. These groups, in general, constitute only a very minor problem, inasmuch as they have few or no political aspirations.

2. The numerically unimportant and geographically scattered minorities, who, even if they are politically self-conscious, are either too isolated or too small in numbers to have any political influence.

3. The numerically important, culturally and politically self-conscious minorities, such as the Germans in Czechoslovakia.[14] According to Macartney the Sudeten Germans in the early post-war period were not "fundamentally irredentist" but regarded themselves "as a natural and integral part of the historical units of Bohemia, Moravia, and Silesia." Their dissatisfaction arose from their being treated as a subordinate minority rather than as an equal partner. It can be seen that the borderline between a minority status and a partnership may be a fluctuating one, de-

[13] C. A. Macartney, *op. cit.*, p. 395.

[14] Arthur de Balogh, *L'Action de la Société des Nations en matière de protection des minorités* (1937), criticizes the Treaties for guaranteeing only individual and not national rights. It will be necessary to end the distinction between majority and minority groups, he urges.

pending upon the temper of the various peoples within a state. That this is so, recent events tend to prove; for many of the Germans in Czechoslovakia, in a reaction against what they believed to be an unsatisfactory and unfair position, responded to the appeals of the German government, and afforded the latter a convenient excuse to pursue a policy of conquest, under the guise of protecting the rights of fellow Germans.

4. Finally, there are the frontier minorities. Because of their position, they have had to endure considerable suffering and even persecution, especially in times of crisis. They are close to their fellow nationalists across the border, and are bound to them by ties of geographical intimacy. They are normally characterized by an intense national consciousness and a desire for a reunion with their compatriots beyond the boundary. From the viewpoint of the country in which they reside, their attitude savors too much of irredentism, and threatens the security of the state itself; and Czechoslovakia, Rumania, Yugoslavia, and Poland watched with deep apprehension the national feeling among their German, Hungarian, and Lithuanian subjects, who lived near the boundaries of Germany, Hungary, and Lithuania. These illustrations suggest the general judgment that, in the absence of collective security, border minorities cannot hope to escape a policy of assimilation or at least pressure at the hands of their anxious governments. As long as boundaries possess military importance, and nations fear aggressive action from their neighbors, so long will the lot of border communities be an unhappy one. In this respect the position of minorities can hardly be improved merely by tackling their problem as such; it must form an integral part of a general settlement of more fundamental problems—disarmament, collective security, and peaceful change.

POSSIBLE REMEDIES

There were, however, several minority complaints which might have been remedied even within the existing framework. The minority treaties as they stood included several vague provisions. Some did not adequately define what minorities were. Some provided for educational facilities in a general way but failed to make specific provision for minority teachers; as a result governments might observe the treaty in some aspects of educational policy but fail to provide the most important element of a true minority school. The treaties provided for equality before the law, but in the opinion of several critics they did not prevent glaring discrimi-

nations in the enforcement of the law; and many instances occurred in which minority subjects suffered from land expropriation measures, did not receive a fair share of state agriculture credits, and had to endure unequal and unjust taxation burdens. More accurate definitions of rights, both substantive and procedural, should have been adopted. Minorities also asserted that there should be reforms in the treatment of their petitions,[15] and especially that there be more opportunities for recourse to the Permanent Court of International Justice;[16] and, of course, most of them urged the establishment of a permanent minorities commission.

Various private or semipublic organizations of an international character took up the serious study of the problem.[17] These organizations included: the International Federation of the League of Nations Societies, which had a Permanent Minorities Commission and made several recommendations to the League; the Interparliamentary Union, which in 1923 established a commission for "ethnic and colonial problems" and used its widespread influence to work for the improvement of the system of minorities protection; the Second International; the International Congress of Peace Societies; the International Law Association; the Institut de Droit International; and the Académie Diplomatique Internationale. The most important body has been the European Nationalities Congress, which first met in Geneva in 1925 and held annual sessions for several years. It consistently stood for a most important principle, namely, the frank acceptance of the present national boundaries and set its face against movements for territorial revision. Having thus unequivocally separated the minority question from the problem of security, which was necessarily bound up with the demand for frontier modification, the Congress proceeded to formulate the ideal of "free national-cultural development within the given state." This basic principle assumes (*a*) the existence of a multinational state under one political rule, and (*b*) the belief that full cultural economy will not result in a demand for political separation. But history has shown that political nationalism has frequently sprung from cultural roots. It

[15] See especially G. Köver, *Histoire d'une Trahison: le calvaire des minorités nationales et la Société des Nations* (Editions des Bureau Central des Minorités, Genève, 1939).

[16] Arthur de Balogh, *op. cit.:* "En resumé pour arriver à une protection réelle et efficace des minorités, il faudrait accorder des droits nationaux aux minorités comme entités collectives, assurer leur protection par un organe internationale, et leur permettre de saisir cet organe de leurs plaintes."

[17] Dr. Otto Junghann, *op. cit.*, p. 81.

may well be argued that this phenomenon appeared only because the minorities were mistreated and oppressed, and were denied a fair chance to develop their own cultural life. The Congress would doubtless contend that a free acceptance of the ideal of cultural autonomy, of a partnership of different groups in one single state, would suffice to create a genuine political unity and a strong and enduring loyalty. The Congress represented 38 minority groups embracing 27,000,000 people living in 15 countries, and its deliberations and findings were therefore of great significance.

The foregoing discussion has really shifted from the relations of national minorities and League of Nations machinery to the consideration of another principle, that of the unnational state, that is, a state which comprises not merely one nationality, as the present-day national state tends to do, but a number of nationalities. Macartney has excellently written that it is the philosophy of the uninational state which is the basic flaw, in that it cannot be reconciled with the idea of national minorities. One does not leave room for the other. How true his statement is we are realizing today as we witness the determined attempts of the totalitarian states to assimilate their minorities, whether of nationality, party, or religion.

There can be, Macartney suggests,[18] only four possible solutions of the minority problem: First, the state may physically annihilate its minorities—a solution which has been tried in the past but which it is impossible to imagine as a practical policy in the face of from twenty-five to thirty millions of minority subjects in Europe.

Second, we may revise national frontiers so as to reduce the number of minorities to the minimum. To this proposal there are two objections: (*a*) Frontier revision can affect only the minority groups living along the boundary; it cannot alleviate the position of minorities scattered in the interior. (*b*) In the present temper of the world the alteration of boundaries would cause such international repercussions as to make any such attempt at minority amelioration far more explosive than remedial.

Third, we may keep the existing boundaries and try to retain the national state by exchanging populations and transferring minorities to their "homeland." This method was tried in the early postwar period. After the disastrous Graeco-Turkish War of 1922, the two countries in January 1923 signed a convention at Lausanne providing for the compulsory exchange of their nation-

[18] C. A. Macartney, *op. cit.*, chapter xi.

als as from May 1, 1923, except for those Greeks who had been established in Constantinople before October 1918 and those Moslems who were residing in western Thrace. The transfer was to carry with it the automatic exchange of nationalities; the people affected were to have the right of taking their movable property; and detailed provisions were elaborated for valuing and liquidating the property left behind. In order to execute the arrangement, Greece and Turkey each nominated four, and the Council of the League of Nations nominated three, members to constitute a mixed commission. The Commission was to prescribe and supervise the conditions for migration. In turn, it entrusted the actual details to eleven subcommissions, on each of which sat one Turk, one Greek, and one neutral chairman. By October 1924, 370,000 Turks had left Greece for Anatolia, and most of the Greeks in the new Turkey had been evacuated.

This great experiment, considering the temper of the time, may have been the lesser of two evils. But the remedy involved much suffering to the thousands of individuals affected. Not only were there many controversies over whether or not certain Greeks were really "established" in Constantinople, but the forcible separation of people from their home ties, the overriding of sentiment, the economic dislocation, the inability of professional people easily to establish themselves in new surroundings, the inevitable property losses through inadequate evaluations, the delays and complexities incidental to such a transfer, the agricultural problems arising from the transfer of farmers to new and unfamiliar areas, the peculiarly difficult position of Greece when inundated by a million refugees—all these and other factors combine to show that the experiment was one to be undertaken only as a last resort. In reality it involved the sacrifice of all other human associations and values to the one principle of nationality; the question arises whether or not, however exalted that principle may be, it is worthy of a sacrifice on so enormous a scale.

After 1918 about 150,000 Bulgarian-speaking people remained in Macedonia and Thrace under the Greek government, and many thousands of Greeks were living in South Bulgaria and in and around the Bulgarian Black Sea ports. The Treaty of Neuilly (1919) included provisions for the protection of minorities and for the reciprocal voluntary emigration of these Greek and Bulgarian people. Under a convention of August 1920 the two governments established a mixed commission, comprising two neutral members nominated by the League of Nations, one Greek, and

one Bulgarian, to supervise the details. The experience of the next four or five years showed difficulties similar to those just outlined in the case of the Graeco-Turkish exchange, as well as one or two special factors. The Greeks living in Bulgaria were attracted to the rich soil of western Thrace in Greece and, being adversely affected by Bulgarian land legislation, were ready to move to Greece; but Bulgarians living in Thrace showed less enthusiasm at the prospect of being transferred to less fertile regions in Bulgaria. Soon scores of thousands of Greeks, refugees from Asia Minor, poured into Greece, and the Bulgarian settlers there now found their position growing increasingly perilous and begged the mixed commission to assist them to move into Bulgaria. So anxious were they to emigrate that many of them reached their new home in a state of destitution. Toynbee remarks that this situation was bound to lead to unfortunate incidents and to charges and countercharges of bad faith. In general, one may say that, while in theory the solution looks attractive, in practice the complexities incidental to large-scale interchange of population, especially compulsory interchange, make it highly unsatisfactory as a means of solving the minorities problem.[19]

Fourth, there remains the possibility of the "unnational" state. It is obvious that the League of Nations minorities treaties presupposed some degree of modification of national states, and that they were incompatible with the ideal of totalitarian nationalism; they presupposed tolerance, generosity, and the willingness of national groups to recognize and respect differences. They cannot work in an atmosphere of exaggerated political self-consciousness. They require a large degree of international stability. Political tension and the dream of power make for a warlike temper and war preparations; and freedom for minorities cannot flourish under these conditions. Until security is attained, minorities will be suppressed within and propagandized from without. They will become "cells" of disaffection and be made the excuse for intervention. They cannot endure in an anarchical world, particularly in view of the methods of war which have now been developed. For who will any longer be able to say whether the complaint of a minority is a legitimate one or whether it has been artificially inspired in order to weaken the central government? If war is to be "total" war, there can be no room for differences of opinion

[19] The policy of Hitler's Germany in forcibly uprooting minorities bears no relation to the experiments cited. The latter were designed to preserve nationalities as political and cultural entities; Hitler's aim was to destroy them.

even in the dominant nationality, let alone any possibility of equality of treatment for minorities.

It would be foolish to say that this factor was the only one in causing the failure of the minorities treaties. Maxwell writes:

> As has been shown the protection of minority rights were safeguarded in theory by the minority treaties and the machinery of the League. Now after nearly two decades it is possible to evaluate the effectiveness of such guarantees for the actual protection of minority groups.
>
> The story of racial and religious minorities in Central and Eastern Europe in modern times is a tale of blood and suffering. The savagery and refinement of cruelty exceeds anything to be found in the annals of the Dark Ages. The tale is worthy of an epic to be recorded by some great writer of tragedy. It is a story of broken promises, perjury, and betrayal. To the American or British student it is wholly incomprehensible since it is outside of his experience to apprehend such cruelty of human to human.[20]

The temper of Europe, after World War I, its unbridled hates and prejudices, and its excessive nationalism made compromise impossible, and would have wrecked any machinery.

THE SPECIAL REGIMES OF UPPER SILESIA AND MEMEL

Upper Silesia.—Under the peace terms handed to Germany on May 7, 1919, all of Upper Silesia was to have gone to Poland; but, as a result of strong German protests, the Council of Four decided to arrange a plebiscite, which was held on May 20, 1921. Despite a large majority who voted for Germany, the Inter-Allied Commission could not agree upon a line which would divide the Polish from the German share of the territory, and it was left to the League of Nations Council to formulate a solution. Its award, made on October 20, 1921, satisfied neither power. Germany in particular protested against a plan which placed some 300,000 Germans under Polish rule and gave to Poland the area which contained the larger part of the industrial wealth of Upper Silesia.

In order to afford guaranties to the German minority in Polish Upper Silesia and to the Polish minority in German Upper Silesia, a special regime was established by the Geneva Convention, signed on May 15, 1922. Under its terms, minorities, instead of appealing directly to the League Council, were to have access to regional machinery; the latter would by conciliation and mediation try to avoid a direct clash between the minority and the state. By its flexibility and immediacy, it would solve questions with less pub-

[20] Maxwell, *op. cit.*, p. 160.

licity and political friction. Both Germany and Poland enacted laws to make the convention municipal law, and the rules of procedure of the mixed commission were established in December. A regional minority office was set up in both Polish and German Upper Silesia. The German minority in Polish Upper Silesia could take its complaints to the minority office there (at Katowice), and the Polish minority in German Upper Silesia could take its complaints to the minority office at Oppeln. These offices examined the petitions and, if necessary, sent the matter to a president appointed by the League of Nations. The office was held by M. Calonder, a citizen of Switzerland.

In general, the regional machinery worked well; but it was discarded in 1937. Both Poland and Hitler's Germany disliked the League procedure for the protection of minorities and by treaty decided to settle their own minority problems. Julius Stone, writing in 1933, expressed the hope that the convention would be renewed, because in his opinion it was a definite guaranty for the peace of Europe and without it there was danger that trouble would again arise between Germany and Poland. Subsequent events have proved the accuracy of his analysis.[21]

One important development took place in the Upper Silesian experiment: Article 78 of the convention allowed the minorities the right of association there—as Stone puts it, it gave a wide charter for collective minority activity. Accordingly, the Poles in Germany formed a league with headquarters at Oppeln, and the Germans in Poland set up their Volksbund at Katowice. Stone believes that unless the convention had granted the minorities the right to collective activity it would have been impossible to protect them, because "legal modes of pressure" by the majority would have made the minority individual "very reluctant to take advantage of his legal right." He believed that these groups, like trade unions, would not injure the two states, but could render a valuable service of conciliation. The associations had the right to petition "as juristic persons," both on their own behalf, and on behalf of individuals, whether they were members of the association or not.

The advantages of the regional procedure were: (1) it was practically a nonpolitical method, differences being settled by a neutral president "quietly and in a spirit of justice and reconciliation"; (2) the personal element and more intimate contact with local conditions gave greater opportunity of persuasion and media-

[21] Julius Stone, *Regional Guarantees of Minority Rights* (The Macmillan Company, New York, 1933).

tion; (3) it enabled the president to gather evidence much more easily than could be done at Geneva; (4) it did not preclude appeal to the League Council, which, however, was saved from having to consider many relatively small disputes.

Over a thousand cases arose. But scarcely more than 100 opinions had to be given; hundreds of cases were settled "in the quiet deliberate atmosphere of the able President Calonder." But the reign of reasonableness was of brief duration. National passions in Germany and Poland made justice to minorities increasingly impossible. Neither power was willing to exercise restraint in its dealings with minority groups, and each discarded the League machinery at the expiration of the treaty period in favor of a bilateral treaty. Today one of the signatories lies amid ruins; the other is its conqueror.

Without question the feeling on the part of the German people that the League Council's award of October 1921 represented, in substantial measure at least, a desire to weaken Germany by giving the rich industrial portion of Upper Silesia to Poland, rather than an impartial judgment on the merits of the case, helped to instill in their minds that the solution was a temporary and not a final one. Hence the regional machinery could play only a limited part: the stable foundations on which it might have built an enduring edifice were not there. However efficiently the international authorities on the spot might assist the minorities, the underlying political rivalries of Germany and Poland and, later, the ambitions of Hitler, as revealed in *Mein Kampf*, made its work one of limited usefulness. Instead of being part of a wider, harmonious Europe, it turned out to be an oasis in a political desert. But its experience remains as a valuable asset, available for the Europe of the future, should that continent be minded to make use of it.

Memel.—After World War I a French High Commissioner administered the German city of Memel, situated on the River Niemen. The Allies had under consideration a plan by which Memel would become a "self-governing territory," perhaps along the lines of the free city of Danzig. In this way Lithuania would obtain special port facilities and an undisputed outlet to the sea. But many Lithuanians were not content with this prospect. They invaded Memel in January 1923 and forced the French troops to surrender. The Allies could not, or would not, compel Lithuania to retire and, after long and tangled negotiations, agreed to leave Memel under Lithuanian sovereignty. In 1924 a convention was signed by which Great Britain, France, Italy, Japan, and Lithuania guaran-

teed the city a considerable amount of legislative, judicial, administrative, and financial autonomy.

The desire to do justice to the Germans in Memel was no doubt praiseworthy; but the question was whether the Allies had not put the cart before the horse. Should they not have guaranteed Lithuania certain port facilities instead of separating a German town from Germany? Moreover, to allow a small nation to seize a town and confront the great powers with a *fait accompli* was hardly establishing a regime for protecting minorities on a sound foundation. The Germans could well argue that Memel constituted, not a genuine, but an artificial minority, and that a pretentious cloak of international organization had been thrown around an ugly act of violence.

Many difficulties arose, because, without any question, the majority of people in the city were German. Lithuania needed a port; but the sympathies of the people outbalanced the economic convenience to the Lithuanian state. By its very separation from Germany, Memel became more conscious of its loyalty and more determined to preserve its distinctive culture. On the other hand, Lithuania resented the restrictions imposed upon it, just as Poland resented the status of Danzig. Danzig had been placed under a League Commission, but not Memel, which therefore had less opportunity to appeal to the League.

The Memel legislature or Landtag, of twenty-nine members, was frequently at loggerheads with the Lithuanian president of the directorate; and between 1925 and 1927 three directorates had to resign because of votes of no confidence from the Landtag. After 1930, trouble became more intense and the Governor dissolved the Landtag again. Lithuania maintained martial law, to the great discontent of the German inhabitants, and tried to replace the German civic officials by Lithuanians. In February 1930 it refused to renew the permits of eleven German teachers, and next year matters came to a head involving an appeal to the World Court. The President of the Memel Directorate, Herr Böttcher, was dismissed by the Lithuanian government for going to Berlin without permission and interviewing the German Minister of Foreign Affairs and the Food Ministry. The Governor asked Böttcher to resign, but the German-minded chamber voted confidence in him. On February 6 the Governor dismissed him, and two days later the German government asked for an urgent meeting of the League Council. The rapporteur advised the four powers of their right of appeal to the World Court under paragraph 2 of Article 17 of

the Memel Convention. The Court held that Memel's autonomy existed only within fixed limits, and that the Governor was therefore entitled to take appropriate steps to protect the interests of Lithuania but should do so only if an act was serious enough to prejudice Lithuania's sovereign rights. In reviewing the case the Court held that Böttcher, by going to Germany and discussing the question of agricultural exports which concerned foreign affairs, had exceeded his authority; and, therefore, in the opinion of the Court his dismissal was in order. At the same time it did not agree that the Governor's dissolution of the diet was in order.

After Hitler came to power it was only a matter of time before some pretext would be found to bring matters in Memel to a head. The German press was filled with stories of the ill-treatment of their fellow countrymen at the hands of the Lithuanians. The seizure of Austria and the acquisition of Sudetenland in Czechoslovakia in 1938 paved the way for exerting pressure upon the Baltic countries. In March 1939, Germany forced an agreement upon Lithuania for the voluntary return of Memel to the Reich. Germany claimed, and with considerable justification, that feeling in the Memel territory was so strong that cession to Germany was the only manner of avoiding collision. The treaty of March 22 provided that the Lithuanian military and police forces should evacuate Memel immediately and that a free harbor zone should be established in Memel for Lithuania. Each party agreed to refrain from applying force against the other.

Hitler visited Memel on March 22 and made a speech of welcome to the inhabitants of Memel. The experiment in minority protection had broken down because of the unsound total setting in Europe itself. In a reasonable atmosphere of mind it may not have made much difference whether Lithuania had formal sovereignty and German-speaking Memel extensive autonomy, or whether Germany had sovereignty over Memel, giving Lithuania undisputed harbor rights. But in an emotionally overwrought Europe the differences appeared to be profound. Exclusive nationalism and intolerance between national groups made a reasonable solution impossible. Both sides with their critical tempers could complain of grievances. Germany undoubtedly could point to injustices; but problems which should have been merely local in their importance became erected into issues of world-wide significance.

The attempt to protect "minorities" by international action also failed because the "minority" within Memel was a majority for-

cibly incorporated by Lithuanian military action. The theory of minority protection was unable to be genuinely tested, because the Memel Convention was merely a validating, in legal phraseology, of an act of force. The international machinery for protecting the German people could not make up for the fact that Memel had been torn from Germany in defiance of the principle of nationality for which the World War of 1914–1918 allegedly had been fought. Consequently the attempt to protect by "law" what had been seized by violence did not carry conviction; and, when stronger force appeared, it soon undid the work of sixteen years.

THE UNITED NATIONS AND MINORITIES

The United Nations Charter does not contain provisions for the protection of national minorities comparable with that established under the League of Nations, but in Articles 1, 35, 55, 56, 62, 68, and 76, expression is given to the importance of promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion. Under Article 56, member states pledge themselves to take joint and separate action in co-operation with the United Nations to achieve these ends. Under Article 62, the Economic and Social Council may make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all, and under Article 68, it is to set up commissions in economic and social fields for the promotion of human rights.

Discussion of the human rights aspect is reserved for the chapter dealing with International Law and Organization. We shall here draw attention to two major questions involving minorities which have been dealt with by the United Nations; the first concerns Trieste and the second a controversy over the position of Indians in South Africa.

Under the peace treaty with Italy following World War II, Trieste was made a free territory, the integrity and independence of which is to be guaranteed by the Security Council. The Council will appoint a Governor after consulting with Yugoslavia and Italy; he will be appointed for five years and his salary will be paid by the United Nations. The Governor will be responsible for supervising the observance of the statute under which a constituent Assembly is to draw up a constitution. He will submit annual reports to the Council and must transmit to it any communication which the Assembly may wish to send to the Council in the event

of a difference with the Governor on proposed legislation. Provision is made for his responsibilities in case of emergency. Provision is also to be made for the free port of Trieste to be administered by a Director. Whether the free territory will fare more happily than did Danzig will depend in no small measure upon the relations between Russia, the United States, and Great Britain. At the time of writing, the great powers were not agreed as to Trieste's finances and to this degree reflected their rivalry in the Balkan area. As yet, however, it is too early to estimate the outcome of this new effort at international administration.

The second question concerned the treatment of Indians settled in South Africa. In November 1946, the Indian delegation proposed a resolution to the effect that the General Assembly of the United Nations

> consider that the Union Government should revise their general policy and their legislative and administrative measures affecting Asiatics in South Africa, so as to bring them into conformity with the principles and purposes of the Charter and requests the Union Government to report at the next session of the General Assembly the action taken by them in this behalf.

In the debate before the joint meeting of the first and sixth committees the Indian and South African delegates presented their case. This problem, which had embarrassed the British Commonwealth for several years, represented an interesting case for the United Nations in that it concerned two members of the same general political system. Discussion in the committees turned on whether this matter was one of domestic jurisdiction or not, and it is significant that the British delegate, while admitting that the United Kingdom would have preferred to stand aside from the dispute, suggested that as important matters of principle were involved it would be wise to refer the matter to the International Court of Justice, a point of view shared by the United States delegation.

After considerable discussion, the General Assembly adopted the Mexican-French Resolution by 32 votes to 15, to the effect that, because relations between the two member states have been impaired and because the treatment of the Indians in the Union should be in conformity with their international obligations, the General Assembly requests the two governments to report at the next session of the Assembly the measures adopted to this effect. If the United Nations can help to settle the problem of the Indians in South Africa, it will have registered a notable achievement.

Chapter XIV

COLONIAL POWERS AND DEPENDENT PEOPLES

THE IMPACT of a more developed upon a weaker civilization invariably ushers in a period of stress and strain for the latter. Tribal peoples who have been brought into contact with Western life as a result of economic and political expansion have been subjected to profoundly disruptive forces. The first experiences with the white race were almost without exception disastrous. Many of the early traders were rough, unimaginative, and cruel. They introduced diseases—measles, dysentery, pulmonary troubles, and syphilis. The natives who had built up a resistance to endemic diseases died like flies when the new ailments spread throughout their lands.

Downright cruelty and exploitation in all parts of the world helped to produce depopulation. Tasmanian settlers formed shooting parties and shot natives in batches. African slave raiders carried off millions of people, of whom hundreds and thousands died en route to the coast. In South America, Indians perished in the mines and Peruvian natives suffered appalling cruelties. The atrocities perpetrated upon the Africans in the Belgian Congo became a world scandal. Recruiters kidnapped natives in the Pacific islands, carried them off by force, and held them in conditions of virtual slavery. From India thousands of men were taken as indentured laborers, with the ostensible acquiescence of their village chiefs. In Portuguese East Africa, frightful conditions prevailed. The Danish traveler, Holmboe, in his *Desert Encounter,* wrote that "Italian colonizing of Cyrenaica is such that any European who obtains a glimpse of it must feel ashamed to belong to the white race." Arabs were shot merely for being in certain areas, and for the offense of giving food to mountain tribes who were still trying to retain their independence. People were condemned to work in the salt lakes in the Libyan desert under shocking conditions.

Recruiting of natives for plantation labor disorganized native

society by removing large numbers of the young men who, had they remained at home, would have become the fathers of the next generation. Those who returned after having lived for some years on foreign plantations tended to grow dissatisfied with the old tribal life. They had seen the outside world; the tribal ceremonies lacked appeal, and appeared even somewhat amusing; they were disinclined to obey a chief who had seen so much less than they had. They became restless; they were "detribalized," and lived unhappily between two worlds—the native world which they had lost and the white man's world which they were unable to enter.

The white race, by introducing firearms to natives (whose warfare was often cruel enough even with their own primitive weapons), caused further demoralization. Many chiefs bartered personal and tribal wealth for the new weapons, partly from a desire to enjoy the delights of the white man's novelty, partly in order to gain additional power.

The introduction of liquor brought misery and ruin to whole groups of people. We have examined elsewhere the international efforts made to control liquor traffic in Africa. Here it will suffice to consider the fate of the New Hebrides. Despite the establishment of a joint rule, the Condominium, by Britain and France in 1906, Speiser, seven years later, wrote that Europeans, particularly the French, sold alcohol to the natives without hindrance from the government. He pictured the consequences as follows: The natives "drink in a senseless way, simply pouring down one bottle after another until they are quite overcome. Some never wake up again; others have dangerous attacks of indigestion from the poison they have consumed; still more catch colds or pneumonia from lying drunk on the ground all night. Quarrels and fights are frequent, and it is not a rare sight to see a whole village, men, women, and children, rolling on the sand completely intoxicated. The degeneration which results from this is all the sadder as originally the race on Ambrym was particularly healthy, vigorous and energetic. If the liquor is not speedily suppressed the population is doomed."

Rev. Frater in November 1928, fifteen years after Speiser, wrote of liquor as a growing menace in the New Hebrides. The Presbyterian Mission Synod concluded that the government must be ignorant of the extent of the liquor traffic, otherwise it was inconceivable that it would permit such conditions to continue. On some islands the traffic was increasing, and the Synod believed intoxication to be the great factor in native depopulation.

Changed methods of living played a part in weakening native society. According to several authorities, the introduction of Western clothing adversely affected the health of natives. Personal and social habits which were tolerably hygienic when people wore little or no clothing became risky, even dangerous, when they attempted to imitate the white man. For example, natives would get their clothing wet and neglect to change, with the result that they fell prey to serious colds, chest troubles, and even pneumonia. Native huts, which in the tropics admit fresh air from all sides, too frequently gave way to houses built on the European model, and the diminished ventilation had unfortunate consequences. The habit of spitting spread disease inside the new closed-in houses more rapidly than it had done in the old open huts.

The moral problem raised in the transition stage presented serious difficulties. With the abolition of the club law against immorality and the substitution of a religion of persuasion rather than compulsion, many backslidings occurred. It is not surprising that tribes (and nations) which have to face changing standards and social values normally experience a period of moral confusion.

In addition to the difficulties caused by a change of moral and social standards other factors helped to upset habitual lines of conduct. The missionaries, who preached the ideal of the family, did not approve the native practice of setting aside separate sleeping quarters for the men and encouraged youths to sleep in the homes of their parents. This innovation, combined with the contempt which the younger generation developed for the traditional tribal ideals, gradually produced a breakdown of the old moral restrictions. Young men and women thrown together under these circumstances were tempted to indulge in promiscuous sex relations.

The missions also opposed another Fijian custom, the separation of parents during the weaning of the child. The father, according to tribal usage, lived in the men's sleeping house for this period, which lasted from twelve to thirty-six months. The precaution was desirable, because, in the absence of artificial food for infants, the child had to be weaned over a longer time than in the case of Europeans. But the missionaries, believers in home life, encouraged fathers to return home, with the result that sexual intercourse took place too soon.[1]

In Africa, Christian missionaries tended to object to native

[1] Basil Thomson, *The Fijians* (1909), pp. 180–81.

marriage customs: (*a*) bride wealth, because it too nearly resembled slavery, and church councils passed resolutions forbidding native Christians to make such payments; (*b*) and polygamy, which they regarded as inconsistent with Christianity. Churches insisted that a native dissolve, for reasons that natives believe to be inadequate, what his society accepts as a legal marriage; and an extremely unfortunate position is thereby created for the dismissed wives. The clan may expect a man to marry his deceased brother's widow, even though he is a married Christian. As Westermann points out,[2] monogamy "is also made more difficult by the long continence which is expected of the man during his wife's pregnancy up to the weaning of the child." Nevertheless polygamy is gradually losing ground in Africa, and monogamy is producing a new problem for the unmarried women. The older African society had no such class to provide for; but under present circumstances many young women are forced into a life of prostitution, "especially where the clan life has been broken up and therefore gives no support to the independent women."[3]

The coming of the white man often had disastrous consequences for native political organization. Many of the new colonial administrators ignored the power of the chiefs, whose authority had possessed a divine or semidivine significance for the tribes. The continued disdain shown by the white settler or trader, coupled with the failure of the gods to intervene on behalf of the chief, served to weaken the ties of tribal solidarity. Sometimes it did the opposite, and created a longing in the soul of the native for his old ways of life and traditional forms of government. Many of them asked for the reintroduction of their chieftainship. Unable to understand the white man's ways, they were in danger of losing their own. In some parts of the world administrators have been wise enough to make use of the best of the native institutions; but in many colonies an unfortunate disregard of native foundations of law and order has characterized European colonial policy.

The economic life of native peoples suffered from the European invasion. We have already noted the disastrous results of recruiting. The presence of the white man has created other grave problems. Scarcely any native community has escaped the loss of its land, much of which the white settler has robbed or confiscated. South Africa provides a tragic illustration of what can happen.

[2] D. Westermann, *The African Today* (Oxford University Press, London, 1934), p. 141.

[3] *Ibid.*, p. 143.

The natives form two-thirds of the population of the Union, and about 85 per cent live in the country. Yet the area which has been assigned to them comprises only 8 per cent of the total, an amount entirely inadequate for their needs. Buell noted that the native areas are overcrowded, land is at the saturation point, water is scarce in many parts, and native health is adversely affected, malnutrition and tuberculosis being on the increase. Native renters and wage earners who live on European farms are in an unsatisfactory position, often having to work for rations instead of wages under the absolute control of the manager and with no security of tenure. The renters or squatters outside of the reserves also suffer from the same evil, and many live under conditions akin to those of the sharecroppers in the United States.[4]

In Kenya the Negroes have lost some of their most valuable land. White settlement there began in 1903 and the government made free 640-acre grants. The land policy which followed the Crown Lands Ordinance of 1902 was criticized by white settlers on grounds that it unduly restricted acquisition and transfer of property. The British government, which protected native land rights, in 1913 relaxed the rules as to land transfer by lengthening leases from 99 to 999 years. The land laws afforded progressively less protection to and permitted alienation of land with fewer safeguards from the Negroes. The Kikuyu tribe found some of their choicest areas passing under the white man's control; and the Masai tribe bitterly complained that they were forced out of their best land, receiving in exchange new areas, much of which was worthless.

Many white employers desired to dispossess the natives of their land, and thereby to obtain more native labor. They realized that if the native was permitted to retain sufficient land, he would not work for them. Land remains the great guaranty of native economic independence; deprive a native of his land, and he is at the mercy of the white settler. Few matters are more urgent, in the administration of native peoples, than the assurance that they will enjoy security of land ownership and that alienation of tribal lands to white owners shall take place only under most carefully regulated conditions.

In addition to the difficulties created by appropriation (some would call it stealing) of tribal lands, other economic problems arose. Many critics assert that native communal economic life is

[4] R. L. Buell, *The Native Problem in Africa* (The Macmillan Company, 1928), chapter v.

inefficient and that it is necessary to encourage the people to become more progressive—to increase their wants and raise their standard of living. Since the tribe is essentially a conservative institution which holds back its most progressive members, some European authorities are ready to introduce movements leading to individualism. An interesting attempt along this line was made in Fiji. If a Fijian worked for himself, the buli or tribal chief claimed part of his income for the tribe; and the loss of a considerable part of his earnings discouraged the would-be individualist native. Accordingly, a method was devised by which the Fijian paid a lump sum to the chief in order to liquidate his obligations to the tribal group. In West Africa native farms have been encouraged; there also the question arose: "If the farmers are confirmed in their holdings, what returns should they make to their chiefs?"[5] The problem is an extremely interesting one; for if the native becomes an individual producer, it is likely the tribe as a unit will be seriously disrupted. If the prestige of the chief continues undiminished, and he sets his face against the new methods which threaten his authority, he will make it difficult to educate the tribe in more efficient ways of production. In any case the question will arise whether or not the tribe can be maintained as a political unit and at the same time be very much modified as an economic unit; separating the economic and political bases of native society, unless the political authority of the chief is carefully maintained, will tend to weaken the whole tribal structure.

Where industrialism invades native communities, the labor problem becomes acute. Sixteen per cent of the South African natives work in factories. These men, separated from their tribes for periods of years, become "detribalized" and often pathetic beings. They probably live in overcrowded quarters, victims of poverty, exploitation, liquor, and disease. They are paid low wages, because the color bar exists (by either legislation or custom). In many occupations skilled labor is reserved for the white worker, and the Negro may work only at low-paid and unskilled tasks.

All these problems of adjustment are linked with the changing sense of economic and social values. In certain parts of Africa cattle have had an almost religious significance; in East and South Africa, for example, the native enjoys an "extraordinarily close, almost personal relationship" with his herd, and each boy receives

[5] A. McPhee, *The Economic Revolution in British West Africa* (George Routledge & Sons, Ltd., London, 1926), p. 157.

an ox which in a special sense is his own. "In these circumstances separation from a favorite animal is a real sorrow, and the idea of slaughtering it for a merely material purpose strikes the owner as cruelty."[6] The change to the modern, economic cash basis involves the transformation of this native religious, or semireligious, attitude to land, animals, and the products of the soil; there is danger that this transformation will be accompanied by greed, self-seeking, and unscrupulous competitive behavior, characteristic of much of the Western industrial world. Westermann wisely suggests that prolonged and intimate expert study of the processes and the effects of economic changes is needed in order to assist native society to make its adjustments with the minimum of suffering and exploitation.

The decline of the native's faith in his religion and way of life accelerates the disintegration of tribal culture. In Hawaii *kapu* was abolished in 1819. The people, at the bidding of their new ruler, threw their idols into the sea and at one blow destroyed the foundation of the old taboos and social beliefs. The Hawaiians could no longer call on their old religious formulas, which had provided them with a sense of certainty. Dr. Handy remarks that, with the abolition of *kapu,* the rule of the king or *moi,* who was regarded as an intermediary between heaven and earth, an incarnate god possessed of magical powers of prosperity, disappeared. The theocratic nature of the Hawaiian government ended. With it also went the organization of society based upon hierarchy and distinction of birth. The *alii,* or nobles, lost their religious and political prestige and could no longer demand tribute. Like the feudal lords of Europe they declined when their political functions were transferred to another authority. People abandoned the ceremony of consecrating their children. The *makahiki* ("harvest thanksgiving festival") languished; and the abandonment of this ceremonial, according to Handy, helped to disrupt the agricultural cycle. Disruption of agriculture resulted in neglect of the excellent Hawaiian irrigation projects and the passing of the fish ponds to the control of Orientals.

Fiji went through a similar experience. The missionaries performed a splendid service in converting the Fijian from habits of cruelty to the finer ways of life, and by 1876 the country had become nominally Christian. But later heathen revolts broke out. Some of them were connected with revelations and prophecies of the end of the white man's rule and the destruction of his re-

[6] D. Westermann, *op. cit.,* p. 69.

ligion. Many Fijians secretly welcomed the new excitement and returned to their heathen practices, to devil-worship, and even to cannibalism. The movement failed, and the doom of the old gods was sounded. The effects went beyond the sphere of "religion," for their former faith had been closely connected with the arts and crafts and daily life of the people. In the Melanesian Islands, also, the abolition of head-hunting customs (connected with religion) had unfortunate effects upon the arts and crafts.

Mr. D. W. Hoodless in an official memorandum pointed out that the natives of Fiji had developed great skill in their manual arts but as they adopted European customs many of the old activities fell into disuse. The cessation of native warfare threw out of work the native artisans who had made clubs, spears, and war canoes; European articles replaced the native nets and fishlines; European dishes and plates took the place of the old wooden ones, and cotton clothes caused the abandonment of native methods of dress. Because no other hobbies grew up to take the place of the old manual arts, the Fijian "now finds himself with a large amount of leisure time for which he has little or no use."

In Africa the arts and crafts declined because the chiefs no longer had the same means of attracting artists, and the craftsmen who in earlier times would spend years on a single piece of work. Moreover, the chief has new duties. Under the white man's rule he collects taxes and acts as judge, supervises subordinate officials, and apparently gains more prestige by "filling his house with European things." He can hand down his image to posterity more beautifully by means of an enlarged photograph than by a wooden statue. Also European utensils are less beautiful, perhaps, but more "practical and durable."

Thus the passing of the old arts, and with them the spirit of satisfaction in creativeness, has produced an inner psychological void. It is difficult to bridge the gap between the life of the old and the life of the new. Native carving and industry are pushed aside by the modern machine, and the individual and the group are left with a sense of frustration and futility.

Several writers have noted the extreme importance of the psychological factor in native society. Some years ago W. H. R. Rivers drew attention to this element of "despair" which modification of, or interference with, native customs produced by depriving the people of many things which had given zest to their life. Natives die easily, he wrote. Their extreme sensibility quickly leads to loss of hope and to spiritual wasting away. The main

question, then, is how to re-establish old interests, to modify old institutions and purge them of cruelty, and yet to preserve enough of them to maintain tribal interest and enthusiasm. Roberts asserts that population decline "is due primarily to psychological causes" and any effective remedy "must cope with the peculiar gap in native life—the gap between the old and new which gives rise to morbidity in the native mind." The native suffers from "psychological repression," from inadequacy of outlets, and "lacking interests and the means of expression, becomes first stagnant, then apathetic, even of life itself."[7] He adds that all over the Pacific there is a "dangerous void in the native mind" and quotes considerable evidence to support his contention. One has heard Marquesan poems of lament which reflect the hopelessness of some of the tribes, who feel themselves doomed because of the relentless advance of the white man's way of life.

PRINCIPLES OF GOVERNMENT OF DEPENDENT PEOPLES

What measures can colonial government adopt in order to meet the problems outlined above? What policies should they pursue, and what principles should guide them? The magnitude of the task will become clearer when it is remembered that the welfare of scores of millions of people is at stake. No minor question this, which affects the tribes of Africa, Indo-China, Ceylon, the East Indies and the many islands in the Pacific Ocean. The problem calls for the highest qualities of statesmanship.

In theory, governments may refuse to take any action; they may set their faces against the acquisition of empire and permit native society to work out its own salvation. Such a policy has been tried, and has failed. In Hawaii the native people sought vainly to maintain their freedom; in the course of the nineteenth century Americans and other settlers formed a bureaucracy which made native independence an illusion; finally, through annexation by the United States, the fact was recognized that Hawaii was no longer capable of ruling itself. Likewise in Samoa foreigners took part in tribal wars and irresponsible whites intensified native rivalries, until at the end of the century the British, German, and United States governments stepped in and partitioned the islands. In Tonga, notwithstanding his efforts to imitate European politi-

[7] S. H. Roberts, *Population Problems of the Pacific* (G. Routledge & Sons, London, 1927), p. 139. Other authors do not emphasize the psychological factor so strongly.

cal forms and methods, the native king could not maintain order, and power passed to a missionary, Mr. Shirley Baker. Difficulties developed into disorder, and disorder provoked struggle, until Britain finally intervened to restore settled government. Fiji and Tahiti, in turn, showed that the new forces which had been released by the coming of the Europeans could no longer be restrained by the natives themselves; and, tragic though it was for these tribal communities to see their traditional life and institutions threatened and then swept away, there was no longer any question of maintaining their independence. The only alternatives were to come under the brutal domination of irresponsible white traders or to be ruled by government officials of a European power. Roberts correctly judges that the theory of governmental non-intervention "was negative and an evasion of responsibility. It meant the sanctioning of a policy of drift rather than the definition of realities and the training of the natives."[8]

The European nations were tempted to go to the opposite extreme. Native kingdoms had proved their inability to stand alone; the white race, conscious of its superiority and proud of its power, tended to look down upon the "primitive" and "barbarian" people and to assume that there was nothing of value in their society and government. In an attempt to introduce "civilization" and efficiency, some of the colonizing powers abolished the rule of chieftains, destroyed native legislative and judicial methods, and imposed, with little or no modification, the political machinery used by themselves at home. This was "direct rule." In many instances, governments set up institutions which cut across tribal lines, took no account of tribal loyalties, and ignored the position and dignity of the chiefs. They attempted to apply conceptions of property and land-ownership to communities with fundamentally different economic ideas and tried to impose European theories of legal and social relations which violated native marriage customs, religious observances, and systems of periodic festivals. Such disregard of native habits, or mores, proved disastrous. It robbed the natives of their own mode of life, discouraged initiative, and even destroyed interest in life itself. It ignored deep-seated human sentiments, and produced instability and restlessness; it proved economically burdensome, since the administration of widely differing tribes over large areas of territory involved heavy financial outlays. The theory of assimilation, of forcing natives into the European mold of life, on the assumption of universality of reason

[8] S. H. Roberts, *op. cit.*, p. 148.

(as the French believed) or the superiority of Western culture, broke down badly.

The best-informed colonial theory today is summarized in the term "indirect rule," which postulates that natives shall be given the opportunity to develop along their own lines and to adapt themselves to the new forces of culture at their own pace rather than according to some preconceived Western plan. It recognizes value in the native way of life, its creative ability and cultural achievements. It recognizes the deep-seated differences, due to long centuries of environmental influence, between native and white civilizations, and attempts to preserve the finer aspects of native society, to purge it of its crudities, and to remedy its defects. In the political sphere it takes cognizance of the traditional power of the chief. The white adviser or resident stands behind the chief and advises him; on some occasions he will exercise pressure; but the tribal forms are maintained as far as possible, and respect and deference to the chief are encouraged. Native councils are permitted to pass legislative measures and, within prescribed limits, they may make rules relating to the native community.

The theory is excellent. It is not always easy to put into practice. Many of the chiefs are inexperienced. Generally speaking, the elders, and the general body of natives themselves, cannot be expected to appreciate the need for some of the innovations desired by the European officials. One can imagine that they would question the need for a road here or for health precautions there, and conceivably might regard these newfangled things as economically burdensome and as dangerous to their old customs. Thus, inexperience, fear, and conservatism may combine unduly to delay the introduction and passage of necessary reforms and innovations.

Hence arises the need of encouraging the chiefs to be forward-looking and progressive. To that end schools for the sons of native chiefs have been opened in certain parts of Africa. There the boys are taught the elements of modern science and the organization of society but are still reminded of their chiefly rank and duties. While they thus retain the respect of their people, they come to appreciate the wider problems of modern government. It is important that Western governments do not make a mere rubber stamp out of the chief; otherwise the native people will soon realize that he is a creature of the white official with no voice of his own. In that event the whole attempt at indirect rule

will be defeated; people will see through the pretense, and the institution of chieftainship will fall into decay.

A danger of the opposite kind also exists. Brown and Burt in their *Anthropology in Action,* a study of the Hehe tribe in the Iringa Province of Tanganyika, say that the fundamental lack is one of insufficient internal checks on the authority of the tribal ruler: In old days the chief dared not antagonize the tribe; today, with the power of the British government behind him, he may "proceed to seize such authority as is possible." They believe that the great weakness is that "there is no adequate expression of public opinion upon administrative affairs and thus no internal constitutional check upon the tribal authorities." And the scale of salaries is bad. The chiefs get too much and the head men too little.[9]

Generally speaking, the system works well provided that the ruling powers are willing to make haste slowly. The crucial point is the speed of reforms; the power of assimilating new ideas and habits cannot be forced beyond a certain rate. Patience and humor are indispensable qualities for colonial officials, more valuable far than mere efficiency.

Indirect rule finds expression not only in the legislative but also in the executive sphere. In Buganda, for example, the native chiefs have considerable administrative power. They may impose taxes, maintain roads, and generally supervise native affairs. They control the machinery for collecting revenue, and keep their own books. In some colonies, native taxes are put into a separate fund which is used exclusively for native purposes. The assumption is that effective government implies not only the right of making rules but also the power to carry them out, and that such a power necessitates the establishment of native treasuries. The estimates are drawn up by the native authorities themselves, on the advice of the tribal councils, under the general supervision of the resident white adviser.

The policy of indirect rule may also apply in the judicial sphere. In Tanganyika native courts of the first class may try civil cases involving sums up to 600 shillings, certain inheritance cases, and cases dealing with marriage and divorce under Mohammedan or

[9] For a strong criticism of indirect rule, see G. Padmore, *How Britain Rules Africa* (Wishart Books, Ltd., London, 1936), pp. 315–25.

The author describes it as a type of fascism which denies the blacks any "voice in the affairs of state," "an autocracy backed up by British bayonets," which "lends itself to all kinds of abuses because it is difficult to fix responsibility upon those who operate the system."

native law. In criminal matters these courts may impose sentence up to six months' imprisonment or 200 shillings fine or eight strokes of the lash, and they may receive appeals from the lower native courts. Native courts of the second class have a less extensive jurisdiction in civil and criminal cases. Neither class of courts may impose the death penalty or life imprisonment, or punish witchcraft, or try cases where one of the parties is not a native. An appeal from the first-class or highest native court may be taken to the British administrative officer, who sits as court of appeal.

A system of legislative, executive, and judicial indirect rule presupposes the existence of well-established native tribal organizations. But where invasion and direct rule have impaired or even destroyed the basis of native institutions, as in Tanganyika and the Belgian Congo, or where distances between the native villages are great, and the villages themselves are small, as in Papua, the mandated territory of New Guinea, and the New Hebrides, it is difficult to proceed along the lines mentioned. In Papua no real chiefs and practically no system of public law exist, and the villages possess only men of stronger personality, whose influence is "often short-lived, too slight and fleeting to support even the most modest system of indirect rule." In contrast to West Africa, Papua had to adopt a modified theory of indirect rule. The administrative officials, having no hereditary chiefs to choose from, had to appoint village constables and village councilors from among the prominent men. Even so modest a degree of native authority was not easy to maintain, as the annual reports of the resident magistrates frequently show. Some of the councilors regarded themselves as above the law and exempt from taxation, or even possessed of authority to "corner the most attractive village maidens." The administration, in the absence of the system of chieftainship, could not set up native judicial institutions; it therefore established courts presided over by government officials. The question what law should apply gave rise to much difficulty. What we regard as murder may not be murder in the eyes of the natives. The taking of life may be due to a desire to achieve social honor, to avoid ridicule, or to win the favor of one's ladylove. To prove his merit a man goes out and kills someone; "returning in triumph, he is received as a hero and his suit prospers, almost beyond his hopes." "And then," adds Sir Hubert Murray, "we come along and put him in jail!" In some places natives wear a decoration of honor to show that they have killed a person; it is

on record that a man once murdered somebody merely to oblige a friend. To apply European penalities in these cases would be grossly unfair. How then shall justice be dispensed? How punish those whose values are so different from those of their rulers?

It may be the mark of a wise administration to avoid undue interference with native custom; but what shall be done with murder, sorcery, adultery, and theft? These cannot be ignored. Murray suggests that the maintenance of order is the essential standard; native customs which tend to break down order must be discouraged and be punished according to the length of time the native has been in contact with white civilization. In Papua a native murderer is not sentenced to death unless he

> was sufficiently civilized to realize what he was doing; and a native who has reached this stage very rarely commits murder. Still, if he does, he is hanged. A less civilized native might get a sentence of seven years, one less civilized still, five years and so on to three years or less; while the absolutely low savage from the frontiers of barbarism might escape with a merely nominal sentence.[10]

In the Belgian Congo the government ignored tribal organization for several years, but in 1914 a commission of inquiry recommended that the administration should recognize natural and not artificial chiefs. Since that time the government has attempted to reconstitute the tribes and to ascertain who were the traditional rulers. It has permitted the higher chiefs to invest subordinate dignitaries and thereby dramatize and reinforce their authority. Where a tribe was too small, the government took steps, in close co-operation with the chiefs, to combine these small groups into larger units. Also in Tanganyika the government has encouraged tribal amalgamation where tribes were "too small to finance projects large enough really to advance communal interests." In these cases, where tribal organization has been impaired, government has to do more than maintain a native system; it must restore, as far as possible, the traditional forms of native life.

The principles which should govern land policy among dependent peoples are the subject of much debate among colonial authorities and anthropologists. Some governments have proclaimed unoccupied land as government land; others have permitted it to remain with the natives. In either case, the important thing is to forbid too extensive alienation of native land. Provided that it

[10] Sir Hubert Murray, *Native Administration in Papua* (Government Printer, Papua, 1929), p. 16.

maintains adequate native land reserves, a government can permit a degree of white settlement; but security of native land tenure is a vital necessity.[11]

The question arises, should the white settlement be kept distinct from native reserves? Some people say that contact of native with white society is an education in itself, and that by learning modern methods of plowing and harvesting, seed cultivation, and fertilization, by acquiring habits of punctuality, cleanliness, and reliability, and by developing the skill to use machinery, natives will gain in experience and efficiency. Those who advocate separation of the races, though not necessarily absolute segregation artificially and legally imposed, insist that tribal life must be kept as intact as possible, and that sufficient land in compact areas should be reserved for the native population.

There is also much difference of opinion as to how far native cultivation should be encouraged. Those who are enthusiastic about modern methods point out that large-scale production introduces many economies.[12] Companies, such as Lever Brothers, Firestone, and the American Fruit Company, can clear land efficiently, introduce irrigation schemes, combat pests and insects on a large scale, build hygienic houses for laborers, introduce the benefits of modern medicine, and increase the yield of sugar, fruit, rubber, cotton, or coca. On the other hand, critics of large-scale white enterprise in the tropics argue that it is too impersonal; it breaks down tribal life by withdrawing too many natives from the reserves; potential fathers are removed from the villages; population suffers; white managers are prone to ill-treat native laborers, whose health is thus undermined; large-scale economic organization pulverizes the individual, breaks down his loyalties, and makes of him merely a "hand" or a laborer. Because of its dependence on foreign markets large-scale production is an economically unstable system: in periods of economic crisis the natives are thrown out of work. Unemployment and demoralization thus more than offset the temporarily higher wages which they may have received in periods of prosperity.

One cannot be dogmatic on the question. Some crops are not

[11] D. Westermann, *op. cit.*, p. 77. Also *Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa* (Cmd. 3234, 1929), chapter iii.

[12] As, for example, H. Martin Leake, *Unity, National and Imperial* (George Allen & Unwin, Ltd., London, 1935), Part III, "Colonial Agriculture." Dr. Leake was Principal of the Imperial College of Tropical Agriculture, Trinidad, 1924–1927.

suited for large-scale production; others are. But in general it is true that, wherever possible, native farming should be continued. In order to gain the best results, however, it is necessary to have white overseers and agricultural and veterinary specialists who can supervise methods of planting, cultivating, and harvesting, and can introduce measures to combat plant and animal diseases and to increase production.

Where native products are sent to outside markets it is desirable to afford assistance in the form of transportation and marketing schemes. Where shifting cultivation prevails, governments should encourage more intensive cultivation and closer settlement, realizing that sedentary life will lead to larger aggregations of people, more differentiation of labor, and greater economic complexity, with resultant specialization of skills. To improve cultivation, Williams suggests, government should encourage the improvement of tools; for imperfect tools tend to perpetuate a lower stage of economic and social development. The changes should not be too great. Any alteration should be of such a kind as not to offend the conservative prejudices of the native or make repairs too difficult to accomplish. New crops should be introduced to provide a more varied diet and to permit a greater diversity of, and wider interest in, gardening. To achieve this result teachers should instruct the native while he is young, before he has become accustomed to the traditional and antiquated tribal methods of cultivation.[13]

In many places the ideal of improved agriculture and better villages has not been easy to attain. Nevertheless, officials by awarding prizes for the best-kept villages and gardens have awakened in the people a feeling of village pride; natives are encouraged to keep their pigs away from the houses, to clean away rubbish, to install pumps, and to arrange their houses in better order instead of in the haphazard manner of older times.

Governments have also introduced other measures to encourage native cultivation. A system of taxation under which the native must pay an annual sum (say five dollars) is designed to force him to grow agricultural products and thereby learn the virtues of discipline and order. Some administrations put the revenue derived from native taxation into a separate fund which is used only for native purposes. Other authorities introduce an element of compulsion, and require natives to work a certain

[13] F. E. Williams, *Practical Education: The Reform of Native Horticulture*, Anthropology Report, No. 14 (Government Printer, Papua, 1933).

number of days each year for the government and/or privately owned estates.

We have now moved by degrees from a consideration of land to an examination of labor policy, for the two subjects are closely interrelated. The question of forced labor is dealt with elsewhere. Here we analyze the problem of free and indentured labor.

Under the indenture system natives sign a contract for a number of years; if they break their contract, they may be not only fined but also thrown into prison. Generally a breach of civil contract carries with it only a civil punishment; but natives have no wealth with which to pay damages, and mere civil prosecution would probably not deter them from attempting to run away before the expiration of their time. Recruiting is a costly business; and employers feel that, because it takes several months to make a newcomer into an efficient laborer, three years is not too long a period of indenture. Moreover, many employers believe that the indenture system gives them a greater control over their labor force, a greater certainty of an adequate labor supply, and a guaranty that the native, irresponsible and lacking in self-discipline, will not abandon his work and leave the plantation shorthanded, often when it is necessary to gather the produce in the shortest possible time. A government official of Papua, Mr. O'Malley, in his annual report for 1927, admitted that most employers prefer to recruit labor under the indenture system even though they have to pay fees for recruitment, the cost of transportation of natives before and after indenture, and native labor-office fees. Mr. O'Malley questioned this view, and was of the opinion that free labor would be found more efficient in the long run and in every way more desirable.

The wise employer, even under the indenture system, which provides for the imprisonment or the imposition of fines upon a negligent native, will not come to the courts if he can help it, but will attempt to reach a friendly understanding. A free laborer, if unsatisfactory, may be immediately dismissed; the threat of losing his job will act as a restraining influence because he will have to bear the cost of his repatriation.

The method of recruiting is most important. If the government does not exercise supervision, unscrupulous private recruiters use fraud and deceit to entice and even kidnap natives from their villages. If the government itself actively encourages recruiting, and an official even hints to the chief that men are required, his "request" is regarded as a command. Employers in

East Africa believed that the government should promote recruiting; but several administrators hold the view that officials should remain strictly neutral and make no effort to influence the native, that each should make certain that the pay is adequate, that the native knows the terms of the contract and signs it of his own free will, and that conditions on the plantation are satisfactory. In the mandated territory of New Guinea, the 1922 ordinance permitted recruiting bonuses to be paid to chiefs, with two safeguards: (1) the intending laborer must testify before a district officer that he desired to work; and (2) bonuses were to be limited in amount.

Governments differ as to the indenture of women. Those who favor the policy argue that if women accompany their husbands the family will not be disrupted, the birthrate will not suffer as it would if the husbands were away for three years, and the presence of women will obviate the tendency to unnatural vice among the indentured men. Administrators who oppose the indenture of women minimize the importance of the foregoing arguments. They insist that to maintain the village as the center of native life is vital: "The men may go off and wander about the Territory, and stay away from home for three or four years, or more, if they can get the commissioner's consent; but, so long as the women are in the village, the men will, as a rule, come back again. But when once the women leave, the village life is dead."[14] For the same reason the government of Papua refused to consider the idea of native village settlements on European plantations. Such a system would enable a man to have his family with him and thus preserve family life; but it would also, in the opinion of officers in Papua, create a class of landless men, cause the loss of their tribal rights and status, and tend to separate them from the ways of their people.

Unmarried women should be recruited only under most exceptional conditions; and they should not be permitted to contract any marriage while in service on plantations, for "plantation marriages" have, in the past, given rise to serious abuses. Too often no cognizance was taken of any native customs, and as the marriage code in most of the native tribes is strictly defined, all marriages being exogamous, and any connection between members of the one clan being considered incestuous, it is easily understood that on return of the parties of the marriage to their district, there was much discontent and trouble. . . . . On the plantation marriages were frequently

[14] Sir Hubert Murray, *op. cit.*, p. 36.

brought about between natives not even belonging to the same district. On the completion of the contract the man and his wife would proceed to the district of the man's house; in a few months, tiring of her, he would take a woman of his own district and the unfortunate native, who probably had been forced to marry against her will, would degenerate into the village prostitute.[15]

Colonial administration has become increasingly concerned with providing satisfactory conditions for laborers on plantations. The more enlightened laws provide that natives must be housed in quarters which have sufficient sleeping space and sanitary equipment; they must be given rations according to rules drawn up by medical officials; they must not be required to work more than a given number of hours a day. Some governments legalize Sundays and holidays as nonworking days; minimum wages, not high according to our standards, are often prescribed. Governments have not a uniform policy of paying wages; some hold back a certain amount of pay until the end of the contract, so that the native may return home with something to show; others require employers to pay their laborers in cash and not in goods. Governments increasingly prohibit corporal punishment, and even prescribe fines or imprisonment for flogging.

Periodic inspection of plantations by government officials is common. In Papua, in 1925–26 officials visited 138 centers and examined over 13,000 natives. The officials have to submit a report which includes the name of the plantation or mine, the names of the owners and the person in charge, the number of indentured and casual natives employed, the hours of work, the amount of overtime and Sunday work, the type of work in each class, a description of the number and condition of the laborers' buildings, the supply of bedding and mosquito nets, the quantity of rations, the number and condition of cooking utensils, the source and quality of water supply, the condition of clothing, the state of the laborers' health, the sanitary arrangements, the accommodations for the sick, the provision of drugs and medical attendance, the machinery in use, the posting of native labor ordinances and regulations, the complaints of both managers and laborers, the recommendations made by the inspector to the manager, and observations by the inspector and his signature.

Authorities do not agree on the language question. Mr. Ormsby Gore and the Phelps-Stokes Commission claimed that

[15] *Annual Report to the League of Nations on the Administration of New Guinea, 1921–22* (Canberra, Australia), p. 53.

in the early stages of education the native language should be the medium of education. Missionaries generally favor the use of the native language. There have not been lacking defenders of the policy of instruction in English.[16] But some authorities prefer to standardize one or more of the native languages.[17] These conflicting views are reflected in the Seminar-Conference of Educators and Social Scientists held at Honolulu in 1936.[18]

Opinion is not unanimous concerning the content of education for dependent peoples. Those who believe that truth and culture are universal minimize differences of culture and are more ready to have a system not fundamentally different from their own. Those who believe that the "good life" and "self-realization" are conceptions too vague to be immediately applied to peoples deeply rooted in their indigenous culture say that education should assist in making native peoples more capable of the finest powers within them as native peoples. But education must also assist natives in adapting themselves to the new world forces which have touched them and are modifying their own social life. Such education must train them to esteem their own culture and not despise it. They must become "bicultural" and do what all peoples in varying degrees do, namely, adapt their beliefs and customs to life, the essence of which is change. In order to make them better members of a village, content to live in their village, and to obey their chiefs, education should be concerned with health, with improving agricultural methods, and with training the girls in duties of the home; it should aim at making the school the center of the community.

This utilitarian concept of education must also be combined with training of character and must provide for intellectual leadership; but the problem of higher education is difficult. If higher education is of a formal intellectual type, it may give "social polish" but will separate the educated native from his community, uproot him from his social setting, and isolate him from his fellow tribesmen. If he is given vocational training, he may, like many graduates in so-called civilized countries, be unable to find a position. The dilemma is serious. Holland has adopted a policy in the Dutch East Indies of strictly limiting the number of schools and the number of students who can be admitted to vocational and

[16] F. E. Williams, *Native Education,* Anthropology Report No. 9 (Government Printer, Papua, 1928), p. 11.

[17] J. W. Burton, in *Studies in Australian Affairs,* p. 236.

[18] F. M. Keesing, *Education in Pacific Countries* (Kelly & Walsh, Ltd., Shanghai, 1937), pp. 164–80.

higher institutions. On the other hand, a well-educated individual may exercise a profound influence for good among his people. Sun Yat-sen of China, Booker T. Washington among the Negroes, and Sir Aparina Ngata among the Maoris are examples of educated men who have done extraordinary work in raising the life of their own people: "The production of one first-class anthropologist, doctor, or linguist of native blood and cultural backgrounds . . . . might well mean more to the future of such an indigenous area than the training of a whole army of minor native officials."[19]

These problems are alive and may be solved, given a deep sympathetic interest on the part of administrators, restraint on the part of the white settlers, and close co-operation of anthropologists with government officials. The question calls for wise government, sympathetic education, and a limitation of the profit-seeking motive in the economic development of the countries in which the natives live. Under these circumstances it will be possible to carry out "the dual mandate" of governing in trust for both the native peoples and the white settlers. Culture contact may then bring enrichment and not disintegration. The next question that arises is, what agencies are best fitted to carry out these policies. We propose to examine the part played by imperialist powers, by the League, and by the United Nations.

CONSTRUCTIVE IMPERIALISM AND DEPENDENT PEOPLES

Although colonial powers have been guilty of ruthless exploitation of native peoples at different times and in many places, and although the record of the dealings of white nations with colored dependencies is marred by many black pages, happily other tendencies have manifested themselves and from earlier times in colonial history voices have spoken on behalf of the natives who have come under imperialist rule. Las Casas was an early champion of the Indians; and the Spanish throne, desirous of spreading the Christian faith, enjoined its officials in the New World to promote the spiritual and physical welfare of their Indian wards. Although the colonists disobeyed these praiseworthy instructions, the rulers of Spain had at least enunciated the ideal of trusteeship. The Church also did valuable work in protecting the rights of

[19] F. M. Keesing, *ibid.*, p. 140. Dr. Keesing's *The South Seas in the Modern World* (The John Day Company, New York, 1941), provides an authoritative study of the principles which should be followed in the government of dependent peoples.

natives, and missionaries during the eighteenth and nineteenth centuries served as agents of a more enlightened imperialism.

Even colonial exploiters found that it did not pay to abuse the natives beyond a certain point; cruelty and neglect brought sickness and death to the laborers, and the plantations and mines were left shorthanded. Just as enlightened capitalism saw the wisdom of higher wages and shorter hours, of sanitary working conditions, and of freedom from anxiety over unemployment on the part of the workers, so the self-interest of imperial governments paved the way, although too slowly, for a better treatment of their native subjects. Toward the end of the eighteenth century, Edmund Burke and William Wilberforce raised their voices against colonial exploitation and slavery. Burke passionately pleaded for a finer concept of government in India. In his speeches, between 1783 and 1785, he drew Parliament's attention to the magnitude of Britain's task in that land, the problem of the clash of cultures and civilizations, and the danger of committing to the same men the functions of government and furtherance of trade; and he enunciated the principle of trusteeship and endeavored to overcome the apathy of the members of the House. Wilberforce and the antislavery groups carried out their splendid crusade, and explorers like Livingstone, missionaries of various denominations, Bible societies, and enlightened colonial administrators helped to bring pressure to bear upon their governments to correct or at least to mitigate the evils and weaknesses of their colonial policies.

Gradually higher standards of colonial administration were evolved and more efficient and humane methods were used throughout the colonies. We may here concentrate attention upon British colonial policy, which in some respects has gone farther than those of other countries. The Colonial Secretary administers "thirty-six different Governments each entirely separate from the rest, each administratively, financially, legislatively self-contained," with "its own administrative service, its own medical service, its own agriculture public works, and other technical services, its own scale of pay, its own pensions."[20] But, as Mr. Amery pointed out, such questions as scientific research and the problems of agriculture, of veterinary science, health, and transport necessitate more efficient organization. In 1927, therefore, the first general Colonial Conference was held and was attended

[20] Mr. Amery's opening address in 1927; see *Report of Colonial Office Conference*, Cmd. 2884.

by administrators from colonial possessions from all over the world.

In addition to this, there have been other more limited colonial gatherings, such as an Agricultural Conference in Jamaica in 1924, conferences between Canadian and West Indian representatives in 1920 and 1925, a West Africa Conference of Senior Medical officers in 1925, of Railway Experts in 1926, of Agricultural Research Authorities or East Africa Law Officers and Agricultural Officers, and an East African Governors' Conference. In 1926 a conference of the main West Indian Colonies met in London to consider setting up a standing body to deal with matters of common interest to them.[21]

Supplementing the general and regional colonial gatherings, other agencies exist to promote greater efficiency of administration and development of resources. The Crown Agents for Colonies purchase stores and raise loans for the colonial governments. They advise on several thousand miles of railway, manage over fifty colonial loans, make some 600 colonial appointments a year, and maintain various engineering and service offices. The colonies obtain cheaper materials, expert technical advice, and lower interest loans as a result of the crown agents' activities. The Colonial Survey Committee, established in 1905, assists the colonies in geographic and geologic surveys, the importance of which is very great; for upon the development of roads, railways, and other methods of transport depend efficiency of administration, the suppression of tribal warfare and slavery, the relief of famine, the education of natives in the interior, the improvement of health, and access to raw materials.

The Colonial Research Committee, appointed in 1919 administers a parliamentary grant for the assistance of poorer colonies in research on matters of local importance—agriculture in Tanganyika, coal in Nyasaland, insect pests in Sierra Leone, or the sponge industry in the Bahamas. The Colonial Advisory Medical and Sanitation Committee and the Tropical Diseases Bureau play an important part in the battle against disease. The Bureau publishes a monthly bulletin on hygiene, a monthly imperial disease bulletin, and a quarterly tropical veterinary bulletin. This involves a survey of over five hundred medical and veterinary publications. The Bureau has built up a valuable library and is thus well described as a "centralized intelligence service."

[21] Linden A. Mander, "The British Commonwealth of Nations," *Proceedings of the Institute of World Affairs* (1928), pp. 96–97.

The Imperial Bureau of Entomology was reorganized in 1913 to encourage and co-ordinate, throughout the Empire, work on human and animal diseases. To its upkeep the Imperial Government, the governments of the self-governing Dominions, India, the Colonies and other Dependencies, the Sudan, and the North Borneo Company contribute. The Bureau publishes both a monthly and a quarterly review, identifies insects for official entomologists all over the Empire, and has set up a laboratory for the purpose of breeding beneficial parasites for export to the overseas Empire.

The Imperial Bureau of Mycology, founded in 1920, does a similar work on plant diseases. It is supported by the Dominions, India, the Sudan, and the non-self-governing colonies and protectorates. Its functions resemble those of the Bureau of Entomology, "distributing information in all matters connected with plant diseases, and undertaking the identification of specimens."

In 1899 the London and Liverpool schools of Tropical Medicine were founded, "primarily for the special training in tropical medicine of officers of the Colonial Medical services"; other universities followed their example by instituting courses and diplomas in the same subjects. Calcutta, in 1921, established its school of Tropical Medicine, and Australia built a similar institute in Townsville, Queensland. Schools for the training of a native medical staff have been founded in Ceylon (1870), Hong Kong (1887), and the Straits Settlements and the Federated Malay States (1905), while other measures, in this connection have been taken elsewhere.[22]

One can refer only briefly to the Imperial College of Tropical Agriculture at Trinidad, which, despite financial handicaps, has done important work in improving the quality of sugar cane, combating insect pests, stimulating research, and training experts for service all over the Empire. And only passing reference can be made to the first Imperial Agricultural Research Conference held in London in 1927 and attended by 150 delegates from all parts of the world. The Conference decided to become a permanent institution and recommended the establishment of central tropical and subtropical research stations, the foundation of new Imperial Bureaus, and other measures affecting all branches of agriculture. In the same year, a special committee under Lord Lovat presented a report (Cmd. 2825) on agricultural research and administration in the non-self-governing Dominions.

It may be objected that many of these institutions were set up

[22] Mander, *op. cit., passim.*

primarily in the interest of the British, and only incidentally in the interest of the native people. The charge in large measure may be true; but if by such policies the dependent peoples do obtain a higher standard of health and economic welfare, the principle of mutual welfare may be served. Both societies may gain from the application of science to the problems of the tropics. But there can be little question that the more recent attempts to develop native education are entirely praiseworthy.

National empires may become instruments of enlightened rule, just as governments at home may be expanded in purpose and function to serve the welfare of the many rather than of the few. Nor should one deny the devotion to duty on the part of thousands of colonial administrators, nor fail to appreciate the willing sacrifices of medical, educational, and religious missionaries who have frequently worked in close association with colonial governments. Nevertheless, the question may be raised whether this system should not merge into a wider, more comprehensive organization of an international character. Imperial trusteeship is unfortunately associated with imperialism, and with the theory that the colonial peoples primarily exist for the benefit of the home country.[28]

The colonial powers, perhaps in response to widespread criticism of the inadequacies of colonial policy and of imperialism in general, to the awakening consciousness of the native populations, and an added sense of their own responsibility have, especially in the last decade, increased their efforts to improve conditions in the colonies. Great Britain has long had an advisory commission on education, a school of Oriental and African studies in London, and a department of anthropology in the London School of Economics. An important memorandum on educational policy in Africa appeared in 1925, another on educational aid in 1933, and an important memorandum on mass education in African society in 1944. Tribal schools in Rhodesia, special schools for boys at Tanganyika, and new types of schools in Ceylon and Malaya indicate an energetic attack upon this problem. By the use of the cinema and the radio, advances have been made in adult education,

[28] Three valuable publications which will keep the student of Colonial problems informed of developments are: *Oversea Education,* a journal describing educational experiments and research in tropical and subtropical areas, published for the Secretary of State for Colonies by His Majesty's Stationery Office, London; *The Colonial Review,* published by the Colonial Department, University of London Institute of Education; and *African Transcripts,* published by the Museum, University of Pennsylvania, Philadelphia, Pennsylvania.

and special facilities have been established at certain labor centers in Malaya, Ceylon, and North Rhodesia. Increasing attention has been given to advanced education in Hong Kong, Singapore, and Khartoum. The University of Ceylon, beginning in 1943, and a Commission on Higher Education in Western Africa, starting in August 1943, have been investigating and have reported upon schemes for universities in those areas.[24]

The dependencies which have undergone any degree of industrialization are experiencing the same general labor problems as did Great Britain and the United States in their early stages, and just as in the latter instances a social consciousness developed, so are reforms being undertaken in the colonies. Colonial labor departments have increased from 11 in 1937 to 33 in 1944; the Secretary of State for Colonies now has the benefit of expert advisers on labor questions; and in 1942 a Colonial Labor Advisory Commission was set up which the Secretary of State might call upon for advice. L. P. Mair points out that international labor legislation in the form of the Forced Labor Convention of 1929, the Recruiting of Labor Convention in 1936, and the 1939 Convention dealing with penal sanctions and the regulation of contracts have been ratified by Great Britain, which has also applied other international conventions, such as those dealing with wages and with women and young persons in industry. In order to control conditions of labor, migration agreements between neighboring countries in South Africa have been signed, and improvements have been made in living standards in certain of the mines. Australia has moved to abolish indentured labor in Papua and New Guinea. These examples are typical and not exhaustive.

The organization of Colonial Health Services has been improved. A chief medical adviser and two assistants are stationed at the British Colonial Office, committees on nutrition and venereal diseases have been set up in the last few years, and medical services have expanded in several of the colonies. Nevertheless much remains to be done when one compares the 700 European medical officers who serve 60,000,000 colonial people with the 40,000 doctors who serve 46,000,000 people in Great Britain. In health and nutrition matters, the work of the League of Nations and the International Labor Organization has had its influence upon British policy. In 1937 a Colonial Penal Administration Com-

[24] Much of this material has been drawn from L. P. Mair, *Welfare in the British Colonies* (Royal Institute of International Affairs, London, 1944).

mittee and in 1943 an Advisory Commission on Social Welfare were set up.

The shortage of animal and vegetable oils and fats led to a remarkable scheme of comprehensive socialized farming for the colonies of Kenya and Northern Rhodesia and the mandated territory of Tanganyika. In these areas the increases of population has produced a serious food problem, particularly because much of the land has suffered from the lack of surface water and/or the presence of the dreaded tsetse fly. Scientific research, however, indicated the possibility of successfully cultivating peanuts. A public corporation financed by the British Treasury has undertaken to loan about one hundred million dollars to finance the cultivation within a few years of more than 3,000,000 acres divided into over 100 mechanized farms of some 30,000 acres apiece. Each farm will employ about 300 Africans, 70 of whom will be skilled men. The families will form village communities, each with its stores, schools, clinics, and other institutions necessary for successful community life. A technical commission sent by the colonial office urged the importance of continuous investigation into "soil fertility, plant breeding, insect pests, crop diseases, nutritional problems . . . . and other related matters." The income derived from the several hundred thousand tons of peanut oil will enable the native African to improve his standard of life, and the experiment may, as the *London Times* writes, prove to be "the boldest and most comprehensive ever launched for developing backward territories."[24a]

In the case of the Dutch and French dependencies, many reforms have been undertaken, not only in economic and health matters but also in the political sphere, with a view to granting the inhabitants a greater measure of self-government. Indeed proposals have been made to admit the French colonies to a status of equality with the inhabitants of France itself, and on February 10, 1946, the Netherlands government issued a statement concerning the future of Indonesia recognizing for the first time the possibility of complete independence for that area and indicating the procedure by which the East Indies may be separated from the kingdom.[25]

We must also note one or two significant developments which may point the way to international co-operation in colonial admin-

[24a] "Colonial Socialism," *The Nation* (March 1, 1947), p. 249.

[25] See discussion by Raymond Kennedy in the *Far Eastern Survey*, April 10, 1946.

istration.[26] In 1942 the governments of the United States and Great Britain established the Anglo-American Caribbean Commission to see if by co-operative action something better could not be done for the five and one-half million colonial inhabitants of the Caribbean area who were and are still suffering from an extremely low standard of living and from political backwardness. The necessities of the war had forced some improvement, and progress was foreshadowed by the British Colonial Development Welfare Act of 1940, but the step taken in March 1942 may hold still greater promise.

The Anglo-American Caribbean Commission comprises six members, three appointed by each government, assisted by a West Indian conference which held its first session at Barbados in March 1944 and was intended to meet annually. The Commission has only advisory powers; it has no control over policy. But almost immediately it turned its attention to the more urgent problems—that of the supply of food lacking in several islands which depended upon one or two stable crops; the shortage of shipping and the consequent loss of markets in Europe and the United States for their products which in turn created serious unemployment and resulting psychological difficulties. The Commission encouraged increased production of local foodstuffs and, on consultation with the Caribbean Shipping Review Committee, recommended a central operating pool. It participated in arrangements to ease unemployment and at the same time relieve manpower shortages in the United States by bringing Caribbean laborers to the American continent for work on farms and in industry. It drew up a program for improved health and sanitation in the islands. It is examining the possibility of diversifying agriculture so that in this troubled world the islands will not be unduly dependent upon foreign trade. And it is attempting to fit the Caribbean policies into the wider framework of international economic policy since many of the island difficulties are due to the contradictions and breakdowns in the general trade policies and organization of the major countries.

Hope was expressed that the Dutch and French governments

[26] The New Hebrides Condominium, set up in 1907, is not considered here because although the 1906 convention establishing the joint rule of France and Great Britain contained eloquent clauses promising administrative action for the benefit of the native people, nothing effective was accomplished. Indeed the Condominium resembled more a dog in the manger policy on the part of both powers. See Linden A. Mander, "The New Hebrides Condominium," *The Pacific Historical Review* (June 1944), pp. 151–67.

would be included in the Commission so as to permit the establishment of a genuine regional agency and in order that "the appearance of Anglo-American exclusionism" might be avoided.[27] This hope was realized when French and Netherlands participation was effected on December 20, 1945: the Anglo-American Caribbean Commission became the Caribbean Commission. When the second session of the West Indies Conference opened on February 21 at St. Thomas in the Virgin Islands, the Netherlands, the United Kingdom, and the United States sent representatives. The conference was "the only international conference participated in by governments in which the people of colonies and overseas territories are directly represented and in which the views and aspirations of the peoples of such territories are freely expressed."[28] Twenty-three of the 29 delegates were natives of the Caribbean area and 16 represented "elected bodies or portions of elected bodies." For ten days the conference met in plenary sessions and discussed regional problems in a general manner. It then divided into three main committees and twelve subcommittees. Committee 1 on organization matters recommended a biannual meeting of the West Indies Conference, the creation of a central Secretariat under a Secretary General, and full consultation of all territories of the region as to proposed agenda; a minority report urged that only elected members of legislative bodies or councils might be delegates to future conferences.

Six subcommittees of Committee 2 made recommendations on agricultural and industrial diversification, trade and transportation, health, plant and animal quarantine, and research. It reaffirmed the importance of agricultural diversification, urged immediate beginning of soil surveys where the work had not been begun, and made other recommendations too numerous to mention here. Committee 3 had to deal with recommendations for specific action. During a later plenary session the conference accepted proposals for the agenda of the next session which included, interestingly enough, the consideration and formulation of a bill of human rights and obligations.

Governor Tugwell of Puerto Rico in the final session asserted that, though the Caribbean Commission and the West Indies Con-

[27] For a general summary, see Olive Holmes, Anglo-American Caribbean Commission, "Pattern for Colonial Cooperation" (*Foreign Policy Report*), December 15, 1944.

[28] Elizabeth H. Armstrong, "Report on the West Indian Conference," *Department of State Bulletin*, May 19, 1946.

ference had no legislative, executive, or judicial powers, they were destined to play a most important part and he "expressed the hope that colonial offices and chancellories would see in this institution not a threat to their private prerogative, a crass disturbance of their established methods, but rather a convention devised for meeting demands and aspirations which would otherwise overwhelm them with their volume and persistence."[29] Elizabeth Armstrong well comments that these new institutions constitute "a considerable guaranty of peaceful, orderly, and evolutional development. Their existence and their functioning should do away with the old cycle of neglect, riots, investigations, disturbances, and again neglect which has marked the course of West Indian history for too many years."[30] A successful Caribbean commission will indeed "be an excellent augury for the establishment of regional commissions in other disturbed areas of the world, occupied largely by non-self-governing peoples."[31]

The sixth (legal) committee of the United Nations at the end of 1946 considered a resolution brought forward by the Philippine representative asking for an international conference of non-self-governing peoples. It referred to the conference already called by the Caribbean Commission and urged that the purpose, namely, "to give the non-self-governing peoples a legitimate vehicle of expression" was so important as to take on the character of urgency. After considerable discussion the committee adopted a United States motion that there were no legal objections to the resolution, which was adopted by 27 votes to 6 with 12 abstentions.[31a]

In February 1947, the governments of Australia, France, Great Britain, Netherlands, New Zealand, and the United States signed an agreement establishing the South Pacific Commission for the purpose of promoting the economic and social welfare of the non-self-governing peoples of that area. The Commission is to meet twice a year; most of its decisions will be by two-thirds vote; its Secretariat will be temporarily established at Syndey, and a South Pacific Conference is to be called within two years after the agreement comes into force and thereafter at intervals not exceeding three years. Delegates to the conference are to be selected so as to insure the greatest possible measure of representation of the local inhabitants of the territory. A research council will

[29] *Ibid.*, p. 845.

[30] *Loc. cit.* [31] *Ibid.*

[31a] *United Nations Weekly Bulletin*, Vol. I, No. 19, December 10, 1946, p. 46.

survey the needs of the areas, suggest research projects and encourage co-operative research.[32]

THE LEAGUE OF NATIONS AND THE MANDATE SYSTEM

The 1885 General Act of Berlin set forth certain principles which the powers agreed they should observe in their relations with the native peoples living in the Congo area. Unfortunately, international action did not equal international eloquence, and the control which was established remained ineffective. Nor did the Brussels Conferences of 1890 and 1899, which concerned themselves with the slave trade and the liquor problem, prove more successful. Some colonial administrations exhibited a more humane outlook, but in general the white race had sadly neglected its obvious duties toward the dependent and so-called backward peoples.

During the World War of 1914–1918 several British and American writers brought forward the theory that any postwar distribution of colonies should redound to the benefit of the international society as a whole rather than provide colonial enrichment for individual countries. Unfortunately the Allies during the course of the war had signed a number of treaties bargaining away the German and Turkish colonies. By treaties signed in 1916 and 1917, Britain and France and Italy were to obtain areas in Palestine, Syria, and Cilicia, and Japan was to acquire German colonies north of the equator.

These arrangements conflicted not only with ideas expressed by Hobson, Lippmann, Beer, Snow, and others but with those of two forward-looking statesmen. In 1918 President Wilson included as one of his Fourteen Points the free and impartial adjustment of all colonial claims, and General Smuts set forth a plan by which the principle of trusteeship could be put into effect. Smuts did not favor the establishment of a direct international administration—experience had demonstrated the failure of such a method—but he urged that certain national governments should be nominated as trustees on behalf of the League.

The Peace Conference witnessed a battle between the two

[32] Space does not permit the detailed treatment of the many problems which will confront the Commission. See Emil J. Sadey, "Report on Southwest Conference," *Department of State Bulletin* (March 16, 1947), pp. 459–65, and "Pioneers in Regional Organization," *Newsletter of the Institute of Ethnic Affairs, Inc.* (Washington, D.C., March 1947), pp. 1–4.

principles—outright annexation and the mandate system. French, Italian, Japanese, Australian, and New Zealand representatives argued in favor of the former. President Wilson championed the proposal of General Smuts. The British Prime Minister wavered, and after several days induced the Dominions to modify their attitude. By a compromise which applied to the German colonies in the Pacific and German South-West Africa, the objections of Australia, New Zealand, South Africa, and Japan were finally overcome. The "C" class mandates which these governments were to receive were to be administered "as integral portions of the mandatory state"; they would not have to observe the "open door" nor to afford equality of immigration rights to other League members, but must administer the colonies in trust for the League. The former Turkish colonies were allocated by the Supreme Council at San Remo on April 25, 1920, and after much delay, due in part to the opposition of the United States, the system came into operation in July 1922.

There were three classes of mandates:

"A" Mandates.—These communities were Syria, Palestine, and Iraq; Great Britain obtained the mandates over Palestine and Iraq, France the mandate over Syria.

"B" Mandates.—The Supreme Council designated the mandatories on May 7, 1919. It awarded the mandate for the Cameroons and Togoland to France and the United Kingdom, and that for Tanganyika (former German East Africa) to the United Kingdom. After subsequent negotiations, Ruanda-Urundi (the northwest region of former German East Africa) was placed under Belgian mandate. The "B" class mandates were: (1) Cameroons under British mandate (administered by the government of Nigeria); (2) Cameroons under French mandate; (3) Togoland under British mandate (administered by the government of the Gold Coast); (4) Togoland under French mandate; (5) Tanganyika Territory (British mandate); (6) Ruanda-Urundi (Belgian mandate).

"C" Mandates.—The Supreme Council awarded "C" mandates as follows: (1) South-West Africa (mandate of the Union of South Africa); (2) Western Samoa (New Zealand mandate); (3) Nauru (British Empire mandate); (4) New Guinea (Australian mandate); (5) Islands under Japanese mandate (the Marianas and Caroline and Marshall Islands).

The League supervised mandatory powers by means of the Permanent Mandate Commission, the Council, and to a lesser de-

gree the Assembly. The Permanent Court of International Justice decided disputed legal matters concerning the mandates; while the health and legal sections of the Secretariat, the Standing Committee on the White Slave Traffic, the International Labor Office, and the Temporary Slavery Commission gave valuable assistance in the various technical fields.

In order to exercise supervision satisfactorily the League had to know fully what was happening in the mandated territories. Accurate information was indispensable. The question arose—what were the sources and were they adequate? The annual reports of the mandatory powers constituted the first and most important basis of information. Each of these undertook to supply to the League each year a report which dealt with main legislative and administrative developments, the general economic, social, and health conditions of the native population, the measures taken to insure their economic and educational progress, the conditions of labor, whether or not the prohibition of liquor, arms, and drugs had been faithfully observed, the financial position of the territory, and the main political events of the period.

The report was sent to the Permanent Mandates Commission, a body of individuals the majority of whom were citizens of nonmandatory powers. The members of the Commission, by reason of training or administrative experience, were expert in the problems of colonial administration. They examined the report and then called in the representative of the mandatory power in order to obtain from him fuller information on matters which the report did not make clear, or on conditions which seemed to them to be unsatisfactory. Those who have read the minutes of the sessions of the Commission know that it did not remain satisfied with perfunctory explanations. It asked searching questions and frequently stated its criticisms in no uncertain terms. When it had finished its examination it prepared a report for the League Council. The League Council considered the report and made its observations, which went to the mandatory power concerned. The Assembly also might discuss matters arising from the report; occasionally it passed resolutions criticizing the methods of the mandatories.

The Permanent Mandates Commission was at a disadvantage in having to rely so heavily on printed government reports. The information contained therein was likely to be weighted in favor of the mandatory, and in any case a written summary could not take the place of personal observation. The Commission often found

itself unable to come to a conclusion because of the inadequacy of information at its disposal. In 1927–28 it had to consider the trouble in Samoa and for a time accepted the reports of the New Zealand government and of a Royal Commission, all of which defended the administration and condemned the opposition party under Mr. Nelson. It was not until after a New Zealand public commission had severely criticized some aspects of the administration in Samoa that the Mandate Commission realized that the information which it had received was not only inadequate but partial; then it did not hesitate to say so in strong terms. On the other hand, Japan claimed that the Commission was unfamiliar with the problems of the islands in the North Pacific under their mandate, as was shown by its alleged very vague and general questions.

The right of petition by the natives of mandated territories was held to be very important. They might send petitions to the League but must do so through the medium of the mandatory power. In the case of the "A" mandates, the Commission had to decide between what it called legitimate and illegitimate petitions; the latter were those which requested a revoking of the terms of the mandate itself, while legitimate petitions were those which pointed out alleged specific grievances. But the written petition suffered from the same drawback as the government report. It could not give the whole atmosphere, and it was natural that petitioners should ask the right to send a personal representative. Certain individuals from Syria and Mr. Nelson from Samoa attempted to gain a hearing in Geneva, but the mandatory powers raised strong objections. They claimed that such a method would put government and subjects on the same level, and even place the ruling power in the position of defendant. The step would undermine the prestige of the government and make its task well-nigh impossible. Britain argued that the right of hearing was "based on misconception of the duties and responsibilities of the Commission and Council." The Permanent Mandates Commission rather cautiously suggested that in certain cases where it could not form a definite opinion "it might appear indispensable to allow the petitioners to be heard by it. The Commission, however, did not desire to formulate a definite recommendation on this subject before being informed of the view of the Council." And the right of oral hearing was not granted.

It might be logically argued that if personal acquaintance is so important, the Commission, or some of its members, should be permitted to visit the mandated territories in order to supplement

the information contained in their annual reports. Unfortunately this proposal arose not from responsible officials but from disaffected elements in Palestine, and however sound the view might be theoretically, it suffered from the circumstances of its origin. The mandatory powers opposed the idea, saying that the visits would make the task of government difficult by weakening their prestige and authority in the eyes of the inhabitants.

Therefore nothing was done to strengthen the investigating machinery of the League, and the mandatory powers even opposed the suggestion of the Commission in 1926 that a more extended questionnaire be adopted in order to obtain more accurate and specific information concerning conditions in the mandated territories. The questionnaire adopted up to this time had fifty-one questions for "B" mandates and fifty for the "C" class, each divided into thirteen parts. Under the new arrangement, there would be 118 questions under 22 headings. Sir Austen Chamberlain claimed that the "immense questionnaire" now proposed was "infinitely more detailed, infinitely more inquisitorial" than that which was being used, and asserted that the Commission was threatening "to extend its authority to a point where the government would no longer be vested in the Mandatory Power but in the Mandates Commission." The vice-chairman of the Commission vigorously denied that that body desired to usurp the functions of governments, and insisted that the authority of the mandatory powers was supreme. The Commission, after obtaining further evidence on the attitude of the mandatories, passed a resolution that "it is entirely for the Mandatory Powers to decide whether they desire to use or not to use the 'List of Questions,' according to whether they share or do not share the Commission's opinions as to its usefulness." Dr. Kastl pointedly suggests that the rejection of the proposed questionnaire by the League Council "is symptomatic of the fact that in the eyes of many of the interested parties the international supervision of the Mandates Commission must stop at the point where it becomes inconvenient to the Mandatory Powers."

The Permanent Mandates Commission had three major objectives: to make the mandate system a reality and not an excuse for outright annexation; to maintain the economic "open door" and commercial equality for all powers so that the mandated territories shall not be a source of political and economic profit to the mandatory; and to promote the welfare of the native inhabitants.

Despite the theory of trusteeship expressed in the mandate system there existed a temptation for nations to consider the mandated territories under their control as being under their sovereignty. One of the most baffling questions which arose out of the mandate system was that which concerned the location of sovereignty. The reason is obvious. A new form of international organization came into existence which could not easily, if at all, be harmonized with the traditional concept of sovereignty. The problem was further complicated by the fact that this much-used word has never received a universally accepted definition, and that its meaning has changed in the course of history.

Some jurists claimed that the sovereignty was located with the Principal Allied and Associated Powers, in whose favor Germany had renounced the colonies. A number of writers claimed that sovereignty passed direct to the League of Nations. A few believed that sovereignty existed in the mandated peoples themselves, even though for a time in suspense pending the achievement of their full powers of self-government. And some asserted that both the League and the Mandatory Power exercised sovereignty, however distasteful to those who claimed that sovereignty could not be divided.

Jurists had raised the question whether a nonmember of the League could administer a mandate. In theory there seemed to be no reason why any government might not be nominated as a mandatory, whether a League member or not, provided that it observed the conditions of the mandate. Quincy Wright believed that the difficulties of such an arrangement "would certainly be almost insuperable"; but other authorities took a different view and maintained that it was merely a question of fulfilling the legal obligations of the mandatory power.

In 1933 Japan gave notice of her withdrawal from the League, and the mandates question at once came into the realm of practical politics. For the government of Japan did not relinquish its mandate and took the view that the Japanese withdrawal from the League did not disqualify it from continuing to act as a mandatory; but neither did it, as many Japanese nationalists claimed, absolve it from the obligation of continuing to administer the islands in accordance with the terms of the mandate.

The mandates problem was further complicated by the fact that mandatories were permitted in certain cases to administer the territories "as an integral part" of their own possessions; it is not easy to distinguish between "the administration of a country as

an integral part of another country" and "the actual incorporation of the first country into the second."[32a] The Mandates Commission used carefully to examine the annual reports of the mandatories and consistently drew attention to certain passages which might suggest that mandatory is thinking in terms of sovereignty: "The rights exercised by the mandatory Powers are dependent on the international texts. . . . . These rights can not be modified unilaterally by the mandatory Power by employing certain terms and expressions in its international legislation . . . . there should be no misunderstanding as to the precise value of these questions of internal legal terminology. The expressions employed are incapable themselves of affecting the real nature of the rights which from the point of view of the League of Nations the mandatory Powers possess."

The Chairman of the Permanent Mandates Commission emphasized "that the Commission had the duty of seeing that the colonial administrations did not become influenced by the natural tendency to make use of the powers given them in order to convert mandated territory into a colony in full sovereignty."

The question of the status of the inhabitants also involved the problem of sovereignty. If it were decided that a person resident within a mandated territory were the subject of the mandatory power, that would confirm the tendency to regard the territory as a colonial possession. The question was connected with the problem whether or not inhabitants in a mandated territory can be naturalized and become citizens of the mandatory power. It was generally agreed that they could be naturalized as individuals; but could they be naturalized *en masse?* The Commission considered that a compulsory collective naturalization would infringe the principle of the mandate system, for a general naturalization would simply convert the mandated people into subjects. The League Council in 1923 agreed in these words: "the status of native inhabitants of mandated territory is distinct from that of nationals of mandatory Powers and cannot be identified therewith by any process having a general application."

The mandatory power was not to use the mandated territory as a source of military strength. The Covenant forbade the establishment of fortifications or naval and military bases and military training of natives for other than police purposes and defense

[32a] E. van Maanen-Helmer, *The Mandate System*, p. 203. For a valuable treatment of the whole problem see Quincy Wright, *Mandates under the League of Nations* (The University of Chicago Press, Chicago, 1930).

of the territory. The question arose as to whether it was legitimate to enroll men within the territory if they were to be put into units organized for service beyond the frontier; the Permanent Mandates Commission decided that it would violate the spirit, if not the law, of the mandate to enroll any men for service in a unit "which is not permanently quartered in the territory and used solely for its defense or the preservation of order within it," except that, in a general war troops might be used beyond the territory in order to repel an attack, or for the more effective defense of the territory itself.

The Permanent Mandates Commission in 1932 inquired whether or not Japan had fortified the mandated islands in the Pacific Ocean, north of the equator. The Japanese representatives assured the Commission that Japan would loyally observe its undertakings.

> The Chairman was anxious that there should be no ambiguity on this point. A naval base might not be self-evident, since harbour works permitting of the entry of ships could be used by submarines. He preferred therefore to ask M. Ito to state quite frankly whether the works undertaken were intended only to promote mercantile navigation.[33]

The Japanese Government, on December 1, made this unambiguous reply:

> it has never contemplated and does not propose to plan in the future the establishment of a naval base in the islands under mandate; the additional expenditure on port construction is solely due to the increase in the cost of improving the port of Saipan for economic purposes.[34]

In very many respects the mandates system worked unusually well. The Permanent Mandates Commission and the Mandates Section of the League were able to collect information and focus world opinion upon the mandatory powers. They constituted themselves an organ of continuous supervision, and thereby supplied an important element in good administration. The standards of colonial government have undoubtedly been affected; for it was not easy for Britain or France to continue ruling their colonial possessions in one way and their mandated territories in another, especially as some of these areas were contiguous and comparison

[33] League of Nations, *Permanent Mandates Commission* (Minutes of the Twenty-second Session, Nov. 3 to Dec. 6, 1932), p. 115.

[34] *Ibid.*, p. 319.

could easily be made by native groups, missionary bodies, and others. Moreover, the explicit recognition in some detail of the rights of dependent peoples, embodied as they were in a document (the League Covenant) signed by most of the nations of the world, marked a distinct advance, comprising at least an international acceptance of principles of colonial administration.

The mandatory powers experienced many difficulties in their efforts to carry out the provisions of the mandates. Australia had trouble in New Guinea; New Zealand and South Africa had to face native uprisings in Samoa and German South-West Africa; and Britain and France faced even graver problems in the "A" mandates. In part the difficulties in the "B" and "C" mandates were due to: (*a*) the appointment of inexperienced administrators to take the place of the German officials who had been sent back to Germany; (*b*) the preference awarded to returned soldiers, whose claims of military service played a larger part in their appointment than should have been the case; (*c*) the attempt, in Samoa at least, to change too rapidly the native ways of living; (*d*) the economic consequences of expropriating experienced German settlers from plantations, settlers who had built up much expert knowledge of tropical industries and agriculture; (*e*) the interruption to scientific research resulting from the temporary closing of the Amani Institute in Tanganyika.

Nevertheless, as years went by, the new administrations became more efficient, and the difficulties which arose from the newness of the task were gradually lessened. But in the "A" mandates of Syria, Palestine, and Iraq a new kind of problem was presented, namely, the problem of ruling an area inhabited by people predominantly Mohammedan in their religious outlook. This Mohammedan world, which carried its faith into every aspect of daily life—the position of women, the rules concerning marriage and divorce, the status of children, the laws governing the inheritance of property, etc.—had been profoundly shaken by contact with Western society, its scientific outlook, and its political and economic forces of expansion. At first the Moslem peoples tried to withstand the West by strengthening their own religious foundations, and then by turning to nationalism in an effort to drive out the West by using the methods of the West.

The attempt to apply the mandates system to Iraq and Syria, whose intelligentsia and merchant class were rapidly developing national self-consciousness, would have been a difficult matter, even under the most favorable circumstances, for no people likes to be

branded as too immature or lacking in capacity to be able to rule itself.

Unfortunately the mandate system which was adopted was a compromise between the aims of those who wished to take the former German and Turkish colonies in full sovereignty and those who wanted a genuine system of administration and trust for the world. Moreover, in the case of the "A" mandates applying to the former Turkish colonies, Palestine, Syria, and Iraq (the last one modified), one of the victorious Allies had promised the Arab peoples the establishment of an Arab nation. Other conflicting commitments had been made, and the most fundamental difficulty in the "A" mandates was that they could not be developed according to the inherent principles of trusteeship, because the situation was already poisoned by the belief on the part of the Arab people that Britain and France as mandatory powers did not have clean hands or a genuine desire to assist them to gain independence. They believed that the mandate was simply imperialism thinly disguised. Even under the most favorable conditions it would have required largeness of vision, considerable patience, and administrative skill on the part of the mandatory, and a trust and restraint on the part of the mandated people if the system were to work; the former would have to be sincere in encouraging self-government at every step; the latter would have to avoid rashness in claiming full independence before it had the strength or training to maintain its status and security unimpaired in a world inhabited by imperialist powers and doctrines of force.

The history of the "A" mandates, especially, shows as much the conflict of commitments on the part of the mandatories, as the problems arising from the relations of a single-minded mandatory and the mandated territory, although Iraq forms a partial exception to this judgment.

We cannot review in detail in this volume the many complicated questions which arose to plague the administration of Syria, Palestine, and Iraq, but must limit our observations and merely note that strategic considerations have increasingly dominated the whole of this region and thus made impossible the normal workings of the mandates system. Nevertheless, one important fact stands out—that Iraq in 1932 was granted its independence and became a member of the League of Nations.

In 1930 Great Britain initiated a move to terminate the treaty by which she controlled Iraq and urged that country's independence. The League of Nations had to decide whether or not a man-

dated country was capable of fulfilling the requirements of an independent state before it felt justified in agreeing to the step. In June 1931 the Permanent Mandates Commission set forth the conditions which it believed to be necessary for the termination of a mandate. The League Council considered the Permanent Mandates Commission report on Iraq at its January 1932 session, and Iraq was admitted to the League at the September meeting.

Toynbee, commenting upon these developments, stated that the political emancipation of Iraq represented a "reversal of Western imperialistic expansion" and demonstrated the error of cynics who had preached that the mandate system was merely "veiled annexation." Trusteeship, remarked Toynbee, really meant something. Indeed, it seemed as if Britain had been more anxious than the Permanent Mandates Commission to end its mandatory control, perhaps because Britain felt that imperialism in Iraq no longer was worth the costs involved, perhaps because adequate safeguards for British interests could be gained by less obvious control; while the Permanent Mandates Commission regarded the mandate as "a responsibility rather than a privilege" and therefore scrutinized the proposed arrangements in order to see that the responsibility was not prematurely discarded.[35]

THE UNITED NATIONS AND TRUSTEESHIP

The machinery for dealing with dependent territories, which has been established under the United Nations, differs from that set up under the League of Nations Mandate System. No specific details were included in the Dumbarton Oaks proposals, and at the San Francisco Conference it became clear that critics of the mandate system were going to be successful in replacing the League methods with something new. They claimed that the mandate system contained several weaknesses: (1) the Permanent Mandates Commission could criticize but had no responsibility for day-to-day administration, and the line between external criticism and interference was a difficult one to draw. (2) On the other side of the shield, the inhabitants had no independent right of petition and the Commission, as we have seen, was unduly dependent upon the mandatory power as a source of information; the Commission could not send any representatives into the man-

[35] Arnold J. Toynbee, *Survey of International Affairs, 1934* (Oxford University Press), pp. 109–15. By 1946, Syria and Lebanon and Transjordania had become independent states.

dated territories to check upon reports. (3) The Permanent Mandates Commission was limited to the rather negative function of criticizing abuses and was not in a position to undertake or cause to be undertaken positive measures for the welfare of the native inhabitants. (4) In a well-intentioned but somewhat unrealistic manner, so the critics continued, the mandatory powers administering B and C class mandates were forbidden to fortify and in other ways provide for the defense of the territories. Justification for this was admitted since it was an attempt to prevent mandated territories from being absorbed as colonies and from strengthening the military power of the mandatory; but, as Australian experience in New Guinea all too tragically revealed, when an aggressor, in this case Japan, invaded the area the Australian people were hard put to it to resist the invasion which ominously threatened their own country, whereas had legitimate measures of self-defense been permitted, Australia would have been in less immediate danger. (5) So with economic matters. In an age of economic nationalism, mounting tariffs and other restrictive measures, it seemed out of proportion to insist that the mandatory governments should be forbidden to take what they considered to be legitimate economic measures in the mandated territories.

On the other hand, public opinion, particularly in the United States, the nationalist movements in southeastern Asia, and the growing self-consciousness of the peoples of Africa led to a mounting tide of criticism against "imperialism" and to widespread discussion of measures to prevent the exploitation of dependent peoples and to insure their welfare. As World War II progressed, thought turned more and more to the ideal of the four freedoms and especially freedom from want; and writers were able to point out that many of the colonies, in addition to the mandated areas, suffered from an extremely low standard of living which in their judgment reflected unfavorably upon the character of the rule of the imperialist powers.

Two effects of this thinking manifested themselves. First the colonial powers took energetic steps during the decade preceding the establishment of the United Nations to improve both the economic lot and the political status of their colonies, details of which have been described above. The second effect was to raise the demand led by the Australian delegation at San Francisco for the incorporation within the United Nations Charter of a general declaration concerning all nonself-governing territories, which

was to mark an advance in the principles publicly accepted by colonial powers. Indeed at a conference held in Wellington, November 1944, the governments of Australia and New Zealand agreed to a resolution which reads:

Powers responsible for dependent territories should accept the principle of trusteeship, already applicable in the case of mandated territories. In such dependent territories the purpose of the trust is the welfare and advancement of the native peoples. Colonial Powers should undertake to make regular reports to an international body analogous to the Permanent Mandates Commission, set up within the framework of the General Organization. This body should be empowered to publish reports of its deliberations and to inspect dependent territories.[36]

At San Francisco several clashing viewpoints met. Some powers wished to retain their colonial empires. South Africa, for example, urged that the colonial system was not touched; merely that new ideals were set up under which colonial powers were to accept certain obligations, and the United Kingdom delegate suggested that the obligations of the Charter were to be to the inhabitants of colonial territories rather than to the United Nations. The United States was interested in maintaining the defensive aspects of the Pacific Islands. And an Egyptian amendment to take the wishes of the native population into consideration in selecting the administering authority was defeated on the ground that strategic considerations might prove to be an important factor in determining the choice of a trust power. The smaller nations wished to have specific guaranties of rights and promises of complete independence as an objective. Egypt proposed that the General Assembly have power to terminate the status of a trusteeship and to declare a territory fit for independence at the instance of the administrating authority or any member of the Assembly. This amendment was opposed on the ground that it would be contrary to the voluntary basis upon which the trusteeship proposals had been made. The British questioned the American claim to "strategic areas," saying that dependent peoples in such areas might not receive the benefits of trusteeship. Delegates differed as to the constitution and powers of a trusteeship council, and controversy ensued over the United States proposal for the equal treatment of economic and commercial matters for all members of

[36] K. H. Bailey, "Dependent Areas of the Pacific: An Australian View," *Foreign Affairs* (April 1946), p. 498.

the United Nations. Such a provision would affect the C Class mandates where, as pointed out above, the open door did not prevail.

The final decision was to adopt the open-door with the qualification that it should not prejudice the interests of the inhabitants of trust territories. The position of Class C mandates, however, was protected to the extent that it can be altered only by the terms of a trusteeship agreement between the mandatory power and other states directly concerned.[36a]

Chapter 11 of the United Nations Charter sets forth the declaration regarding nonself-governing territories. Colonial powers "recognize the principle" that the interests of the inhabitants of territories which have not yet attained a full measure of self-government are paramount, and they accept as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants. In Article 73 these obligations are set forth in some detail; in part they go beyond Article 23 of the Covenant but in some respects they are vaguer. The governments have undertaken to "transmit through the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible. . . ." This obligation does not go as far as the Wellington Resolution, for the delegates did not accept the suggestion of an international body having the power not only to receive reports but also to inspect dependent territories and publish the results of its deliberations. Unsympathetic colonial powers may send in inadequate and perhaps even misleading reports, and each member may interpret the restrictive phrase "subject to such limitation as security and constitutional considerations may require" in a very broad manner; and the Charter contains no provisions for handling such a situation should it occur other than the power of the General Assembly to call attention to an unsatisfactory condition. Professor Bailey notes that the General Assembly, if it so wishes, may fashion Chapter 11 containing the declaration concerning nonself-governing colonies "into something very like a world-wide 'mandate system.' To be sure, the public discussion of colonial administration will sometimes need delicate handling. Effec-

[36a] Vernon McKay, "International Trusteeship-Role of the United Nations in the Colonial World," *Foreign Policy Reports* (May 15, 1946), p. 58.

tively used, however, Chapter 11 of the Charter should keep the parent state on its toes."[37]

This is the first time that such accountability has been accepted on so wide a scale. The information contained in the reports is to be summarized and analyzed for the General Assembly, for the Economic and Social Council, and for the Trusteeship Council and, it is suggested, will enable world public opinion to know more fully what is going on. Considerable discussion took place concerning the methods of and extent to which such information should be analyzed. At the General Assembly meeting in December 1946, a resolution was passed establishing an *ad hoc* committee to examine the Secretary-General's summary and analysis of the information "with a view to aiding the General Assembly in its consideration of this information" and to make recommendations for future procedure. Moreover, the Secretary-General was instructed to co-operate with the Food and Agricultural Organization, the International Labor Organization, UNESCO, and later the World Health Organization and the International Trade Organization, to gain the assistance of these specialized agencies in labor, health, education, and other problems confronting non-self-governing territories. By February 1947, the Secretary-General had received 47 reports giving information concerning conditions in the non-self-governing colonies. Skeptics are apt to criticize the purely informational aspect of these reports and the lack of supervisory authority on the part of the Trusteeship Council but proponents claim, with some justification, that a system analysis of colonial policy and action may do much to improve conditions of the dependent peoples. Much will depend upon the lead given by one or more of the colonial powers as well as the effect of comparing policies and achievements in a systematic manner through a consideration of these annual reports. Information may be indispensable preliminary to a more comprehensive attack upon the problems of poverty, illiteracy, and sub-standard health which are so common in so many dependent areas even where colonial administration has been comparatively successful.

Chapter 12 of the United Nations Charter provides for an international trusteeship system the basic objectives of which are set forth in some detail (providing for the general welfare of the native peoples) and which occasionally in formulated purposes goes beyond the League mandate system. More important are the

[37] Vernon McKay, *op. cit.*, p. 501.

articles dealing with the establishment and the extent of the trusteeship system which is to apply

to such territories in the following categories as may be placed thereunder by means of trusteeship agreements: *(a)* Territories now held under mandate; *(b)* Territories which may be detached from enemy states as a result of the Second World War; and *(c)* Territories voluntarily placed under the system by states responsible for their administration.

Chapter 13 prescribes the membership, powers, and procedures of the Trusteeship Council itself, which is to have control over its own rules of procedure and is to consider reports submitted by the administering authorities to accept and examine petitions, to provide for periodical visits to territories at times agreed upon with the administering authority, and to take such other action as may be necessary, consistent with the trusteeship agreements. Compared with Article 22 of the Covenant, there is less obligation upon the members of the United Nations to come to agreements to place the foregoing categories under a trusteeship system. More will depend upon the voluntary action and less upon what has been well called the "moral compulsion," since the terms of trusteeship for each territory to be placed under the trusteeship system must be agreed to by the states directly concerned. The question immediately arises, which are the states directly concerned? For example, in the case of the mandates held under the League of Nations, are the states which comprise the principal Allied and Associated Powers in 1920 when the mandates were originally signed to be regarded as states directly concerned, or the members of the League of Nations Council, or the members of the League itself, or the Big Five, or other members of the United Nations? The Soviet Union claimed to be a state directly concerned in the disposition of the Italian colonies.

Considerable controversy took place in the Preparatory Commission of the United Nations, which sat between August and December, 1945, to consider, among other things, the implementation of the principles contained in the trusteeship clauses. The United States successfully urged that the Trusteeship Council hear oral as well as written petitions and the colonial powers agreed that the Trusteeship Council in its annual report might include suggestions and recommendations for improvements in nonstrategic areas and also "in strategic areas if authorized to do so

by the Security Council or the individual trusteeship agreement."[38]

Grave concern was expressed in the General Assembly when France and South Africa failed to follow the lead of Great Britain, New Zealand, Australia, and Belgium, whose governments announced their intention of placing their mandates under supervision of the United Nations. Indeed, the French wished to consider the trust territories as integral parts of France if the inhabitants so wished, while South Africa had announced its intention of incorporating German Southwest Africa into its own system. At its December 1946 meeting the Assembly noted that the African inhabitants of Southwest Africa had not reached a stage of development which would enable them to decide whether they really wished to be incorporated in the Union of South Africa and for that reason the General Assembly was unable to agree to the proposal of the South African government. It, therefore, recommended that Southwest Africa be put under the trusteeship agreement and invited the Union of South Africa to prepare a trusteeship agreement for the consideration of the Assembly.

Considerable debate took place over the United States trusteeship agreement, which was submitted to the Security Council on February 17, 1947. The United States designated the former Japanese-mandated islands as a strategic area, claiming that these islands were important for the security of the United States but that the trust territory would be administered in the spirit of the Charter. Moreover, although the United States might specify certain areas as closed for security reasons, this would not prevent international control and inspection measures that grew out of a system of international control of atomic energy and other armaments. In addition, the United States undertook to submit the political, economic, social, and educational development of the inhabitants of the 98 islands which comprise the Marshalls, Marianas, and Carolines, to international supervision and assured the Council that the interests of the inhabitants were paramount. It is not possible here to analyze the lengthy debates which took place before the Council accepted the United States draft with two or three minor alterations.

Perhaps no trusteeship agreement has been debated so vigorously and criticized so generally. Many persons believe that military and naval considerations have outweighed the welfare provisions; and even well-disposed British opinion believes that

[38] Vernon McKay, *op. cit.*, p. 61.

the step is but a thinly and poorly disguised type of annexation.[39] Others claim that the system is likely to put too much control in the hands of military naval authorities who are by temperament and training not suited for colonial administration. On the other hand, some people urge that the recent progress of training naval personnel to handle colonial territories proves that the Navy is alive to the "culture-contact" problems involved. Keesing well suggests that it may be impossible "if only on the grounds of the very great cost involved, for a civilian agency to duplicate the technical services essential to government which the Navy already has in the area: transportation and communication, engineering, medical, and so forth." Nevertheless, there will also be needed "men trained in administrative and welfare skills not among the ordinary accomplishments of the naval officer: political, economic, legal, educational, etc."[40]

The first session of the United States Trusteeship Council was held in March 1947. Members of the Council included Australia,

[39] See *New York Times*, April 6, 1947, "United Nations Held Debased by United States Trust Terms," a summary of an editorial appearing in the *Manchester Guardian*

The Committee on Trusteeship of the Commission to Study the Organization of Peace criticized the United States proposed trusteeship agreement for the Japanese-mandated islands on three counts: (1) the whole area is designated as strategic, "but we are not told what strategic considerations prevent putting many of these islands and their peoples under an ordinary trusteeship agreement . . . ."; (2) the United States government has not indicated which of the areas it proposes to close to inspection by the United Nations, where they are situated, "or why the national security requires that our operations in these islands should be cloaked in greater secrecy even than, for instance, in areas containing uranium mines or atomic bomb factories . . . ."; and (3) the United States proposes to reserve to itself a privileged economic position in the islands and to that degree violates the provision of the Atlantic Charter, which promises equality of economic opportunity to all nations.

The Commission, therefore, proposed that the United States "should declare now that any future United Nations agreement for the regulation of armaments, including inspection and control, would be applicable to the trust areas under its administration, and that, accordingly, the strategic and closed area provision of the trust agreement would be subject to any new armaments agreement." See "Pacific Islands, United States Ownership or United Nations Trusteeship," *Changing World* (February 1947), p. 3.

[40] Felix M. Keesing, "Administration in Pacific Islands," *Far Eastern Survey*, March 26, 1947, p. 65. For a criticism of the Navy rule in the Pacific Islands, see the 1929 *Commission Report on American Samoa* and, more recently, *News Letter*, the monthly news letter of the Institute of Ethnic Affairs, the statements of Mr. Harold Ickes, and the comments of newspaper men whom the Navy took on a tour in the spring and summer of 1946. Secretary Forrestal has appointed the Hopkins three-man commission to study the naval administration of the islands. Interior Secretary J. A. Krug has urged the desirability of civilian administration for the Pacific Islands.

Belgium, France, New Zealand, and the United Kingdom as administrating authorities of agreements which have been reached for eight trust territories. China, the United States, and the Soviet Union are also members, since by provisions of the Charter they belong to the Big Five. The General Assembly in December 1946 elected Mexico and Iraq to a three-year term of membership in order to equalize the number of nonadministering and administering powers. The trust territories included New Zealand (Australia), Ruanda, Urundi (Belgium), the Camaroons and Togoland (French), the Camaroons, Togoland and Tanganyika and Western Samoa (New Zealand).

The provisional rules of procedure provide that decisions are to be taken by a majority of those present and voting; a quorum comprises two-thirds of the membership. At its first meeting, the Trusteeship Council had 13 items on the agenda, including the adoption of provisional rules of procedure, the election of President and Vice-President, the formulation of questionnaires on the political, economic, social, and educational advancement of the inhabitants of each trust territory; consideration of petitions concerning trust territories as may have appeared and other items.[41]

The Soviet Union representative did not attend, for at the General Assembly session in December 1946 Russia argued that the Trusteeship Council could not be established legally because the eight approved agreements for trust territories which were used as the basis for the establishment of the Council conflicted with the United Nations Charter. First, the agreements had not been drafted in consultation with the states directly concerned; it was the Russian contention that all the Big Five powers were directly concerned because of their permanent membership on the Trusteeship Council and because of their general responsibility for maintaining security and peace. Second, the Soviet argued that provision in the agreements that trusteeship areas might be administered as "an integral part" of the administrating authority was contrary to the Charter provision that trusteeship "shall promote the progressive development of the trust territories towards self-government or independence." And third, the Russians claimed that the trusteeship agreements which permitted establishment of military bases in trust territories without the Security Council's consent was contrary to Article 83 of the Charter.

At the time of writing it appeared that the Trusteeship Coun-

[41] See *United Nations Weekly Bulletin*, April 1, 1947, pp. 309–10.

cil would face substantially the same kind of questions which confronted the Permanent Mandates Commission under the League of Nations. First, what should be the content of the questionnaires? Should they be very detailed and extensive? Second, how far can the right of petition, oral and written, be carried without opening the door to all kinds of irresponsible and perhaps disaffected complaints?

Third, will the nonadministering powers on the Trusteeship Council be able to persuade the administrating powers to permit a strengthening of the United Nations supervision?

Fourth, how frequently should the inspections take place; must they depend entirely upon the consent of the administrative state or will the rule suggested by the Preparatory Commission hold, namely that

> at least one month in advance of each proposed visit, the Council shall notify the administering authority of the intention of the Council to sponsor a visit to that territory. The administering authority may indicate its preference for some other date. In that case, the date of the visit shall be determined by agreement between the President of the Council and the administering authority.[42]

CONCLUSIONS

The following conclusions may be drawn concerning the colonial problem. First an impressive case can theoretically be made for direct international administration. In this way colonies, especially strategic areas both military and economic, can be removed from the process of power politics and to that degree will reduce the number of points of friction between competing powers. If, for example Gibraltar, the Panama Canal, the Suez Canal, the

[42] Forty-six Western Samoan native leaders have petitioned the Trusteeship Council requesting self-government for Samoa on the basis of a declaration made at a Fono in November 1946. The petition also requests that an end be put to "the unnatural division of the islands of the Samoan group" and refers to the situation under which Eastern Samoa is administered by the United States and Western Samoa by the government of New Zealand. The Samoan leaders recognize the benefits of the New Zealand rule and ask that New Zealand continue to act as "protector" and "adviser."

Another petition was received from a number of Germans of Tanganyika who requested that they be not repatriated to Germany on account of the hardships which would be involved. Two petitions were also received from Italian residents. The British government took the view that the Germans in question were either Nazis or Nazi sympathizers or "otherwise obnoxious." After considerable discussion by the Trusteeship Council, the President appointed a committee comprising the Australian, Belgian, Chinese, and Iraqian members to consider the Italian and the German petitions and report back to the Council.

Dardanelles could be put under direct international control, the number of problems plaguing the major nations would be correspondingly lessened. If the United Nations could put sufficient funds at the disposal of the Trusteeship Council, it could draw upon the ablest anthropologists and administrators, missionaries and educators, and enlarge the welfare work among native inhabitants. In a peaceful age, many opportunities would exist for trained people to find new openings for careers in various parts of the world for at present some of the colonial powers have a long way to go before they will have an adequate colonial service embracing the many branches of administration.

On the other hand, serious difficulties stand in the way of an immediate and widespread application of direct international colonial administration. It would be very costly and the members of the United Nations would have to spend considerably more money than at present seems likely. True, the amount saved by a substantial reduction of armaments would far outbalance the requirements for even the most ambitious colonial policy. And the present temper of colonial powers is such that they appear more ready to spend money for a beneficent or constructive imperialism than they would to provide a similar amount for direct international colonial administration. This attitude may be unfortunate and shortsighted but it is a factor which must be taken into account, for, as one very liberal Englishman remarked, "you must know that we British are proud of our Empire and do not feel that we have to apologize for it despite many unfortunate errors and even failures." The concept of prestige will have to undergo a substantial modification before the peoples of the world can reinterpret the colonial problem.

Lionel Curtis has drawn attention to the extraordinary situation under which the United Kingdom through the development of the British Empire has been responsible for the peace, order, and good government of somewhere about 440,000,000 people who do not as yet govern themselves. While the British colonial system in his view will bear comparison with any other, the evidence shows that there are still "grave short-comings" and also that it will be impossible for Great Britain to spend the amount of money which such experts as Lord Hailey, Miss Perham, and the Royal Commission on the West Indies regard as necessary to raise the standard of life in the Crown Colonies. Since Britain no longer has the power the obvious implication, according to Curtis' view,

is that international society must undertake the costly burden of developing these areas so as to improve the health and increase the wealth of the millions of dependent peoples. The question merges into the problem of placing both capital and technological skills at the disposal of the less-developed economic areas—a matter dealt with above under "International Trade" and "Monetary Issues."

Perhaps the most serious difficulty lies in the problems of harmonizing colonial policies of Great Britain, the United States, Belgium, Holland, and the British Dominions, which show major differences both in method and in objective—a subject which can be only mentioned and not further explored here. To bring together English, American, Dutch, Belgian, and other officials in the same area of administration without careful preparation might produce much confusion. On the other hand, the attempt should be made as soon as possible to put certain areas under direct international control, areas which do not pose very complicated problems of applied anthropology and where the native population is relatively small. But for the present it would seem that there is much to be said for exercising all possible pressure upon the colonial powers to induce them to raise standards of administration, and such a policy will be more likely to succeed if the central question of international military security is solved.

It may or may not logically follow that the economies effected by this policy and the confidence engendered will cause colonial powers to increase the amounts which they are willing to spend upon colonial development. But, as mentioned above, quite appreciable steps have been taken in this direction and a more lively international conscience and a functioning international society might well prove effective in inducing colonial powers to make good their general commitments to raise standards and promote the self-government (even to the point of independence) of their colonial areas.

Another question should be given serious consideration. At present, several of the dependencies which are struggling to free themselves from colonial tutelage talk in terms of sovereignty—Burma, Indo-China, the Dutch East Indies, and of course India. We should be sympathetic with these demands but also raise the point whether sovereign independence in the atomic age constitutes the most desirable ideal. It will be most tragic if the present dependent areas take as their central political ideal the Western theory of national sovereignty at a time when the West has expe-

rienced the bankruptcy of this idea. Independence from exploitation, yes, but is there no other alternative than that of sovereignty? Can not the dependent as well as the present ruling powers evolve a political theory and practice more in accord with present-day realities? The fundamental problem would seem to be to assist in eliminating the objectionable features of imperialism, encouraging "independence" but an independence within the framework of a tightly knit world society. If the peoples now struggling for freedom develop a self-consciousness centering largely in their feeling of separateness from, instead of interdependence with, other peoples, they may have substituted scorpions for whips.

In the case of dependencies which contain more than one set of people, it may well be that for some time an enlightened colonial policy by a ruling power will be in the best interests of the majority of inhabitants. To make this assertion lays one open to the charge of being pro-imperialist, but this would be a grave misunderstanding of the issue. If Kenya or the West Indies or northern Rhodesia were suddenly freed from the control of the British Colonial Office, the result might well be "the tyranny of the few over the many." In the Malay States, the Straits Settlements, and British Guiana, "where there are several national groups," the same policy might well "lead to bitter conflicts, deferring to the distant future real government by the people."[43]

Whatever be the authority which should rule dependent areas, one thing stands out clearly—the need of trained anthropologists in the task of governing dependent peoples.

Anthropologists can supply an increasing amount of material that is related directly to practical questions, and in doing so, can become progressively more sensitive to what is really needed for its best application. Administrators and others interested will, in turn, need to prepare themselves with training in the anthropological viewpoint and technique so as to make the best use of this material in concrete instances.[44]

Keesing well sets forth the many ways in which the trained anthropologist can assist in the art of government. He can enable officials, in framing laws, to avoid needless clash with native cus-

[43] Edith Dobie and Leslie M. Heathcoate, "The Problem of Dependencies" in *If Men Want Peace* (edited by J. B. Harrison, L. A. Mander, N. H. Engle; The Macmillan Company, 1946), p. 62. This chapter gives an able statement of it.

[44] Felix M. Keesing, "Applied Anthropology in Colonial Administration," Ralph Linton (editor), *The Science of Man in the World Crisis* (Columbia University Press, 1945), p. 385.

toms. He can become the spokesman of the native peoples and by winning their confidence serve to bring administrator and tribal peoples into better relations. The anthropologist can advise on health policy, since the beliefs and customs of dependent peoples which are bound up with their religious views and are much influenced by myth and magic, ritual and sorcery, profoundly influence their practices, which in turn affect their health. The trained investigator can advise the government concerning the best methods of introducing new crops and adjusting land titles, the limits of direct and indirect rule, and, above all, he may enable missionaries to avoid many pitfalls in dealing with the everyday beliefs of the natives. The anthropologist can give guidance in the field of education, for anthropological study has revealed "indigenous methods of education by which the traditional heritages are transmitted" and which may be skilfully utilized in the attempt to bring Western values to tribal peoples. Finally he may assist administrators in timing the introduction of reforms, knowing when to push matters with energy and when to exercise patience in awaiting "the psychologically favorable moment for action."

The Western peoples need to cultivate a better attitude of mind toward dependent peoples. They must discard the concept of superiority. Melville Jacobs has put the matter thus: "There is much direct evidence that the native peoples of all backward areas are capable of rapid advance, granted adequate educational and financial assistance and full opportunity to acquire techniques and knowledge."[45] Jacobs gives a number of examples to show how quickly several so-called backward peoples have learned technologically advanced skills and concludes that possible beliefs in the incapacity, laziness, apathy, and indifference of dependent peoples has "neither scientific basis nor historical support." Kodanda Rao urges that in the contact of cultures it is relatively easy for people to acquire the applied sciences, since it takes no great effort to see the benefits conferred by an automobile or other labor-saving devices. To exchange social ideas and, above all, ideas in literature and the fine arts constitutes a much more difficult step. White people should appreciate these fundamental distinctions and know that the present lead which European countries and America enjoy has been due in no small measure to the discovery of the scientific method in the sixteenth and seventeenth centuries. Before that

[45] Melville Jacobs, "An Anthropological View of Colonial and Race Questions," in *If Men Want Peace* (Harrison, Mander, and Engle), pp. 101, 102.

time the gaps between European and Asiatic cultures especially on the material plane were less evident than today.

Now the persistence of a superior attitude and, above all, the identification of Western civilization with the white race are playing havoc in present-day international relations. Raymond Kennedy, an authority on Indonesia, has recently criticized the behavior of the United States in the Orient.

> The provincialism, ignorance, and isolation of the American public and many American statesmen is applying a "Jim Crow" attitude to the world. . . . . We have always had a double standard of democracy in this country in regard to colored people and are now supporting the same double standard in regard to all the colored people of the world.[46]

This stern judgment finds confirmation in a remarkable article by Mr. R. G. Casey, formerly Australian minister to Washington, British Resident minister in the Middle East, and Governor of Bengal from January 1944 to February 1946. Writing to the *Christian Science Monitor*, Casey claims that the British have given the people of India

> our methods of education, law of administration, democracy and government—none of which really fits in with their fundamental, unspoken, unformulated idea of the scheme of things . . . .
>
> For our part we have never bothered to question whether we are right in trying to force India into the British mold. We have not spent much time trying to understand an Indian mentality nor become free enough with them to enable them to speak their minds freely . . . .
>
> The reason for all this is that we, the British, are not very good at human relations. Nor, for that matter, is any other race better than we.

And he goes on to point out that very few of the British in India have attempted to learn the Indian language, that the British have not the curiosity to search the mind of another race of completely different culture and outlook, that in human relations the British are "congenitally lazy" and that because of lack of imagination the British have been content to impose their own methods on India instead of attempting to learn to run things in the Indian way. This criticism might well apply to all European colonizing powers, and the result has been the curious paradox that at the time when Western colonizing powers became more alert to their responsi-

[46] *New York Times*, May 5, 1946, p. 26

bilities for the welfare of the dependent peoples under their rule these dependent peoples demanded more and more insistently the right of self-government. The Dutch, for example, began their so-called "ethical policy" soon after 1900 and, as we have seen, the British and French and Belgium policy has increasingly concerned itself with native welfare, but apparently little gratitude is felt by the beneficiaries. Fundamentally, the reason is that peoples want equality, not only in material things, but in status and esteem. They want more than to have things done for them, and the more they develop their own self-consciousness the more they resent the implication of inferiority implicit in having things, however well done, performed for them by outsiders. The problem becomes increasingly subtle as the dependent peoples raise their sights from material to mental things. An increasing nationalism develops which leads to added estrangement, so that Casey can make the startling and tragic observation that in his judgment misunderstanding has gone too far to enable the British and Indians to bridge the abyss which now divides them. Only when India attains independence, he thinks, may a new understanding arise, for it will then "no longer be possible for Indians to attribute all the evils of the earth to the British and the British to attribute it to the Indian frustration of the British ideal." Whether this understanding will eventuate depends, in his view, on "how the British political and administrative connection with India is severed—whether amicably or not."[47]

Thus the colonial question merges into the problem of race, for today most of the colonial territories owned by other powers are inhabited by nonwhite people and where stirrings of nationalism are taking place, as in Africa, the Middle East, and southeastern Asia, the ideal of political self-government or independence is complicated by the deep dividing power of racial prejudice. Wendell Willkie urged the United States to realize the growing strength and determination of the dependent peoples, and Gunnar Myrdal announced that it was important for the Allies to convince the nonwhite peoples associated with them in the battle against the Axis that they are not fighting to maintain colonial advantage, for, in the words of Pearl Buck, "the deep patience of colored peoples is at an end."[48] Williston and Michael draw attention to the significance of Lin Yutang's book, *Between Tears and Laughter,*

[47] *Christian Science Monitor*, May 16, 1946, p. 10.

[48] Pearl S. Buck, *American Unity and Asia* (John Day Co., New York, 1942), p. 25.

which created much feeling in this country, coming as it did from one who for many years had seemed to be the apostle of Western values for China. This writer was now asserting that "neither in the United States nor in England has any political leader said or done anything to bid for the support of Asia's millions or give them an incentive for better fighting morale," and even more outspokenly he was to declare that "it is white insolence that will ruin any world co-operation"; and an Indian author, Kodanda Rao, claimed that the fundamental difference is not between Eastern and Western cultures but between the white and the nonwhite aspects of civilization into which the sense of race-consciousness has been injected in all phases. The same theme finds eloquent expression in W. E. B. Du Bois *The World and Africa* (published by the Viking Press in 1947). The famous Negro scholar claims that the slave trade and the institution of slavery have conditioned white peoples into accepting the doctrine of the inferiority of the colored races, and, moreover, have prevented white historians from impartially examining or even desiring to know the evidence showing the great contributions which the African peoples have made to civilization. In this state of mind the whites are frequently unconscious of the evils which they have perpetrated and do not suspect their own moral and intellectual distortion. Must we not learn history once more?

Japan failed to have the principle of racial equality written into the Treaty of Versailles, and, although the United States passed the repeal of the Chinese Exclusion Act during World War II, the existence of racial discrimination within this country and its manifestation abroad by the white powers have produced most serious complications. During the war the Japanese were able to use the weapon of racial propaganda in an endeavor to persuade the Asiatic peoples that the Western peoples did not mean what they said when they spoke in terms of the Atlantic Charter. And the present difficulties in southeastern Asia, however natural owing to the complexities of liquidating a war, are still more damaging to the prestige of the white peoples.

It is beyond the province of this chapter to examine the evidence which clearly points to the intimate relation between racisms within white countries and the threat to democracy. I may again quote Williston and Michael:

America may yet discover that the question is not merely one of leadership but rather one of survival. The racism which has produced

increasing tension in this country is not basically different from that which has brought to Germany defeat and universal condemnation. Its incompatibility with internationalism is evident. Its incompatibility with the continued existence of the American state, while it is less apparent, is demonstrable. The premise of racism nullifies the very principle upon which the American commonwealth is based.[49] And its continued practice will make impossible the peaceful relations of the white and non-white peoples.

[49] Frank G. Williston and Franz H. Michael, chapter on "National and International Aspects of Race," in J. B. Harrison, L. A. Mander, and N. H. Engle (editors), *If Men Want Peace,* (The Macmillan Company, New York. 1946), pp. 96–97.

Chapter XV

INTELLECTUAL AND RELIGIOUS CO-OPERATION

INTELLECTUAL and spiritual advance has been largely the achievement of individuals, groups, of societies and peoples who in their search for scientific, artistic, and philosophic truths have been only incidentally members of a political community. Furthermore it is important to remember that all peoples of the human race have contributed to mankind's cultural heritage.[1]

Can the world forget its debt to the poems of Homer, the dramas of Sophocles, Aeschylus, and Euripides, the philosophic wisdom of Socrates, Plato, and Aristotle, the religious genius of Buddha and Jesus, and the medicine, mathematics, and general scientific spirit of the scholars of ancient Greece? Did not the Romans give to the world a long period of order, build remarkable roads, bequeath the gifts of Roman law, the poetry of Horace, the history of Tacitus, and the thought of Epictetus and Marcus Aurelius? During the period of the European Dark Ages the Arabs preserved and developed learning and culture, restored science to life in Alexandria, made discoveries in mathematics, physics, astronomy, and chemistry, were apparently the first people to make and use soap, improved the practice of medicine, provided a stimulus for the first universities of Europe, increased the scope of the science of geography, formed schools of music, built baths, aqueducts, palaces, and embankments, planted orchards and gardens, influenced architecture, and encouraged poetry and philosophy.

In Europe the clergy slowly rescued Europe from the Dark Ages. Missionaries from Italy and from Ireland journeyed to

[1] C. Delisle Burns, *A Short History of International Intercourse* (George Allen & Unwin, London, 1924), Preface. See Arnold J. Toynbee, *A Study of History* (Oxford University Press, 1947), abridgment of Volumes I–VI, "Introduction, The Unit of Historical Study," for a criticism of historians who make the nation the normal field of historical study.

various parts of the Continent in a noble effort to instill the habits of peace, industry, and goodness. The building of churches developed into the building of great cathedrals in the north of Italy and in France. Although these originally were in the Romanesque style, the French in the thirteenth century introduced the Gothic pointed arch and made a lasting contribution to architecture. The expanding influence of the church enabled different people under its sway to give their separate gifts to human needs. The famous medieval universities of Bologna, Paris, and Oxford, to name but three outstanding ones, cut across local divisions. The monasteries all over Europe and the reformed orders—Benedictines, Cluniacs, Carthusians, Cistercians, Franciscans, and Dominicans—originated in different countries and labored in all lands. Medieval cities developed, and from their trade and commerce grew the beginnings of maritime law. Italian painting and music stimulated similar cultural arts throughout the rest of Europe.

During the Renaissance the great art of printing took hold of the Western continent. Carter has shown how it moved westward from China, and then from Germany and England, to play its profound part in the following centuries. The Italians, drawing upon old Greek manuscripts, led the world into a new intellectual life; in painting, literature, art, sculpture, and architecture, they placed the world under an eternal debt. And English, French, German, and Spanish scholars responded to the stimuli, and in turn gave to humanity their distinctive contributions.

The discovery of the New World by Spanish, Portuguese, and English explorers opened a new era in the life of Europe. Soon the gold of the Americas, the tea, coffee, and spices of Asia, the silks, prints, and designs of China began to make their way into the West. Lest it be thought that this survey is merely Europacentric, one should hasten to add that the artistic and cultural triumphs of China and the religious and intellectual contributions of India and the Middle East must be included in their own right and not as mere appendices to European culture. These countries had enjoyed many of the amenities of refined culture long before Europe began its discovery of civilized values. In the succeeding centuries the West brought many new things to the Orient, but the Orient was also to modify the life of the West.[2]

In the seventeenth .century, the so-called Age of Enlightenment witnessed the growth of the great academies and scientific societies in many lands. The eighteenth-century developments in

[2] A. Reichwein, *China and Europe* (A. Knopf, New York, 1925).

political theory, in scientific investigation, and in literature were European in scope; the great names which fill the pages of history belong to every country.

Is there any need to do more than point to the obvious fact that since the industrial revolution the thousands of inventions in every walk of human life have been due to learned men and women from every country and every nation of the world? The mere catalogue of famous individuals in science alone would suffice to fill pages. In the light of these facts, surely it is superfluous again to stress the point that compared with the contributions of "nations," the peaceful arts have been overwhelmingly indebted to individual, group, and supranational forces.

The history of civilization "is a history of peace, because peace is the name for the common cause of all this growth, namely the transfer of ideas from one race to another. The flower of civilization grows in one locality or another; but it is fertilized by those who travel in body or mind. The history of peace is not, indeed, the whole of human history. Wars and revolutions are important and have sometimes promoted liberty or secured order."[3] But the history of the arts and the sciences and of commerce cannot "be explained by a history which deals mainly with war and opposition between peoples." And at the conclusion of his volume Delisle Burns writes: "Civilized life is not and never has been a private possession or the achievement of one nation. Intercourse between nations is essential to it; for if one nation conquered all others and destroyed them utterly, in one generation the conquerors would sink back into barbarism."[4]

The universities for many hundreds of years have embodied this tradition, that learning knows no frontiers and that truth is independent of boundaries; they grew up when central and western Europe enjoyed a unity of civilization based upon Greek thought, Latin literature, Roman law, the Latin tongue, and the Christian faith. In the sixteenth century the growth of national languages, the decline of Latin, the appearance of the modern state system, and the disruptive effects of the Reformation dealt heavy blows to the unity of Western life. During the next few centuries national cultures tended to displace the common European outlook; their laws and educational systems, and the religious divisions, bore witness to the centrifugal tendencies at work. By the eighteenth century, however, the pendulum began to swing somewhat slowly toward a European cultural unity, and

[3] Delisle Burns, *op. cit.*, p. 8. [4] *Ibid.*, p. 153.

this phenomenon was due largely to the growth of toleration and the decline of religious persecutions: men could travel more freely on the Continent.

Mowat writes that during this century "the universities were recognized as centers of a knowledge which was common to all, and of methods of instruction which were universally familiar." They assisted scholars to retain a broad cultural outlook, and linked the various countries in a fine fellowship of learning. And he draws attention to Oliver Goldsmith's *The Present State of Polite Learning in Europe,* published in 1759, wherein the famous writer speaks of a "Commonwealth of literature" which had existed in Europe since the days of Virgil and Horace, and of a European culture which still drew its inspiration from the classics. As Mowat puts it, "for the purposes of learning, Europe was a unit; a student could choose any university he liked,"[5] and a cosmopolitanism of outlook marked the educated classes of the time. Hayes has shown how even the national patriots of the century—men like Rousseau in France, Herder in Germany, and Bolingbroke in England—thought of their nations as harmonious parts of a great cultural internationalism wherein each people would contribute its own special genius to the totality of civilization to be enjoyed by all. Diversity of cultures, yes; but also a unity embracing those diversities.[6] And yet to many scholars of that time the idea of the nation or state appeared too narrow and limiting for the free spirit of man who not merely inhabited a particular country but dwelt in the realm of thought which knows no bounds. Man is a part of the universe, and must be permitted to follow truth unhampered by the petty restrictions of political states. Schiller wrote to Körner in 1789:

> Es ist ein armseliges Ideal, für ein Nation zu schreiben: einem philosophischen Geiste ist diese Grenze durchaus unerträglich. Dieser kann bei einer so wandelbaren, zufälligen und willkürlichen Form der Menschheit, bei einem Fragmente (und was ist die wichtigste Nation anders?) nicht stillstehen.

And he proposed to be a citizen of the world "who serves no prince. I lost my Fatherland, to exchange it for the great world." To Lessing, the ideal of humanity seemed so much finer than

[5] R. B. Mowat, *England in the Eighteenth Century* (R. M. McBride, New York), pp. 14, 15.

[6] C. J. H. Hayes, *The Historical Evolution of Modern Nationalism* (New York, 1931).

that of one's country that the latter appeared "at best but an heroic vice." "To be praised as a zealous patriot is the last thing I desire—a patriot, that is, who would teach one to forget that I must be a citizen of the world." And Goethe could say, "If we find a place where we can rest with our belongings, a field to support us, a house to shelter us, have we not a Fatherland?"

During the nineteenth century the centrifugal forces of Europe gathered strength. Not that the universities and the aristocracy lost a great deal of their cosmopolitan outlook, but rather that the spread of nationalism into the middle classes and later among the workers paved the way for national systems of education. No longer were the great majority of children permitted to go to private schools or remain illiterate. They were made to attend national schools in order to learn to read and write and to absorb the national versions of history; and they acquired a greater sense of prejudice against foreigners or a heightened sense of national importance than a consciousness of being part of a supranational system of culture or faith. Newspapers tended to heighten the daily interest of millions of people in local or national affairs, and propaganda even in the nineteenth century started on its ominous career which was to realize fuller possibilities during and after the World War of 1914–1918. Thus the university traditions of the past, and the declining respect for the intellectual on the part of a business-minded age, resulted in a growth of serious intellectual "gaps" between nations.

Even before 1914 a number of agencies were formed with the object of bridging some of these gaps and of strengthening the bonds among scholars of different countries. The Consular Academy of Vienna, founded in 1754, as the Oriental Academy for giving special training in Oriental languages and history, was reorganized in 1898 for more specifically Austro-Hungarian consular preparation. The American Society of International Law, established in 1906, had as its object to "foster the study of international law and promote the establishment of international relations on the basis of law and justice." Over thirty years earlier, in 1873, a group of scholars had founded the Institute of International Law at Ghent, and another group established the International Law Association at Brussels in the same year. In 1889 began the important International Parliamentary Union, which held regular conferences of members of Parliament, worked steadily for international arbitration, made important studies, and published the inter-Parliamentary bulletin every two months at

the headquarters of the bureau in Geneva. Of the other prewar agencies the most notable was the Carnegie Endowment for International Peace established by Mr. Andrew Carnegie in 1910. In the course of thirty years it has done striking work, to which further reference will be made presently.

At the conclusion of the war in 1918 men turned to the building of a political organization which would minimize, if not eliminate, the danger of war. Out of the discussions and differences came the Covenant of the League of Nations, which represented the first world attempt to bring political and economic forces within a system designed to promote world co-operation rather than world rivalry. However, a world which is closely knit by economic and scientific forces but is divided by mental barriers stands in a precarious position. Intimate political and economic relations unaccompanied by a corresponding development in intellectual relations will soon break down. Without a League of minds, a League of political nations cannot long endure. This truth was appreciated by M. Hymans of Belgium, who proposed that the League Covenant include a clause providing for intellectual co-operation. He was unsuccessful, but the first Assembly of the League considered the matter and passed a resolution. The Council thereupon proposed the appointment of a committee, whose activities were defined by the second Assembly to include questions of intellectual co-operation (but not of education, be it noted, since the latter field was deemed to be within the province of the sovereign state).

The problems which confronted the newly constituted Intellectual Committee were extremely numerous and complex. In the nineteenth century scholars had been generally drawn from the middle and upper classes; they lived relatively detached lives, and experienced little fear of unemployment. Only a small number of people went to the universities and engaged in the professions. By 1920 the situation had radically changed. The intellectual class had been called by governments to assist in the application of scientific knowledge to social, industrial, and military affairs. No longer were biologists, chemists, economists, geographers, and bacteriologists able to work in comparative isolation; nor were university and high-school teachers of social sciences permitted to enjoy a cloistered detachment from the influences of everyday life. Instead, all were subjected to the propagandas and pressures of political forces, popular prejudices, and state interference and domination. Finally, the fear of unemployment, intensified by the

dislocation of war and economic crises, now confronted the intellectual as well as the manual classes.

In facing these urgent questions, the Committee had little support, either moral or financial. Indeed, it was difficult for the League to obtain enough funds to pay even a small staff; and, in 1924, the situation was extremely discouraging. The French government then offered to the League the services of an institute in Paris and an annual income to enable the Committee to carry on its work. In one respect the offer was timely, for without it the work on intellectual co-operation would have been seriously delayed. On the other hand, many League officials felt that to accept the French offer would constitute a dangerous precedent: other governments might offer headquarters in their capital cities for League activities, and thereby gain undue influence over organizations supposed to be international in character. In 1928 the League agreed to the establishment of an International Institute for the unification or assimilation and co-ordination of private law, to be under the direction of the League and with headquarters at Rome.

ORGANIZATION FOR INTELLECTUAL CO-OPERATION

As then established, the organization for intellectual co-operation comprised (1) the Intellectual Committee, which was the advisory organ to the Council and Assembly, consisting of nineteen members appointed by the Council. In 1930 the Committee established an executive committee to supervise developments between sessions. (2) Committees of experts for special purposes. Fourteen permanent committees have dealt with arts and letters, principles and facts of intellectual co-operation, science, architecture, international museums, institutes of archaeology and of the history of art, higher education, libraries, archives, the publication of a Japanese collection, the publication of an Ibero-American collection, intellectual rights, historical monuments, and folk arts. In addition to the permanent committees there were committees which were established for special purposes and which disbanded when they had accomplished them.

The organization had two main executive bodies: (1) The Intellectual Co-operation Section, which was the administrative secretariat of the international committee; this body had to do with the League Council and the Assembly, and was the channel for official communications with governments and certain other inter-

national organizations. (2) The International Institute of Intellectual Co-operation at Paris, which was the executive organ of the committee. It arranged the meetings of expert committees, provided for inquiries, and published results. In addition there were forty-five national committees in countries in every continent of the world, whose function it was to serve as a connecting link between the international organization and the educational and intellectual groups within the member states.

In 1938 fifty states sent delegates to a General Conference of National Committees in order to adopt an international act concerning intellectual co-operation. It was designed to improve the original statute and to strengthen the organization of the national committees themselves.

The methods and subjects embraced under the heading of intellectual co-operation are so numerous that only the most general summary can be made here. One important fact should be kept in mind: The aim of all human and especially of intellectual activity should be directed to life's *summum bonum*. Knowledge has become so specialized and scientific research so technical that no one person, institution, or nation can dispense with the findings of other individuals and other national institutions. Truth knows no national boundaries, and the infinite possibilities open to human creativeness within the limits of mortal life demand that national boundaries be minimized as far as possible, and that the utmost be done to co-ordinate the efforts of educators, artists, writers, scientists, and inventors in all fields of scholarly endeavor.

First we find that there have been great movements for the scientific study of international relations. Only by a widespread accurate knowledge of the political, economic, and social bases of international affairs can passion and prejudice be overcome. Accurate knowledge is a necessary bulwark against irrational emotion. Many national institutes and centers for the study of foreign policy have been set up in different countries—the Council on Foreign Relations in the United States, the Royal Institute of International Affairs in Great Britain and the Dominions, Institutes at Milan and Madrid, a study center in Paris, and the Institute of Pacific Relations with branches in the countries bordering upon and directly interested in the Pacific. Sometimes these institutes are assisted by the Rockefeller Foundation, the Carnegie Endowment, and other bodies. They are gradually but surely developing new methods of international co-operation.[7]

[7] See also pp. 764–67, below.

These include international studies conferences, which meet about every two years and are attended by experts from different countries after a period of preparatory study upon a carefully prepared agenda. Thus far the studies conferences have considered such subjects as the state and economic life, collective security, and peaceful change,[8] the papers and studies which have been published are valuable contributions to these problems, while the several conferences of the Institute of Pacific Relations in the last twenty years have dealt with practically every important phase of the affairs of the Pacific world. Also limited meetings and personal visits are arranged among members of the studies conferences.

Something more than conferences is required if the maximum result is to be obtained from widespread study. Hence the League Committee sponsored the preparation of directories of research and institutions which teach international affairs. From a comparison of methods followed in different countries, teachers were enabled to improve their own knowledge and methods.

One of the most interesting developments was the arrangement of a series of "conversations." Each year the Committee invited some outstanding scholars to meet and discuss an important cultural question. Twenty, or perhaps thirty, world figures were enabled to overcome the obstacles of distance and for a few days engage in stimulating and provocative exchange of ideas. The conversations held before 1939 included discussions of Goethe on the occasion of the one hundredth anniversary of his death, the future of European culture, art and reality, the relation of art to the state, the development of modern man, toward a new humanism, the present relation between Latin-American and European culture, the future destiny of letters, and "quality and life."[9]

Co-operation is highly desirable in the exact and natural sciences as well as in the social sciences. In 1925 a proposal was made to draw up an agreement between the Council of Scientific Unions and the International Organization for Intellectual Co-operation in order to avoid unnecessary duplication of work. After twelve years the agreement was signed, and after 1937 the executive committees of the two bodies met to consider the

[8] The International Studies Conference which met at Bergen in September 1939 had to be abandoned a few days after the opening on account of the war which had broken out between Poland and Germany.

[9] The series was designated *Entretiens* and was published by the Institute of Intellectual Co-operation.

best method of organizing scientific research. Plans were under way for the study of phytohormones and for the publication of old scientific works in the form of facsimiles of very rare manuscripts or reprints of fundamental classical works in the development of science. A study committee for the determination of molecular atomic weights of gases was set up, and it was proposed to join with the International Council of Scientific Unions and the International Union of Physics and Chemistry in the study of such problems as new vitamins, nomenclature of genetics, new theories in modern physics, etc. It was hoped to make readily available reports on the progress in each branch of science and to prepare scientific bibliographies.

The committee also arranged conversations in the field of science. The first meeting was held at Warsaw, May 30 to June 4, 1938. Outstanding scientists contributed to the discussion of "The New Theories of Modern Physics." The Committee also organized study meetings to consider "The Fundamental Principles and Methods of the Mathematical Sciences," "Magnetism," "The Philosophical Consequences of New Theories in Physics," and "Two Specialized Problems in Biology."

It is important to preserve for succeeding generations the outstanding achievements in human history. In March 1937 an international conference on excavations was held at Cairo, succeeding other conferences which had been held at Rome, Athens, and Madrid. The experts there considered the technique of excavations and field research, and problems of a legal character which were involved, and drew up an international charter concerning antiquities and excavations. The charter was considered by the League Assembly in September 1937 and communicated to the respective governments. In this field, which revealed to the world the hitherto hidden evidences of human culture in other ages and is deeply influencing our ideas of history, we find the great scholars of many nations joining their efforts in an attempt to widen the horizons of the human mind.[10]

A beginning has been made on the collection of ethnographical and historical works on the origins of American civilization and on the publication of outstanding literary and artistic Japanese works. Since 1932 the Institute has published an international bibliography of translations. This publication enables

[10] The International Museums Office has published extensive and attractive volumes on the *Conservation of Monuments* and *Museographie* (1934), of great value for specialists working in these fields.

scholars to gain more adequate knowledge of foreign works. An international committee for folk arts has been conducting research into the documents of folk art "in order to establish scientifically the popular sources of esthetic and affective expression, and to inform nations concerning their distinct or common origins." Studies include documentary sources, popular music and songs, the symbol in folklore and folk art, and means of using gramophone and cinema to record "traditional techniques still in use by artisans today." The department of arts, archeology, and ethnology of the Institute is engaging in many technical tasks which lie beyond the province of the amateur, who must be referred to the official publications for further details. The International Committee for Folk Arts has organized several congresses—in Prague, Brussels, Liege, and Antwerp.

It is necessary to preserve the results of human discoveries, and therefore libraries, archives, and museums are of the highest importance to mankind. In 1931 a committee of scientific advisers drew up a plan for the co-ordination of work among science museums. Under the direction of an International Museums Office, established in 1926, conferences of experts have been arranged on specialized subjects; they have considered questions involved in international exhibits, the preservation of historic buildings, and the principles of construction and equipment of museums. The International Museums Office publishes a quarterly magazine and monthly supplements which review the administrative and technical studies connected with museums and the preservation of ancient monuments, together with a survey of current activities of museums in all countries.[11]

In 1937, the International Congress of Architects passed a recommendation aiming to raise the intellectual and professional standard of architects. In the International Centre for the Study of Architectural and Town-planning Questions, a subdivision of the International Committee on Intellectual Co-operation drew up a report dealing with international aspects of architecture and town planning.

As learning becomes more specialized it is impossible for city, state, and even national libraries to carry more than a small pro-

[11] See, for example, *Les Dossiers de L'Office International des Musées*. No. 1 contains the Conclusions of the Conference on the Conservation of Artistic and Historical Monuments (held at Athens, 1931). No. 2 contains the documents relating to the Conservation of Paintings and the general conclusions of the Rome Conference of 1930.

portion of the books which appear. Nor can they afford to purchase more than a limited number of documents which form the basis of much historical and scientific research. Not only for these reasons is it important to effect a great measure of international co-operation but also because the purely technical questions involved in an efficient library system require an improvement of library methods and facilities equal to those of the most advanced countries. In 1929 there was formed an International Federation of Library Associations, which has dealt with such questions as the professional training of librarians, facsimiles of manuscripts, the principles of planning and constructing libraries, the relation of central libraries to branches, the use of slides and films in reproducing old documents, and many other matters.[12] Important questions have arisen over archives, and the Committee of Archives Experts has supervised the compilation of an international guide to archives, some volumes of which have already appeared. The exchange of lecturers on the technique and science of archives has been arranged, and technical problems have been considered.[13]

The more immediate and popularly appreciated tasks of intellectual co-operation refer to international collaboration among universities, schools, and higher institutions of learning. The Committee has assisted in promoting more than forty centers of educational information and documentation in different countries, and has set up a committee of directors of higher education comprising representatives from Great Britain, France, Italy, Hungary, Switzerland, and the United States. National committees on intellectual co-operation have been formed and have been active. Representatives of these committees met in a general conference at Paris in July 1937, and the American Committee held a conference in Santiago in January 1939. The Baltic and Northern National Committees have also held regional conferences. These committees have encouraged universities to re-examine the fundamental principles of higher education, the relations between the state and universities, how far academic freedom and administrative autonomy are desirable, the problem of budgets and other such questions; also the internal organization of institutions of

[12] Société des Nations, *Mission Social et Intellectuelle des Bibliothèques Populaires* (Institut International de Coopération Intellectuelle, Paris, 1937); see also the Institute's *Rôle et Formation du Bibliothécaire* (1935).

[13] The League of Nations Library published a monthly list of selected articles on all phases of League work. Abstracts of about 1,200 periodicals were made, which are extremely useful for scholars working in the fields of politics, economics, social welfare, education, etc.

higher education, including the relations between the boards of trustees, the president, the faculty, conditions of appointment of professors, etc.; examinations, degrees, and tuition fees, including the relative value of the university degrees of one country compared with those of another; scholarships and student welfare organizations, including reduction of tuition fees for needy students, organization of loans, and the establishment of houses, hostels, restaurants, clubs, and sanitoria for students. The League Committee attempted to find the most efficient ways of enabling the major research institutions in different countries to co-operate in scientific, industrial, and social science research. It worked for the co-ordination of national university statistics so as to obtain a clearer picture of national university life and also to serve as a basis for international comparison. It undertook inquiries into the organization of biological studies and the teaching of modern languages. Efforts have been made to have international collections of textbooks used in schools, and to organize permanent and temporary exhibitions of gramophone records for teaching foreign languages, and to make lantern slides and educational films. It arranged conferences of educators who specialized on educational aims and methods. The British national center arranged for English teachers of modern languages to teach a year abroad as auxiliary professors.[14]

One of the greatest obstacles to world peace is the existence of national histories which, by distorting or at least overemphasizing or underemphasizing incidents and policies, perpetuate and intensify international prejudice and misunderstanding. For several years national groups have worked toward eliminating objectionable phases and biased historical judgments, particularly as they deal with responsibility for wars and seizures of territory.[15] In 1934 the Institute was asked to undertake an examination of history textbooks used in certain countries. Several national committees investigated a large number of volumes and brought together valuable information. In 1935, several French and German professors made forty recommendations "concerning certain controversial questions in the history of France and Germany, with a view to indicating the general lines to be followed by the authors of textbooks in the two countries." The resolutions were adopted

[14] See Société des Nations, *L'Organisation de L'Enseignement Supérieur* (Institut International de Coopération Intellectuelle, Paris, 1938).

[15] See Société des Nations, *La Révision des Manuels Scolaires* (Institut International de Coopération Intellectuelle, Paris, 1932).

and later published. The Pan American Peace Conference in December 1936 adopted resolutions concerning the revision of school textbooks and civic instruction. A number of governments voluntarily made corrections, and a great step forward was taken with the Declaration on the Revision of School Textbooks which was submitted to the 1937 Assembly for approval. It came into force November 1937, when it was signed by Belgium and the Dominican Republic. Perhaps the greatest advance in this connection has been made in the Scandinavian countries as a result of the work of the Committee for the Teaching of History of the Norden Association. But the general results were disappointing.

Broadcasting has become an important instrument in primary and secondary education and in the controlling of public opinion. The future of the world depends in large measure upon the wise control of so powerful a force. The League Committee set up a body of experts to study the whole question of the possibility of promoting better understanding by means of international broadcasts devoted to programs describing the civilization, attitudes, and policies of foreign countries.[16] In 1936 the League convened an intergovernmental conference to draw up a convention on the use of broadcasting in the cause of peace. Twenty-eight states signed the Convention, which had two ends in view: (1) to prevent deterioration of good relations by "misleading or simply inconsiderate broadcasts" and (2) to encourage programs which would increase understanding. The Convention provided that broadcasts which might incite the people of a country to violence shall be prohibited, and the signatories agreed to stop any such transmission. They undertook to intervene when obviously false statements were broadcast. Each signatory promised to furnish other states on request with program items designed to provide a better knowledge of the civilization and conditions of life in its own country. In case of dispute, the Convention permitted appeal to arbitration or judicial award or to the good offices of the Committee on Intellectual Co-operation. According to the annual summary of the Institute the Convention did not impose new obligations on the contracting parties but merely defined their mutual responsibilities in a field where almost daily incidents pointed to the need of regulation.

It is needless to add that the methods pursued by the German and Italian and other governments show that there is considerable

[16] League of Nations, *Broadcasting and Peace* (International Institute of Intellectual Co-operation, Paris, 1933).

room for improvement in this field of effort, and that while broadcasting is regarded as an important instrument of war, its use for genuine cultural appreciation will be seriously impaired.[17]

Within the last few years a large number of agreements on intellectual matters have been signed among governments. A few such accords existed before 1914—among Mexico, Chile, and Peru (1831), Costa Rica and Honduras (1895), both concerning the exercise of liberal professions and the equivalence of studies and examinations; also the Franco-Swiss convention of 1887, and the 1912 Franco-Italian agreement regulating the exchange of professors of modern languages. After 1918 the need for intellectual agreements grew as new problems arose and new tendencies appeared. After 1926, intergovernment intellectual accords became more numerous.[18] Unfortunately, some academic exchanges were designed to serve political ends and, as appears elsewhere, this form of "co-operation" is becoming increasingly menacing.

The movement for international intellectual co-operation has made headway on the American continent also, and Pan-American conferences have devoted much attention to the question.

In 1933, at the seventh international conference of American states held at Montevideo, the governments initiated a Pan-American convention relating to the teaching of history. The matter had been considered at previous nonofficial conferences, notably at Lima (1924), Montevideo (1928), Buenos Aires (1929), Bogotá (1930), and Rio de Janeiro and Montevideo (1931). At the international conference held at Buenos Aires (1936), the representatives adopted a convention for the encouragement of inter-American cultural relations. It provided that every year each government would grant two scholarships to students from each of the other countries for the following academic year, a provision based upon agreements concluded between Argentina and Chile (1935), Argentina and Peru (1935), and Chile and Peru (1936).

[17] See Harold N. Graves, Jr., *War on the Short Wave* (Foreign Policy Association, New York, 1941). For a discussion of the cinema, see J. E. Harley, *World-Wide Influences of the Cinema* (University of Southern California Press, 1940).

[18] In Europe, Germany–Hungary, Germany–Italy, Austria–France, Austria–Hungary, Austria–Italy, Belgium–France, Belgium–Holland, Belgium–Poland, Bulgaria–Poland, Denmark–France, Spain–Great Britain, France–Italy, and several others; see Société des Nations, *Recueil des Accords Intellectuels* (Institut International de Coopération Intellectuelle, Paris, 1938).

At the Lima Conference in 1938 the twenty-one republics recommended the following measures for the purpose of promoting intellectual co-operation: (1) The governments which had not ratified the 1936 Convention for the promotion of inter-American cultural relations should do so, and make provision for the interchange of graduate students and professors. (2) The Pan-American Union should study the possibility of establishing a center for the exchange of works of American composers. (3) National committees of intellectual co-operation should promote a close association of American writers and artists. (4) American governments should assume their obligation to send to the Columbus Memorial Library of the Pan-American Union a copy of all works published in their respective countries, and should promote greater interlibrary co-operation in order to facilitate loans of books, documents, and other materials. (5) Signatories should encourage the teaching of democratic principles in their respective countries. (6) School texts should be revised and the study of pacifism, "with special reference to the progress of International Law, the ideas of the great thinkers on universal solidarity, the experiences of the past in intellectual co-operation, the creation of institutions which tend to strengthen the bonds which unite all peoples, and to agreements outlawing war," should be encouraged. (7) Mutual recognition of degrees from institutions of higher learning should be given. (8) As far as possible, school curricula should include Spanish, Portuguese, English, and French languages. (9) Vacation courses in the languages, literature, history, and social sciences for foreign teachers and students should be established. (10) Co-operation in scientific, technical, and social welfare research should be encouraged. (11) An institute of co-ordination of geographic sciences, to be called the Inter-American Geographic Institute, should be set up in Buenos Aires. (12) The governments should give moral support to the ethnographic and historic collection dealing with the origin of American civilization, a work to be published by the University of Buenos Aires. (13) Radio broadcasting should be used to promote closer continental bonds of culture by means of lectures, artistic programs, and courses in teaching.

Intellectual co-operation has extended also to the field of rural life. The Institute of Intellectual Co-operation sent to the Health Section of the League a number of questions to be considered at a projected European conference on rural life which has been postponed on account of the war. Considerable anx-

iety has been felt at the exodus of farmers and peasants to the city, and authorities realize that rural rehabilitation involves not only economic and medical action but also improvements in primary, secondary, and adult education and encouragements of social life. Consequently experts have experimented in the use of radio for rural schools and adult groups. Already thirty-two countries have special rural broadcasting programs. The use of the cinema and of libraries is important.[19] Rural museums might form the center of a general institution devoted to rural meetings, lectures, films, and entertainments of various kinds.[20]

In 1931 the Institute of Intellectual Co-operation published *Art populaire,* comprising the papers and exhibits presented at the First International Congress of Popular Arts (held at Prague in 1928). It is impossible here even to summarize the list of contents. Suffice it to point out that 42 experts gave papers dealing with the popular arts of their respective countries, and that over one hundred and twenty papers on architecture, world sculpture and designs, metals, ceramics, textiles (including costume design and tapestry), music, the dance, and the theater were given. The volumes breathe a civilizing atmosphere in strange contrast to the war which was to follow.

At Prague in 1928 the Congress urged that steps be taken to prevent the disappearance of popular songs and melodies in all countries. At the Second International Congress of Popular Arts it was decided to establish a Bureau to draw up lists of archives, museums, etc. The study of comparative folk music demands the services of experts who by means of the film, the disk, or the Edison records can preserve some of the most beautiful efforts of peoples to make life happier.[21]

Private agencies have done even more than governments and the League to develop the idea and machinery of intellectual co-operation. J. Eugene Harley in 1931 brought together a great amount of information on this question, and the following paragraphs are based upon his volume.[22] International houses for the purpose of permitting students from many lands to live under the same roof or in adjacent buildings were founded in New York

[19] See League of Nations, *International Institute of Intellectual Co-operation* (Paris, 1938), p. 77.

[20] *Ibid.,* pp. 78–79.

[21] Société des Nations, *Musique et Chanson Populaires* (Institut International de Coopération Intellectuelle, Paris, 1934).

[22] John Eugene Harley, *International Understanding, Agencies Educating for a New World* (Stanford University Press, 1931).

in 1923 and later in the University of California at Berkeley and at the University of Chicago; in Paris, the University City was commenced in 1925, designed to accommodate over a dozen different national groups; the International Quaker Student Hostel was opened at Geneva to provide accommodation for the growing number of students attending Geneva for educational purposes.

Many universities and other institutions of higher learning promoted summer or vacation schools and institutes. Chief of these were the University of Chicago's Norman Wait Harris Memorial Foundation, which has held institutes since 1924 and has published a number of important volumes. The Institute of Politics, begun at Williamstown in 1921 and lasting till 1932, was a gathering for one month every year at which outstanding authorities appeared to lead round tables and deliver public lectures. The Institute of International Relations at Riverside, California, began its annual weekly sessions in 1926 and is still active. The Geneva School of International Studies, established in 1924 under the direction of Professor (now Sir) Alfred Zimmern, gave special fortnightly courses and offered scholarships. The Geneva Institute of International Relations was established in the same year to devote intensive discussion to current international problems during one week in every August. The Institute of Pacific Relations, which developed out of the initiative of the Y.M.C.A., held its first conference at Honolulu in 1925. It was attended by men and women from the Pacific Basin countries, and was a forerunner of several biennial conferences and a wide range of research projects and publications too extensive to be described here. The Academy of International Law began in 1923 at The Hague with the support of the Carnegie Endowment, and promoted the higher studies of international law and cognate sciences.

What Harley calls special institutes or associations of a permanent nature developed rapidly after the World War of 1914–1918. Chief of these, with their founding dates, were the Foreign Policy Association (New York, 1918), the Council on Foreign Relations (New York, 1921), the Chicago Council on Foreign Relations (Chicago, 1922), the American University Union at Paris, London, and Rome, the National Student Federation of America (1926), which became a member of the International Confederation of Students, the National Federation of Business and Professional Women's Clubs (St. Louis, 1919), and the American Association of University Women, which is part of the International Federation of University Women.

Other postwar international agencies include the Students' International Union organized at Geneva in 1924; and the International Confederation of Students founded at Strassburg in November 1919, with a central office at Brussels, which publishes an annual yearbook, a monthly bulletin of information, and other material. In 1921 the Catholic Students formed the International Secretariat of Catholic Students' Unions; and the World Students' Christian Federation, which was established in 1895, continued to carry on a great amount of work in many branches of student life. The World Federation of Educational Associations was formed in San Francisco in 1923, has held biennial conferences in various cities of the world, and has attempted to carry forward the ideal of peace through education. In 1925 the International Bureau of Education was founded at Geneva and has carried on a similar program of distributing information and carrying out scientific research and forming international conferences.

The Royal Institute of International Affairs, which held its inaugural meeting in July 1920, aims to advance the study of international politics, economics, and jurisprudence; it has done a splendid work in publishing the *Annual Survey of International Affairs* as well as several authoritative studies on special subjects. It has co-operated with other institutes such as the Institute of Pacific Relations and the Council on Foreign Relations in New York, has built up an extensive library, and issues every two months a report on foreign affairs and a journal, *International Affairs*. Affiliated institutes have been established in Australia, New Zealand, and Canada. Finally mention should be made of the major endowments such as the Carnegie Endowment for International Peace, the World Peace Foundation, the Rockefeller Foundation, the John Simon Guggenheim Memorial Foundation, and many others.[23]

The foregoing list does less than justice to the admirable work carried on by these institutions, but it serves to indicate how indebted modern scholars are to the generosity and vision of their founders and to the ability and devotion of their directors and officials. Although they have not succeeded any better than the other sections of modern civilization in preventing war, they have enriched contemporary life by assembling information, promoting research, putting scholars in contact with one another, and in many other ways promoting the economic, physical, mental, and

[23] J. E. Harley, *op. cit.*

moral welfare of hundreds of thousands of people all over the world. In terms of welfare there is not a scholar in the field of international relations who has not directly or indirectly benefited from the work of these foundations and institutions.

Unfortunately, the hopes of intellectual co-operation which the establishment of the League and the many private agencies had raised to a high peak of expectancy have been seriously disappointed by reason of two factors: (1) the growing political anarchy of the world; and (2) the official backing on the part of Germany, Italy, the Soviet Union, and other countries of a "revolt against reason." These two factors require some explanation.

Now that war has become increasingly extensive in character, making use of economic resources, scientific inventions, popular attitudes, and propaganda instrumentalities, the conditions for intellectual co-operation beyond national boundaries have become, if not impossible, at least most risky and inexpedient. For what scientists can present the results of their research to international gatherings if their discoveries are likely to be translated into strengthening the military power of another government? What welcome can be given to foreign students and professors if there is a suspicion that these men are not primarily seekers of truth but are, like Herr Abetz in Paris and many another German scholar abroad, political agents working to undermine the unity of the countries in which they sojourn? Given the modern German theory of war and the planting of cells abroad as the advance agents of a policy of war and conquest, the outlook for international intellectual co-operation is indeed black.

These obstacles operate in a direct manner, and Staley notes that because of the threat of war "certain aspects of geology, geography, chemistry, and other sciences have become dangerous political subjects, which it is not everywhere safe to discuss in frankness with a foreigner."[24] He adds that if the present temper continues very long, it may be necessary to censor scientific periodicals before they can be sent abroad, and that "delegates to international technical congresses will have to be as tight-lipped as diplomats, for fear of revealing national secrets." At a Pacific Congress held some time ago, delegates suspected that the inquiries of one national group concerning resources in the colonies of another were made with military rather than scientific objectives in view.

[24] Eugene Staley, *World Economy in Transition*, p. 47. This factor has become of extreme importance in the matter of atomic energy.

Some economic nationalists claim that it is desirable to limit the amount of international trade but to encourage the free interchange of ideas among the scholars of various nations. However, as Grebler points out, historically

> economic exchange has always blazed the trails for cultural exchange. When commercial exchange dries up, the exchange of products of the intellect, of science, of art, is bound to be reduced.
>
> Organized exchange of students selected according to political principles, and the swamping of foreign countries with propaganda material, are no substitutes for this free and spontaneous use of science and arts that was the pride of bygone days. If goods and finance are homespun, ideas and culture too become homespun.[25]

The importance of international economic investigation is enormous. The Washington navel orange was brought from Brazil in about 1870; and barley, rice, oats, rye, sorghum alfalfa, soya beans, cotton have since been brought from Turkey, Egypt, Formosa, Italy, Sweden, Africa, Peru, Japan, and elsewhere.

In 1928 United States scientists explored for three months in Papua and New Guinea to see if they could find a new variety of sugar which would resist disease in the United States. They shipped home 160 different varieties. In 1898 an American official found a wheat in Russia which would resist rust in the United States, and 4,000,000 acres are now planted with this wheat on the American continent. Two years later, Carleton revisited Russia and found a hard red winter wheat, which is planted in over 2,000,000 acres in the United States. Who can deny that these everyday articles have enriched not merely the material life of the United States but have also given an impetus to further scientific investigation? Staley quotes evidence to show that the development of mathematics and of printing has followed trade. And undoubtedly the influence of the Orient in silks, prints, and the decorative arts would not have taken place without the fertilizing influences of trade.

The close connection between intellectual co-operation and economic and other forms of intercourse also finds expression in several other works, for it should be apparent that effective intellectual co-operation does not lie merely in exchanging abstract ideas but in making possible the exchange of goods and services

[25] Leo Grebler, "Self-sufficiency and Imperialism," *Annals of the American Academy of Political and Social Science,* Vol. 198 (1938), p. 7. See also Ross E. Moore, *Good Neighborliness through Technical Agricultural Collaboration (Department of State Bulletin,* September 16, 1945).

and all other products of human experience in the freest possible manner. Hindrances to radio broadcasts, difficulties in obtaining passports, the inability to obtain technical services for soil conservation or agricultural development, all constitute obstacles to the mingling of creative ideas. A few examples of the connection between the economic and the intellectual must suffice. The Inter-American Institute of Agricultural Sciences supported by the United States and twenty Latin-American republics has been experimenting on the best crops to be grown on the American continent and along what lines crops should be developed in order to strengthen national development as well as international trade.[25a] Walter T. Swingle, in an outstanding chapter on our agricultural debt to Asia, shows how much Europe and America have owed to the Asiatic countries in their plants and domesticated animals.

> Without Asiatic plants and animals, our agriculture and that of the whole Western Hemisphere could not have developed properly, as we would have no domestic animals except the llama, an ill-tempered brute, and the turkey. We would have had a few good food plants . . . . but no green vegetables, no important fruit trees . . . . Few Americans realize that our chief agricultural creditor is China.[26]

Swingle suggests the many contributions which the countries of Asia may yet make to our agricultural development, and in two volumes dealing with the Middle East the authors show the connection between the establishment of scientific institutions with international investment and the development of the resources of that area.[26a]

It is a mistake to think that ideas can be divorced from the achievements of economic life. What limits the freedom of the latter threatens to destroy the creativeness of the former. Human life in its varied aspects is closely interrelated, and what adversely affects one may cripple another. Man cannot be half-slave and half-free—the mind cannot explore untrammeled in the realms of philosophy and science if the scholar is to be regarded primarily

[25a] See *World Report*, "Better Crops for Western Hemisphere Sought in Joint Experiments in Costa Rican Valley."

[26] In Arthur E. Christy (editor), *The Asian Legacy and American Life* (John Day Company, New York, 1945), pp. 84–85.

[26a] E. B. Worthington, *Middle East Science* (His Majesty's Stationery Office, 1936); B. A. Keen, *The Agricultural Development of the Middle East* (His Majesty's Stationery Office, 1946); I have not had an opportunity of consulting H. B. Allen's *Rural Education and Welfare in the Middle East* or N. C. Wright's *Animal Industry in the Middle East*. See also the reports of the work of the Inter-American Development Commission.

as a citizen dedicated to the task of merely making his country militarily strong or secure.

On the other hand, it must be admitted that the challenge of national self-sufficiency, both economic and military, has intensified the scientific search for the most efficient use of raw materials. Without question war and the threat of war have produced inventions which later have made for progress. To this degree, the condemnatory judgment must be modified, but there can be no doubt that the benefits along these lines are more than outweighed by the losses sustained through the limiting of the findings so made to one group and by preventing scholars from as freely stimulating one another as would be possible in a more stable and less politically divided world.

The second outstanding obstacle to contemporary international intellectual co-operation lies in the widespread revolt against reason. During the nineteenth century several thinkers had criticized reason, alleging that it could not supply a dynamic to effective human action, that it could not penetrate to the ultimate mysteries of truth, that abstract generalizations were removed from the pulsating rhythmic reality of things, that static concepts could only act as pointers, that social morality was little more than social "myths," that a thing did not work because it was true but was true because it worked. Nietzsche preached the doctrine of the superman with emphasis upon power and will. Darwin was popularly interpreted as preaching the survival of the fittest in a world of struggle amid a nature red in tooth and claw; Marx urged the revolt of the proletariat and talked of "bourgeois" truth and "bourgeois" system of ethics; Sorel advocated violence instead of reason as an instrument of social change; D. H. Lawrence substituted sex for the pale gray matter of the brain; and in these and other ways scholars concluded that reason had either failed, or that it had proved man's unimportance in the universe. Modern psychology, with its widely accepted emphasis upon instincts, the subconscious, rationalizing, and behaviorism, helped to produce a spirit of skepticism and in certain quarters a cult of irrationality.

But all these movements were private, and the influence which they exerted was either directly upon relatively small groups or indirectly upon a wider public. When, however, the Fascist and Nazi governments came to power in 1922 and 1933, following the advent of the Bolshevist government to control in 1917, a new situation developed. In these three instances governments liqui-

dated intellectuals and erected into a government policy affecting over two hundred and fifty million people the ideal of conscious indoctrination. Communist truth was proclaimed in the Soviet Union, national truth in Italy, and racial truth in Germany. The evidence is too voluminous to summarize at this point, but it is impossible to deny the truth of the judgment expressed by Hamilton Fish Armstrong when he wrote that, whereas previously educated people did agree on certain terms for describing general things, so that ideas could be exchanged—"Our minds can meet, even in disagreement, because the words we use have meanings accepted in advance"[26]—now a great gulf is being deepened between the dictator countries and the democracies. Armstrong asks, "how are we to talk to people who say familiar words but mean something else? . . . . who say 'art' and mean 'propaganda,' to whom music by Mendelssohn is not music, and poetry by Heine is not poetry . . . ."[27] How can we send our students to German universities when their greatest scientists—Einstein, Franck, Hertz, Meyerhof—have been expelled? He goes on: "Shall we go there for art . . . . shall we go there for historical research," when the German authorities denounce "the false ideal of objectivity" and affirm that "we will never approach history impartially but as Germans"? How reach an understanding with those who assert that law arises out of race and that cancer comes from the conflict of races within the body? "Could Pasteur engage in profitable discussion with a man who says that?" We need give no more examples. The tragic truth is well expressed in the words: "A great gulf indeed is fixed between the two conceptions of life. Nor does there seem a way to bridge it with words, because on the two sides words no longer have any commonly accepted meaning."[27a]

The difficulties in the way of intellectual co-operation appear from a consideration of the League's attempt to persuade governments to revise their school textbooks in order to eliminate from them passages offensive to peoples of other countries. Take, for example, the question of responsibility for the World War of 1914–1918 and the justification or condemnation of the resulting peace treaties. One can readily see that even trained scholars might passionately differ on these questions. But if emotion can distort the judgment of university people supposedly trained to approach the social sciences in an analytical spirit, how much greater will

[27] H. F. Armstrong, *We or They* (The Macmillan Company, New York, 1937), p. 7. Quoted by special permission.

[27a] *Ibid.*, p. 25.

be the tendency of national governments to influence history writing so as to make good citizens of their growing children.

The French and German textbooks contained material of a particularly offensive nature; in them education and propaganda became hopelessly mixed. One or two examples may be given at random. German storybooks for little children contained versions of the Mother Goose story in which a Jew is made the ogre and the pictures are of an appalling and insulting character. German mathematical textbooks contained problems designed to instill in the minds of the children a consciousness of Germany's losses during the war. For example: "How much territory would have to be taken back by Germany . . . . ," "if Germany retained her coal mines . . . ."—around statements like these were framed simple mathematical problems. The Committee on Intellectual Co-operation did good work and helped to persuade French and German authorities to make considerable revision of their textbooks between 1920 and 1930. When Hitler came to power these revised texts were destroyed and others of the type of propaganda just mentioned were introduced. After his Rhineland occupation of March 1935, the Führer said that he was ready to agree to a permanent French-German committee operating under the aegis of the League to consider the whole question of textbooks. But critics believed that Hitler's action was designed to stop all French criticism of what the Nazis were doing in internal and international affairs, of its policy toward Jews, liberals, trade unionists, Roman Catholics, and of National Socialist philosophy.

Here, then, is the problem: Is intellectual co-operation to mean that other countries cannot subject the policies and actions of a country to criticism? Is it to be a colorless agency which must permit nations to go their own way? Or is it to be allowed to bring the light of reason to bear upon the abuses and extravagances which may exist in national curricula? Rational criticism depends upon basic values, and today there is a widespread reaction against reason. To tell Hitler or Mussolini that a thing will not stand the test of reason will bring the retort "Whose reason?" What intellectual co-operation is possible with those who allege that truth is not universal, that right is what is right to an Aryan, and that there is no such thing as objective science? How much co-operation is possible between the liberal mind which believes in analysis and experimentation, trusts in reason, and believes in obtaining as much evidence as possible and arriving at an a posteriori judgment, and the fundamentalist mind which accepts certain funda-

mentals on faith, believes that reason and analysis are inadequate to solve the deeper problems of the universe and its meaning, and proceeds according to a priori methods? The believer in reason will claim the right to analyze things which the fundamentalist would regard as beyond the province of reason.

Even in social affairs one does not have to go far to ask whether in our liberal society one would find much sympathy for the view that we should dispassionately analyze with children the pros and cons of free love, stealing, murder, lying, and other actions. No; we assume that these things are wrong, and our defense is not necessarily a "rational" one. Suppose, however, that the same attitude is carried over into racial matters and that apologists say that these things cannot be discussed by merely rational methods. Suppose that Fascist and Nazi leaders deny the claims of the intellect and preach the desirability of force, saying that violence, noble violence, is necessary, and that in a nation there is a mystical unity between a people and its soil. What then?

Suppose they say that there are limits to intellectual co-operation, that history shows the tragic breakdown of certainties when traditions and values are unduly and too rapidly undermined by new ideas. The Indians in Central and South America lived a life reasonably adapted to their environment, but when the fighting, individualist Spaniards arrived and mingled with the communal Indians, the result was chaos to their children, who socially inherited mutually contradictory values. Their minds became confused and their purposes uncertain, and instead of the richness of variety they suffered from the consequences of the cancelling-out process induced by the meeting of incompatible values. What is the limit of synthesis? And how much can the average mind absorb and assimilate?

Moreover, if the state be regarded as the great instrument for truth, or if its leaders and people believe that the security of the state is the highest duty of its citizens, then the outlook for intellectual co-operation today depends upon the solution of this security problem. If security is to be obtained by the nation arming itself to the utmost, if war is normal and desirable, then the state must prepare the minds of its citizens for warlike purposes. The greater the danger of war, the more definitely must all values be made subordinate to this purpose. But to make human minds the instrument of national war is to limit the scope of intellectual co-operation to a small compass.

It may be argued, of course, that the educated soldiers of vari-

ous countries can meet on common ground and that, although their ultimate purpose may be to destroy one another, they can attain the chivalry and the nobility of character which military tradition at its best inspires. The educated military man probably does not hate his brother officers of other countries, and the spirit of sacrifice engendered by a willingness to die for one's country may be compatible with a high spirit of culture and of tolerance for difference of beliefs.

Unfortunately popular attitudes toward other countries do not reach this level. In order to make the nation into an efficient fighting instrument it seems necessary to arouse the spirit of hate, and the present propaganda methods throughout the world seem to require the indoctrination of millions of people with crude and distorted ideas of other countries.

Today there is a progressive limiting of human interests by more than one state; and in order to maintain an emotional unity of an uninformed kind, the thoughts, contacts, and speculations of scholars are being confined within dangerously small limits. Thus it is not unjust to say that emotional nationalism, and especially the totalitarian state, is not compatible with any substantial intellectual co-operation in social, political, scientific, and philosophic matters. Nor is a unity of temper in which different beliefs are held easily attainable under conditions of present political rivalry.

A scholar can help to enrich and even revolutionize the life of his generation and of generations to come—witness Pasteur, Faraday, and many others—but if war kills him, or political or economic chaos starves him or deprives him of the opportunity of unfettered thought, he cannot make his contribution. Intellectual advance presupposes a minimum of world order; without it, scientists face the prospect of becoming primarily adjuncts to rival national-defense machines. Only with the defeat of the doctrine of anti-reason and of the fallacies of the superman and the superior race can rational progress be insured; and the prevention of future aggression in turn can be achieved only by the establishment of adequate international political and economic institutions.

How close is the relation between intellectual co-operation and the development of agriculture, industry, health, and other matters pertaining to general welfare one may see from the extensive list of international scientific congresses held or announced between 1930 and 1939. The list was compiled in the Library of the National Research Council, Washington, D.C. When one remembers that some four hundred meetings were held during the con-

tinual breakdown of international political society, he realizes the divorce between the political organization of the world and its economic and intellectual requirements. A more eloquent description of common interests transcending national boundaries could scarcely be given.

THE UNITED NATIONS AND INTELLECTUAL CO-OPERATION

The methods and achievements of the committee on intellectual co-operation of the League, while excellent in themselves, failed to capture the imagination of the world and cannot be said to have exercised a decisive influence. In part the limited success can be traced to the unduly restricted and rarefied intellectual atmosphere in which much of the activity took place. While provision was made to co-operate with national educational systems the methods were relatively colorless and did not sufficiently make use of newer techniques. The reports did not make interesting reading and there was little to kindle the imagination.

While it appears to be easier to broadcast emotional appeals and crude propaganda than rational and persuasive analysis, and to this degree applied science perhaps makes more difficult than ever the task of defeating prejudice and ignorance, this unpromising situation is no warrant for despair. For rational analysis has this advantage—that it proceeds in a straight line and consistency of direction gives it an added power. And because it reflects truth it can gain momentum, given adequate time, where as propaganda falsely conceived must sooner or later founder upon the rock of truth. If, therefore, the forces of education can be mobilized on the impressive scale which modern science makes possible, and if popular education keeps its eye upon the problems to be faced, there is ground for hope.

What are the major tasks which confront the United Nations? First, to rebuild institutions of learning in countries which have suffered so much material destruction as a result of the war. A score of nations must rebuild schoolhouses, colleges, and universities, equip their libraries, and replace their scientific equipment. A conference of Allied ministers of education in 1942 noted that several European countries had to draw up plans for obtaining "rudimentary supplies such as desks, pens, pencils, papers, slates, and books." The commission of scientific and laboratory equipment set forth some 10,000 items required to reconstruct scientific

education. The Books and Periodicals Commission began a drive to obtain hundreds of thousands of volumes. Professor Harold Lancour, head of Cooper Union Library, headed a committee of American engineers to help restore and rebuild Europe's engineering libraries. Mr. Lancour noted that "Europe cannot hope to get far in its reconstruction until modern reference materials in the technological fields are available in continental libraries."[28] The Austrian minister of education in March 1946 appealed to the United States for American books; 1,200 public libraries were in need of modern American literature in English and German languages; several hundred book stores needed books for sale. He also issued a list of American books needed for Austria's scientific and research libraries which have been unable to obtain materials in the social sciences for the last eight years. In February 1946 the United Nations Relief and Rehabilitation Administration and the United Nations Educational, Scientific, and Cultural Organization signed an agreement to collaborate in dealing with the problems of education and relief in war-devastated countries. UNRRA was to be the main operating agency to distribute and administer relief under a joint committee of six members. This committee has been receiving valuable help from the United Kingdom, Canada, Denmark, and other countries. The task of reconstructing institutions of learning in Europe and Asia is truly an enormous one.

In the United States, Senator Fulbright and Representative Bloom introduced bills to enable American military surplus material in foreign countries to be purchased by those countries, the proceeds to be used to provide scholarships for foreign students tenable in the United States, and providing for regular exchange visits between students and citizens, including journalists, teachers, and others. Under the Fulbright plan not more than $2,500,000 for any one country in any one year would be expended. By these means countries which are acutely short of dollar exchange would be able to maintain intellectual contact with the United States. Without adequate dollar exchange, as Professor Laski has pointed out, foreign peoples (in the case which he was discussing, the British) would be unable to buy American books and periodicals and pay royalties for performances of American plays. Economies in this realm, he rightly urged, would be a grave blow to American intellectual co-operation abroad.

[28] *Christian Science Monitor,* May 18, 1946.

In addition to rebuilding the institutions of higher learning, educators and others must face the formidable task of bridging the intellectual divisions which have been so widened and deepened by national hatreds due to the sufferings occasioned by the war and especially to the atrocities perpetrated upon scholars by the Axis powers. How many great as well as lesser minds have become embittered, cynical, and even distorted, it is impossible to say. The effort must be made to raise again the lamp of spiritual and intellectual endeavor throughout the world. Fortunately, many private and semi-public associations of intellectual, religious, and professional character have not succumbed to the wholesale bitterness occasioned by the cataclysm of war and intensified by ruthless and persuasive propaganda. Reports show that the international organization of nurses, for example, are re-establishing their lines of communication, and their help has become an important factor to nurses in Europe. So with the Student Christian movement, the Christian churches, the universities which have subscribed food, clothes, and books for students and faculties of other lands, Soroptomists and Rotarians, the doctors and the engineers. A survey of these activities leads to the conclusion that the hundreds of private societies and semi-public societies of a professional character which operate across national boundaries may do much to re-establish a wholesomeness of the human spirit; they may help to restore sanity in an emotionally overstrained age despite grave obstacles which confront them.

That the educated groups are particularly alert to the implications of intellectual and indeed political co-operation, and especially in the atomic age, is seen in the remarkable exhibition of the scientist who helped to produce the atomic bomb. An impressive list of the world's intellectual elite has come out strongly for world government as well as for measures which will permit free interchange of information.

The establishment of the United Nations Educational, Scientific, and Cultural Organization reveals a growing awareness of the greater tasks ahead and the need of devising methods more effective than those pursued by the League of Nations Committee on Intellectual Co-operation.

The structure of the Organization does not reveal any substantial departure from the many other international agencies already established. A general conference will meet annually; each member nation will be represented by not more than five delegates

to be selected after consultation with national educational, scientific, and cultural groups. An executive board of 18 members under the authority of the general conference will carry out the day-by-day routine work under the supervision of a director general. The Organization is to work in close co-operation with the Economic and Social Council by an agreement between the two agencies. It will co-operate too with other bodies, such as the International Labor Organization, the Food and Agriculture Organization, and the International Health Organization.[29]

It is expected that the resources and activities developed by the International Institute of Intellectual Co-operation in Paris will be transferred to UNESCO.[30] This agency also will consult and co-operate with nongovernmental international organizations. The member nations undertake to make periodic reports in the various educational, scientific, and cultural fields, such reports to include "laws, regulations, and statistics dealing with the fields mentioned." Each member state will undertake to meet its proportionate share of the budget, and the staff will be accorded the privileges and immunities enjoyed by members of the UNO.

In an interesting statement, Mr. Archibald MacLeish, who was chairman of the United States delegation to the London Conference called to establish UNESCO, notes "that the aim of UNESCO is not set at the elevated level of advanced scholarship or science but at the level of the popular education of the peoples of the world and of their communication with each other through

[29] The relations of UNESCO and the United Nations, according to Articles 47 and 63 of the United Nations Charter, are to be worked out by agreement between the two organizations. Considerable discussion ensued at London concerning the location of UNESCO. The French wished to have it at Paris. The Commission so recommended, but the British delegation wished to review the question after five years; the Conference, however, adopted a resolution that Paris should be the seat of the Organization, but this designation "shall not in any way affect the right of the General Conference to make decisions in regard to this matter by a two-thirds majority." The first director general, it was agreed, should be chosen from some country other than France. An interesting decision was that "the General Conference should not have a permanent seat but should vary the location of its meeting from year to year as the General Conference itself should determine" [C. Mildred Thompson, *The Education of the Scientific and Cultural Organization*, p. 314, *Foreign Policy Reports*, February 15, 1946]. The United States delegation believed that "the peripatetic character of the General Conference" would help to spread the extent of interest and understanding of the Organization among the peoples of the various countries.

[30] Assistant Secretary Benton, *The Role of UNESCO in our Foreign Policy (Department of State Bulletin*, April 21, 1946), p. 627.

the mass media now at their disposal."[31] And he adds an interesting sidelight:

It would be impossible for anyone who did not attend the London Conference to form an idea, in any degree adequate, of the depth and fervor of the human hope and expectation which produced the constitution of UNESCO. A very large number of the delegates at the London Conference were men and women who had played a leading part in the resistance movements of their countries under the Nazi regime. They knew from their own personal experience what issues were at stake. They were determined that an attack should be made upon the problem of war and peace at the one level where success is possible—the level of human beings themselves who will, in the last analysis, determine which of the alternatives will be chosen.[32]

The first UNESCO conference was held at Paris November 19 to December 10, 1946. It was attended by nearly two hundred delegates. The Preparatory Commission had forwarded "hundreds of suggested projects," and the Program Committee adopted specific criteria in selecting proposals to include in UNESCO's program. These criteria are:

1. Does the project contribute to peace and security?
2. Do the separate projects form a coherent total program?
3. Is the project financially feasible?
4. Is it feasible in terms of available staff?
5. Does the project represent the most appropriate way to achieve the desired result?
6. Should the project be undertaken during the coming year, or should it be approved and postponed?
7. Are the projects few enough in number and important enough to form a practical and challenging program?[32a]

The committee on reconstruction and rehabilitation approved a number of activities such as an extensive fund-raising campaign; appeals are to go out to private organizations. UNESCO set up a reserve or revolving fund to purchase surplus war property.

A number of specific projects in education too numerous to mention here were approved and a committee of experts was to be

[31] Statement by Archibald MacLeish *(Department of State Bulletin,* April 21, 1946), p. 629.

[32] *Loc. cit.*

[32a] *United Nations Weekly Bulletin,* December 31, 1946, p. 29. See also *UNESCO Conference; Report from Paris* (*Department of State Bulletin,* January 12, 1947), pp. 53–56.

used to study proposals for a world-wide network of mass communications. In the realm of natural science, approval was given to a study of the tropical areas of the Amazon and nutrition in India, China, and the Amazon. UNESCO undertook to appoint field officers to help raise living standards in certain countries and approved a number of plans for scientific rehabilitation, such as

> the organization and operation of an International Science Service System; the establishment of a network of Science Co-operation Stations around the world, the support and extension of the International Scientific Unions and their work; co-operation in scientific matters with the work of the United Nations and its other specialized agencies; the informing of the people in all countries on the international implications of scientific discoveries; and the undertaking of new types of international co-operative projects (such as international observatories and laboratories).[33]

Detailed recommendations were made for the social sciences, philosophy, the humanistic studies, libraries and museums, and the creative arts.

The Executive Board in April 1947 approved three major projects—the Educational Reconstruction Program for devastated member countries, a campaign for the extension of "fundamental education" in an attempt to eliminate illiteracy, and the development of plans for promoting education for international understanding. Budgetary reduction from seven and one-half million to six million dollars forced a modification of the program adopted at Paris in 1946, but the scope and energy manifested in the recommendations show the determination of the officials of UNESCO under the leadership of Dr. Julian Huxley, Director-General of the organization. The difficulties ahead are immense, not merely by reason of heightened national emotions but also because of the ideological differences and the difficulty of finding a common method on the part of countries whose fundamental philosophies differ. We have mentioned above how the revolt against reason and the development of national and class fundamentalisms made the task of intellectual co-operation a formidable one. The events of the last few years have not revealed any lessening of the difficulties.

This judgment is confirmed by the events which took place at the general conference of UNESCO in Paris in November 1946. The program committee proposed the eventual establishment of a

[33] *United Nations Weekly Bulletin*, December 31, 1946, p. 32.

world-wide radio network, an international radio forum, and other methods of developing "mass communications." The Yugoslavian observer indicated that his government had not ratified the constitution of UNESCO and was generally to have expressed the views of the Soviet Union. He criticized "world scientific humanism," which, he said, "will be forcibly disseminated and imposed upon the peoples of the world" and urged that "the campaign against dialectical materialism was one of the main factors of the Fascist regimes." UNESCO, he went on, must avoid the temptation of misusing the principles of "free flow of ideas" and distorting them into a new kind of propaganda against the masses of the people.[33a] Dexter well points out that the attempts to develop mass communication of ideas may lead into serious difficulty if the "fundamentals" of a nation or religion or class are submitted to critical analysis by other nations, classes, or groups, or under the auspices of the United Nations itself. But, nevertheless, the attempt must be made to appeal so far as possible to evidence. A premature assertion of a social or religious philosophy will be fatal to progress.

The difficulties are immense; they spring not merely from the existence of national prejudices, hatreds born of long centuries of historical memory (in the case especially of many European countries), the differences of language and culture generally, the low standards of education in many countries which make difficult the appreciation of the world transformed by reason of science, but also from the grotesque futility of so much national self-consciousness in the light of the great tasks which will require common effort for their solution.

There are difficulties of a perhaps even more profound character. First, we shall be seriously disillusioned if we think that intellectual co-operation, even of the most efficient kind, will enable the average individuals of any one country to have a close understanding of the culture of more than one or two of the countries of the world. The range of human knowledge is so vast that it is fantastic to expect people to acquire the necessary languages and necessary knowledge in the many branches of science, art, and cultural subjects generally. It is not the amount of information which will determine "understanding." If the problem is viewed in this light, it becomes progressively more unsolvable owing to the rapid development of knowledge everywhere under conditions

[33a] See Byron Dexter, "UNESCO Faces Two Worlds," *Foreign Affairs*, April 1947, pp. 388–407.

of modern life. There is danger that a type of weariness will take hold of people if the effort to attain international understanding carries with it an undue burden of information that people think must be acquired. We must recognize the limitations of the human mind and especially the human nervous system.

Information and appreciation of the culture of other nations form worth-while ends, but in a sense a great degree of superficiality necessarily will characterize people's understanding of other people's cultures. Count Sforza has written that a foreigner should live ten years in the enviroiment of the Italian peasant before hoping to understand the Italian "genius"; on this score, a person would have to live to the ripe age of Methuselah and live successively in all the major countries of the five continents before he could acquire "intellectual understanding"! At the end of his vast odyssey he would return to the first country of his study to find it as much transformed at the end of 700 or 800 years as the England of today is different from that of the age of Chaucer!

This statement is no counsel of despair. Much indeed can be accomplished by efficient methods. Dr. Max Winter in 1934 suggested the establishment of a Child's World Peace Library of 101 children's books which should be especially written for the children of all nations so that they would have a common experience on which to build. By more effective methods of language teaching, visual aid, and many other devices, a great deal of the waste of present-day education in grade and high schools may be eliminated. By means of thousands of scholarships, students and faculties of various countries might come to know each other much better. By the establishment of bureaus of translation in universities and other institutions of higher education, not only would jobs be created for thousands of language students but specialists in the many fields of human culture would have immediately available the opportunity of finding out the latest developments in their own and allied fields in the other parts of the world. The development of professional interchange can be carried much further—to doctors, engineers, teachers, trade-union leaders, etc., along the lines carried out in many of the international conferences during past years. But above all the new techniques of mass communication hold much promise as well as much danger.[33b]

Second, and above all, we must recognize the almost insuper-

[33b] See chapter ix, pp. 538–52.

able obstacles which the existence of the national state in a period wherein the promotion of national security by military, political, economic, and psychological means has become intensified. This point has been excellently brought out by Lionel Curtis who writes that "important as teaching and preaching are, the structure of the state in which men live is more decisive in shaping their minds and characters."[34]

Curtis goes on to show how, despite the widespread propaganda for the League of Nations, the very structure of each nation "was more potent than all the organized teaching and preaching" because the national Commonwealth "is the most powerful agency for developing a sense of duty in its own members,"[35] whose outlook is limited to the good or imagined good of their own nation. We cannot expect intellectual co-operation to do a great deal to promote world peace as long as the independent sovereign states continue to exist.

If, however, world control of atomic energy and of conventional armaments can be brought about and sufficient money devoted to the great task of education, it is conceivable that remarkable results might be obtained. In 1938, H. G. Wells pointed out that much of the remarkable knowledge of the world—whether the scientific discoveries of those in the laboratory, the creative arts of the writer, the museum, and the painter, or of philosophical and religious systems—was dispersed, unorganized, and socially impotent; what was required in the opinion of Wells was a systematic, comprehensive body of knowledge put in the hands of the hundreds of millions of the world's inhabitants. There should be a standard encyclopedia of 20 to 40 volumes which would become the basis of a minimum amount of knowledge of all persons, so that they would have the opportunity of becoming in fact members of a world community. Such an encyclopedia should be under continual revision by a world board of editors and it should be brought to the educational agencies of the world, the universities, schools, colleges, newspapers, churches, and other institutions by an adequate Promotion Organization. This plan of Wells may appear visionary, but an analysis of UNESCO's far-reaching program indicates that, given the opportunity, the scholars of the world may yet be able to devise methods of bringing men's thought to appreciate the nature of the universe and the world in which they live.

Intellectual co-operation thus goes more deeply than the

[34] Lionel Curtis, *Faith and Works* (Oxford University Press, 1943), p. 30.
[35] *Ibid.*, p. 31.

exchange of information; it will develop and result in a deepened attitude toward the search for cultural values, a heightened awareness of what is involved in the search for truth and for artistic accomplishment, as well as in the immense developments of the scientific method and its cultural implications. It will involve a deeper understanding of the nature and destiny of individuals, their place in the scheme of things, and will in this respect take on a philosophic tinge and even link up with questions of a religious nature.

RELIGIOUS CO-OPERATION

Although the saints of Christian history spoke of being one in Christ, the last nineteen hundred years have little to show of this lofty ideal. For centuries the East and the West, Protestant, Catholic, and a bewildering number of other sects have argued and fought with each other over doctrinal questions, ecclesiastical jurisdiction, and the more self-regarding quest of who should be first in the Kingdom of God both on earth and in Heaven. In fact, disunion has become so habitual as to make the dream of Christian unity scarcely more than a vague wish on the part of millions of people.

Yet a few leaders and thinkers have long grieved over hair-splitting theological controversies and narrow sectarianism, and have believed that true religion can unite all creeds and classes in the pursuit of lofty social and spiritual ideals which will lift the churches out of their petty bickerings and limited vision, and some progress achieved by them can be recorded. Before 1914 little progress was made in that direction beyond a few conferences, the Student Christian Movement, and a number of missionary enterprises. And during the years 1914 to 1918 German, Austrian, Russian, British, French, and other Christian nations prayed to God for support in waging war and for military triumph. God received a chaotic babel of nationalistic petitions, and looked down upon human beings using the Cross for the purpose of intensifying national hatreds. Some Christians realized the utter tragedy of it all, and saw that the disunity of Christendom had in no small measure contributed to the world cataclysm.

In November 1914 a number of outstanding church leaders issued an appeal for peace. The Archbishop of Upsala, Soderblom, a noble ecclesiastic who was later to play a decisive part in the Ecumenical Movement and was to receive the Nobel Peace Prize

in 1930, took the initiative in reminding the world, then amid the clash of arms, "that war cannot sunder the bond of international union that Christ holds in us." In 1917 five neutral Protestant countries issued a declaration setting forth the unity of Christendom; they deplored the fact that the church had frequently stressed that which divides and not that which unites, and urged that it should work for the settlement of international disputes through mediation and arbitration. After the war had ended, the World Alliance for Promoting International Fellowship met at The Hague in 1919, and approved the proposal of Archbishop Soderblom for an Ecumenical Council which should strive for a common doctrine so as to realize an organized unity of nations for the application of Christian principles to social and international life within an international brotherhood.[36]

In 1920 the Lambeth Conference of Anglican Bishops issued an appeal to all Christian people, and passed a resolution on the desirability of Christian unity. Their action paved the way to later "conversations" between these bishops and the leaders of other Protestant denominations in order to see how far there could be "unity with variety" among Christian churches. Meanwhile a committee of the Hague Conference proceeded to organize the first ecumenical conference at Stockholm in 1925. During these years the Eastern Orthodox Church had also realized the need of a closer unity with other Christian churches, and in January 1920 the Patriarchate of Constantinople issued an appeal to that end. In addition to supporting the idea of the League of Nations in the political sphere, he suggested a pan-Christian conference to deal with questions of vital importance to all persons of the Christian faith.

The committee working for the Stockholm Conference must have had almost as mountainous a task as the statesmen who set out to build the League of Nations! In both cases differences of doctrine, of long-settled habits of thought, of material interests and selfish purposes stood in the way of realizing the clear and sensible vision which might have delivered mankind from its suffering. The committee itself realized that it would be impossible to achieve an immediate unity of faith, and doctrinal differences would die hard. And the committee concluded that it would be wiser to separate the movement into two parts: (*a*) Life and Work, which should confine itself to co-operation in social, na-

[36] Bishop George Bell, "The Stockholm Conference," in Percy Dearmer (ed.), *Christianity and the Crisis* (Victor Gollancz, London, 1933).

tional, and international relationships; and (*b*) Faith and Order which should consider "the ultimate but more remote goal of unity in Doctrine and Church Order."

The Stockholm Conference, the first world-wide Christian conference for almost sixteen hundred years, met August 19–30, 1925. Over five hundred delegates attended. They represented all Christian churches except the Roman Catholic, and came from thirty-seven nations. The Conference considered six main subjects, including: God's purpose and the duty of the church; the church in relation to (*a*) economic and industrial problems, (*b*) social and moral problems, (*c*) international relations, and (*d*) Christian education; and also methods of co-operative and federative action by Christian churches. The Conference passed a number of resolutions. It realized that its work would not end with one gathering but needed constant and consistent effort; accordingly it appointed a continuation committee, which met each year from 1926 to 1930. In 1930 it became the Universal Christian Council for Life and Work, comprising one hundred members, divided into the Orthodox, Continental European, British, and American sections, each with a president holding office for two years. The Council has its headquarters at Geneva, where there has also been established an International Christian Social Institute with a research department and a general secretary. The Institute has important contacts with the International Labor Office and the Economic and other sections of the League of Nations. It has arranged conferences on various social problems, such as the economic crisis, unemployment, and opium; it publishes a quarterly newsletter in English, French, and German; and it sponsors the meeting of international commissions dealing with youth, the press, etc.

In 1930 over three hundred bishops gathered at Lambeth and again appealed to "all Christian people" for an agreement on the fundamental bases of Christianity, which they believed was consistent with considerable national and regional variety of creed and worship. They again invited nonconformist churches to participate in joint conferences with the bishops for the purpose of further exploring the possibilities of reunion.

Within each of several countries the union ideal is making headway. There is the United Church of Scotland; the Wesleyans and Methodists of Canada have joined forces; Baptists, Congregationalists, and Presbyterians in England are striving to find a basis of unity; and other movements are taking place in Persia,

China, Japan, Nigeria, India, and elsewhere. These movements are not unimportant.

As J. H. Oldham well reminds us, the church has been for many years content to fit into the framework of the modern political state. But can it be true to its spiritual mission and accept such a subordinate role? Can the church which claims to be the instrument of God be satisfied to allow the world to become increasingly dominated by secular, national, "this-worldly ideals and loyalties"?[87]

The research department of the International Christian Social Institute organized in 1934 a preliminary international conference, which decided to convene a world conference of churches to deal with the problem of "Church, community, and state." The work of preparation for the universal gathering occupied over two years; several subsidiary conferences were held for purposes of preliminary study; over one hundred papers by outstanding scholars were circulated; and, as a result of these thorough preparations, the Oxford Conference of July 12–26, 1937, proved to be an event of first importance. One may find in its *Proceedings* a description of the common worship each morning, the brilliant garb of the delegates, and the addresses and reports. Here it must suffice to point out the main conclusions:

The Conference made an important distinction between ecumenical and international. The latter term presupposes the division of mankind into separate nations "as a natural, if not a final. state of affairs"; the former term emphasizes the fact of unity ir Christ. Now, because the church has an ecumenical spiritual character, it can, or should, bring to international questions "an insigh which is not to be derived from ordinary political sources." To those who doubt man's capacity to overcome the divisions of nationalism through an effort of will, the church offers "not an ideal but a fact, man united not by his aspiration but by the love of God."

The Conference came to a conclusion which, if Christians take it seriously, has tremendous consequences for the modern state: A true conception of international relations, it asserted, "requires a recognition of the fact that the state, whether it admits it or not, is not autonomous, but is under the ultimate governance of God." The delegates realized that international relations are still considered in terms of power. This evil they claimed must be reme-

[87] "It seemed plain that Christian thought must be directed with the utmost energy to the problem of the state."—J. H. Oldham, *The Oxford Conference, Official Report*, p. 7.

died. The source of the evil is to be found "in the claim of each national state to be judge in its own cause," and the church has the duty of urging upon nations the abandonment of the claim of absolute national sovereignty. The Conference, while admitting the failure of the League of Nations in many respects, asserted that "no alternative conception or method of comparable range has come to light in the intervening period, and the need for an agency of international co-operation is as great as ever." It supported the Permanent Court of International Justice, and strongly condemned war, which it described as "a particular demonstration of the power of sin in this world and a defiance of the righteousness of God as revealed in Jesus Christ and Him crucified. No justification of war must be allowed to conceal or minimize this fact."

The delegates noted that Christians are not agreed as to what they should do in the event of war. Some accept pacifism; others will support a "just war," provided that judgment is given against an aggressor by a third party on the basis of international law and organization; and a few, believing that war is rooted in human nature, accept the view that a Christian's duty is to obey the state as far as possible, because it is the duty of the state to maintain order within and defend its people against enemies from without. These contrasting views, the Conference suggested, bear witness to a perplexity which itself "is a sign of the sin in which its members are implicated" and urged that through prayer and study the problem should be still further examined. A profoundly challenging statement is contained in the words: "the Church should remind its members that the principle of the unconditional supremacy of the state or nation, advanced either in time of peace or war, is incompatible with the Church's faith in Jesus Christ as its only Lord, and is therefore unacceptable as the final norm of judgment or action."

A close examination of the declarations of the Conference reveals that in them the participating Christian churches have taken a stand in general terms against the excessive claims of the most dominant political institution, the state, and the most powerful idea, sovereignty, which together have ruled the political world since the Reformation.

In December 1938 the International Missionary Council of the Christian Church held an important meeting at Tambaram, near Madras, in India. With 471 persons from about seventy countries in attendance, for the first time in history the younger churches of Asia, Africa, Latin America, and the Pacific Islands

had the same representation as the older churches of Europe, North America, Australia, and New Zealand. Hundreds of proposals which of course cannot be mentioned here were considered by it. The Madras Conference, it was hoped, might usher in a new era of co-operation because of the profoundly inspirational character of its proceedings and the universality of its representation.[38]

Although students have been subjected to the dividing influences of nationalist and secular education, the Student Christian Movement for nearly fifty years has striven to maintain the ideal of unity throughout the world. It has branches in nearly three thousand universities and a membership of 300,000. It has held world conferences in Tokyo (1907), Peking (1922), and India (1928) for the purpose of binding Occident and Orient more closely together; and the latest world conference in Holland in 1939 endeavored to set the Christian ideal of brotherhood above the intense nationalisms rampant in the world—but with apparently doubtful success, even among its own members at the Conference.

Conferences have also taken place between representatives of Christian and non-Christian religions in order to see if the great religions of the world which derive inspiration from infinitely greater sources than human political organizations can co-operate to preserve the finest values of the various civilizations which are now being threatened by the reign of war and barbarous destruction. A typical gathering was that held in England in 1938, when services and discussions were led by profound scholars of the Moslem, Buddhist, Christian, and other religions. By using a common terminology they were able to realize the essential unity of purpose underlying the respective faiths and the relatively small importance of the differences in their expressions of faith.

The war and the dislocation of millions of people had profound effects upon the churches.[39] Space does not permit enumeration of the many conferences called by churches and affiliated bodies to held their co-religionists in their time of suffering. Millions of dollars have been subscribed to help rebuild churches abroad; religious organizations have participated in food and

[38] See J. R. Mott, *Five Decades and a Forward View* (Harper & Bros., New York, 1939); also William Adams Brown, *Toward a United Church: Three Decades of Ecumenical Christianity* (Charles Scribner's Sons, New York, 1946), which contains an extensive bibliography prepared by Paul Griswold Macy.

[39] For a deeply moving account see Adolph Keller, *Christian Europe Today* (Harper & Brothers, New York, 1942).

relief programs; some have undertaken specific projects as the American Unitarian Service Committee which sent a team of medical specialists on a medical teaching mission for two and one-half months in the summer of 1946 to Czechoslovakia. The American Friends Service Committee continued its remarkable work. The World Council is laying its plans for more extended world co-operation.

All this represented a gain, but on the other side of the ledger, as Walter Van Kirk pointed out, a vast amount of sectarianism, local self-sufficiency, and preoccupation with local building and other activities gave evidence that a sufficient energization of the churches had not taken place to make them adequate inspirers in the present world crisis. Van Kirk compared the amounts spent in the United States on building plans with those collected for foreign missions and drew the conclusion that in too many instances the churches had lost sight of their universal task.[40]

Also religions like nations are not all willing to forego their claims to exclusive loyalty. Some of them claim to be the special medium through which God reveals his will and purpose and are unwilling to co-operate with other religions on a level of substantial equality. Admirable is the ideal of interreligious co-operation; but it will involve a much greater knowledge of comparative religion, a deeper appreciation of the best in all religions, and a sense of the appalling gap between theory and practice which characterizes practically every organized religion.

It is relatively easy to make a declaration that absolute sovereignty belongs to God alone and that the churches should take a theoretical stand against the doctrine of political sovereignty claimed by the modern state. Admittedly such a step bears witness to some advance in recent religious social thought. But if nothing more than a vague general statement is made, little will be done to arrest the processes of disintegration, because no procedures will be established to translate the general ideal into practice.

If it was simple enough for governments to appeal to the Kellogg Pact, which renounced war as an instrument of national policy, in order to justify wars allegedly defensive in character, it will be even simpler, in the absence of appropriate institutions to determine the aggressor, for war-minded governments to preach a defensive war in the name of morality, of religion, and of God

[40] Walter Van Kirk, *Global Strategy for Religion* (Willett and Clarke, Chicago and New York, 1945).

himself. The question is whether it is possible to devise procedures by which the religious values of peace and good will can be combined with the ideal of preventing the aggression of a war-minded state. The church is right in denying the claims to absolute sovereignty on the part of the state; but that alone will not prevent men from fighting for the defense of their country if it is attacked by an invader. The church must therefore support the institution which can best stop aggression. It must ask itself what form of society will prevent governments from making war, and it must transfer its sense of civic duty and loyalty to that form of society. Sooner or later it would seem that the church must take a determined stand against the present exaggerated claims of the state, if it is to be true to the loftiest ideals which gave it birth.

If the church is to make an effective contribution to peace, a broad program of studies and sermons on the relations of church and state must be undertaken. The emphasis must be on the devotion to the institutions (especially as they go beyond the state) which will best prevent war. The church is not to conceive its duty in terms of accommodating itself to the state. There are values beyond those which the state is at present serving. Christians are more than citizens of a state, and if they are to be loyal citizens of the wider community of God they must set up expert committees to study the technical problems involved in the prevention of war. Many such committees have already been established and are working in co-operation with laymen's committees. Their findings need to become part of the everyday active values of the whole body of Christendom and other faiths.

One important method is suggested at this point, namely, that the international obligations of the states within which churches reside should be transformed into constitutional obligations. The religious groups should insist that international treaties entered into by their governments should in all cases be binding upon them. How far the churches are from being ready to take so determined a stand, and to subordinate the sovereign state to wider ends, may be seen by asking the question how many churches would be willing immediately to remove the national flags from above their altars.

A happy reconciliation is possible between the claims of the state and of the church and of other forms of society, but at present the everyday emotional loyalties are in the service of the national state. If, however, the latter continues to exhaust itself by

unceasing turmoil and warfare, and to reveal its inadequacy to satisfy the deeper needs of man's nature, we may well witness a widespread renewed sense of the fact that basically man is a creature of the universe and only secondarily a citizen of a state. When this sense of proportion returns, loyalties may fall into truer perspective and a better balance be struck between the claims of the immediately political and the ever-present universe which religion, however imperfectly, attempts to interpret. No final answer can be given. The outcome depends upon the kind of religion and the kind of nationalism.

We may summarize by indicating several vital questions to which answers are desperately required and which too often church leaders and members either have ignored or have answered with vague generalities. (1) Does the individual owe his supreme loyalty to God or to his nation? (2) If to the former, is the church pre-eminently and without challenge the authoritative spokesman and if so, which church? (3) What is the relation between church and state especially in an age of atomic welfare? (4) Can the churches make vivid the living presence of God or is this idea an illusion sentimentally held by well-meaning people? (5) Can the church demonstrate in intellectually and morally compelling terms the existence and the sheer necessity of moral values? (6) Can the churches convincingly illustrate the truth that man's personality is not rooted primarily in the nation but that here-and now and in his multifarious activities is rooted in the universe? (7) Can the churches convincingly bring to immediate realization what is involved in the terms of majesty of God, the infinitude of the universe, compared with which the pretensions of national governments are but puny gestures and that, therefore, in the attempt to force men's loyalities into this human creation, states violate the fundamentals of man's essential nature?

In some respects the churches have taken significant steps in attempting to meet these questions. A few examples must suffice. In 1943 the Federal Council of the Churches of Christ in America produced the study, *Six Pillars of Peace*,[41] and in the following year published two studies, *A Durable Peace in Europe,* written by William Henry Chamberlin, and *A Durable Peace in Eastern Asia*, by Willis Lemott. Many conferences were held, such as that at Cleveland, to consider the planning of the peace, and similar meetings took place in other countries.

[41] *Six Pillars of Peace,* The Commission to Study the Bases of a Just and Durable Peace of the Churches of Christ in America, New York, 1943.

A recently established Commission of the Churches on International Affairs is publishing periodic reports, and the world's committee of the Y.M.C.A., at its executive meeting in March 1946 in Geneva, gave particular attention to UNESCO. Mr. Wesley F. Rennie, now an Assistant General Secretary of the World Alliance of Y.M.C.A., and others are working strenuously to organize that institution for effective participation in a study of world affairs. He proposes an office in New York near the headquarters of the United Nations for the purpose of maintaining close liaison connections and promoting a continuous program. Under the policy adopted by the United Nations, pursuant to Article 71 of the Charter, the World Alliance of the Y.M.C.A. has been accorded consultative status by the Economic and Social Council of the United Nations.

These examples are typical and not exhaustive, but they illustrate the growing concern of the churches in the establishment of an adequate world political order.[42] In addition, much thought has been given to the question raised above, namely, the relation between the church and the modern sovereign state. During World War II many religious bodies experienced a deep searching of the soul on being again called upon to support war. Paul Hutchinson[43] brings forward impressive evidence to show how reluctantly many churches fell into line, though J. Milton Yinger in his analysis shows how the national crisis in both world wars tended to produce a nationalist fervor in the majority of religious congregations.[44] Hutchinson draws attention to a number of important pronouncements on the subject of the Christian church in relation to the recent war—one, from the Baptists of the Maritime Provinces of Canada, another by Special Commission of the Church of Scotland under the chairmanship of Professor John Baillie, and the remarkable report, published in November 1944, by a commission of 26 American theologians under the chairmanship of Professor Robert Calhoun of Yale. The report, entitled *The Relation of the Church to the War in the Light of the Christian Faith,* is a remarkable document which deserves much attention. Writings of continentalists like Karl Barth indicate that

[42] See Commission of Churches on International Affairs (Form C.1. March 21, 1947), *Human Rights and Fundamental Freedoms,* by O. Frederick Nolde.

[43] Paul Hutchinson, *The New Leviathan* (Willett, Clark & Co., Chicago, New York, 1946).

[44] See J. Milton Yinger, *Religion in the Struggle for Power* (Duke University Press, 1946), chapter vi.

theologians of other lands are also deeply concerned with this question.

Reinhold Niebuhr, to quote one more writer, ably analyzes the sinful elements, such as pride and pretension, that go into national judgments, and he points out the nemesis which overtakes nations who presume to sit in moral judgment upon their defeated enemies.

> The conferences of the victorious Great Powers, solemnly deciding to hold the vanquished in the chains of an indefinite occupation and seeking by mere punishment both to turn the heart of the foe to repentance and to maim his power sufficiently to make him incapable of future wrong-doing, present us with the most pathetic symbols of the vainglory of man.[45] . . . . a nation which has the power to annihilate other nations does not achieve, as a concomitant of that power, the transcendent wisdom which would make it the safe custodian of such power.[46]

He suggests that without humility and self-examination the victorious powers, our own nation included, may easily, and sooner than they realize, doom themselves to destruction.[47]

Finally, increasing attention has been given to the relations of Christianity to the other major religions of the world. Space does not permit a historical review of the changing relations, sometimes cordial, sometimes hostile, between the major religions. Suffice it to say that, at the present time, challenging works are appearing. William Ernest Hocking, for example, in his *Living Religions and a World Faith,* shows how it is possible for Christianity, Hinduism, Mohammedanism, and other faiths to co-operate, not by producing formulae showing the highest common factor in the expressed beliefs, but rather by the earnest exchange of thoughts and experiences which will tend to enrich and broaden their respective faiths.[48] On the other hand, those who believe in the unique

[45] Reinhold Niebuhr, *Discerning the Signs of the Times* (Charles Scribner's Sons, New York, 1946), p. 35.

[46] *Ibid.*, p. 70.

[47] For an interesting statement of the function of the church to bring before the peoples of the world the all-importance of natural law, see Canon Cyril D. Hudson, "The Church and International Affairs," in *International Affairs*, Vol. XXIII, No. 1, January 1947, pp. 1–10. A Catholic view is given in Christopher Dawson, *Religion and the Modern State* (Sheed & Ward, New York, 1940). Karl Barth's *The Church and the War* was published by The Macmillan Company, New York, 1944.

[48] William Ernest Hocking, *Living Religions and a World Faith* (Harper & Bros., New York, 1940).

and exclusive character of their faith will deny much that is contained in Hocking's thesis. Typical of this viewpoint is Hendrick Kraemer, who asserts the principal of discontinuity.[49] It lies beyond the province and capacity of the writer to analyze the theological questions involved. What can be done is to indicate the rich thought available in the writings of men like Karl Barth, Emil Brunner, Paul Tillich, Jacques Maritain, William Temple, Reinhold Niebuhr, John Baillie, and Nels Ferré, to mention but a few of the outstanding writers.

[49] Hendrick Kraemer, *The Christian Message in a Non-Christian World* (Harper & Bros., New York, 1938).

Chapter XVI

INTERNATIONAL LAW AND ORGANIZATION

THERE has been a persistent tendency to oversimplify the description of political societies. Scholars write of tribes bound by blood ties, and about city-states, feudal communities, nations, and empires; but it is important to realize that these names do not describe entirely different entities with nothing in common. In reality, all groups of people must meet common problems; and although a thinker may err in the direction of finding too much similarity among different types of groups, he may also exaggerate the element of difference; differences then become magnified into near absolutes and the intellectual superstructures tend to monopolize theorists and others, blotting out the common foundations upon which all societies must exist.

CHANGES IN THE UNITS OF GOVERNMENT

Many tribal communities have been bound together chiefly by blood ties and myths, but even they did not and could not entirely discard the territorial factor. Tribes live on the land, and there grows up a vested interest in land. The soil is sacred to many tribes, and it would be strange if legal or political claims to it would not come about. Moreover, Indian tribes formed major federations; and these must have had some kind of territorial foundation. Unless a tribe is purely nomadic or engages in nothing but a shifting cultivation, if rivers or water holes are important to them for drinking purposes, there must be agreements as to their use. Thus the tribe cannot be considered apart from the place in which it lives. A tribe's concept of boundaries may have been far less exact than ours, but tribalism does not imply total lack of territorialism. One principle alone does not govern this or any other form of society.

The Greek city-state was not merely a geographic unit; it was also a tribal state, a community of persons, united by tribal ties

and religious bonds; and blood, brotherhood, and birth entered into its concept of worship. Moreover, these cities had a large element of the country in them and were less sharply separated from rural life than are many of our own metropolitan centers. Thus, although the political unit in ancient Greece was the city-state, it was not wholly divorced from tribal organization and myths and ceremonies connected with the tribal attitude to life. The same holds true of Rome. Now, as an instrument of government, the city-state may appear to have little in common with the modern nation; but the political groups of that time, like our own, had to live together and work out orderly intercourse. Were the rules which governed them intermunicipal rather than international relations? It may be, but the term "international" has been freely and appropriately applied to them. In some respects the ancient city-states had the essential characteristics of a modern state, and the inter-city relations bore a resemblance to present-day international relations. Otherwise, why the designation "state"?

The civic patriotism of the Greeks was only partial, and their essential weakness was twofold: they could not or would not develop an adequate inter-Greek-city organization; and they could not or would not develop an adequate internal unity. The unit of government of the city-state was not strong enough to solve the wider problems of defense or to settle the differences within the city arising between its social classes. Thus the excessive desire for absolute state independence, the failure to form larger political units which the changing times and needs demanded, the declining power of the god Apollo, the ravages of plague, and the failure to solve the problem of war led to the fall of the city-state or rather its transformation into a subordinate entity. Alexander formed a great empire, and in the light of this the fights between the little Greek states at home "for a strip of meadow land seemed mere ebullitions of jealous folly."[1] What were once struggles in the balance-of-power system of Greece became in the new and wider perspective absurd local squabbles and bickerings.

The destruction of Greek political independence did not mark the complete eclipse of the city-state. As a form of government, it was to play an important although not an independent role in European history for several centuries. Alexander, the Seleucids, and Rome preserved the city-states as political units, superimposing upon them a wider imperial form of government. The Roman Empire comprised in large measure a union of city-states under

[1] C. Oman, *A History of Greece*, p. 545.

the control of a premier city-state. The new government was not merely an empire excluding the city-state; the two types co-existed, each fulfilling certain purposes.

As Rome pursued her path of conquest and brought more and more cities and peoples under her sway, she modified her attitude toward the doctrine of equality of states. Having become the dominant power, she forced her neighbors into special relations with her, relations which were not those of equality in peace time and did not permit their neutrality during war. If they did not choose to be her "allies," they must run the risk of being regarded as her enemies. When Rome reduced the Greek cities to a condition of dependence, the relations of the latter with one another "became only pseudo-international in nature, being subject to the increasing overlordship of Rome." Arbitration was then not truly international in nature, but rather a form of civil regulation, since Rome made it almost mandatory. Vinogradoff designates the international law of Rome "private international law."

The Romans permitted a great variety of status and a large amount of self-government in their provincial towns. They dissolved those political leagues and unions which threatened military resistance, but at the same time they permitted the traditional forms of city life to continue. There were different ranks for different cities—those with full Roman franchise; those which possessed the rights of Latins; the free or federate cities, which enjoyed freedom and immunity from taxes; and stipendiary towns, which were subject to taxes at the pleasure of Rome but were administered by their own magistrates and enjoyed considerable autonomy. Undoubtedly the Roman rule brought peace and order to the outlying provinces.

The fall of the Roman Empire did not take place in sudden catastrophic fashion. Many of its ideas and much of its organization lingered on. But, as the central power weakened, local units grew up. They took the form of feudalism, manorial in the country and civic in the towns. As the Church grew to power, another unit of government grew up; and between the Church and the local feudal units, many struggles developed. After several centuries the idea of universal government based upon Christianity and the inherited traditions of the Roman Empire reasserted itself.

The "universal idea" which captured the imagination of medieval thinkers was essentially religious in nature. Men sought guidance and authority from the Holy Scriptures; they contemplated the universe and saw society and the individual in relation to it.

They saw that God had made the world and created harmony between its many parts, and believed that each individual reflected something of the universe in himself—he was a microcosm in the macrocosm. It followed that all the individuals who composed mankind formed a "unity" which came under the operation of God's law and that the government of this mankind logically should be a "unity." Now human life is both physical and spiritual, and its unity must therefore embrace both these aspects.

It was at this point that the medievalist saw that Church and State each had a part to play: God rules in Heaven over the heavenly spirits, and the Pope as his representative on earth should rule over the souls of man. But God is also Lord of the earth and consequently has "a second earthly viceroy," the Emperor, to minister to the civil needs of man's present life. Both Pope and Emperor therefore have high functions to fulfill; each must help the other in the furtherance of the Kingdom of God on earth.

This noble ideal of two universal representatives working in alliance for the purpose of establishing justice and happiness on earth demanded extraordinarily high qualities on the part of Pope and Emperor—skill and insight, tact and devotion, and readiness to co-operate. It presupposed a fairly clear dividing line between spiritual and temporal matters, and that the duties of the Pope and the Emperor could be easily delimited so as to avoid disputes concerning the scope of their respective jurisdictions. Unless Emperor and Pope behaved with moderation and restraint, and refrained from extreme claims for their position, the attempt at what might be called "joint universalism" was not destined to succeed and Church and State would find themselves competing, and not co-operating, for men's allegiance.

But neither Pope nor Emperor behaved with moderation and restraint, and for several centuries they fought each other in bitter conflict. They looked for allies and intrigued with cities and bishops and local bodies to gain more power. The ideal which had begun as a co-operation of two universal authorities bound together in a mystic unity degenerated into little more than a medieval struggle for the balance of power; and the representatives of God, both civil and spiritual, succumbed to the typical methods of common political bargaining.

With the defeat of Emperor Frederick II (1250) the Empire fell and ceased to be a universal agency of real power. It was to continue as an ideal and a theory, but its great days had ended. The Papacy seemed to have won an unqualified triumph. The Church

became the great center of European life and the controller of its destiny. Pope Innocent III placed France under interdict until the King restored his wife to her legitimate place. He also put England under interdict and excommunicated King John. He nominated and deposed emperors. He set in motion various crusades, and claimed the right to mediate disputes between monarchs and between rulers and their subjects.

But the Church was not the only unit of government. There was the Emperor. There were the feudal lords, many of whom looked with fear and suspicion upon the claims of the Pope, many of whom disliked the sending of so much revenue to Rome. They opposed the claims of the Pope to be supreme arbiter because of the absence of a universally recognized system of international law.

Moreover, feudal law varied from state to state, and there was no authoritative code; nor was there any guaranty that the Pope, a nonexpert, would be qualified to settle points of feudal law. Nevertheless, the Papacy continued to make its exclusive claims and asserted that the Church might give and take away from subjects the right of citizenship, and that religious consecration was necessary before accepting temporal authority. Thus the Pope could use a doctrine to support rivals of an irreligious or anti-Papal King.

Note, too, that the Church had in reality become engaged in an amazing amount of legislative, administrative, and legal activity. Canon law covered a wide field. Rome exercised a universal appellate jurisdiction. The Church claimed the right to excommunicate and interdict and could denounce heresy and make the confessional obligatory. These religio-political powers clashed with the growing system of state or national law and, as already mentioned, with the feudal law. Another factor also appeared. The extension of trade and commerce revived ancient customs and rules which gradually developed into a cosmopolitan system, the Law Merchant, enforced by the merchant courts of various countries. Economic life was developing its own organization, methods, and scales of value.

Moreover, national law was beginning to grow up, in England from the twelfth century and in other parts of Europe more slowly. The growing power of the princes and the national states took place at the expense of the feudal lords below and the Emperor and the Pope above. A new unit more extensive than the feudal and more suited to economic needs grew up. Whatever the theory of European unity under Church and Empire, the practice was frequently deplorable. Disorder was rampant. The new national

units were in many ways not efficient instruments of government; but the King and the state which developed in opposition to feudalism on the one hand and to the Pope and Church on the other did serve a real need, and their growth challenged the whole basis of medieval society.

The Reformation movement completed the disunity of Christendom. Luther opposed the Church and exalted the power of the German princes. He claimed divine origin for royal power, insisted that subjects give absolute obedience to their rulers, and condemned the peasants for revolting against lawfully constituted secular authority. He set the divine right of kings against the divine institution of the Church, and even advocated giving control over religion to the sovereign princes. He gave a tremendous impetus to the state, and encouraged a policy which was to repudiate the ideal of the Church Universal and to become closely identified with the growing national states.

Machiavelli was also expounding the all-importance of the ruler and the state. His teachings struck a further blow at the Church and at religion as the unifying agency of Europe, and intensified the forces making for political and social disunity.

Meanwhile Europe was experiencing a curious confusion of religion and politics, similar to the confusion which we find in the modern world. For more than a hundred years people were torn by the conflicting loyalties of religious faith and the growing nationalism. Was a person primarily a Frenchman, owing allegiance to his king, or was he above all a Catholic, bound by indissoluble ties to the Church? The question became a real one to the people of Christian Europe, and the religious wars from 1500 to 1700 showed that men had not yet finally chosen nationalism as their god, for Catholics and Protestants still fought each other to the death within the bosom of a single state. The universal idea of the Papacy was still the living politico-religious faith of millions of people; and many Protestants, too, who did not think in political terms but merely desired peace and salvation for their souls, fought and suffered for religious freedom, and opposed the claim of the state to mediate between God and man.

Others attempted to reconcile religion and nationalism, or tried to separate the spheres of politics and religion.[2] Many Catholics believed that they could remain good Catholics in religion and be good Frenchmen in politics; many of them were willing to support a foreign Protestant prince against a foreign

[2] The same forces are at work in the Moslem world today.

Catholic ruler if such an action would strengthen the political power of France, even though it meant weakening the influence of the Church by weakening its political allies. Nor did this confusion of loyalties complete the picture. The Emperor still claimed a paramount position and watched the mounting claims to independence of kings and princes with deep concern. Each of the units—Church, Empire, and nation—became engaged in a contest to gain and preserve as much power as possible for itself. The Reformation unloosed these criss-cross emotions and produced a veritable chaos of tangled forces. For thirty years, the struggle continued: Emperor versus nation, Emperor versus Pope, Pope versus nation, shifting alliances, and confusion of purposes. It is not surprising; for Europe was engaged in changing its fundamental basis; and changing fundamentals necessarily produces doubt and confusion.

When the state had become more firmly organized, what happened to the all-embracing claims of the Pope and the assertion of the Church universal? No longer could the Papacy ignore the existence of the sovereign state, however much it might deplore it. It was obvious that there was no longer a united Christendom, and that the Pope no longer stood as the supreme head of one great assembly of the faithful. At the conclusion of the great religious wars of 1618–1648 the Treaties of Westphalia revealed that the Pope had suffered an irreparable loss of power and prestige, and that Europe had rejected his claim to unlimited authority and had turned to the ideal of the modern state. The new settlement, by depriving the Catholic Church of its universal power, opened the way to what we know as "modern international relations," i.e., relations among sovereign states. Territorialism and Protestantism had gained a permanent place in Europe. The religious and civil powers were no longer two aspects of one society; Church and State had become two different institutions. International politics had become secularized.

But the Papacy did not submit to the "secularization" of European and world politics without protest. The Treaties of Westphalia threatened the whole basis of Catholic supremacy which had been so patiently built up during the centuries. Wangereck, and other apologists, protested against the Treaties because (1) the princes had granted the right of worship to heretics, but only the Pope, as the guardian of men's souls, could exercise such a power; (2) the princes had wrongly set aside the jurisdiction of the Church when they had extinguished "certain bishopries

and other ecclesiastical rights or decrees." Wangereck protested also against the general formula which had been inserted in the Treaties in order to override and nullify any Papal protest.

Here stood the signpost marking the change from the medieval to the modern system of international relations. The Pope's protest might enable a state to break its treaty obligations, on the plea that the Pope's superior command ordered it to do so; in that event there could be no guaranty of treaty observation and stability. Therefore, the princes deemed it important to guard against the possibility of permitting Papal interference. They did this by inserting a most remarkable clause:

> That there shall never be alleged, heard, or allowed, neither against this Treaty nor any of these articles or clauses, any canon or civil law, nor any general or special decrees of councils, whether privileges, indults, edicts, commissions, inhibitions, mandates, decrees, rescripts, pendencies, sentences, rendered at any time whatsoever, [any] verdicts, imperial capitularies, or other rules or exemptions of religious orders, whether former or future protests, appellations, investitures, transactions, oaths, renunciations, all sorts of pacts, still less the edict of 1629, or the Transaction of Prague with its appendixes, or the concordats with the popes, or the interim of the year 1548, or any other statutes, whether political or ecclesiastical decrees, dispensations, absolutions, or any other thing which can be imagined under whatever name or pretext; nor shall there anywhere ever be decreed against this transaction indictments or commissions either from the side of the seeker or possessor.[3]

The Treaties of Westphalia did not end the conflict between Church and State. The Papacy has made many protests against treaties between secular powers during the last three hundred years. One may note especially the protest against the Treaty of Vienna in 1815, both for its secularization of German ecclesiastical lands and its failure to restore the Holy Roman Empire, described by the Papal nuncio as "the center of political unity consecrated by the august character of religion." But the protests and threats of the Church were of no avail and were merely noted.

Nevertheless, arrangements had to be made between the new secular states and the Papacy, because, although the states claimed the exclusive loyalty of their subjects, the fact could not be denied that millions of men and women were devoted to the Catholic faith. They had two loyalties; moreover, a sovereign state which

[3] Quoted in Carl Conrad Eckhardt, *The Papacy and World Affairs* (The University of Chicago Press, 1937), p. 138.

ruthlessly attempted to uproot the religious loyalties would run the risk of having its own foundations overturned, and the Catholic Church could not force its own religionists to forego their political loyalties. A compromise was reached in the form of the Concordat, an arrangement between the Papacy and the state which regulated the rights and privileges of bishops and other officials of the Church and of the body of people themselves. The Concordats are in a sense a truce between two irreconcilable views of life. The fundamentals of the Catholic Church cannot be reconciled with the fundamentals of the modern sovereign state. The two instruments may compromise their differences, but a compromise only it will be. Basically the same is true regarding the Protestant and other religions.

The state system set up in the seventeenth century was largely absolutist in character. The French Revolution challenged the social foundations of the absolutist order and attempted to take charge of the state and to change its internal nature. In 1814 a conservative restoration took place. Within the formal framework of the state, many variations were possible: Theoretically, it made little difference who controlled the state, seeing that the state was a sovereign entity; but in practice differences of social complexion had far-reaching consequences.

The earlier state system was not synonymous with the modern nation, and, indeed, nationalism arose as a rebellious movement against the established state order. Almost no modern nation has arisen to power except by war. The Turkish, Austrian, Russian, Spanish, and, in a sense, the British empires, were each transformed, having to give independence to their nationalities at the point of the sword. But the new nations transformed themselves into states. In a theoretical sense, the state remained unaltered. It was still sovereign, but only in the most formal sense could the sovereignty of the hitherto subordinate fragments be the same as the sovereignty of the empires of which they had been a part. The establishment of the national state did not end the loyalty of many of their subjects either to the Catholic Church or to local institutions, some of which retained a distinctively feudal flavor. But the theories of sovereignty and the exclusive devotion to the new political theory of nationality obscured the fact that many rule-making agencies outside of the state remained effective and that many groups which had amalgamated retained their special interests. The theory of monoloyalty tended to hide these other deep-seated factors.

INTERNATIONAL LAW AND THE MODERN STATE

After the breakdown of the feudal system and the political authority of the medieval Church, as we have seen, the modern state arose and developed the theory of sovereignty presently to be examined. Nevertheless, intercourse between peoples did not cease and rules to govern that intercourse gradually evolved. These rules constituted the beginnings of modern international law as we know it. They were helped by the spread of Roman Law throughout Europe during the Middle Ages and by the rules or regulations developed in order to serve the needs of medieval trade and commerce. Towns and cities had to work out rules in order to regularize conditions under which ordinary peaceful trading between relatively independent towns might take place. Indeed, they formed leagues, the most famous of which were the Hanseatic League, the League of the Rhine, and the Swabian League, which set up arbitration methods and united for the defense of the interests of their members.

The growth of sea trade led merchants from different cities to work out codes which dealt with many complicated problems arising in ocean transportation. The formation of the British and Dutch East India Companies and other similar organizations, often under government auspices or at least with official encouragement, assisted in the same direction. Grotius' famous work, *Mare Liberum*, which deeply influenced the course of international law, was written to assert the right of Dutch merchants to participate in the trade of East India.

The century-old habit of sending official representatives with diplomatic status led to rules of official intercourse which regularized the ways in which governments transacted business with one another. Men realized that rules of war must be adopted if conflicts between communities were not to degenerate into irresponsible massacres; if war was to be an appeal to force in order to obtain rights or to remedy wrongs, and not just wanton destruction of human life, it must be fought according to methods agreed upon by the different peoples. Scholars did not lose the ideal of the intellectual unity of Europe; and the Church and theological writers kept alive the intellectual and spiritual background which formed the inspiration for many scholars in their endeavor to build a more orderly society in Europe.

The jurists played an important part by their appeal to the law

of nature.[4] The concept of natural law is not so easily expressed in nontechnical language, but perhaps for the general reader it can be put thus: Human beings cannot disregard the natural world in which they live. They must have food and water, warmth and shelter. If they wish to build a house or a road or a harbor, to sail a ship, to paint a picture, to play an instrument, or to construct a machine, they must follow certain rules. If they are to be efficient they must adapt themselves to the requirements imposed by the nature of the materials with which they work; and they must take into account the nature of human beings; the society which ignores or violates some of these fundamental facts of life must pay the penalty.

Political law cannot ignore certain fundamental natural conditions. The weakness of the naturalist school of jurists lay in their too easily identifying so-called physical laws with human laws. Nevertheless, it is basically true that human standards must be built within certain limits of natural forces, and mankind does well to remember the earth-bound and nature-bound conditions of its existence. It is in this sense that natural law forms the basis of international law. Sheer necessity requires that individuals and peoples in their dealings with one another shall observe restraint, promote order, and live within a considerable measure of routine.

The development of international law was profoundly influenced by the rise of the modern state. One might even say that its very existence was challenged by the new theories which grew up, and especially by the concept of sovereignty, which, from relatively humble beginnings, came to dominate much of the legal thinking of the West. Originally *sovrain* (from the Latin *superanus*) meant "superior" and "superiority"; it is a relative term, which implies that there are persons subordinate to the "superior," and was used in the sixteenth and seventeenth centuries (1) to justify the separation of the state from the medieval Church and free it from ecclesiastical interference; and (2) to centralize power in the monarch in order to bring unity to the state from within and break the independent power of feudal lords, cities, and other local authorities. From that meaning, it grew until today states use it to justify their absolute independence and their right to do anything in international life which they will to do.

[4] The factors which contributed to the development of international law are dealt with in G. A. Finch, *The Sources of Modern International Law* (Carnegie Endowment for International Peace. Washington, D.C., 1937), chapters 1–3.

Luther helped to expand the idea of sovereignty by calling upon the secular princes to reform the Church. Since the Church was a divinely ordained institution, the prince had to have a correspondingly divine status if he was to exercise power over it; and Luther used theological arguments for the purpose of freeing the state from external interference at the hands of the Roman Church. Bodin in 1556 published his *De Republica,* in which he argued that in every state there must be a central power, the sole creator of laws, yet not bound by them. Bodin had not cast off certain medieval ideas; hence he did not carry his theory to a logical conclusion; "his sovereign, though not bound by the law of the land, was bound by divine law, by the law of nature, and also by the law of nations," and even by certain fundamental laws. Nevertheless Bodin had "laid the foundation of national sovereignty."

Gentilis (1551–1608) took the important step of separating international law from theology and ethics and made it a branch of jurisprudence. In contrast to the Spanish writer, Victoria, who based international law upon medieval religious foundations, Gentilis turned to the actual practice of states in order to find out what was the nature of international law.

During the sixteenth century the state was mainly concerned in establishing its internal sovereignty and preventing interference from without. When Spain, England, Portugal, and Holland began to found their colonial empires, the state began to assert sovereignty in its external relations. It was to be free from restraints imposed by any other authority in its expansion abroad; no other human institution could limit it. Sovereignty thus grew in meaning. This transition was accomplished by Grotius (1583–1645), who wrote his *De jure belli et pacis* in 1625. He attempted to do two major things: (1) He attempted to prove that the independence of states must be accepted, and that the idea of sovereignty must be conceded. The ruler must have power over his subjects, but he must use his power to promote justice. Because man is a rational being, he must obey natural law or "the dictate of right reason." The sovereign therefore was not free to act without a view to right conduct. (2) He also attempted to mitigate the barbarities of war. He wrote during the great Thirty Years' struggle (1618–1648), which evoked terrible passions and cruelty "as if a single edict had released a madness driving men to all kinds of crime." So, while accepting sovereignty, he tried to make it compatible with distinguishing between a lawful and

an unlawful war. A sovereign must indulge only in lawful or just wars. He is not free to abuse his sovereign rights but must obey the law of nature.

Unfortunately the law of nature was not a clear-cut system of specific rules; and the very vagueness of the concept enabled rulers to do it lip service, if they so desired, and yet go to war. Nor did Grotius' attempt to distinguish between a just and an unjust, a legal and an illegal, war fare better. In the absence of any third party to judge between two states in a dispute, each could claim that it was fighting in a just cause. Grotius had made it possible for later princes and theorists to use his idea to give a cloak of legality to their aggressive designs. His attempt to clarify the distinction between a legal and an illegal, a just and an unjust war failed because of the absence of satisfactory international machinery to give an impartial and authoritative verdict. Perhaps he was too close to the days of the medieval Church to be able to propose any supra-national machinery.

Despite his great service, Grotius gave an emphasis to international law which was in one respect unfortunate. He was so preoccupied with the problem of war that he gave it a disproportionate share of attention and did less than justice to the necessity of building up everyday rules to make possible the smoother functioning of the peaceful relations between peoples and states. Sovereignty thus became increasingly associated with the right to make war, and the restraints imposed by the law of nature dissolved under the critical thought of the eighteenth and nineteenth centuries.

For, given the idea of sovereignty or independence, some thinker was bound sooner or later to develop the concept to its logical conclusion. That thinker was Thomas Hobbes (1588–1679), who with incisive skill argued that if the state is supreme, if it is to give orders to all and accept orders from none, then there is no way in which its will can be bound except by its consent or by its being conquered by another. Relations between states cannot therefore be permanently organized except by treaty—an agreement between sovereign states—and a state, being sovereign, may break off the agreement when it so wills. The belief in natural law as a source of international law was therefore weakened and gave place to the idea that only positive law had any validity. Despite Pufendorf (1632–94) and Bynkershoek (1673–1743) the fashion of legal thinking turned toward regarding international law as no more than the rules by which sovereign states

agreed to abide. Ideas of natural law were regarded as "metajurisprudence" or were relegated to the domain of philosophy or theology and therefore of no concern to the jurist. Vattel (1714–69), who accepted the positivist view, wrote that sovereign states must be regarded as so many free persons living together: men are by nature equal and states are therefore equal; "strength or weakness produces in this regard no distinction . . . . a small republic is no less a sovereign state than the most powerful kingdom." From these premises the doctrine of the equality of states naturally followed; and, because states are sovereign and cannot be bound except by their own will, a unanimous vote is necessary before a multilateral treaty can come into effect. If unanimity is required, even a small state can legally prevent a proposal which other sovereign states have agreed to from applying to itself.

John Austin and others in the nineteenth century continued the same line of reasoning, with the result that a modern doctrine of sovereignty, far more pretentious than in its original form, became enthroned in modern international relations. Its main ideas may be summarized: (1) Law is the command of a sovereign. What is not commanded by a sovereign cannot truly bear the name of law. (2) Law must be enforced. Without enforceability, there cannot be law in the true sense. That which distinguishes law from other rules in society is the power of the state to enforce it. (3) A sovereign state is legally and politically independent, and owes no habitual allegiance to any other human superior. Should, by any chance, a sovereign agree to a limitation of its authority, such action is no more than an autolimitation, a choice of its own free will which may be altered at its own pleasure. (4) Since law is a command, there can be no limitations imposed by "natural law." Things, values, and actions rooted in the very nature of life itself which lie beyond the commanding power of the sovereign state there may be; but there are not laws to which positive law must be subordinate. (5) From this viewpoint international law cannot be true law: It has no sovereign power, no enforcing power behind it. So-called international law may represent convention, agreement, or morality; but it is not true law. (6) Consequently no external power has any right to interfere with the internal affairs of a sovereign state which cannot admit any legal restrictions on its freedom of action in foreign affairs. It may disregard treaties, declare war, and carry out national policy, without legal let or hindrance.

The theory of sovereignty did not remain unchallenged. Many

jurists criticized it from the viewpoint of legal science. They asserted that: (1) Law is as much the result of consent and agreement as it is of command, perhaps more so. Even a dictator must rule in accordance with public opinion. (2) A law is an expression of man's "material, intellectual and moral needs."[5] There are many factors which contribute to giving power to a government, which "it seems clear can only maintain itself in any durable fashion through the belief of its subjects that the rulers perform their functions." The basis of public law then becomes a matter of organization. If laws are passed to regulate and operate public services and facilitate private services, government and its officials "are no longer the organs of a corporate person issuing its commands. They are simply the managers of the nation's business." (3) Merely to say that law is a command and to disregard its purpose and its material aim is to "distort" one of its most essential factors, namely, the ideal of justice.[6] Law is not merely the instrumentality or expression of a command; it is an agency of justice. This justice, difficult though it may be to define, is or should be superior to even the authority of the state. (4) Historically, law existed for long periods before the advent of the sovereign state. The Mosaic Law, Hammurabi's Code, the Code of Manu, and Medieval Canon Law illustrate the close connection between law and religious belief. Hundreds of tribes have regarded law as the embodiment of tradition; and custom administered by the old men or the chief or the priest is the law for these societies. In Europe, from the days of Greece and Rome, the concept of natural law, the work of philosophers and jurists, profoundly influenced legal systems. The historian would therefore claim that to regard law as nothing more than a command is to ignore its historical development and to overstress the merely modern period. Indeed, the critics go further; they say that the doctrine of sovereignty arose from an assertion of national independence at a time when society was reacting against the universal claims of the Church on the one hand and disorderly, quarrelsome, local and feudal groups on the other, and to erect a theory developed in response to particular conditions into a general rule

[5] Order or law "of any kind is preferable to anarchy." It is rooted in sheer necessity, if life is to be livable. See Charles Fairman, "Sovereignty and War," in *Proceedings of the Institute of World Affairs* (University of Southern California), 1941.

[6] See "International Ethics," preliminary (1928) report of the Committee on International Ethics of the Catholic Association for International Peace.

for other times is unscientific in method and mischievous in practice. (5) Despite the claim that sovereignty is one and indivisible, it is impossible to locate sovereignty in many nations, especially those with a federal system, where power is divided between the central and state governments and neither is finally supreme. In modern government, where division of powers increasingly takes place and delegated legislatures and administrative law are expanding, one can speak of law as command only in a purely abstract and formalistic fashion. (6) The theory of sovereignty is based upon an artificial conception of society. Men and women are not merely citizens of the state but also producers and members of special groups, i.e., trade unions, employers' associations, churches, clubs, professions, etc. It is incorrect, critics say, to assume that these nonpolitical associations are created by the state and depend upon the will of the state. Rather, these groups arise spontaneously and carry out their group activities essentially independent of the state. The state therefore cannot in any important sense be said to be sovereign in its relation to these "independently originating and functioning groups." (7) Not only is the state one of a number of groups within its own territory, or at best an association of associations; it is also only an association among associations. To ignore the interrelationship of nations, merely to speak of the independence, and not to consider the interdependence, of nations is to look at them in an entirely formalistic manner. To talk in theoretical terms of absolute sovereignty when the nation is in fact not thoroughly independent is highly misleading. To concentrate attention on one group, the nation, and to disregard the many groups inside and outside its borders is to see one part of the picture only.

From the viewpoint of international organization there are also serious reasons for doubting the soundness of the theory elaborated by the more eloquent and extreme defenders of "supreme or absolute sovereignty." The so-called sovereign state comes into the family of nations only by reason of the recognition accorded it by the society of nations, which may require the fulfillment of certain international obligations. Most of the nations which gained the recognition of their independence in the nineteenth century and since 1918 did so concurrently with acceptance of certain responsibilities. Belgium and Holland undertook to grant religious equality; Greece was recognized as an independent power on condition that it grant civil and political equality to its new subjects. In 1858 Rumania made certain promises, especially

undertaking not to impose discriminatory legislation upon Jews. After 1918 several of the new governments, some of them under protest it is true, accepted the Minorities Treaties, under which they promised to afford civil and religious liberty to minorities living within their borders.

These obligations of an international character cannot lightly be dismissed by a gratuitous assertion that a sovereign state has freedom to do just what it likes. It cannot by mere unilateral action, or by adopting a particular constitution, free itself from its international commitments. The Permanent Court of International Justice has put it thus: "A state cannot adduce as against another state its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force." A treaty embodies a solemn obligation; and it is not enough to say that merely because a society claims to be sovereign it can violate promises and in the name of independence disregard the rights of others.

What do sovereign states claim as their fundamental rights? They claim independence, the right to be treated as equals; they claim respect, and the power of jurisdiction within their own borders; they claim, above all, the right of self-preservation, which carries with it the right of defense against attack and aggression. But it is clear that if one nation has these fundamental rights the other nations have the fundamental obligation to respect these rights, and that if all nations possess these fundamental rights they must all accept the fundamental obligation mutually to respect each other's rights. Thus, sovereign rights within the society of nations can be only a relative matter; respect for rights means fulfillment of obligations, and therefore national sovereignty becomes a condition of relativity and not of absoluteness. It also follows that if nations do not exercise their rights in the light of correlative obligations they may be guilty of what is called an "abuse of rights." Logically there can be no absolute sovereignty; for, if that were so, all states would have rights in a world where no state had any obligation to respect rights—which would be chaos.

The problem may be approached from another and less theoretical angle. Since the Industrial Revolution the world has become so closely knit that nations are no longer in fact "independent"—they are intimately bound together in a thousand ways. They no longer have absolute control over their own destiny, whatever the legal theory may be. A political assassination in Sarajevo

in 1914 leads to a world war; the failure of an Austrian bank in 1931 forces a world financial crisis; the armament program of Hitler's Germany has caused repercussions all over the earth; Great Britain goes off the gold standard and carries other nations with it. Capital, labor, tariffs, opium, armaments, security, immigration, and health present problems which go beyond any one nation. National governments can no longer solve them. They require inter- or rather supra-national action. Whereas, two hundred or even one hundred years ago, nations could look inwardly for the solution of many of their problems, today such is not the case. The welfare of the nation itself and that of the community of nations require the common action of nations. And "what touches all must be decided by all." From this principle follows the conclusion that sovereignty, the claim to unfettered national action, is no longer to be regarded as the norm by which rights and duties are to be judged. Where the action of the one will endanger the welfare of the many, its actions must be restrained. The facts of modern life are forcing mankind to extend the concept of "abuse of rights" to the international sphere. In a closely knit world where the power to do evil to others has immeasurably increased, how a nation uses its sovereignty is a matter of urgent and common concern. Because interdependence, and not independence, is the fundamental characteristic of world society, interdependence and not independence must be recognized as the fundamental premise on which political and legal thought and organization must be built.

What becomes a matter of concern to the whole world obviously introduces standards of behavior which must be prescribed by world society. The mere plea of exercising sovereign rights no longer suffices; it has to undergo international examination in order to ascertain whether or not the act of a sovereign power can be justified. The League Covenant and the United Nations Charter have haltingly applied to international relations the principle already accepted within nations which have adopted a system of collective national action against individuals or groups found guilty of infringing the rights of others and disturbing the social peace; as long as persons indulge in a legitimate exercise of their individual desires, they remain unmolested; but beyond a certain point they are liable to social control and social correction. In a similar way the League and the United Nations carry the implication of a hierarchy of values. Nations might still claim to exercise sovereignty; a declaration of war, despite a League judgment that

the Covenant had been broken, would still produce a legal situation of war, and to that degree nations might still be sovereign powers able to wage war. The Covenant, however, provided methods of enabling other nations to express combined disapproval and condemnation such that it would not pay states to exercise certain so-called sovereign rights. Certain consequences might then gradually come about. Traditions would grow up and rules become more precise; they would introduce clearer distinctions between legitimate and nonlegitimate expressions of sovereignty. International control over abuses of sovereignty might develop; a struggle in principle over the question whether the nation itself or international society should be the judge of certain actions hitherto regarded as the accepted legal right of a sovereign state would become important. Over a long period of years it might be expected that a modification of practice would bring in its train a modification of theory. "Sovereign" actions disapproved by the nations acting in a collective manner would tend to be recognized as "abuses"; what is an abuse would be deemed illegal and no longer the expression of a sovereign power in the absolute sense, because the action had become judgeable by some other human superior. Thus the Covenant contained the evidences of an attempt to build a society of "sovereign" nations; and if *human* society is really to function, a considerable modification of the practice and theory of "sovereignty" must come about. The same reasoning applies to the United Nations.

The history of the British Empire supplies an interesting illustration of the manner in which legal theory changes to fit into a world of changing facts. One hundred years ago the British Parliament legislated for the Empire; its laws were supreme. After the American Revolution it agreed not to tax a colony without that colony's consent, but its legal power to do so undoubtedly remained. In time the colonies and the Dominions gained more and more effective self-government until they reached virtual international status. But the British Parliament retained a theoretical legal supremacy which did not square with the new situation; and the contradiction could not persist without creating much confusion. Sir Robert Borden of Canada attempted to narrow the gap between theory and practice by claiming that, although the Imperial Parliament possessed the "legal power," it did not have the "constitutional right" to pass laws binding the Dominions in certain respects. When the Dominions entered the League of Nations the theoretical legal power of the British Parliament had

not yet disappeared, but as an effective power it had ceased to exist. Practice had outstripped theory; and it was only a matter of time before the theory itself would have to go. The Imperial Conferences of 1926 and 1930 and the 1931 Statute of Westminster gave explicit expression to the fact that the legal power of the British Parliament no longer existed over the Dominions except with their consent.

Unless we are to witness the breakdown of international society there must be a similar development in the international world. For many years there will be passionate appeals to sovereignty; but, if international order is to come, abuses of sovereign power must be curtailed, "sovereign" actions must be tested by the standards of common international good, and sovereignty must become subordinate to a higher principle. The concept may continue to exist, with a changing connotation, until it comes to signify no longer the supreme legal power of an irresponsible state, but to designate an independent state subject to restraint if it abuses its power. We shall then have returned nearer to the original meaning of the word *sovrain.* If, however, the word is still to mean absolute sovereignty, the sooner it is discarded the better.

The history of politics is thus largely the history of units of society and government which have existed for the preservation of order, the promotion of justice, and the enforcement of rights and duties. These units have changed in the course of history. There have been the tribe, the city-state, the feudal system, the medieval Church, the modern state, and, to a limited degree, the League of Nations. These units may have different purposes and they may overlap. In discussing law, we must realize that there has been no law except in association with institutions. In a sense, it is beside the point to discuss the abstract nature of law when law is never met with except as embodied in some form of government.

> The law is not an abstraction. It cannot be understood independently of the political foundations on which it rests and of the political interests which it serves . . . . Every system of law presupposes an initial political decision, whether explicit or implied, whether achieved by voting or by bargaining or by force, as to the authority entitled to make and unmake law.[7]

Now institutions awaken a certain attitude of mind, and this psychological attitude is important in considering law. One's con-

[7] E. H. Carr, *The Twenty Years Crisis, 1919–1939* (Macmillan & Company, Ltd., London, 1940), pp. 229–31. Quoted by permission.

ception of law is not of law *in vacuo* but of law embodied in institutions. Law has been part of government, and government cannot be maintained without rules of law. And as units of government change in response to new conditions, law must change.

Moreover, there may be laws on the statute book which have become out of date, or they may be inadequately enforced. The distinction will then arise between weak law and strong law. Similarly, in the international field there may be rules which are generally accepted and toward which there is an attitude of mind favorable to their operation, and there may be other laws or rules which are frequently if not freely broken. International or national law may be strong in some respects and not in others.[8] The significance of this approach appears when we consider that there may be a distinction between the ultimate power of the state and its everyday power. If an ultimate power such as is claimed for the sovereign state cannot be efficiently wielded, what then? If we assume that law must be enforced and yet a habit grows up by which two independent units join in enforcing rules, what then? Theoretically, they may break their agreement, but in practice they may so consistently enforce the agreement that it becomes for all practical purposes a rule of law. Note that a modern state cannot merely command by force for any length of time. If so, the state would be unmitigated tyranny, and many people today complain that dictatorships by abolishing older rules of law have wielded naked power. But even dictatorships must conciliate minorities, and must wield power through propaganda, through conciliation, through symbols, and perhaps ultimately through the sword. To say that law is a command and that what is not a command is not law is to neglect consideration of the actual methods by which laws are made and enforced.

What is the purpose of the modern state? If it is to keep order, the question then arises whether or not it is doing so. Internally it may have an efficient police force; but if externally the international disorder is so great as to threaten the very foundations of society, what shall we say of the state whose final justification is supposed to be that it can keep order? If the state,

[8] Note Hall's interesting phrase "the rough jurisprudence of nations," quoted by R. Jennings in the *British Year Book of International Law, 1939*. Commenting upon Janowsky and Fagan's claim that Germany had incurred a conventional pledge to treat her minorities justly by making the promise in its "Observations on the Conditions of Peace," Jennings admits that the argument may be in accord with strict theory, but is too refined for "the rough jurisprudence of nations."

therefore, is the law-making institution but the problems upon which it must legislate are too wide for it to encompass, then it can no longer be the sole legislating authority except in a purely formal sense. The standards must be drawn up by an agency which is extensive enough to encompass the whole problem (opium control, prevention of slave raiding, etc.). If the state exists for law enforcement and claims to be the supreme agency but cannot efficiently enforce a law (e.g., double taxation) without outside assistance, it would seem that a dangerous gap between the formal concept and the changing basis of law is likely to grow up; only by ignoring the real basis can the facts be fitted into a formal framework. If law is a set of rules,[9] we need a wider basis than the state, as several chapters in this volume attempt to show. If law is a command with a penalty for disobedience, the question will arise as to whether it is the command of an absolute authority or an authority which is in fact only substantially or partially independent. If law is a combination of both force and rule, of obedience and power, it is conceivable that rules may be drawn up by agreement and enforced by a local or national agency.

Admitting that force may be a component part of law in practically every instance, it does not follow that force is the essence of law any more than hydrogen, being a part of water, is the whole of water. Arbitrary force may give a kind of law, but it will be an inferior kind and not a superior kind. The federal power may intervene in the United States in many ways but itself is bound by the Constitution. It may bring in many laws, but there are fields which it may not touch. If the state is a corporation, the juridical personality of a nation, if all its common purposes fall within the sphere of state activity, the question arises as to what are common purposes. We have seen elsewhere that a state or a nation is a state or nation for certain purposes, and it is unreal to assume that states can exist for all purposes.

Law depends upon the conviction that it is a valid thing. A

[9] The concept of law as rules includes the idea of rules to make rules. A dictatorship must have a large number of rules if it is not to degenerate into anarchy. But if the dictator can alter rules at will, an inferior kind of law results. Democracy attempts to safeguard against tyranny by introducing regular methods for making, enforcing, and interpreting rules. Constitutional restraints, and provisions for due process of law, the conduct of the legislature, political parties, martial law, elections, etc., bear witness to the importance of "rules to make rules." See R. M. MacIver, *The Web of Government* (The Macmillan Company, New York, 1947), chapter i, section 2, "One Man Is Not Much Stronger Than Another," for a discussion of the inadequacy of force to explain law.

state is relatively powerless to impose mere force except for a short time. There must be a prior condition existing before a legal system can evolve, and Jellinek is right in saying that the state obligates itself to its subjects, in creating a law, to apply and execute the law. To that extent it is bound by the law. Otherwise, there is pure arbitrariness. If this is so, then even on Jellinek's theory the state will oblige itself to apply and execute the law which it has created along with other states. In a real sense, "law is legally limited force, even though in another sense law is a continual threat of physical force."

But, it may be objected that the state is a unity, is "one," and international society is not such a commonwealth. The question then arises, what is a unit? It has been pointed out before that anything may be a unity. A drop of water, a hat, an atom within the hat, a person's finger, a person, a family, a city, a state, the world, the universe—each is a unity from a certain point of view. To say that the state has unity may mean much or little. It has unity for certain purposes, but no more. These purposes may change. The more purposes there are in common, and the more agencies there are, the stronger will be the unity. If the state is an agency to co-ordinate the other agencies which are building a unit of society, then the state loses its absolute character and takes on a relativist character. As Duguit points out, public law is then grounded not in the command of a state but in organization. Many groups may co-operate to produce statutes and decrees, and theoretically these groups may be within or without a given unit of society; and theoretically the decrees and statutes may be enforced by the state or any particular branch of a state. If inter-independence is necessary in order to create law, and if the violation of the law "provokes a social reaction," there would seem no valid reason for denying to many rules drawn up by international society the character of law. It is, as Duguit points out, not the existence of coervice force which is needed but the consciousness of the need for coercive sanction that suffices to transform national or international social norms into law. International law, therefore, comes from relations which have grown beyond the boundaries of the state or nation, and international public services are growing up which demand the adoption of rules that become laws when, and if, sufficiently accepted.

Just as national law has expanded in response to the needs of national society and its agencies have increased, so the growing complexity of international life necessitates more rule-making

bodies, a greater number of judicial agencies and administrative bodies. Moreover, the content of international law is changing, albeit more slowly than some theorists would desire. Until now, and even at the present time, international law has dealt with states and not individuals or groups. Grotius claimed that international law should govern relations between states and individuals, but the doctrines of sovereignty of the 250 subsequent years left little room for the individual in international affairs. Within the last generation economic and professional groups have become more important and more organized, and have taken an increasingly important lot in initiating enforceable rules of conduct within nations. And it would be shutting one's eyes to obvious facts in a blind devotion to mere formalism to ignore the number of rules which international organization has made on behalf of individuals.[10] It is true that many of these rules can become effective only through the intermediary of states members and that they must be ratified by states; but it is also true that national laws depend upon the intermediary actions of national officials who may seriously affect the application of law by their inefficiency or negligence; and while they may be ultimately called to account in a manner not yet possible in international affairs the question is whether or not such accountability is a matter of degree rather than a difference of kind. Unquestionably the difference of degree is at present most pronounced. In the International Labor Organization, government, workers', and employers' representatives take part in drawing up rules. According to treaty arrangements, minorities and certain international unions and mandated communities have been given a standing in international relations. Piracy is now a crime against the law of nations and remedies for it are available against individuals. The attempts to make slavery also a crime have thus far failed but may some day succeed. A convention has been signed to set up an International Criminal Court to try individuals.

Without question the great number of conventions and agreements—how many there are can be seen from a perusal of the legislative treaties as published by Judge Manley Hudson[11] or in the League of Nations treaty series—shows that international conferences are filling a basic need of the modern world. Although

[10] And the content of law will change if the individual's position in society undergoes substantial alteration, and if revolution introduces new social purposes and new instrumentalities.

[11] M. O. Hudson (editor), *International Legislation* (Carnegie Endowment for International Peace, Washington, D.C., 1931), p. xiii.

we do not have a world international legislative body similar in constitution and power to national legislatures, nevertheless, "international lawmaking" has become an extremely important part of the law of nations today.

Despite the theory that international law is not true law, the fact remains that national courts on thousands of occasions have applied what they consider to be international law, and that governments have so far recognized its existence as invariably to attempt to justify a course of action which seemed to be irregular by appealing to the principles of international law or to the fact that an opponent had violated international law. Judge John Bassett Moore has pointed out that international law in times of peace is on the whole as well observed as municipal law, and that, considering the great amount of international intercourse which takes place, there is little need to have recourse to claims—contracts and agreements in normal times are not broken. That international law covers a great variety of peace-time service can be seen by referring to any textbook on the subject.

International law also dealt with forceful measures short of war: (*a*) retorsion, which Oppenheim defined as "retaliation for discourteous, for unkind or unfair or inequitable acts, by acts of the same or similar kind"; (*b*) reprisals, i.e., illegal acts against a state which is alleged to have also acted illegally; (*c*) intervention by single states or by states acting collectively; and (*d*) pacific blockade in peace time as a means of compulsion. Typical textbooks discuss at length the laws of neutrality as well as the laws of warfare. True, these rules have been frequently broken; but in the majority of cases they are observed and serve useful purposes, despite an urgent need of reform which now exists.

The question arises as to how these rules came into existence and what gave them whatever obligatory character they possess.

1. Textbook writers usually regard custom as one of the most important sources of international law. Out of long experience certain rules are so uniformly observed and are felt to be so binding that they acquire the force of law. Custom is in no sense "a less working origin of law than actual conventions or specific declarations," writes Sir John Fischer Williams, who quotes from Pascal: "Custom is the creator of all equity, simply because it is accepted; that is the mystical foundation of its authority." Pascal also wisely stated that "it was custom and example more than certain knowledge which persuaded us, and the things of which men are persuaded are the stuff out of which they make their law."

In the Paquete Habana case, 1900, the United States Supreme Court declared: "By an ancient usage among civilized nations, beginning centuries ago, and gradually ripening into a rule of international law, coast fishing vessels, pursuing their vocation of catching and bringing in fresh fish, have been recognized as exempt, with their cargoes and crews, from capture as prize of war." Many other examples might be quoted of how national courts have appealed to custom.

2. Treaties are likewise sources of international law. Ordinary bilateral treaties which resemble contracts bind only the particular parties, but certain multilateral conventions have been commonly accepted as law-making because the signatory powers thereby establish certain general rules of law. And "when a solemn declaration of this kind is made, the world at large is surely entitled to take it seriously and by acting in the faith of the declaration to fix it as binding on the declarant." Most writers agree that the Conventions of Vienna in 1815 which established the principle of freedom of navigation and that of international rivers and regulated the status of diplomatic agents, and the Declaration of the Powers in 1858 which adopted rules governing the relations of neutrals and belligerents in naval warfare, and the 1864 Red Cross Convention which was revised several times, concerning the sick and wounded, and also the Covenant of the League of Nations, the Washington Conference, and other major multilateral treaty arrangements all are sources of international law.

3. Judicial decisions made by international tribunals, by prize courts, and by national courts have contributed to building up international law.

4. The writings of eminent jurists have frequently been quoted by national and international tribunals and have played their part in the development of international law and practice.

5. There was also fairly widespread agreement that the general principles of law recognized by civilized nations are another source of law.

THE WEAKNESS OF INTERNATIONAL LAW AND ORGANIZATION

The weaknesses of the prewar system of international law (which cannot be considered entirely apart from the organization of international society) will now be apparent:

1. There was profound disagreement as to the nature of international law. Some scholars claimed that it was superior to na-

tional law, even though it had no enforcing agencies. Others claimed that it was inferior to national law because it was not a command and had no enforcing agencies: it was merely the expression of a number of agreements. Still others took the view that international law was law, but of a different kind from national law. These theoretical differences had important consequences because they led to the second difficulty.

2. Many jurists and statesmen took the view that treaties were the expression of the will of a sovereign state. Other jurists claimed that treaties were legal obligations which limited the sovereign action of the contracting parties. In critical times governments usually acted upon the first assumption even though they may have given lip service to the second. It is noteworthy that while international courts considered an act of a state invalid which went beyond the authority of international law, national courts accepted the legislation of the state in question as constitutional, although they attempted to reconcile, as far as possible, the legislative act with the provisions of international law. Treaties as an act of a sovereign will conflicted with a fundamental doctrine emphasized by many legal writers that *pacta sunt servanda*—"agreements must be kept"—and until the confusion existing in this matter was cleared up there could be little hope of genuine progress. If sovereign states could not or would not bind themselves, or if there was mere "auto-limitation," international law was merely a precariously existent set of rules. But if obligation comes from law which is something outside the will of the state, the consequences will be fundamentally different. Until this uncertainty is removed there will under present conditions continue to be confusion in international affairs. Both doctrines cannot coexist. One or the other must go.

3. The doctrine that treaties must be observed, while true in most fields of international endeavor, confronted an almost fatal obstacle in that international law recognized the validity of treaties imposed by force. Presumably war could be ended only by treaties of peace; but if nations took advantage of their victory to impose a punitive peace and did not observe the doctrine urged by Vattel in the eighteenth century that peace treaties should be acts of equals, it followed that the defeated power would not regard such a punitive treaty as sacred and would await the first opportunity to overthrow it by force. It may be too much to say that to give a punitive treaty the effect of law is to legalize anarchy; but to admit such a practice tends seriously to divorce law and justice.

Difficult as it may be to define justice, it is relatively easy for the injured party to feel that it suffers injustice, particularly when the victorious power is both judge and party in imposing the conditions.

4. There is further what Professor Dickinson calls the "tyranny of arbitrary rules which have outlived their reason." The doctrine of the three-mile limit of the territorial authority of a national government is "developing a deceptive certainty and illusory advantage of an arbitrary rule" at a time when the rapidity of communications and the need of conserving resources at sea demand new methods; nevertheless governments have insisted upon maintaining the three-mile limit. Inconveniences and injustices follow also from a rigid devotion to the rule that foreign states should be immune from suit in national tribunals unless they expressly waive their immunity. Today, with governments going into businesses on a large scale, this immunity results in widespread injustice; but national courts are powerless to alter the rule. Another tyranny is that of the right of nations to use the high seas unhindered. The discussion of slavery, narcotics, and liquor as international problems has shown what frightful abuses can be committed in the name of the freedom of the seas. Other instances might be quoted to show that international law possesses "inadequate means for change and adaptation."

5. Many scholars have pointed to another serious obstacle in the attempt to apply law to international relations, i.e., the diversity of legal systems throughout the world, and the consequent difficulty which an international court would experience in knowing which law to apply in a particular case.

The English word "law" means law and nothing else; on the Continent it means not only law but also right and justice. English jurisprudence tends to exclude, and Continental jurisprudence to include, the ethical. And Continental jurisprudence is more metaphysical in character than English.[12]

The common law is deeply concerned with the principles of public law or justice for the individual; whereas the Roman law, which passed to the Middle Ages, was derived from the Corpus Juris of the Emperor Justinian—"the law of an imperial dictatorship"—and established "no institutions of independent judicature . . . . no guarantees for personal liberty, or for the due process of law."[13] The common law places more emphasis than

[12] Sir John Salmond, *Jurisprudence* (Sweet & Maxwell, London, 1924), p. 9.
[13] Sir Morris Ames, in Harvard Tercentenary Lecture, 1936.

does the civil law upon "questions of fact" and therefore examination and cross-examination of witnesses and the whole law of evidence are much more highly developed in Anglo-Saxon countries. Continental law has permitted judges a much greater use of "inquisitorial" methods in finding out evidence against accused persons in criminal matters, although in civil matters the ratios appear to be reversed. Continental law is much older than the common law, the former having been about twenty-six hundred years and the latter about six hundred years in existence; with the result that the older system has abandoned more of the formalism and substantive institutions based upon rules of jurisdiction and procedure than has the common law. Anglo-Saxon jurists make a clearer distinction between law and right than the Continental legal thinkers, and Anglo-Saxon law is based more definitely upon the doctrine of precedent. "Nowhere else than in England and in countries which have derived their legal system from England have the decisions of judges been systematically treated as authoritative"; indeed, the fifth article of the French Civil Code "expressly prohibits judges from pretending to lay down general rules when giving their decisions."[14] For these and other reasons some of those who have been trained in the so-called Anglo-American school of law fear that to give a permanent international court jurisdiction over all legal questions "would subject Great Britain and the United States in advance to decisions of a tribunal most of whom have been bred in and wedded to the Continental doctrine."[15]

Perhaps, so Alvarez maintains, the international law which developed in western Europe does not contain principles of universal validity, and countries of the New World have faced new conditions, have a different outlook on life, have attempted to create new values, and have rejected certain elements of the public law of Europe.[16]

In 1908 the first Pan-American Scientific Congress declared that there were American problems which were "*sui generis* and of clearly American character" and had "not been found susceptible of world agreement." After 1918 a movement arose for the codification of an American system of international law, not for the purpose of detracting from the authority of universal law, but to

[14] W. Markby, *Elements of Law*, p. 17.

[15] H. Lauterpacht, "The So-called Anglo-American and Continental Schools of Thought," *British Year Book of International Law, 1931*, pp. 31–62.

[16] Alejandre Alvarez, *Le Droit international americain* (1910).

add "principles and rules which are found to relate to the special exigencies of the American Republics." In 1925 a committee of the American Institute of International Law issued a report defining American international law as "all of the institutions, principles, rules, doctrines, conventions, customs, and practices which, in the domain of international relations, are proper to the republics of the New World." It did not intend to create an international system separating "the Republics of this hemisphere from the world concert," but recognized regional systems which in some respects go beyond the general world order. The Panama Conference of September 1937 actually established certain new rules of neutrality which may well be regarded as international law principles for the Western Hemisphere, and the Mexico City Conference of 1945 expanded the regional principle.

Thus the content and method of law vary according to the kind of society which has been evolved. Law exists in order to promote human welfare. If, therefore, law is directed to the achievement of certain ends, it follows that the quality of the laws adopted, as well as the general spirit of the law, will reflect the purposes of a community. Law in a predominantly capitalist society will differ in content and method from law in a communist society; and both the capitalist and the communist systems of law will differ from the Fascist and the National Socialist systems.[17] The rules vary, and affect the individuals and classes differently because the ends or purposes vary.

It follows that until a sufficient number of problems are common to different societies the amount of law which they will accept as binding upon them all will be limited. Until that time comes, the differences will be more obvious than the common factors, and law will develop in uneven and even in contradictory fashion. As the communities come into closer relation, there will be conflicts of laws. As long as the major part of life is dominated by internal concerns, the emphasis will remain upon the local or national source of law; and new rules will tend to be regarded as something extra, something added to the central body of national law.

When science and communications bring regions and even continents into increasingly intimate relationship, there will develop

[17] T. A. Taracouzio, in *The Soviet Union and International Law* (The Macmillan Company, 1935), writes that international law for the Soviets is a provisional interclass law aiming to further the interests of the proletariat in a struggle for world supremacy.

an urgent need for still further rules for certainty.[18] Those who have been accustomed to think in national terms will regard the new rules as less authoritative than the old rules which have gained the sanction of time and custom; those who look to the future and conceive of society in dynamic rather than static terms will be impressed by the need of expanding the agencies of making rules or laws binding upon all countries.

Because estimates will differ as to the importance of preventing war or establishing a world currency, or in some other way adopting definite and unambiguous rules, estimates will vary as to the need for and the method of creating the new rules or laws. Some thinkers will stress the requirements of the new and will minimize the differences existing between the various systems in the light of the greater problems to be solved. We shall examine this view presently.

6. International law has had a relatively small scope and the most serious conflicts between nations have arisen over matters concerning which international law has laid down no precise rules. For example, immigration and tariffs have been regarded as "domestic" questions reserved to the sovereign states, despite the fact that immigration and tariff barriers may have profound effects upon the welfare of other countries. Some writers claim that there are "gaps" in international law. Others assert that international law forms a complete system, and that there is no question which cannot be settled according to the rules of international law; if particular rules do not exist, the international courts have recourse to the more general principles of law common to civilized communities. Others write that there are no "gaps," because tribunals can definitely ascertain whether or not a rule exists, and if it does not exist the plaintiff has no action; it is therefore easy for the judges to establish the line between domestic and international jurisdiction. Still others admit that, although international law may be theoretically complete, there do not exist enough specific rules to guide international courts or tribunals; if the latter had to decide on the basis of very general rules, then they might be applying equity, or giving the judgment of a "good man," but it

[18] L. Oppenheim, in *The Future of International Law* (1911), writes of the progress of the law of nations: "Much, if not all, depends on whether the international interests of individual states become stronger than their national interests, for no state puts its hand to the task of international organization save when, and so far as, its international interests urge it more or less irresistibly to do so."

would not be law, for there would be too great an element of discretion.

7. Another aspect of the limited scope of international law is seen in the problem raised by what are called "justiciable and non-justiciable" matters. Many theorists assert that in international law, there is a definite limit to the judicial processes, that there exists a great difference between political and legal disputes, between legislative and legal methods. They say that the law declares what are existing rights but cannot alter existing rights; legislatures alone can create or modify rights.

In a broad sense, this judgment is true, although readers will recall the age-old controversies whether judges declare or make law. When a common law judge gives a decision on a particular case, it is based upon precedent; the judge applies existing law. But the application of existing law to a present situation where conflicts of principle are involved is influenced in close decisions by the general legal philosophy of the judges. The subordinate and quasi-judicial powers exercised by administrative bodies suggest that the line between law and politics is not clear and unalterable. Australian and New Zealand arbitration courts apply legal methods to decide matters of wages and hours, a procedure which some critics believe tends to discredit law by bringing it into the controversial area of economics. The League of Nations machinery for the protection of minorities was an attempt to shift the question from prewar political to a postwar legal basis. These illustrations show the difficulty of drawing a sharp division between political and legal disputes in domestic and international affairs.[19] The essential point, however, is that the realm of the unquestionably political so dominates the international sphere that the realm of law has been considerably limited. Policy still remains overwhelmingly dominant. This fact was recognized in Article XIV of the League Covenant (as amended in 1924), embodied in the statute of the Permanent Court of International Justice, which limits the legal processes to a small category of questions:

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established,

[19] E. H. Carr, *op. cit.*: ". . . . no definition of disputes recognized as justiciable can be universally or permanently valid; for political agreement (which makes the law and which treats it as binding) is a factor which varies from place to place and from time to time." See especially, H. Lauterpacht, *The Function of Law in the International Community* (Oxford University Press, London, 1933).

would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

Moreover, at one time certain matters may be regarded as political and at another as legal; and governments have on occasions refused to submit certain disputes to arbitration even though the matters at issue were susceptible of judicial determination, as in the case of the foreign powers in their dispute with Venezuela in 1902 and the United States in several disputes with Caribbean nations. It may be objected that no country can permit a group of judges to decide concerning its vital interests and its self-defense. To this it is replied that "resort to force must be a matter for the state concerned" but that a determination as to whether the exercise of the right of self-defense is justified may be a matter for judicial determination; the attitude of states makes a given issue nonjusticiable; a nonjusticiable question is one which governments choose to regard as nonjusticiable.

Other jurists believe that it would not necessarily follow that an extension of the rule of courts would be an extension of the rule of law. The mere existence of a court or tribunal may not be sufficient to guarantee justice on the basis of law, although it may provide justice according to discretion. They say that to hope too much from law is to ignore the lessons of history: An English judge gave a decision in 1637 that ship money was legal, but it led to Hampden's resistance and paved the way to the English civil war. The American Supreme Court in 1857, in the Dred Scott case, gave a judicial decision on the slavery issue, and thereby helped to precipitate civil conflict. Judicial decisions by themselves do not settle questions; they only enable a settlement to take place if the parties are sufficiently united in viewpoint to accept the judgment.

8. The limits of international law are seen in another direction. Normally only states are subjects of international law, and individuals have no standing in international courts; indeed, by Article 34 of the Statute of the Permanent Court of International Justice, "only states or members of the League of Nations can be parties in cases before the Court." There are a few exceptions to the general rule in that pirates, counterfeiters, and blockade-runners are punishable under international law even though the national courts normally impose the penalty.

We have seen that individuals or corporations who wish to lodge claims against a foreign state must have their case taken up by their own government and that this procedure is open to many criticisms. Individuals have suffered inconveniences and hardships by having their claims presented by their own government, for they may become, to use Borchard's phrase, the "plaything of politics and of their accidents."[20] Before 1914 the question of awarding protection to the individual on international law was discussed and the Central American Court, which lasted from 1907 to 1916, had authority to consider a legal action of an individual against a state; and the second Hague Conference in 1907 discussed the possibility of establishing a prize court to assume jurisdiction over individuals.

The judgment of Sir John Fischer Williams in 1939 might have been written before 1914:

> But however this may be, the present limitation of "subjects" of international law to states in the sense that, before a legal or arbitral tribunal administering international law, states alone, in the absence of some special provision, can enforce international rights or be required to implement international duties, can hardly be destined to remain in force for an indefinite period of time. States are human creations, and they are only one form of the organization of men.[21]

It still holds good, although, as hinted elsewhere, new tendencies are at work. In surveying these tendencies, Politis writes:

> International law will not really become the law of individuals until relations between peoples have lost their international character and have become properly speaking universal. At present they are still, in principle, international. They are carried on through the intermediary of States. But as the universal society comes into being, there are some relations which, by way of exception, are already world-wide, being maintained directly between the citizens of the various countries. What is now the exception will one day become the rule.
>
> Until that day comes the modern conception of the right of peoples will remain in rivalry with the old conception of the right of States, but with an increasingly manifest tendency to supplant it.[22]

[20] See also C. Eagleton, *International Government* (The Ronald Press Co., New York, 1931), pp. 181–85.

[21] Sir John Fischer Williams, *Aspects of Modern International Law* (Oxford University Press, London, 1939), p. 21.

[22] N. Politis, *The New Aspects of International Law* (Carnegie Endowment for International Peace, Washington, D.C., 1928), p. 31.

Thus the weaknesses of international law may be regarded as the effect as well as the cause of the lack of a closely knit international community. Is international anarchy (if the term be permitted) the result of inadequate law-making and law-interpreting institutions, or is it the cause? The lack of institutions made it impossible to have efficient international relations, but the lack of international institutions in turn came from an inadequately developed international society. Sir Frederick Pollock has defined law as "a rule of conduct binding on members of a commonwealth as such." If there is no commonwealth, no sense of common welfare, there will be no sense of the binding force of rules. Law is strong when the sense of social unity is strong, and weak when the sense of social unity is weak.

How inadequate international institutions have been we may see by comparing international law-making and law-modifying agencies with national legislatures. The national-sphere legislatures convene at definite times as a regular practice. They have agenda, they possess adequate fact-finding bodies, and they enjoy the benefit of a permanent civil service which carries on in the intervals between sessions. By contrast, international conferences are not easy to convene. Some government has to take the initiative; and because of the lack of continuity, the same things have to be done over again. Much time is consumed and many disputes arise in the preparation of the agenda. After the conferences have met, resolutions can be passed only by a unanimous vote; and, because of the theory of equality of states, a small power has the right (theoretical, at least, and occasionally in practice) to block general international legislation. Except in a few cases, such as the Copyright organization and the Postal Unions, there have existed few permanent secretariats to continue the work begun by conferences and to translate general resolutions into practical achievement, to collect information, and to encourage ratification of conventions. Because of the doctrine of sovereignty, international agreements cannot bind the participating states without their ratification. Ratification, however, is frequently a difficult thing to obtain; some states will not ratify; other states ratify conditionally, and consequently those who do ratify impose obligations upon themselves which others fail to undertake. Other governments attach reservations to international agreements, and many confusions result. The revision of international conventions is a matter of great difficulty and has hindered the effective development of international organization. The Hague Conferences of 1899 and

1907 showed the possibility of periodic meetings; but the intervals between them are too long to enable the gatherings to be efficient legislative bodies, and the same general criticism may be made of the Pan-American Conferences, which meet only every fifth year. *Ad hoc* and infrequent periodic conferences, even annual United Nations Assemblies, are insufficient for a complex world.

We have already suggested that the solution of international disputes by legal methods has been confined to a small area of international relations. International arbitration had a long and honorable history in ancient times, but fell into disuse in the early part of the modern period of European history. In the nineteenth century it was revived and a great number of disputes were arbitrated. There was, however, no obligation to arbitrate; nor did any permanent institution exist until almost the close of the period. If two nations had a dispute, they had first to agree to establish an arbitral tribunal for the purpose of giving a third-party judgment. They had to agree in defining the scope of the question to be arbitrated, and each government insisted on nominating one or more arbitrators, who then chose an impartial chairman not a national of either of the litigant parties. The states thus participated in the selection of their own judges; moreover, it was a very general practice for these arbitrators to act, not as judges, but as negotiators.

The establishment of the Permanent Court of Arbitration at The Hague represented a distinct step forward. It provided for a more definite procedure in the selection of the umpire or chairman, and it emphasized the appointment of persons of highest competency in questions of international law. Nevertheless, the Hague Court, was, as Ralston puts it, "neither permanent nor a court" but "merely a panel of possible arbitrators who may to the usual number of three or five be called together to act in a given instance."

Law does not act in a vacuum. It is indissolubly connected with organization, and rules short of law likewise need organization and institutions if they are to be effective. Whatever one's view about the theoretical nature of law, or the relation between law and government, the fact remains that before 1914 society did possess some international institutions. States had to have intercourse, and required agencies for the discussion, communication, and negotiation of agreements.

Consuls existed many centuries ago and their rights and duties were the occasion of treaties between states. After the modern

nation appeared, the consular service was adapted to its needs. Today there are over thirty thousand consular agents in the world; their business is to promote and protect trade, to investigate trade opportunities, to report upon market conditions, to issue certificates, to issue invoices of goods, to administer regulations relating to quarantine, to settle estates of citizens who have died abroad, to issue bills of health, to issue passports, and to give advice. They certify births, marriages, and deaths, protect their fellow citizens against injustice in local courts, and inspect those who are preparing to migrate to the country of the consular agent. Consular practice rests upon many bilateral treaties and conventions, and is evidence of a high degree of international solidarity. Consuls do not receive diplomatic immunity, although they enjoy certain other privileges. They do not play an important part in settling disputes, but upon them has long rested a great deal of responsibility for the smooth working of daily international intercourse.

In former times envoys were sent from one country to another, but there were no permanent embassies and no career diplomats. With the establishment of the modern national state under the European monarchies, rulers sent diplomats to foreign countries. By the seventeenth century the diplomatic corps had become an intimate part of the modern international system but remained relatively unorganized and dependent upon usage and custom. In 1815 and 1818 the Congresses of Vienna and Aix-la-Chapelle adopted a classification of diplomats which substantially holds good today: The envoy is the representative of his state; his person is inviolable; he is exempt from the civil and criminal jurisdiction of the country to which he is accredited, and from customs duties and personal and property taxes. His correspondence and archives are likewise inviolable and his residence cannot be entered without his permission. The diplomat supplies information to his government so that it may more efficiently develop its foreign policy, and upon his skill and uprightness the good relations between governments to a considerable degree depend. Before 1914 the diplomat had almost exclusive charge of negotiations. Policy was determined by the foreign office at home and only seldom did a minister of state meet in direct conference with other foreign ministers.

The prewar diplomacy system has been the subject of considerable discussion. Its critics have denounced it because of the element of secrecy it involved, saying that cabinets could commit their people to war without any check from the public in absolute

monarchies, and with little control from parliament in democratic countries. Even the British Cabinet was under no obligation to submit treaties to the House of Commons unless they contained clauses which required financial implementation.

Many stories exist of the deceitfulness, bribery, and corruption of diplomacy, too numerous to summarize here. On the other hand, some writers have defended the old system by pointing out that, although it was wrong to have secret treaties committing a country to a military alliance or even to war, there was a defensible and satisfactory type of secret diplomacy, i.e., diplomacy of negotiation. The prewar diplomats who lived abroad came to know one another very well. Diplomatic intercourse was "leisurely and polished"; the most important communications took place by means of written notes, so that there should be no misunderstandings of what was said between diplomat and minister. Many crises were averted by the calm deliberations of professional diplomats removed from the public gaze. They were enabled to discuss matters more easily than would have been possible had their deliberations taken place in public. The major criticism of prewar diplomacy lies not in the institution itself, for diplomacy is essential, but in the fact that it was part of the balance-of-power system which prevented the best elements in diplomatic life from operating to the fullest extent and accentuated the bad effects of its evil side.

Before 1914 the royal courts were not unimportant in international intercourse. What Mowat called "the international of monarchs" helped Europe to maintain a certain unity. Although most rulers had lost at least some power to parliaments or to cabinets in domestic matters, they still exercised considerable influence in foreign affairs. Indeed, Mowat suggests that the balance-of-power system was able to function as well as it did in Europe because of the existence of a few great monarchs who maintained the habit of communicating with each other and who could write to each other more intimately than could their ministers of state—who usually were not acquainted with other foreign ministers. The World War of 1914–1918 destroyed the international of the monarchs, and with it an institution which, with all of its defects, did something to offset the growing anarchy of a Europe divided into sovereign states.

Whether or not legalists admitted the existence of international law, international society had to find some means of settling disputes unless it was to live in a condition of perpetual disorder.

Before 1914 various methods were used. First was diplomacy—many differences which never became headline news were settled by discussion between foreign offices, and upon the tact and ability of diplomats and foreign ministers depended the efficient working of international relations. If diplomacy failed to reach a settlement, a third state might tender its "good offices" to the disputants in the hope of inducing them to come to an amicable agreement. The third party did not make an award or give a decision or even participate in negotiations.

Mediation constituted a further stage. In this case the third party took more active steps by offering suggestions and proposing a solution. The 1907 Hague Convention for the pacific settlement of international disputes formally recognized the method of mediation. Before this time, a third party which attempted to mediate was theoretically open to the suspicion of intervening in a dispute to serve its own purposes; but the Convention provided that states should "have recourse as far as circumstances allow to the good offices or mediation of one or more friendly powers" and that the offer of mediation was not to be regarded as an unfriendly act. The mediator could not give a judgment; nor were the disputants obligated to accept his proposal. The method was useful on several occasions generally confined, it must be admitted, to disputes between the smaller powers.

Commissions of inquiry constituted another method of pacific settlement of cases where disagreement existed as to facts. The Hague Conferences accepted this method; but unfortunately the convention covering it did not apply to disputes which involved the honor and vital interests of the signatory powers. Moreover, each commission of inquiry was limited to the facts and could not give an award, and the powers involved retained full freedom of action. This method was used in settling the Anglo-Russian dispute which arose as a result of the attack by the Russian fleet upon some English fishing vessels operating off the Dogger Bank in the North Sea. In 1911 Secretary Knox negotiated treaties providing for a mixed high commission of inquiry which should make recommendations for the settlement of disputes; but the Senate rejected his policy. In 1913 Secretary Bryan signed a number of "peace commission" treaties under which certain states agreed to refer disputes for investigation and report to a permanent international commission of five members, two selected by each state, one of whom must be a national of a third state, and the fifth to be selected by agreement between the two governments. Each such

commission was to be allowed one year for the completion of its investigations and the presentation of its report; the disputants agreed not to declare war or begin hostilities during that time.

The theory behind the commission of inquiry is that if the facts of the controversy were clearly established, the possibilities of peaceful settlement would be improved. Under the Hague method, there were three disadvantages: (*a*) delay through having to reach a special agreement on the constitution and appointment of the commission; (*b*) loss of time between the nomination of the commission and the beginning of inquiry, during which the temper of the disputants might rise and the situation become worse; (*c*) the exemption of disputes involving national honor and vital interests—a dispute could be excluded from inquiry simply by designating it so. The Bryan Peace Commission Treaties represented an improvement: The commissions were permanent; they were established in advance; they did not except questions of honor and vital interests; and they provided that no war or hostilities should be undertaken during the year in which the report was being prepared. But the machinery was cumbrous and has not proved practicable.

The method of conciliation marks a further advance in the pacific settlement of international disputes. A conciliation commission not only conducts impartial inquiry in order to establish the facts of the dispute but also makes proposals which may be used by the parties as a basis of settlement. The proposals are not binding upon the disputants, but they may have considerable effect in providing at least a starting point for specific constructive effort. Treaties of conciliation became frequent only after 1918. Brazil and Great Britain in 1919 signed such a treaty, and Sweden and Chile in 1920.

The many other bilateral treaties which followed represented an advance in that nations began to assume the obligation to submit quarrels to pacific settlement. They improved the machinery by having a permanent commission of conciliation established, and they reduced the number of questions which might not be dealt with by conciliation commissions. Questions of national honor and vital interests were no longer excepted. Three major lines of development may be noted: the bilateral treaties just referred to; multilateral conventions such as the inter-American conciliation treaty of 1929, which established two permanent commissions, one at Washington and one at Montevideo, and under which the parties are obliged to submit all disputes which cannot be settled by diplo-

matic means of conciliation;[28] and the Locarno settlement of 1925, which included a number of treaties providing for conciliation as a process of settlement and for the establishment of permanent conciliation commissions. In the event that these commissions failed to produce proposals satisfactory to the disputants, the latter were obliged to submit the matter either to the Permanent Court or to a special arbitral tribunal. In 1922 the League of Nations Assembly adopted a resolution recommending that states should "conclude conventions with the object of laying their dispute before conciliation commissions formed by themselves" and suggested nine rules for the creation of these commissions. Clearly much effort and energy would be conserved if states could agree upon multilateral conventions for conciliation instead of having to rely on bipartite treaties. If forty or fifty nations each signed a separate treaty with every other nation, the number of resulting instruments would be enormous. A general treaty to cover all states would constitute a great economy of effort. From a recognition of this truth came proposals which resulted in the 1928 General Act for the pacific settlement of international disputes, under which states might accept each or all of the obligations to conciliate, to arbitrate legal problems, or to arbitrate all problems even of a nonlegal character.

Conciliation treaties have been considered sometimes as supplementary and sometimes as alternative to the method of arbitration by which a binding judgment is given by a third party. Those who emphasize the value of conciliation with its nonbinding recommendations do so because they are impressed by the limited scope of international law and the strength of national sovereignty. For these reasons they desire to encourage friendly agreement, and believe that in the present state of world society, peace, stability, and good feeling are more important than legal awards. Conciliation leaves the way open to compromise, whereas arbitration by a final decision may create ill-will in its endeavor to fulfill the letter of the law. In so far as individuals and communities can settle disputes on a friendly basis, so much the better. If they can avoid prolonged legal controversies and settle disputes in an amiable spirit without the costliness of legal proceedings, they have rendered a great service to the cause of peace.

The weaknesses of conciliation, however, must not be over-

[28] This convention was in fact a continuation of the Gondra Treaty of 1923, which provided for commissions of inquiry modeled upon the Hague Convention and the Bryan Treaties.

looked. The obligation not to move troops or take hostile action during the period of investigation rests entirely upon the good faith of the members, and the Italo-Ethiopian and the Sino-Japanese crises showed that one of the parties could alter the essential problem by taking military steps which themselves weakened prospects of successful conciliation. After the report has been issued, either disputant may accept or reject any proposals; it regains complete freedom of action. The great number and variety of conciliation treaties leads to overcomplexity; public opinion cannot clearly follow negotiations unless there is a reasonable simplification of machinery. Conciliation processes work satisfactorily if national security is not at stake and if general conditions do not threaten the existence of either signatory; but neither party can afford to make concessions if it has reason to believe that a concession, once granted, will be the occasion of further demands on the part of the other state. If a dispute cannot be entirely separated from the problem of security, then what appears to be even a relatively unimportant matter will not be susceptible of treatment by conciliation. On the other hand, if fundamental security is guaranteed, incidental and also not unimportant differences may be settled by mediatorial or conciliatory action. The more intensely the problem of security looms up, the less chance there is for mediation and conciliation to be successful; a state dares not run the risk of wasting time if its safety is in the balance. Or, if it does submit to conciliation processes, it will do so with its tongue in its cheek and will continue to trust in God and keep its powder dry; but such attitude and action destroy the confidence which is necessary for the pacific solution of disputes. Conciliation treaties have been able to eliminate questions of honor and vital interests. Until the fundamental question of security also has been eliminated, by some means or other, conciliation will not possess the adequate foundations on which to build peaceful settlement of disputes.

Another characteristic of prewar international organization was the acceptance of the doctrine of neutrality. In ancient times India and Greece recognized a degree of neutrality status. Rome did not; communities were either her allies or her enemies; and the Romans had no word which conveyed the precise meaning of our word "neutrality." Public opinion during the Middle Ages accepted the principle that war was a matter of general concern; the Church recognized the distinction between a just and an unjust war, and even applied sanctions or penalties against those who

broke the peace. With the advent of the modern national state the theory developed that, because war was the act of a sovereign, a neutral power was no longer even morally bound to pronounce on the justice of the act. This concept did not win easy acceptance. In the seventeenth century there were different degrees of neutrality—"natural, strict, perfect, imperfect, qualified, conditional, conventional, etc."; and for some time the rights and duties of neutrals were ill-defined and inadequately respected. Belligerents marched over the territories of neutrals and seized men and goods. Gustavus Adolphus, King of Sweden, asked, "What then is neutrality? I do not understand. It means nothing."[24] And for a long time nations had to negotiate special agreements in the absence of which their right to enjoy the benefits of neutrality depended upon the good will of the belligerents. Neutrals had ill-defined duties as well as uncertain rights. They could help one or the other of the belligerents without losing their status of neutrality. In 1630, for example, Charles I of England, while at peace with the German Emperor, allowed 6,000 men to join Gustavus Adolphus on his expedition against Germany.[25]

In the eighteenth century, maritime powers increasingly adopted the policy of blockading and thereby interfered with the trade of neutrals. With the growth of modern commerce and the extension of the area of modern warfare, the interests of the belligerents and of neutrals began to clash more and more definitely. It was therefore necessary to attempt a clear definition of the rights and duties of neutrals in their relation to states engaged in war.[26]

Grotius had already laid down the following rules: (1) articles useful in war are always subject to capture; (2) articles not useful in war are always free; (3) those which may be useful in both war and peace ("conditional" contraband) must be classified by reference to existing facts.

The declaration of the neutral powers in 1780 asserted that (1) neutrals should be free to continue their trade as far as possible, when other nations were at war; (2) noncontraband goods of an enemy should be free from seizure if carried by neutral ves-

[24] N. Politis, *La Neutralité et la Paix* (Librairie Hachette, Paris, 1935), p. 33.

[25] *Ibid.*, p. 39.

[26] Although Christian Wolff in 1749 wrote that a state must help a state which fought a just war, must not support an unjust war, and must remain neutral only where the justice of a war was doubtful, Westlake much later claimed that there was no general duty of remaining neutral. Some other writers have doubts concerning neutrality.

sels, and neutral noncontraband goods should likewise be free from seizure if carried by enemy merchantmen; (3) only munitions of war should be regarded as contraband liable to seizure; and (4) no port should be regarded as blockaded unless the belligerent power had sufficient ships near at hand to shut off the port from normal trade. The United States fought the War of 1812 against Great Britain over the question of neutral rights. Jefferson had already enunciated the principle that international war should be fought in such a manner as to disturb the normal life of the rest of the world as little as possible. His theory is admirable; international and domestic strife undoubtedly should be subordinate to the normal peaceful life of society, and Americans were justified in demanding that their neutral trade and commerce should be subjected to the minimum interruption. The theory assumed that war could be waged between major powers without infringing upon the rights of neutral countries, and that the belligerents would respect the neutrality of others even though it acted to their disadvantage. The World War of 1914–1918 showed the hollowness of this assumption. The methods and conditions of war had so developed as to make the needs of belligerents increasingly incompatible with the rights of neutrals. Belgium, Greece, and Persia found their neutrality violated; and the United States entered the war because its neutral rights were outraged. The doctrine was considerably modified in the Covenant of the League, and still more in the United Nations Charter.

ATTEMPTS TO STRENGTHEN INTERNATIONAL LAW AND ORGANIZATION

Rule of unanimity.—The doctrine of sovereignty led logically to the doctrine of unanimity. A sovereign state could not be bound by another, and it must therefore agree to any measure which may affect itself. A small state had the same "independence," legally speaking, as a large state, just as a small circle is as round as a larger circle.

The rule of unanimity was often regarded as constituting a serious obstacle to international organization. Critics pointed to the fate of eighteenth-century Poland, which suffered irreparable loss from its unity-requiring constitutional provision, the *liberum veto*. They said that no society could progress if it had to wait upon the unanimous verdict of its members.

It was not surprising that an attempt was made to modify the rule of unanimity when the League of Nations was established.

Considerable discussion took place, and some advance was made. Yet Article 5 of the League Covenant seemed to consecrate the principle, which, if strictly carried out, would render international government difficult, if not almost impossible. The Article read: "Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting."

There were, however, several exceptions to the rule of unanimity contained in the Covenant. Two-thirds of the Assembly might vote the admission of new members. The majority of the Assembly and a unanimous Council might name further permanent members to the Council. A two-thirds majority of the Assembly might fix rules dealing with the election of nonmembers of the Council. Matters of procedure in both Council and Assembly might be decided by a majority vote. The successor to the first Secretary-General was to be appointed by the Council with the approval of the majority of the Assembly. In the event of a dispute investigated under Article 15, the Council might either unanimously or by majority vote make a report of the facts of the dispute and submit its recommendations, and might adopt a unanimous decision apart from the votes of the disputing parties. Should the dispute be referred to the Assembly, an Assembly report, if accepted by all the Council members and a majority of the other League members (excluding the disputants), was equally binding. A nation might be expelled from the League by a Council vote exclusive of the vote of the nation involved. And, finally, amendments to the Covenant took effect when ratified by all the nations which comprised the League Council and a majority of the Assembly members.

These exceptions to the rule of unanimity are not unimportant; in fact they make rather a striking list. Nevertheless, had this been the whole story, the outlook for the future would have been unpromising enough, because in matters of essential policy (except Article 15) the requirement of unanimity seemed sufficient to enable a nation to obstruct any measure which it regarded as adversely affecting its interests and ambitions, whatever the requirements of world society.

The Council and the Assembly when given duties to perform could not take action but could merely recommend to member governments a policy for their adoption: Under Article 8 the Council formulated plans for reduction of armaments; but the governments must adopt them. Under Article 10 the Council merely advised

how the obligations contained therein were to be fulfilled. Under Article 16 it proposed steps and recommended what military forces the members should contribute for action against a state which had violated the Covenant. The Assembly under Article 19 "advises" the reconsideration of treaties which have been inapplicable. Voluntary association was still the basis of the League of Nations.

A number of modifications were adopted in the rule of unanimity during the generation of the League's existence and at one time they promised to open a wider door to more effective international government. It became the practice that nations which did not vote on a given matter were regarded as absent. That is, a nation which did not vote against a measure but abstained from voting at all was held to have accepted the result of an otherwise unanimous vote. "No one against" (*nem. con.*) was translated to mean "unanimously accepted." This procedure was not accepted without debate; but its acceptance meant that a nation not positively in favor of a measure did not definitely have to oppose it—it could avoid the embarrassment of voting unwillingly for, and it need not force a deadlock by voting against, a proposal. A serious question arose when a state claimed that, by not voting, it was reserving its decision and was not committing itself in favor of the measure. Such an interpretation would have led to endless confusion; a subsequent plea to be released from obligations accepted by other nations on the ground that the nonvoting nations had not expressed positive agreement would introduce universal uncertainty of obligations. The League members rightly rejected so dangerous a claim.

The Covenant provided that questions of procedure might be settled by majority vote; but, in the absence of a clear definition of "procedure" as against "policy," the League later faced serious problems. It was agreed that the order of business in the Council and the Assembly and the election of officers and of nonpermanent members to the Council were procedural. In the 1931 Sino-Japanese dispute, the Council unanimously agreed to keep the United States informed of proceedings by means of written communications. A later proposal was made to supplement this action by permitting a representative of the United States to be present at the Council debates. The Council members, apart from Japan, maintained that such an action was merely an extension of the procedural step already taken; but Japan asserted that to ask a non-League nation to sit on the Council was clearly a matter of policy, since the decision to associate nonmembers with members

involved a drastic departure from League principles. The President of the Council disagreed with the Japanese view and ruled that a matter of procedure and not principle was involved. Several authorities questioned the correctness of the verdict; but M. Briand's action constituted an important step, in that by an extended interpretation of "procedural" questions many important international problems might be settled by majority vote.

It was generally accepted that commissions of inquiry might be appointed by the Assembly or the Council by majority vote; and in the 1920 Albania-Jugoslavia dispute, the Greco-Bulgarian quarrel (1925), and the Polish-Lithuanian dispute (1928), committees were so appointed—not without protest from some of the interested nations, on the ground that their national sovereignty was being infringed.

The League attempted to overcome the need of a unanimous vote by distinguishing between "decisions," in which all voting members must concur, and "recommendations," which might be adopted by a majority of the members. The latter course was pursued when it was clear that there was little chance of reaching a unanimous verdict—the Assembly, for example, failed to obtain unanimity of decision upon the budgetary limitation of armament expenditure; it therefore adopted, by majority vote, a recommendation which, although it possessed no legal validity, would, if the majority were a decisive one and included the major powers, carry great moral weight. A danger existed in that the powers might be tempted to side-step definite decisions and immediate action in favor of pious recommendations, which might be merely a verbal substitute for effective deeds. Thus far the danger has remained a theoretical one, and the constitutional power to adopt recommendations has not been abused. The government of Colombia proposed that a two-thirds majority should suffice to decide whether or not a proposal merely developed a principle or introduced a new one; but the idea was rejected because the dividing line between a principle and its particular application is not an easy one to draw. The Council preferred to retain the distinction between recommendations and decisions.

Although the Covenant by Articles 15 and 16 excluded the parties to a dispute from voting, it made no similar provision in the important Articles 10, 11, and 13; a party to a dispute might claim under Article 11 the privilege of voting, although President Wilson and others urged that disputants should not vote under Article 11. The League moved uncertainly in this matter. The

whole spirit of the Covenant, of course, suggests that no party should be a judge in its own cause; and yet Article 5 specifically states that, unless otherwise definitely provided in the Covenant, unanimity is essential for a decision. In some instances the Council took action apart from the vote of the interested parties, as in the Mosul boundary dispute between Great Britain and Turkey and the Greco-Bulgarian dispute in 1925. However, this procedure was not followed in the Polish-Lithuanian or the Sino-Japanese disputes, Lithuania voting in the one and Japan in the other. In the Far Eastern crisis Japan by its vote was able to block several proposals. It would seem that an effective organization must insist upon the right, should mediation fail in serious crises, to take decisions to override the "sovereign" objections of the disputants.

Committee work in the League was of great importance. Although the Assembly rules of procedure apparently required unanimity, the sixth committee frequently made decisions by majority vote. And often states which opposed a matter in committee withdrew their opposition in full Assembly and in that way facilitated unanimous action.

Several other international instruments provide for decision by majority vote, especially where the matters are of a technical rather than a political character. Although unanimity is theoretically required, practical considerations lead to some modification. Provided that the great powers are in agreement (and there is the rub!) it is likely that substantial action will be taken. Smaller nations may, by obstinate behavior in their treatment of minorities, render effective action difficult; but, given anything like the will to compromise, the unanimity rule need not present an insuperable difficulty. (The general problem is considered at length by Cromwell A. Riches in *The Unanimity Rule and the League of Nations,* and *Majority Rule in International Organization.*)

In the Italo-Ethiopian crisis the unanimity rule came to the front. It will be recalled that "recommendations" of the Council or the Assembly could be made by a majority vote, and that under Article 16 the Council might "recommend" to governments what contribution they should make in order to uphold the Covenant. After the Committee of the Council had reported that, in its judgment, Italy had violated its obligations, the President of the Council asked each representative on the Council to give his opinion. This was done, and only the Italian member dissented from the judgment of the Committee. Hence the Council as a whole passed

no resolution; the individual members gave their "separate expressions of view." The President of the Council then noted, not that the Council itself had adopted a resolution or decision, but that fourteen members of the League of Nations represented on the Council considered that they were in the presence of a war begun in disregard of the Covenant.

Next day the Council report was presented to the Assembly, which followed substantially the same procedure. It adopted no formal resolutions, and avoided any procedure which might have necessitated a unanimous decision. The President of the Assembly significantly stated:

> It must be made clear that no organ of the League has power to decide, in such a way as to bind all the Members, that one of them has violated the Covenant. . . . . I was anxious to make it clear at the outset that, in the present case, this is not a resolution in the strict sense of the word, but an invitation addressed by the Assembly to the State members.

The Italian representatives, Baron Aloisi, objected to this procedure and argued that the Assembly's vote must be unanimous in order to be effective. Italy had hoped that Poland would vote on its side during the Council proceedings, but had been disappointed. In the Assembly it relied upon Austria, Hungary, and Albania to prevent a unanimous vote of condemnation against Italy. But M. Beneš, President of the Assembly, announced that "the members of the Assembly are invited to express an opinion. . . . . What is required is the assent of each Government individually. We are not going to propose a vote. . . . . I shall give to those who desire to express a contrary view an opportunity to speak," or to abstain from voting. Silence was to imply agreement. Over the protests of Baron Aloisi the Assembly upheld its President, and its members individually (with the exception of Austria, Hungary, Albania, and Italy) concurred in the findings of the fourteen members of the Council that the Italian government had violated its obligations under the Covenant. The Assembly thus acted upon the theory of substantial unanimity.

In spite of the failure of sanctions against Italy, the constitutional significance of the crisis cannot be ignored. At the time the international organization worked out a procedure which effectively overcame the obstacles imposed by the doctrines of sovereignty and unanimity, and enabled fifty nations to join in measures against an aggressor. The action may prove to be a precedent of extreme importance in world affairs.

We have seen in the chapter on "Security" that in most decisions of the United Nations a modification of the unanimity rule has been made, since the Assembly may make decisions on policy by two-thirds vote and on procedure by a majority vote. We have also seen that in the Security Council the existence of the veto in certain cases bears "witness" to the continued existence of a unanimity rule. Both the United States and the Soviet Union representatives at San Francisco insisted upon the importance of retaining this rule. Much concern has been expressed at the frequency with which the Soviet Union has exercised the veto. Theoretically it could argue that it is better to exercise the veto early in a dispute than to allow a dispute to go to such lengths as to bring up the question of enforcement and then interpose a veto. Nevertheless, a widespread feeling existed that the veto had been abused, and the General Assembly in a majority resolution passed on December 13, 1946, recommended that the Security Council early adopt practices and procedures to reduce its difficulties in the application of the unanimity rule in order to insure prompt and effective exercise of its functions. We have noted in the dicussion on the atomic bomb that the United States led the way in proposing the abolition of the veto power in the control of atomic energy. On the other hand, as Colonel Romulo pointed out in the course of the United Nations debates, a strong country like the Soviet Union will not give up the veto as long as the present system of one vote for each member state, however small or great, obtains. The question is not unconnected with the problem of the weighted vote.

The Permanent Court of International Justice.—We have referred to the establishment of the Permanent Court of Arbitration as a result of the First Hague Conference in 1899. Under the convention each signatory power might select four persons, whose names were sent to the Bureau of the Court at The Hague and were included upon the panel of judges. About one hundred and fifty persons constituted the panel, and from them the members of tribunals were selected when a dispute arose. Each party then signed a *compromis* which set forth particular questions to be decided, the number of members of the tribunal, and the method of choosing the judges from the panel. It can be seen that the Court was not a permanent court. It tried relatively few cases, averaging indeed less than one a year. And it suffered from several defects: The tribunal was overweighted by members selected after the dispute had arisen by governments which perhaps had an

eye to the known views of the judges on the panel concerning the principles at stake. There were too many representatives of interested parties compared with neutral judges. A court which sits only once cannot build up continuity and prestige, which come from long experience; its judgments will not carry so much weight (since the next tribunal would be selected from the one hundred fifty members on the panel) as if the same members sat year after year.

Consequently an attempt was made at the Second Hague Conference to remedy the defects, and the American delegates were instructed to urge the establishment of a permanent tribunal of judges "who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility." The movement failed because of the difficulty in finding a method of electing judges satisfactory to both the small and the great powers. If the former each had one judge, the court would be too large; if the latter each had one judge, the small powers would be in danger of being excluded. A move to confer a degree of compulsory jurisdiction upon the Permanent Court of Arbitration failed because of the opposition of Germany. And a similar fate befell the attempt to create an international prize court to be composed of fifteen members, including judges chosen by eight of the great powers.

In 1907 a Central American Court of Justice was established comprising five judges, one nominated by each of the five participating states. It was given wide jurisdiction, including the right to hear suits brought by an individual against a foreign state. The charge has been made that it failed because it attempted to try cases which had too great an element of the political in them. It sat upon the 1916 Bryan-Chamorro Treaty between the United States and Nicaragua which granted to the United States an option for constructing an interoceanic canal and establishing a naval base in the Gulf of Fonseca. Costa Rica and Salvador appealed to the Court, claiming that the treaty violated an 1888 treaty with Costa Rica and that the Gulf was owned by the three countries. The Court decided in both cases against Nicaragua. The latter refused to admit the jurisdiction of the Court, and the United States ignored the decision as well. Resentment ran high, and the Court ceased to exist after 1918.

In 1922 the Court was theoretically re-created. A panel of

thirty names was drawn up, and three judges were to be chosen for each case. Its jurisdiction was to be obligatory, but it could not deal with problems affecting sovereignty and independence. However, it has not been called upon to try any cases.

After 1918 another move took place to build a more adequate institution. Article 14 of the Covenant provided that the League Council should formulate and submit plans to the Members of the League for the establishment of a Permanent Court of International Justice. An advisory committee met and drafted plans which, after considerable discussion and modification, were adopted by the states and became the Statute of the Court. The major problem which had remained unsolved in 1907—the election of judges—was now successfully solved by the method suggested by Mr. Elihu Root. From the panel of judges nominated by the national groups in the Permanent Court of Arbitration, the Council and the Assembly elected the Judges, each body sitting separately. Such a method gave the small powers a voice but reserved a special voice for the great powers.

The Court was inaugurated in February and held its first session in June 1922. At first it comprised fifteen members—eleven judges and four deputy judges. In 1929 this provision was modified to read that the Court "shall consist of fifteen members who are chosen regardless of their nationality for their high legal and moral qualifications." Article 9 provided that the Court should represent the main forms of civilization and the principal legal systems of the world. The judges held office for nine years and were eligible for re-election. They thereby enjoyed independence, and the nine-year period enabled changes to be made so as to avoid the danger of a judge becoming too old in his office. A judge might be dismissed only on the unanimous vote of the other members of the Court. Thus the institution was freed from the danger of political interference. The judges elected their own president for a three-year term, and also the registrar of the Court. The Court was situated at The Hague, and the original statutes provided that it must meet at least once a year, although the President could summon extraordinary sessions when necessary. By the revised Article 23 the Court was to remain permanently in session except during the judicial vacation. Nine judges formed a quorum.

Article 34 prescribed that only states or members of the League could be parties in cases before the Court, with special provisions for cases involving the International Labor Organization. Although several of the Committee of Jurists believed that individuals

ought to be able to appear before the Court, this provision was not inserted. Nonmember states by making a declaration accepting the conditions laid down by the Court might appear before it. Much discussion took place as to whether or not the Court should exercise compulsory jurisdiction, i.e., whether states against their own will could be summoned before the Court. The Committee of Jurists decided in favor of this principle, but the Council and the Assembly refused to accept it and instead approved Article 36, which provided that the Court had jurisdiction over all cases which the parties referred to it and all matters especially provided for in treaties and conventions in force. There are many treaties which conferred compulsory jurisdiction upon the Court, and the Covenant itself required that certain questions should be submitted to judicial settlement. Disappointing as the rejection of its compulsory jurisdiction was to many legal experts, they found some consolation in the compromise known as the Optional Clause. Article 36 also provided that states might agree to recognize as compulsory the jurisdiction of the Court in all or any of the classes of legal disputes. The Scandinavian countries led the way, and other countries followed, signing the Optional Clause, usually for a period of five years. The reason for the limited period and for the unwillingness of some powers to accept the principle of compulsory jurisdiction is to be found in the difficulty of clearly establishing the line between a legal and a political dispute, a question which is here dealt with elsewhere.

We have discussed earlier in this chapter the question of differences in the legal systems of the world. One can imagine that countries living under the Anglo-Saxon common law might hesitate to submit their cases to a Court dominated by judges brought up under the Roman law. Because of the alleged gaps and uncertainty and contradictions in international law, it was a matter of importance to decide what law the Court would be authorized to apply. Its statute provided that it might apply international conventions, whether general or particular, established rules expressly recognized by states, international custom as evidence of general practice accepted as law, the general principles of law recognized by civilized nations, and judicial decisions and the teachings of publicists. The Court might also, if the parties agreed, render a decision *ex aequo et bono*, i.e., according to equity and good conscience. (Fachiri suggests that this clause was inserted to enable parties having disputes of a political character, or which were otherwise not suited for decisions on strictly legal grounds, to

have recourse to the Court as a "purely arbitral party untrammeled by rules of law.")

There was a special chamber to consider labor cases, comprising five judges appointed by the Court every three years. If the parties to a dispute involving labor demanded it, the chamber would hear and decide it; but if there was no such demand the full Court would sit. A similar chamber for transit cases was provided. And Article 29 provided for a third chamber, that of summary procedure, comprising three judges with two substitutes, elected annually by the full Court.

Under Article 14 of the Covenant the Court "may give advisory opinions upon matters referred to it by either the Assembly or the Council." These two bodies had frequent recourse to the Permanent Court for advisory opinions, which, because of the thoroughness with which the Court considered the questions, "are practically equivalent to regular judgments" and were on many occasions of great assistance in determining the legal position in matters involving political problems considered by the Assembly or the Council.[27]

States were unwilling to submit to judgment of the Court without having a national representative sit on the bench. Fachiri points out that there were three possible situations relative to the question of the nationality of judges; on the bench there might be a judge of the nationality of each party, there might be a judge of the nationality of one of the parties only, or there might be no judges belonging to the nationality of either party. Under the circumstances it would have been possible (1) to make no alteration in the membership of the Court at all, (2) to have the judge belonging to the nationality of one party retire, (3) to appoint an *ad hoc* judge if the nationality were not represented, or (4) to appoint national assessors with advisory powers but with no vote on the decision of the case.

The Committee of Jurists, after much discussion, recommended the inclusion of judges representing the nationality of the parties. It was felt that perhaps the national judge could explain more authoritatively the legal position of his own state, and that if the

[27] Practically every volume on international organization contains a general summary of the World Court, its structure, and procedure. Three works may be mentioned here: A. S. de Bustamante, *The World Court* (The Macmillan Company, New York, 1925); A. P. Fachiri, *The Permanent Court of International Justice* (Oxford University Press, London, 1932); M. O. Hudson, *The Permanent Court of International Justice* (The Macmillan Company, New York, 1934).

verdict went against his state he could assist to form the judgment of the Court in a manner less calculated to give offense. In Fachiri's words: "It is not sufficient that justice should be done; it must also appear to have been done."

Many, however, criticized the provision for *ad hoc* national judges. They asserted that the function of a judge is not to represent his own nationality or state, or to advocate a particular point of view. His vote might be sufficient to change the decision or at least to prevent unanimity. The very presence of national judges may change the character of the deliberations of the Court, and the argument that they may defend national interests is unconvincing because the national representatives who appear to plead the case, and the long written opinions which are submitted, serve amply to present a national viewpoint. Lauterpacht suggested, as a compromise, that for a time, pending their abolition, there should be a panel of national judges who could act in an *ad hoc* capacity; at least this method would provide a permanent list and would eliminate the political appointment of a national judge on the occasion of each appearance before the Court.

What had been accomplished by the new institution by 1939? The Court did important work in building up international case law.[28] Theoretically the Court was bound by Article 59 of the Statute to limit its decisions to particular cases; but in practice it referred to previous decisions and, while not rigidly observed, the doctrine of precedent could not altogether be ignored. In the interest of continuity and stability the Court had to maintain a strong element of consistency. Most of its work was concerned with the interpretation of treaties; but in the course of its decisions it made many authoritative announcements on many aspects of international law, not by way of *obiter dicta* but in the course of a judgment which must be fully sustained by sound legal reasoning. The Court was limited to cases which national states consent to bring before it and to cases which are submitted to it under the provisions of a great number of postwar treaties. Except for the Optional Clause, the Court had no compulsory jurisdiction over states. Consequently, it had to proceed with extreme caution in applying international law. If it attempted to lay down general statements and did not confine it-

[28] H. Lauterpacht, *The Development of International Law by the Permanent Court of International Justice* (Longmans, Green & Co., London, New York, 1934).

self strictly to the particular case at issue, governments would refuse to submit disputes to it or to renew their obligations under the Optional Clause at the expiration of the stated period. Lauterpacht well put it that if governments would not transfer legislative functions to a League, they would certainly not transfer them to a tribunal. The Court, therefore, would not deal with purely hypothetical questions; it avoided statement of general principles; it showed great caution in assuming jurisdiction; and it put itself particularly on guard against making pronouncements upon certain highly controversial aspects of international law, such as the doctrines of servitudes and *rebus sic stantibus*.

The Court had to remember that states are still jealous of their sovereignty; on the other hand, if it was to be true to its task of declaring the law, it had to assert the binding nature of law. In its Twelfth Advisory Opinion, it had to decide whether a unanimous verdict was required in the application of certain disputed passages of the Treaty of Lausanne. Article 5 of the Covenant had stated that except where expressly provided otherwise in the Covenant there must be a unanimous vote on the League Council or Assembly; but the Court held in this case that justice required that the interested party could not judge its own cause. It regarded the Covenant as a legal and not a mere political document; therefore, "as a matter of judicial duty, it must be interpreted so as to be effective." In the Danzig Railway case, the Court ruled that Poland could not release itself from treaty obligations by failing to enact municipal legislation to give effect to those obligations. Its decisions in minority treaties were clearly to the effect that nations must observe the obligations which they have undertaken in those treaties. It ruled that states cannot evade their international responsibilities by an appeal to their domestic constitutions. It proceeded upon the principle that its judgments should give finality to questions under dispute and shall not be interpreted in such a way as to prolong the issue. It did not rigidly insist upon rules of evidence, if, by so doing, the demands of essential justice would be defeated; and in one case it did not refuse to accept jurisdiction because of defects in formal presentation.

It upheld the rule that private rights do not cease when sovereignty changes, and found in favor of the German settlers in Poland. It awarded damages for actions taken in disregard of international obligations. It refused to admit the plea that a state can disregard its international obligations by asserting

that the measures which it took were applied also to its own nationals and to other aliens.

Although the Court was not a major instrument in preventing international strife, it made a notable contribution in building up international institutions for the settlement of legal disputes. Its high standard of judgments, its careful and thorough work, its impartiality (despite the criticisms made of the Court when a bare majority of the judges in the Austro-German customs regime case found that the proposed Custom Union was contrary to treaty obligations) all combined to enhance its prestige, and the mere fact that the Court existed made it possible for states (if they desire to do so) to agree more easily to submit their legal disputes to an authoritative tribunal.

THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice which forms a part of the United Nations organization does not materially depart in organization and powers from the Permanent Court of International Justice. Fifteen judges have been elected in the same general manner as were the judges of the previous court. One improvement to be noticed is that, whereas judges were previously elected for a period of nine years, they are now retired, one-third at the end of each three-year period. This method makes for greater continuity of membership than under the previous regime. Under both statutes, nine judges form a quorum. Article 26 of the new Statute prescribes that the Court may from time to time form one or more chambers of three or more judges to deal with particular categories of cases such as labor or transit or communications. It may also, as did the older Court, establish a chamber of summary procedure. Possibly the Court under Article 26 may set up other chambers of a regional nature, although no special provision for regional courts was made in the Statute despite strong recommendations from the Canadian and American Bar Associations. Perhaps caution in this matter was dictated by the desire to preserve the central body as the paramount court and to avoid the danger of rival regional courts. The new Court, like the old, will be open only to States, nor is it endowed with compulsory jurisdiction, although the Statute provides that States may accept the compulsory jurisdiction of the Court in all or any of the classes of legal disputes. The new Statute repeats Article 36 of the old Statute in listing the four categories of legal disputes. As indicated above, several writers question the soundness of this classification,

but the more conservative view is that, although theoreticians may make a strong logical case against enumerating legal disputes, a practical consideration dictated this approach since probably this is about as far as States would go in conferring jurisdiction upon an international Court.

The procedure of the new Court follows closely the lines laid down in the older Court, and chapter 4 retains the use of advisory opinions. Whereas in the 1920 Statute, two languages are used, the texts of the Charter and of the new Statute are in five languages—Chinese, English, French, Russian, and Spanish. Former Judge Manley O. Hudson writes that the "creating of a new Court was in reality little more than a re-christening and a re-orientation of the old one"; elsewhere the learned judge surveyed several proposals for international regional courts, special courts for commercial arbitration, and an international criminal court, and urged that the multiplication of international judicial agencies throughout the world was fraught with risk; and he defended the policy of strengthening the new Court in order to put international law on a sounder and a more comprehensive basis.

On August 2, 1946, the United States Senate passed the Morse Resolution and thereby accepted for the United States the compulsory jurisdiction of the International Court of Justice. The Morse Resolution had some minor limitations but these were far less important than the two amendments proposed by Senators Connally and Vandenburg. Senator Connally proposed that domestic questions "as determined by the United States" should be excluded from the jurisdiction of the Court and Senator Vandenburg's amendment provided that compulsory jurisdiction should not apply to disputes arising under a multilateral treaty unless all parties to the treaty affected by the decision are also parties to the case before the Court or unless the United States especially agrees to jurisdiction. In the opinion of many persons, Senator Connally's reservation was most unfortunate in that its effect "is to give to the United States a veto upon the jurisdiction of the Court after a dispute has been referred to it by an applicant state."[28a] Senator Morse argued that this amendment would pave the way to other states unilaterally declaring that certain disputes in which the United States might be an applicant lay within their domestic

[28a] Lawrence Preuss, "The International Court of Justice, The Senate, and Matters of Domestic Jurisdiction," *The American Journal of International Law*, Vol. XL, No. 4, October 1946, p. 729. See also Manley O. Hudson, "The World Court: America's Declaration Accepting Jurisdiction Raises Questions," *American Bar Association Journal*, December 1946.

jurisdiction and would therefore possibly "have serious consequences in depriving the United States of judicial remedies against other states in cases in which it would otherwise have a valid legal claim."[29] The Vandenburg Resolution, if carried to a logical conclusion, might mean that the Court could not interpret the United Nations Charter in settling a case between two disputants unless all the other members of the United Nations became parties to the dispute, but one authority has suggested that the word "affected" used in the Vandenburg amendment might be interpreted to mean "directly affected" or "legally affected."[29a] Wilcox takes a less pessimistic view of the two reservations than does Preuss.

Under Article 13 of the United Nations Charter the General Assembly is authorized to initiate studies and to make recommendations for the purpose of encouraging the progressive development of international law and its codification. After the transfer of the United Nations to New York the legal department of the Secretariat set up a Division on Development and Codification of International Law which has been studying the problem. The sixth (legal) committee considered a joint resolution proposing that the Assembly appoint a committee of seven members to study with the Secretariat the methods by which these steps might be carried out.

In October 1946, the Security Council approved the conditions under which states not parties to the Courts Statute might have access to the Court. The Council rejected a resolution proposed by Poland which would have barred Spain from membership in the Court.

PROPOSALS FOR EXTENSION OF INTERNATIONAL JUDICIAL INSTITUTIONS

In recent years several scholars have proposed the establishment of further international judicial machinery to deal with new questions which now confront a complex and tangled world.[30] In 1936 a League of Nations committee for the study of international loan contracts surveyed the possibilities of reducing hazards of in-

[29] Preuss, *op. cit.*, p. 734. It is of interest to note that the Chinese government on October 26, 1946, filed a declaration with the Secretary-General of the United Nations accepting compulsory jurisdiction without reservations.

[29a] Francis O. Wilcox, "The United States Accepts Compulsory Jurisdiction," *op. cit.*, p. 715.

[30] For this section I have drawn extensively on my article in the *Washington Law Review and State Bar Journal* (March 1946), entitled "The Immediate Tasks of International Law and Organization."

ternational lending by improving the legal form of international loan contracts. It emphasized the need of greater certainty of the proper law and jurisdiction to be applied and suggested the desirability of embodying "into an international convention a code of rules applicable to international loans, thus removing the subject from the field of municipal law into that of international law." And it requests the International Institute for the Uniformity of Private Law at Rome to prepare such a code. In the absence of such procedures, delay ensues in submitting disputes for settlement. The Committee therefore proposed that loan contracts should include a clause providing for arbitration on all matters of interpretation of the contract, that each contract should provide for the appointment of arbitrators by some international body, and that an arbitral tribunal comprising three persons nominated by the President of the Permanent Court of International Justice should be established to try disputes exclusively from a legal point of view.

We have pointed out in the chapter dealing with the protection of nationals abroad how serious are the drawbacks attending the traditional methods unilaterally employed by sovereign states in safeguarding the rights of their citizens in other lands. Thus far it has been impossible to persuade states to allow their nationals to appear directly before international tribunals, partly because such a step might compromise the sovereign dignity of the state itself and partly because sovereign states will not permit themselves to be sued by individuals. Recognizing these limitations, Edgar Turlington proposes an international equivalent to national courts of claims which may hear and decide individual cases on their merits. Turlington suggests that the United Nations might set up a committee "with a sufficient number of sub-committees and technical assistants to receive, investigate, and report on all complaints filed by individuals against governments other than their own." This Committee might also make recommendations in case an individual had suffered injuries for which no one government could be held responsible under present rules of international law.[30a]

The same author a few months later made another proposal designed to obviate the long delays which attend the claims of citizens against a foreign country. Specifically he was referring to certain claims of American citizens against Mexico, some dating

[30a] Edgar Turlington, "A New Technique in International Reclamation," *American Journal of International Law,* XXXVII (1943), 293.

as far back as 1868. Turlington proposed that governments agree each to establish permanent courts within its own territory manned by judges of its own choice to hear claims of foreigners for loss and damage through alleged violations of international law; a Permanent International Court might then deal with cases in which the decisions of the national courts "are not accepted by the governments of the individual claimants." No appeal would go to this international court "except on leave of the individual claimant's governments." Such a restriction would limit the number of appeals and avoid the difficult problem of the right of the individual to appear before international tribunals. Turlington suggested that this court of appeal might be composed of 60 distinguished lawyers of some 20 different nationalities, with the Court divided into three chambers, each for a definite region, and the Permanent Court of International Justice (now the International Court of Justice) might serve as a court of last resort "in which application for certiorari might be made in cases of the gravest importance."[31]

In the judgment of Kurt H. Nadelmann improvements in the international arrangements concerning bankruptcy will be required if international investment and trade are to increase and be put on a firmer footing. At present national creditors too often secure preference over foreign creditors in bankruptcy proceedings; divergent decisions, different requirements of courts, and different rules concerning the time when bankruptcy is given effect add to the difficulties; and inadequate publications dealing with foreign bankruptcy laws hinder progress in treaty arrangements. Nadelmann proposes an international information center for bankruptcy—perhaps associated with the International Chamber of Commerce. The subject bristles with difficulties, and it is doubtful whether a general international convention on the subject can be expected under present conditions. But bilateral and limited multilateral treaties, along the line of reciprocal enforcement acts and bankruptcy judgments, should be attempted.

World War II has created serious problems on the continent of Europe, not the least of which has been the breakdown of the normal restraints of civilized life[32] and the emergence of criminal

[31] Edgar Turlington, "A Neglected Phase of International Judicial Organization," *American Journal of International Law*, XXXVII (1943), 651.

[32] Jan Karski, *Story of a Secret State* (Houghton Mifflin Co., Boston, 1944), gives vivid description of the methods which underground organizations used in fighting the Nazis. The techniques learned in this struggle may have far-reaching consequences for postwar reconstruction.

actions on an unprecedented scale, many of these with the direct encouragment and careful planning of the Nazi government. Under these circumstances, Professor Radzinoewicz proposed an International Commission to study penal matters, to encourage the unification of penal legislation and attempt "to make criminal policy everywhere more humane and at the same time more efficacious." Such a Commission was established in November 1941, on the initiative of the newly established Department of Criminal Science at Cambridge University. The Chairman and the Secretary of the Department are acting as the Chairman and the Secretary of the Commission which is hoping to undertake more extensive work than was achieved by the former international penal and prison commission.

National legal-aid machinery constitutes another requirement, according to certain outstanding authors, owing to the huge number of displaced persons, the destruction of normal economic life and of property, and other civil rights. These emergency needs are paramount, but the revival of international trade in the next few years will necessitate a great deal of international legal co-operation "to permit the transfer and discharge of such legal affairs from one country to another with a minimum of expense, delay, and cumbersome red tape, and in such a manner that reasonably comparable results may be obtained."[33] They suggest an international clearing house which could draw up lists of competent persons in various countries ready to serve in the work of providing legal aid. The clearing house could gather information concerning "the resources of the law in the various countries dealing with human problems" (the statutory provisions, for example), and also compile practical suggestions "as to how particular results may be achieved by various agencies whose aid may be solicited, and many other such details which seem barren and tedious until one is confronted with an actual situation requiring prompt action."[34]

It could also promote "periodical discussion and adoption of reasonable minimum standards," and the two authors urge that a meeting of experts be called, similar to that held in Geneva in 1924 for the purpose of drafting an international convention to supplement the 1907–1908 convention and to provide a new point of departure. In their general view they are supported by a noted

[33] John S. Bradway and Alona E. Evans, "International Aspects of Legal Aid," *American Journal of International Law,* XXXVIII (1944), 463.

[34] *Ibid.,* p. 446.

British authority, E. J. Cohn, who writes: "The best treatment of a foreign poor plaintiff or defendant by the Courts of a country will not help if the legal aid organizations in the two countries concerned are not capable of handling international cases with reasonable efficiency."[35] The unprecedented character of the problem of displaced persons has "vast" international aspects,[36] and Cohn urges that the legal aid organizations in several countries take the lead in setting up an international organization to act as a clearing house of information. Since the poverty-stricken bodies in many nations cannot be expected to do this work, the initiative should be taken by Great Britain and the United States.

We have noted above the criticism that international law should be strengthened by widening the jurisdiction of international courts over individuals. During World War II considerable discussion took place concerning the rights of individuals, for the dictatorships in Italy, Germany, Hungary, and elsewhere clearly showed that Wilson's fourteen points which dealt primarily with the rights of nations and only incidentally with the rights of individuals did not go far enough. The liberated countries which had suffered under the tyranny of imperial masters frequently showed no great concern for the liberties of their own minorities. "Sovereign independence and internal freedom did not always go together; indeed several of the sovereign nations proved to be not the promoters but rather the enemies of the freedom of their subjects."[37]

In 1942 the United Nations representatives proclaimed the need of preserving human rights and justice in their own lands as well as in other lands; and at Teheran the Big Three proclaimed the desirability of eliminating tyranny and slavery, oppression and intolerance. Many writers urged that nations which refused freedom at home might be expected to pursue harsh in-

[35] E. J. Cohn, "The Political Parties and Legal Aid," *The Modern Law Review,* VIII (1945), 118.

[36] Fred K. Hoehler, Director of the Division of Displaced Persons, UNRRA, writes of the "lasting dislocation" of hundreds of thousands of people, the tremendous task of rehabilitation, and such legal problems as "the right of displaced persons to marry, to divorce, to adopt children, and to prosecute charges against other displaced persons." This apart from the gigantic question of statelessness. *Europe's Homeless Millions,* (Foreign Policy Association, New York, 1945.)

[37] Linden A. Mander and Melvin M. Rader, "International Protection of Individual Freedom" in L. A. Mander, J. B. Harrison, N. H. Engle (editors) *If Men Want Peace* (The Macmillan Company, 1946), p. 82.

ternational policies abroad and that national freedom was not enough. "The individual must count in his own right; he must not be regarded merely as a unit of national society."[38] The United Nations Charter embodied something of this philosophy. Article I, Section 3, states that the United Nations has as one of its purposes the "promoting and encouraging of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"; how to achieve this laudable end is not clear, for two great difficulties present themselves. First, how far international action can interfere in what are essentially matters within the domestic jurisdiction of any state is difficult to ascertain. Indeed, Section 7 of the same Article states that the United Nations is not authorized by anything within the Article to intervene in matters essentially within the domestic jurisdiction of any state. The second difficulty is that of defining what under all circumstances are human rights and fundamental freedoms.

Concerning the first point, we may well ask just where the denial of essential freedom within a state will cease to be a matter of purely national concern. What if a government mistreats its minorities as the Nazis mistreated liberals, Jews, Catholics, and others? Of themselves, do such actions justify international intervention, and if so, what kind? In borderline cases, shall the decision of the national authority or an international authority hold good? If government repression becomes so severe as to promote unrest widespread enough to threaten rebellion, what then? The experience of the League of Nations showed how difficult it was for an international organization to accomplish much for national minorities. Presumably the task of internationally protecting individual rights would be much heavier not only because of the opposition shown by the "sovereignty" of nations but also because of the overwhelmingly numerous cases which presumably an international court or other agency might have to decide. When we consider how little the United States federal government has been able to do to prevent discrimination against Negroes in the Southern states, we can well appreciate the magnitude of the problem on an international scale.

An attempt by the United Nations to intervene in what nations still regard as their own domestic affairs will be met with still more hostility than the Southern states have manifested toward the federal government, for anti-foreign prejudice and the appeal to

[38] *Ibid.*, p. 83

sovereignty will prove valiant allies to the opposition.[39] In addition the international society would require an enforcement staff which we have no reason to believe can be attained within a measurable distance of time.

The second point concerns the definition of human rights. We do not have to subscribe to the theory of moral relativity to acknowledge that rights and duties are largely conceived in terms of the philosophic and social values of a given community. Free enterprise does not fit easily into a socialist country; the two-party system will not be universally accepted as a test of political freedom. Other examples might be given to show that it will not be easy to draw up a definitive list of "rights" applicable under all circumstances since the legal systems and social traditions of countries vary so greatly.

The difficulties foreshadowed in the preceding sections were revealed in the Human Rights Commission of the United Nations Economic and Social Council which met January 27 to February 10, 1947. Colonel William R. Hodgson of Australia pleaded for the early establishment of a World Court of Human Rights which should have jurisdiction to decide disputes concerning rights of citizenship and the enjoyment of human rights and of the fundamental freedoms. This Court should be open to any person or group of persons or member state of the United Nations and should be empowered to hear appeals from decisions of national courts. A court should be established without delay and should proceed, *pari passu*, with the acceptance of a multilateral convention guaranteeing fundamental human rights. A majority of the members of the Commission believed the proposal premature, and the resolution was tabled. The Commission also decided that the time was not ripe to draft a bill of human rights but requested three members to prepare a preliminary draft for examination in July 1947.

Another stumbling block arose: namely, the question whether

[39] The National Negro Congress on June 1, 1946, asked the United Nations to intervene to halt the oppression of 13,000,000 American Negroes. A thousand delegates went on record expressing "profound regret" that they could not obtain relief through constitutional repeal and had been forced to bring the issue to the attention of the United Nations. An eight-page documented brief compiled by Dr. Herbert Apetheker, a member of the American Historical Association, was attached to the appeal. The brief charged that the Negroes in the United States suffer under a second-class citizenship, and are subjected to oppression and discrimination based upon an unscientific theory of racism. At the time of writing it was too early to know what action the United Nations would take.

the individual or society is supreme. One group of delegates took the view that the individual, apart from the community, was a pure abstraction. Other delegates argued for the priority of the human individual and for the sacredness of his mind and consciousness, and it will be surprising if this division of philosophic values does not persist for a long time.

A subcommission on freedom of information and of the press was asked to examine what species was involved in the concept of freedom of information. Another subcommisison was to deal with the prevention of discrimination and the protection of minorities.

During the session, the Assistant Secretary-General, Henri Laugier, declared that a fundamental issue must be faced, national sovereignty or human rights. He argued that no violation of the Charter and therefore no violation of human rights should be permitted under guise of national sovereignty. Mr. Laugier also pointed out that the Commission was not competent to hold hearings or conduct inquiries without both sides represented, and he urged that ultimately the principle and practice should be established of an impartial hearing before the United Nations.

What can be done is to state in general terms, as was done in the preamble to the International Labor Organization in 1919, the general objectives and then to make them the ideals to be served and expressive of the long-term purposes which international society can have in view. Elsewhere it was suggested[40] that an international office of human rights should be set up to plan periodic international conferences which would deal with specific problems and, like the International Labor Organization, gradually pass or adopt a number of conventions or recommendations year by year. It was also pointed out that the 1928 Pan-American Conference created an Inter-American Commisison of Women which studied problems concerning the legal rights of women and prepared measures for the consideration of the Pan-American conferences themselves.

The United Nations has set up a Commission on Human Rights and on February 16, 1946, the Economic and Social Council set up a nuclear subcommission on the status of women as a subsidiary of the Human Rights Commission. The subcommission met on April 29 and after nine meetings issued a report

[40] Linden A. Mander and Melvin M. Rader, "International Protection of Human Freedom" in J. B. Harrison, L. A. Mander, and N. H. Engle (editors) *If Men Want Peace* (The Macmillan Company, 1946), pp. 81–88.

which made detailed recommendations designed to raise the status of women to equality with men in politics, civil and social, economic, and educational life. It set forth a number of proposals for a survey of laws dealing with the status of women and recommended that the Commission comprise fifteen members. The Council on June 21 raised the subcommission to a full commission which is to prepare recommendations and reports to the Economic and Social Council.

The Economic and Social Council, in June 1946, directed the Secretary-General to publish a Year Book on Human Rights as well as information on the activities of the United Nations on this question. It also adopted the principle that the peace treaties should contain provision for human rights; and it is significant that the treaties with the five enemy states have clauses in which the governments undertake to secure to all persons under their jurisdiction the enjoyment of human rights and the fundamental freedoms. We have noted in the chapter on minorities the action of the General Assembly on the treatment of Indians in South Africa. The Assembly also passed a resolution favoring an international conference on freedom of information as well as a resolution on genocide, a matter referred to in the chapter dealing with the prevention of crime. Discussion has been proceeding on an international Bill of Rights but here the United Nations has run into the difficulties outlined above and has thus far rejected the Australian proposal for an international court to deal with human rights.

On June 21, 1946, the Economic and Social Council invited members of the United Nations to consider establishment of information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights. This action was taken pursuant to Article 62 of the Charter, which empowered the Council to make recommendations for the promotion and observance of human rights and fundamental freedoms. On November 16, 1946, the third committee of the General Assembly adopted a resolution recommending to the General Assembly that member states which had not already done so should adopt measures which would grant women the same political rights as men.

The evidence thus suggests that the individual and the group are gradually attaining a status in international law and organization, although the movement is as yet of a very limited character. We have referred elsewhere to the significance of the workers' and

employers' representation in the International Labor Organization. And, under the League of Nations, national minorities were given a certain status in the matter of appeals. The League also gave an implicit recognition to the right of individuals and groups to be interested in and associated with the League, but the United Nations has gone further in this respect. It organized a conference of international organizations at Lake Success early in February 1947. This was attended by 250 persons representing more than one hundred organizations, some of which, such as the World Federation of Trade Unions, the American Federation of Labor, and others, are extremely influential. Delegates came from all over the world and discussed the methods by which the United Nations Department of Public Information could more actively assist nongovernmental organizations by the appointment of advisers similar to those set up to advise in a matter of press, radio, and films.[41] Moreover, the United Nations Educational, Scientific, and Cultural Organization has encouraged the formation of national commissions for UNESCO.[41a]

But we are unlikely to see other than slow progress in the field of individual rights not only for the reasons given above but also because of the growth of arbitrary power of governments in recent years; the political climate is not favorable to individual rights. Nor can we expect these rights to flourish unless a strongly knit international organization is established, for the race in atomic arms will still further jeopardize personal liberties and lead increasingly to the growth of the police state.[42]

Professor Borchard's view finds unfortunate confirmation in the demand made by Allied governments in the earlier part of 1946 upon the Swiss government that privately owned German

[41] See *United Nations Weekly Bulletin,* February 11, 1947, p. 116, and February 25, 1947, pp. 174–75.

[41a] See *United States National Commission for UNESCO,* "Report on the First Meeting," September 1946, US-UN Information Series 14, *Department of State Publication 2726,* 1947.

[42] For an able statement of difficulties see Edwin Borchard, "Historical Background of International Protection of Human Rights," *Annals of the American Academy of Political and Social Science* (January 1946), pp. 112–14. I have attempted to analyze the bearing of international security on civil liberty in "Civil Liberty after the War," *The American Political Science Review,* February 1946, pp. 70–79. Robert E. Cushman has an excellent paper "Civil Liberties in the Atomic Age," in *Annals of the American Academy of Political and Social Science* (January 1947), pp. 54–65. The literature on the general subject of international protection of human rights is voluminous. See especially H. Lauterpacht, *An International Bill of the Rights of Man* (Columbia University Press, New York, 1945).

bank accounts in Switzerland be handed over to the Allies as part of reparations. Critics claim that this step constitutes a serious imitation of Nazi methods and shows little respect for private rights. Such an action identifies the citizen with the state and assumes that normal peacetime international trade and financial relations are also a kind of economic warfare. Moreover it constitutes a departure from the 1907 Hague Convention which forbade the confiscation of private property. Unfortunately similar action was taken at the end of World War I when German property was taken over in the United States; however Congress regarded this step as sequestration and not as a permanent confiscation; and in 1928 the Settlement of War Claims Act resulted in substantial payments to Germany. The Allies, by Sections 297 and 298 of the Versailles Treaty, required Germany to make good to Allied citizens for property which it had taken from them during the war. Fundamentally, however, the important principle emerges that the state appears to have swallowed up the individual and that, as Harold Fleming puts it, "there are no individuals but only nations and states, and that even peacetime trade between individuals is in fact a kind of economic warfare in which the individual and his property are only pawns in the struggle between states. . . . ."[42a]

Attempts at Codification of International Law.—In most countries the time comes when the great bulk and complexity of the massive body of law which has been created by custom, statutes, and judicial decisions causes men to ask if this material cannot be sifted, analyzed, and put into logical order. Every year legislation grows in volume, the number of judicial decisions increases, and the task of judges and lawyers becomes more difficult. Codification seems to provide an obvious answer, and history affords many examples—the Code of Justinian, the Prussian Code of 1751 (replaced by the German Civil Code of 1900), the Napoleonic Civil Code, and many others. In the international field the problem appears to many people to be even more urgent. We have seen that there are conflicts of laws and that the binding force of some rules is by no means universally admitted. Would not a clearer statement and elimination of the inconsistencies now existing help to encourage a recourse to international arbitration?

A number of scholars deny that codification can be applied

[42a] Harold Fleming, "Is Demand on Swiss Thwarting of Justice?" *Christian Science Monitor* (May 14, 1946), p. 11.

to the international sphere as it can in the national sphere. In a relatively undeveloped system, premature codification would arrest the growth of law. Many cases will arise for which the code will have made no provision, and difficulties will ensue in the attempt to incorporate new laws into the code. Codification will destroy flexibility and elasticity. Further, the most serious disputes likely to lead to war arise not from conflicting views of international law but from divergent interests. Nor can we expect that codification conferences are the best method, because national representatives are frequently hampered by precise instructions which cause them to overemphasize the national views of their government instead of taking a broader view of the law.

Again the international courts have developed rules to deal with conflicts of laws and, provided that these rules are known in advance, no hardship is encountered. Also a state would probably accept the verdict of an international tribunal, whereas it would "not be prepared beforehand to accept the view of the law which the tribunal in fact adopts." It is better to allow law to grow out of the needs of communities rather than to attempt by governmental action to force the process. Finally, codification has a double meaning: (*a*) merely to express the law in a clearer and more precise form, and (*b*) to restate the law in such a way as to eliminate substantive differences, which really involves legislative activity. It is argued that codification of international law involves much more legislation than codification of national law, and for that reason the statesman rather than the lawyer is required: "What is being attempted in fact is to arrive at agreement, not so much on what the law is, but more especially on what it shall be in the future."

Proponents of codification allege that customary law grows too slowly and must be supplemented by more rapid case law, which codification would encourage. International law stands in need of restatement and precision and "it needs also the authority of treaty obligation, and the confidence produced through agreement, and the elimination of conflicting interpretations." If laws are more definite, nations and governments will be more willing to resort to international tribunals, which would then "have more opportunity, through judicial interpretation, to develop international law and give to it necessary elasticity." Moreover, codifying need not destroy the elasticity of developing law, as is seen in the United States, where a rigid Constitution has not prevented the growth of conventions which have become powerful. Codification

has been successful within nations, and success attended the efforts of the Committee of Jurists who drafted the Statute of the Permanent Court of International Justice, which was in effect a codification of the sources of international law.

During the nineteenth century a number of unofficial efforts were made to promote codification. Jeremy Bentham, Bluntschli, who produced his code in 1868, David Dudley Field, who published his draft outlines of an international code in 1872 and 1876, and the Italian jurist, Fiore, whose work appeared in 1899, were outstanding individuals in the cause. The Institut de Droit International founded in 1873, the International Law Association, the American Institute of International Law, and other organizations, and the Harvard Research in International Law (begun in 1926) have worked consistently at the problem.

On the American continent several official conferences have devoted their energy to the same ideal. At the 1906 Pan-American Conference a committee of jurists was appointed and formed six commissions, whose work was interrupted by the World War of 1914–1918. After the restoration of peace, the work was begun again. In 1928 the sixth Pan-American Conference at Havana adopted seven statements of the law dealing with the status of aliens, the duties of neutrals in the event of civil war, the position of diplomats and of consular agents, the problem of maritime neutrality, and the right of asylum.

In Europe discussions took place at the two prewar Hague Conferences, but after 1918 no mention was made of codification in the League Covenant. The British representative, Lord Cecil, in the first League Assembly, opposed codification; and not until 1924 did the Council, at the request of the Assembly, set up a committee of experts for the gradual and progressive codification of international law. After some time it produced several recommendations. Out of these recommendations and the labors of a preparatory committee came the first Codification Conference, attended by representatives of forty-eight states. It met at The Hague on March 30, 1930, and considered three subjects: nationality, territorial waters, and the responsibility of states for damage caused in their territory to the person or property of foreigners. The conference had only a most limited success, if, indeed, it may not be described as a failure. The committee on nationality, instead of being able to adopt a code to abolish multiple nationality, produced an instrument which "rather consecrates its existence." The attempt to overcome the differences in

laws dealing with the nationality of married women found the conference divided into two groups—that which wished to maintain the unity of the family, and that which advocated an equal choice for men and women. The conference was able to adopt two protocols: one providing that a person of dual nationality who habitually resides in one country be exempt from military obligation in any other land in which he also is a national; the other eliminating to a certain degree the condition of statelessness. Fundamentally, the conference was able to do so little because the problems of nationality are more political than they are legal. The states which lose people by emigration desire to have laws enabling them to retain their original nationality; immigrant-receiving countries wish to have laws making it easy to acquire the new and renounce the old citizenship.

The attempt to codify the law of territorial waters was even more unsuccessful. Two fundamental questions were the extent of national jurisdiction in marginal seas and the legal rights of a state to enforce its laws outside of the limits of territorial waters. Norway, with its rich fishery resources, was anxious to keep the four-mile limit in order to reserve the fishing rights between the third and fourth miles to its own citizens. Russia, Italy, Portugal, Sweden, Denmark, and Greece also claimed jurisdiction over marginal seas for a distance greater than three miles. Some states (France and certain Latin-American countries, for example), which generally accept the three-mile limit, claimed the right of extending their jurisdiction beyond the three miles for specific purposes. The need of conserving the resources and of preventing criminal activities has led to serious questioning as to the utility of the three-mile doctrine. Little wonder that the conference could not reach an agreement. A subcommittee which attempted to devise methods of determining the limits of territorial waters in bays, around islands, and within archipelagos and straits met with no success.

The effort to codify the laws dealing with the responsibility of states was also fruitless. Questions of delays by judicial tribunals, of the acts of officials, and of armed forces, of insurrections and riots, and whether foreigners should or should not enjoy a more favored position than nationals could not be resolved because of conflicting political and economic interests.[48]

[48] For a general summary of the Hague Conference for the Codification of International Law, see *The American Journal of International Law*, 1930, pp. 467 ff.; also J. L. Brierly, "The Future of Codification," *British Year Book of International Law, 1931*, pp. 1 ff.

Perhaps the inadequate technical preparation and the lack of experience were factors contributing to the failure of the Codification Conference, which itself made a number of observations urging the need of more detailed preparation.

At the San Francisco Conference, Committee II/2 decided, by a vote of sixteen to eight, that the Assembly should be empowered to initiate studies and make recommendations for promoting revision of the rules and principles of international law. The term "revision" was suggested "in order to avoid the rigidity implied by mentioning 'codification' without providing for modification" but in the final draft "the term 'progressive development' was adopted as suggesting a nice balance between stability and change."

Article 13 of the United Nations Charter as finally adopted provided that the General Assembly might initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. The General Assembly took no action along these lines at its first session in London, but after the transfer of the United Nations to New York the legal department of the Secretariat created a Division on Development and Codification of International Law. This Division will study "the functioning of the various organs of the United Nations in the application of the Charter," and seek to determine the "extent and manner in which the workings of such a primary international organization affect the development of international law."[43a]

The "sanctity" of treaties: a dilemma.—We have seen that from one point of view a treaty is merely the expression of the will of a sovereign state and is binding only so long as a sovereign state so desires, and that from another point of view a treaty is a solemn contract entered into by two states and therefore inviolable. Those who hold to the strict Austrian theory of sovereignty will adopt the first view. Those who believe that the foundation of all order lies in the keeping of promises and the observance of treaties and that law is more than the command of a sovereign will accept the second view.

It is significant that in spite of the record of broken treaties—and the list is a long one—the tradition of the inviolability of treaties is even more impressive. Space does not permit reference to the great number of examples which might be drawn from scholars, law courts, statesmen, and governments of many coun-

[43a] *United Nations Weekly Bulletin,* Vol. I, No. 3, August 19, 1946, p. 16.

tries and ages. It is also significant that a government in breaking a treaty seldom claims that international law is not binding, although some new theories seem to be growing up along this line. Governments which break treaties usually plead that they do so because another country has already violated its obligations or because the necessity of self-preservation impels them to such action. In everyday life the great body of treaties has been observed as well as people respect their national law.[44] But two great weaknesses exist: (1) the fact that a peace treaty imposed by a victor upon a vanquished nation is held to be sacred, whereas domestic contracts entered into under duress are not legally binding; and (2), because of the change in conditions, certain treaties are felt by one of the signatories to have become inconsistent with its national welfare.

The first problem is of fundamental importance. A war cannot end until a peace treaty has been signed. The kind of peace treaty will depend upon the temper of the victors and the severity of the terms judged necessary to disarm the vanquished power. The development of modern war is making for harsher peace treaties and rendering more difficult the kind of peace urged by Vattel in the eighteenth century and by Woodrow Wilson in 1916. Military security will demand that the defeated power be disarmed in all potential fields which constitute a threat to the victor, and such wholesale disarmament must in these days of totalitarian warfare impose heavy economic and social disabilities. The more thorough the military disarmament the less satisfactory the political peace, because the defeated power will observe the treaty only so long as it has to do so and, like Germany, will repudiate it at the earliest possible moment. The sanctity of all treaties, therefore, becomes part of the problem of eliminating war by means of collective or some other form of security. After a modern war it is growingly impossible to devise a peace which is both politically and militarily sound.

This question requires further elaboration. The world has witnessed the fatal consequences of attempting to reconcile the idea of a League of Nations based upon the principles of common consent and collective responsibility and such peace treaties as in

[44] J. B. Moore, *International Law and Some Current Illusions and Other Essays* (The Macmillan Company, New York, 1922), p. 300, states: "In respect of actual observance, I venture to say that international law is on the whole as well observed as municipal law. Perhaps one would not go too far in saying that it is better observed, at any rate in time of peace."

1919 were imposed upon defeated countries based upon the principle of keeping those countries in a position of essential inferiority. The League of Nations did not have an opportunity to function according to its own inherent principles. Collective security required conditions of substantial equality and of nondiscrimination among the nations of the world; but the peace treaties were based upon force. The enemy powers had to accept extremely harsh conditions; the "Carthaginian" peace emphasized the distinction between victors and vanquished. Now the contradiction between the peace treaties based on force and the League of Nations based on the ideal of collective guaranty of substantial equality of rights had to be resolved before the League could function in its own right, free from the distortion of a punitive peace. The time came when it was no longer possible simultaneously to move in these divergent directions, and hence the confusion and deadlock in Europe.

The source of this contradiction must be found in the history of the last two hundred years, and its full significance must be adequately appreciated. The Italian historian, Ferrero, has called attention to a fundamental concept of Vattel, who in his *Law of Nations*, written in 1758, urged that, inasmuch as both countries at war believe themselves to be right, and because no impartial tribunal exists to give an authoritative verdict, a peace treaty must represent an agreement which is accepted by both sides as substantially just or at least as substantially not unjust. A peace treaty, if it is really to end a war, must liquidate the causes of the war in such a way as to be "fully and honestly accepted" by the defeated power. But the victorious nation imposes the treaty by force; how then can a defeated power accept it "freely and honestly"? Only if the victor acts with sufficient restraint and combines two objects—obtaining satisfaction for himself by appropriating the object for which he fought, and at the same time avoiding what will appear "an intolerable exercise of compulsion" upon the defeated party. Only in this way will the treaty be sacred or at least tolerable to the loser as well as to the winner. The war must therefore be concluded before the weaker power is so exhausted that it cannot exercise a fairly wide degree of free choice in preferring "a certain and immediate loss but of limited extent" to a later overwhelming defeat and exhaustion. It must feel that it has suffered an honorable defeat at the hands of an honorable opponent whose respect it still enjoys. A peace treaty should be essentially a matter of compromise between two nations

which have resorted to arms in order to gain what they believe their rights. Now a compromise is inconsistent with the application by the victor of harsh penalties, especially if they are imposed in the name of justice. Vattel insists that nothing in war "is more opposed to moderation than the judicatory spirit" on the part of the winner; to use his victory to assume the role of a judge when he has been one of the contending parties is fatal; and to inflict unnecessary punishment upon a defeated enemy is a licentious action condemned by the law of nature.

Only on the principle of "peace without victory" could the treaties of Versailles, St. Germain, Trianon, and Neuilly have the essential spirit of compromise so eloquently urged by Vattel. Yet the very developments of war itself made this kind of peace difficult if not impossible to achieve. During the eighteenth century armies were small—Marshal Saxe claimed that an army of 42,000 men was sufficient. The object of war was to execute "skilfull maneuvers" rather than to "annihilate the enemy." The French Revolution destroyed this conception of war and introduced the idea of a nation in arms and organized conscription. It aroused popular emotion by the use of symbols and propaganda. Passion replaced professional training, and military writers began to advocate the application of sheer force and numbers, instead of avoiding battles and indulging in chess-like maneuvers. The military restraints of the small professional armies were destined to disappear.

A new era had begun, writes Ferrero, an era in which national wars were to assume an increasingly devastating character because of the overthrow of this principle of restraint, the growth of propaganda, and the increased application of science to warfare. The World War of 1914–1918, because of its unprecedented proportions, the fury of its character, and the unleashing of passions on a world-wide scale, became a conflict which lost all relation to any specific objectives. It became its own end, and it is significant that war aims were not even discussed until 1916.

Here we find the essential cause of the great contradiction between the requirements of modern war and the necessities of modern peace. In order to maintain a military victory the general staffs must insist that the enemy be rendered as helpless as possible. Because of the rapidity of modern inventions in the field of armaments, the victorious nation feels that it cannot adopt a peace without victory. The defeated power might recover so rapidly as to endanger the advantages of the victor. Hence the

enemy must be disarmed. The Peace Treaties gained this objective to an unusual degree; but the military requirements contradicted the fundamental conditions of a sound political peace. There could be no political compromise along the lines suggested by Vattel or President Wilson.

The League of Nations and the ideal of collective security could not, therefore, develop along sound lines while they were called upon to guarantee the status quo which itself was the result of war. To make Articles 10 and 16 serve the purpose of perpetuating provisions of a forcible treaty, and not to enable Article 19 (and other Articles) providing for the reconsideration of existing treaties to come into play, was to invalidate the whole claim that in preventing aggression by collective sanctions the League was engaged in "police power." Within nations themselves, police power is not used to enforce contracts imposed by threat or violence by one person against another. And until nations agree to modify treaties in favor of those countries which lose in war, sanctions must appear as a collective instrument of the victors against the vanquished, and the latter will use the threat of force or go to war, as Germany did in 1939.

Thus the question of sanctions presents a dilemma. Strong sanctions cannot develop until there is fairly universal feeling among people in favor of using them to maintain peace. But rigid definition of aggressors and schemes for automatic sanctions are dangerous until flexibility in treaty arrangements comes about. Otherwise, sanctions mean collective immobility and resistance to change in a changing world.

Peaceful changing of existing treaties carries with it profound implications. If in a threatened war no party should be a judge in its own cause, if the international community claims the right of restraining the aggressor and later of inquiring into alleged grievances, it must follow that the international community is bound to take cognizance of treaties which are the source of irritation and danger. If that be the case, international organization must be in a position to pronounce that certain parts of certain treaties stand in need of modification. Thus the claim of the defeated powers to treaty revision must be examined and must be subordinated to the good of the world as interpreted by collective judgment; but victorious powers in a past war must also realize that their desire for treaty perpetuation must be subordinate to the general good as interpreted by collective judgment. The fact that treaties contain no provisions for revision or denunciation

cannot be made the basis of a claim against the superior rights of the international community.

How can a system be devised to prevent treaties from militating against "peaceful change"? For we need a system which will permit stability on the one hand and change on the other. Punitive peace treaties make peaceful change a most difficult matter. They intensify the argument of the "have" and the "have-not" nations. Germany has been a "have-not" largely because of the peace treaties. Japan and Italy are so-called "have-not" nations because of the damming up of world markets, the collapse of currency, and the struggle for adequate reserves of raw materials in case of war. Peaceful change cannot take place in a world which is building armaments at a feverish pace, and in which military preparedness dwarfs all else. Peaceful change in a war world is a senseless statement. There cannot be peaceful change until there is peaceful routine. Peaceful change must grow out of a more basic order in international as well as national society. But, given the fundamentals of order, steps must be taken to prevent order from becoming solidified into a static political system and to prevent treaties from becoming instruments of political rigidity.

To this end it will be necessary to establish some independent body which can supervise the performance of treaties. Obviously neither of the signatory parties should have the final right to say that a treaty is no longer observed because conditions have changed. A treaty should remain binding until a court or tribunal, after hearing an appeal from the parties, shall determine that modification should be permitted.

Certain principles[45] would assist in maintaining the sanctity of treaties: (1) They should be signed for a fixed but not overlong period, and should contain a clear statement of methods by which the signatories may denounce or modify them. Short-term treaties will be less liable to denunciation than those of indefinite duration. (2) The signatories should agree to submit any dispute arising from the interpretation or application of the treaty to the Permanent Court of International Justice or some other tribunal. (3) As described above, any pleas that conditions have changed should be submitted to a third-party judgment and should not provide the excuse for either signatory to denounce the treaty. (4) Because some treaties exist which no longer express a common interest, a system of peaceful revision is neces-

[45] John B. Whitton, "The Sanctity of Treaties," in *International Conciliation* (Carnegie Endowment for International Peace, New York, October 1935).

ary. At present the only practicable solution is to encourage the parties to come to a voluntary agreement. International organization can do little more, although, in Whitton's judgment, "an impartial investigation and report . . . . made under the auspices of the community of nations, may be useful." (5) The codification of the Stimson doctrine of nonrecognition should be made into "a universal rule of international law," so that every treaty which results from a violation of the League Covenant or the Kellogg Pact or any other conventions for the prevention of war and aggression should be deemed to be "contrary to international public order" and therefore *"invalid ab initio."*

The United States in revising the permanent treaty with Cuba in 1934 and the unsatisfactory treaty with Panama in 1939, in order to carry out the Good Neighbor Policy, has provided an example of treaty revision by diplomatic action which merits consideration as another means of peaceful change.[46]

National Sovereignty and the Binding Character of Treaties.—The "sanctity" of treaties imposed by force does not constitute the only dilemma. The Charter of the United Nations and indeed the future of international law must be examined in the light of two doctrines which cannot easily (if indeed, at all) be reconciled: The sovereignty of nations on one hand and the binding character of treaties on the other.[47] While the Charter does not, as did the League of Nations Covenant, contain provisions for the withdrawal of members and to that degree may be regarded as a more binding instrument than the Covenant, if it is merely the expression of a number of sovereign wills, if it embodies merely the principle of association, then the nations which have signed it may exercise their soverign will to ignore it or to refuse to carry out their duties under its provisions. If, however, the

[46] See Graham H. Stuart, Diplomacy as an Adequate Procedure for Treaty Revision," *World Affairs*, September 1940, pp. 159–63.

[47] Much, of course, will depend upon the definition of sovereignty. In contrast with many writers, Brierly asserts that the "modern conception of the sovereignty or independence of states is not inconsistent with their subordination to law," and that those who claim absolute and illimitable sovereignty for states do so by *a priori* reasoning and by adopting "a thoroughly unscientific method of approach" which is much like "trying to explain human nature by studying the behavior of Robinson Crusoe before the arrival on the scene of Man Friday." (J. L. Brierly, *The Outlook for International Law* [Oxford University Press, 1944], pp. 3–4.) Despite these and many similar observations which could be quoted, the situation which obtains in present-day international relations is that which is described above. Indeed, Brierly recognizes the position when he writes that "International Law is still very definitely in the laissez faire of social development," *(Ibid.,* p. 11).

legal obligations are paramount, then, in fact if not in theory, there has been a limitation placed upon the extent of the exercise of sovereignty. Now the Charter contains explicit reference to the sovereign equality of the members of the United Nations and to this degree appears to consecrate the principle of associative action: the Charter is not a constitution for the world; and it appears to contain the two irreconcilable principles mentioned above. The question arises whether this contradiction can safely be permitted to continue.

Up to the time of the League of Nations, there was no "system of legal precedence whereby treaty obligations" might "be set into their relative order." Consequently a treaty signed by a nation inconsistent with an earlier treaty was deemed to be nonbinding to the extent of its inconsistency; and during the Ethiopian crisis in 1935 Professor Borchard argued that if the United States placed an embargo on exports of oil to Italy because of the latter's violation of the Kellogg Pact, the embargo would violate a long-standing commercial treaty between the United States and Italy. On this view a minor treaty was deemed to have as much weight as a comprehensive international instrument. This incident reveals the significance of Lauterpacht's suggestion that nations should write into a comprehensive treaty a general principle of law with explicitly expressed attributes of superiority over any other contractual obligation present or future.[48] Such a step appeared to have been taken by the nations which signed the League of Nations Covenant; under Article 20 the members agreed that the Covenant was to be accepted as abrogating all obligations or understandings *inter se* which were inconsistent with the terms thereof. They solemnly undertook that they would not thereafter enter into any engagements inconsistent with the Covenant and that they would take immediate steps to procure release from any existing inconsistent obligations. This undertaking did not amount to a constitutional limitation for, in addition to the provision for withdrawal from the League on the part of dissatisfied nations, if states did not take steps to abrogate inconsistent obligations presumably the obligations would still be binding; as Wild noted, no powers under Article 20 of the Covenant were given to the League "to bring about the termination of treaty commitments of this character."[49] In a word, the League Covenant did not

[48] H. Lauterpacht, "The Covenant as the 'Higher Law'" (1936), *British Year Book of International Law*, pp. 54–65.

[49] Payson S. Wild, *Sanctions and Treaty Enforcement* (Harvard University Press, 1934), p. 7.

bridge the gap between the two principles—the paramountcy of legal obligations and the sovereignty of member states.

It would appear that the Charter of the United Nations has made an advance over the League of Nations Covenant in this respect. No provision is made for withdrawal from the organization, though expulsion is possible. As with the League, so under Article 102 of the Charter, member states undertake to register with the Secretariat all treaties and international agreements entered into after the Charter comes into force. Article 103 states: "In the event of a conflict between the obligations of the members of the United Nations under the present charter and any other international obligations to which they are subject, their obligations under the present Charter shall prevail." This appears to be a more binding text than Article 20 of the League Covenant and to this degree perhaps begins the creation of a system of legal precedence and of a system of world constitutionalism. But it is more than doubtful whether the Charter is sufficiently the "higher law" in the sense that a national constitution is a higher law than laws passed by a national legislature. First, the veto power of the Big Five appears to provide a big loophole, and second, no international agency is given final power to say whether a conflict of obligations exists and if so what action must be taken. This question requires further examination, for it involves the problem of the relation of national constitutions to international treaties.

The United States has ratified the Charter of the United Nations which thus becomes part of the supreme law of the land, but in case of a conflict between the Charter and an act of Congress, is it certain that the Charter would prevail? In the United States Circuit Court, District of Massachusetts, 1855,[50] Mr. Justice Curtis held:

> This provision of our Constitution has made treaties part of our municipal law. But it has not assigned to them any particular degree of authority in our municipal law, nor declared whether laws so enacted shall or shall not be paramount to laws otherwise enacted. No such declaration is made, even in respect to the Constitution itself. It is named in conjunction with treaties and acts of Congress, as one of the supreme laws, but no supremacy is in terms assigned to one over the other.

[50] *Taylor* v. *Morton*, 2 Curt. 458–59; Fed. Cas. No. 13,799 (1855). See also, *inter alia*, Swayne J. in *The Cherokee Tobacco*, 11 Wall 616, 621, 20 L. Ed. 227 (1871); Harlan J. in *Hijo* v. *United States*, 194 United States 315, 324; 24 Sup. Ct. in 727, 729; 48 L. Ed. 994 (1904).

The learned judge then went on:

There is therefore nothing in the mere fact that a treaty is a law, which would prevent Congress from repealing it. Unless it is for some reason distinguishable from other laws, the rule which it gives may be displaced by the legislative power, at its pleasure . . . .

To refuse to execute a treaty, for reasons which approve themselves to the conscientious judgment of the nation, is a matter of the utmost gravity and delicacy; but the power to do so is a prerogative of which no nation can be deprived without deeply affecting its independence. That the people of the United States have deprived their government of this power in any case, I do not believe. That it must reside somewhere and be applicable to all cases, I am convinced. I feel no doubt that it belongs to Congress.

Many decisions, of which one only will be noted here, confirm this doctrine that if a treaty and an act of Congress are inconsistent, the later one prevails. In *United States* v. *Thompson* (1919)[51] it was held that "there is no principle of law more firmly established by the highest court of the land than that while a treaty will supersede a prior act of Congress, an act of Congress may supersede a prior treaty. The latest expression controls . . . ." Ex-President Taft, writing in 1916,[52] asserted that:

A sovereign nation, though it makes a treaty, has the power to break it, even though it be violating its plighted faith and doing an immoral thing. If it could not, it would not be sovereign. Therefore, Congress may make a law which is binding on the courts and on the people within its jurisdiction, though the law violate a binding treaty. . . . . To hold otherwise would be to give a treaty, recognized as law under the Constitution, not the force of law but the force of constitutional restriction.

Similar considerations govern the judiciaries of other countries. More than that, it is uncertain how far decisions of the Permanent Court of International Justice are binding upon national judiciaries. C. W. Jenks in 1939 claimed that the assertion of an English judge that decisions of the Permanent Court of International Justice do not bind the English courts was not necessarily sound and asserted that the English courts should, under certain circumstances, hold themselves bound by a World

[51] *United States* v. *Thompson*, 258 Fed. 257, 268 (E. D. Ark. 1919).

[52] W. H. Taft, *The Presidency, Its Duties, Its Powers, Its Opportunities, Its Limitations* (Charles Scribner's Sons), 1916.

Court decision.[53] In addition, the courts have given great weight to the construction of treaties by the political or executive arm of the government, which fact makes for uncertainty in the event that two governments disagree as to the meaning of a treaty provision.

On the other hand, the Permanent Court of International Justice has laid down that treaties are sources of legal obligation and may not be interpreted restrictively by devices of municipal legislation. It upheld the Minorities Treaties and opposed Poland's arguments which would have minimized their effectiveness; it sustained the extended competence of the International Labor Organization against restrictive claims, and in the Tunis and Morocco case it decided against the right of a state to invoke the idea of domestic jurisdiction in order to nullify international law. In several cases it decided that the uncertainty of treaty obligations, owing to ambiguous wording, must be removed so as to permit an effective observance of treaty provisions. In the case of the exchange of Greek and Turkish populations, the Court held that

> . . . . A state which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfillment of the obligations undertaken.[54]

And in the case of Polish Nationals in Danzig, it held that a state might not

> advance as against another state its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force.[55]

[53] C. W. Jenks, "The Authority in English Courts of Decisions of the Permanent Court of International Justice," *British Year Book of International Law 1939,* pp. 1–36.

[54] Permanent Court of International Justice, Advisory Opinion; Ser. 8, No. 10, p. 20. See also P.C.I.J., *Greco-Bulgarian Communities,* Advisory Opinion, July 30, 1930, Ser. B, No. 17, pp. 3–4: "It is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty."

[55] P.C.I.J., *The Treatment of Polish Nationals in Danzig,* Advisory Opinion, Feb. 4, 1932, Ser. A/B, No. 44, p. 24. Also see the Free Zones case where the court said: "France cannot rely on her own legislation to limit the scope of her international obligations." However, the court in the S. S. Wimbleton case (P.C.I.J., Ser. A, No. 1) argued that a treaty by which a state undertook to perform or refrain from performing certain acts did not constitute an abandonment of its sovereignty, though no doubt it "places a restriction upon the exercise of the sovereign rights of the state"!

We thus have the curious paradox that a national legislature may pass an act repealing a treaty without thereby being relieved of its obligations established by the treaty. Clearly much has to be done to clarify the relations of national constitutions to the new international order. Many constitutions were drawn up on days when the major problems originated within the national boundaries. Such a state of affairs no longer holds. Today we witness the almost continuous impact of extra-national forces upon nations. International conferences are becoming increasingly numerous, and constitutions which make difficult the effective execution of treaties dealing with matters which vitally affect the welfare of nations are a hindrance, not a help, and should be revised in order to increase the common national good which results from international co-operation as well as from internal effort.

INTERNATIONAL AGENCIES FOR MAINTAINING ORDER, MAKING, ENFORCING, AND INTERPRETING RULES

We have seen all through this volume the extent to which new problems have demanded action on the wider than national scale, and to that degree they have borne witness to the need of international co-operation. In the nineteenth century, the Industrial Revolution brought many problems of industrial regulation. In the twentieth century, these problems have grown in scope and complexity but they have been overshadowed by another problem, namely that of maintaining world order and preventing the outbreak of war in an age of the atomic bomb. Under these circumstances the process which created a wider area of government in past centuries—namely the modern state—has by reason of its claim to exclusive authority become a principle of anarchy. How true this judgment is we may realize by considering how impossible is the task confronting the small powers of defending their sovereignty. The age of their sovereign independence is gone, since the material instruments which science has discovered have transcended their capacity to make these instruments or to defend themselves from their operation. There exist today only three superpowers—France and China, although included in the Big Five, are relatively a second class from the point of view of armed might. Even Great Britain, one of the Big Three, trails, leaving the United States and Soviet Union the two most powerful countries in the world. But can these countries by the separate exercise of their sovereignty avert their own catastrophe? He

would be a bold man who would confidently answer "yes" in the light of the scientific discoveries of even the last twelve months.

The first problem then is the maintenance of international order, the prevention of aggression. Unless men can satisfactorily resolve this question, the rest of life becomes enslaved. We have analyzed the problem of security in another chapter. Here we are concerned with recent developments and proposals in international organizations in the "legislative," "executive," and "judicial" spheres.

IMPROVING THE TREATY PROCESS

We may expect that (except for possible world security arrangements)[56] "international legislation" will continue to be effected through treaties and conventions since there appears to be little immediate hope of any direct international legislation by a world parliament. Under the circumstances improvements in the treaty and agreement process might and should be made.

First, we may draw attention to a valuable proposal made by C. Wilfred Jenks, legal adviser of the International Labor Office of an international legislative drafting bureau. He points out that faulty draftsmanship of treaties constitutes a serious defect in the present international setup and that the "standard of draftmanship of most of the instruments produced by League of Nations conferences has been very uneven." An International Parliamentary Counsel's Office could do three main things:

1. Prepare and keep up to date "the somewhat elaborate reference books" which are necessary in the complex legal systems of the modern world. The works of reference would include "(*a*) a manual of rules of style, (*b*) a manual of common forms for standard articles, (*c*) a subject index of the contents of multipartite instruments, (*d*) a multilingual glossary of translations used in multipartite instruments consisting of versions in two or more languages, (*e*) an index of terms defined in multipartite instruments, and (*f*) a list of short titles of multipartite instruments."[57]

[56] Assuming that agreement can be reached in strengthening the United Nations Charter so as to provide for world control of atomic power, three Senators have introduced a Senate resolution providing for adherence of the United States to a World State. However logical their stand, the present indications suggest the continuance of treaty relations in most phases of international life.

[57] C. Wilfred Jenks, "The Need for an International Legislative Drafting Bureau," 39 *American Journal of International Law*, XXIX (1945), 174.

2. This Office should assist in preparing drafts of multipartite instruments. Drafting, as every attorney knows, involves a high degree of specialized skill and such an office would make available to international conferences the services of those whose special training will have fitted them for this task.
3. This Office should be empowered to propose improvements in legislative technique; such a step will require attention to both general instruments and also to many small details which always exist in legal relations of an international character.

Judge Manley O. Hudson makes an important suggestion that where multilateral conventions are signed setting forth the text "of a uniform law to be incorporated in the national legislation of the states which are parties," either a general international agency could be given competence to deal with questions of uniform interpretation or a special chamber could be created within the Permanent Court of International Justice. The problem has risen especially in the commercial field, but it has a wider application and resembles that which obtains in the United States where difficulties ensue when uniform acts are passed by the states because of the absence of a tribunal clothed with power "to reconcile divergent state interpretations of such acts." A number of international administrative bodies exist which may give "persuasive interpretations" (bodies such as the International Bureau of the Universal Postal Union and the International Labor Organization, which deal with postal and labor matters); and the Permanent Court of International Justice may give decisions in disputes brought before it by two or more states, which, however, do not have binding effect upon states not parties to the dispute. These methods no not appear to be comprehensive enough, and the suggestion offered by Judge Hudson appears to be worthy of serious consideration.[58]

If international "government" is to keep pace with growing needs, the process will have to be speeded up by effectively dealing with the long delays now occasioned by the process of treaty ratification. All should agree that the bewildering complexity of international relations makes a certain cumbersomeness inevitable, but something is radically defective when it will take perhaps more than two years to set in motion the financial organization pro-

[58] Manley O. Hudson, *International Tribunals: Past and Future* (Carnegie Endowment for International Peace and Brookings Institution, 1944), pp. 218–19.

vided for in the Bretton Woods Agreement. The world desperately needs a rapid restoration of currency stability as well as an institution for capital investment which can get under way in a very short time. Otherwise economic chaos may spread in many parts of the world, not the least in those areas which the victorious Allies have delivered from the German and Japanese governments. It will, indeed, be grim irony if the sole effect of delivering Europe and Asia from the dictatorships should be to present the delivered peoples with a freedom of starvation and nothing more. Unless more rapid action is possible, the United Nations is threatened with something more than a breakdown of constitutional structure.

Francis O. Wilcox has pointed out the tendency for ratification of treaties to take longer in recent years than several decades ago.[59] This unfortunate result has come about for the following reasons: (1) The growing amount of governmental control and regulation which of itself throws a greater burden upon government and slows it up; (2) The democratic process makes for discussion, and some cynics would say for useless talk betraying little more than organized sectional interests; (3) The necessity of national implementation, often involving considerable sums of money such as the two billion dollars (later over three billion) asked for by UNRRA from the various member nations; (4) The growing expense involved in international "legislation" to raise social standards; unemployment and sickness insurance, medical insurance, etc., place heavy burdens upon the exchequer and naturally the national governments require time in order to adjust these demands to the national budget, although one must add that all the costs of the internationally proposed social and economic reforms would not approach within measurable distance the appalling expenditure at present incurred in competitive armaments. Earlier in this article reference was made to the loose drafting of the international conventions. This factor, in the words of Francis Wilcox, causes states to hesitate "to assume the obligations imposed until they have a definite assurance of what they really are. Unfortunately there is no easy method of obtaining official interpretations of questionable phrases or clauses."[60]

Several proposals have been made to speed up ratification. A League of Nations committee in 1930 proposed that states which

[59] Francis O. Wilcox, *The Ratification of International Conventions* (George Allen and Unwin, London, 1935).

[60] Francis O. Wilcox, *op. cit.*, pp. 115–16.

had failed to ratify should provide the League with the reasons for their delay; that states undertake to consider a convention providing for ratification within a stated time; and even that certain international agreements might be adopted without process of ratification.

Professor Noel Baker has suggested that ratification should automatically follow unless states specifically reject a treaty signed by the representatives, this rejection to take place within a given time limit.[61] G. E. Toulmin has proposed that ratification take place in the international conference itself;[62] Eagleton and others have even asked whether it would not be desirable to eliminate the ratification process altogether. Clearly these proposals would involve a material change in the center of gravity in the relation of national states to international organizations. But we should also realize that failure to ratify is a form of veto.

We must beware, however, of falling into the error of thinking that society has worked out a final pattern of lawmaking, law enforcing, and law interpreting. We must not be led away by over-rigid classifications and assume that parliaments, executives, and judiciaries have remained structurally and functionally static. To see the international problem clearly we must take into account the changing nature and wide variety of the instruments of government which have developed during the history of human society. In England, the King was supposed to be the foundation of legislative, executive, and judicial power. Indeed, in early years, these functions were all exercised by the King in Council—witness the challenging title of C. H. McIlwain's *The High Court of Parliament*. Gradually the growing complexity and the pressure of business led to a differentiation of functions. The House of Lords and the House of Commons emerged; the Common Law Courts challenged the King's Courts; the King fought in Commons; Parliament enlarged its powers; the Lower House became master; the Cabinet system emerged. The police department grew, and in the nineteenth century the civil service as we know it, began its remarkable career. It would take undue space to describe these changes in detail and to review other changes which occurred in the United States and elsewhere. But certain recent developments should be stressed in order clearly to bring out the point that

[61] P. J. Noel Baker, "The Codification of International Law," *British Year Book of International Law* (1924–25), p. 68.

[62] G. E. Toulmin, "The Barcelona Conference on Communications and Transit and the Danube Statute," *ibid.* (1922–23), p. 178.

change, experimentation, and uncertainty characterize the political life, institutions, and values within the nations of the victorious Allies, and from these we may draw inferences having significance for the wider field of international law and government.

Parliament and Congress have handed over a great deal of quasi-legislative power to subordinate agencies. Indeed the volume of delegated legislation far exceeds the amount of statute. Executive bodies have taken over a great deal of quasi-judicial power. Courts have become more specialized—juvenile courts, traffic courts, courts of claims being outstanding examples. Federalism has passed into a stage of peculiar complexity; no longer will the simple formula "state versus federal government" suffice to describe the process—for federal grants-in-aid, interstate conferences of governors, executive officials, and professional bodies, regional projects like TVA, CVA, etc., co-operation of civic authorities with state and federal agencies have all developed as part response to the quest for more effective instruments of government. Demands have been voiced freely for a reorganization of Congress—the committee system, the seniority rule, the lack of sufficient party responsibility, and so on. Pressure groups, vocational representation, public opinion polls, radio, and the movies in turn add their contributions as well as their problems.

These and other examples which might be adduced show that the simple three-fold division of legislative, executive, and judiciary will no longer suffice to give an accurate picture of national governments today. We need to keep in mind a much more complex and changing and dynamic picture if we would not sacrifice accuracy to inert mental stereotypes. Similarly we should beware of oversimplifying the structure of the emerging world organization and avoid trying to apply in overrigid fashion the categories just mentioned.

For example, treaties may or may not be regarded as international "legislation" or "quasi-legislation,"[63] but that we are in the process of evolving more intricate methods of rule-making there can be little doubt. The forms may vary considerably. The basic treaty may set only the general outlines; a commission or

[63] Torsten Gihl, *International Legislation* (Oxford University Press, 1937), denies that treaties make international law. Judge Manley O. Hudson takes the opposite viewpoint, in *International Legislation* (Vol. I, Introduction; Carnegie Endowment for International Peace, 1931; and Vol. V, Introduction). In the seven volumes which cover the modern period up to 1937, Professor Hudson includes 505 instruments of a multipartite nature which in his judgment indicates a "broad extension of international law."

committee meeting periodically may adopt more detailed rules; while a small executive committee may be entrusted with the duty of legislating on a still more detailed scale, as will be illustrated later. Moreover, we are seeing the development of what may be described as functional rather than over-all or horizontal international rule-making bodies—a contrast to the national picture where, except in dictator countries, the over-all legislature still makes the laws. The international society especially may be expected to create new forms of governments if the recent experience within nations and also the developments in the relations between nations furnish any reliable ground for judgment at this point. We have no reason to expect that international society has to go through the same steps as national societies in the past any more than the Oriental countries will have to proceed from candle to gas and electricity as we have done. In modern times new methods may be adopted in different stages and at different rates; some intervening steps important to older nations may be relatively ignored by later nations facing basically different problems.

INTERNATIONAL ADMINISTRATIVE AGENCIES

The importance of keeping the changing nature of human institutions in mind is seen when we consider what is commonly called international administration. For we must remember that there exists a fundamental difference between national and international administrative agencies traceable in no small measure to the difference between national legislatures and international conferences. National legislatures make laws or rules directly binding upon citizens; international conferences adopt treaties or conventions which have to be ratified. The former sit for several months in the year; the latter meet irregularly, or if regularly, for intervals seldom exceeding three or four weeks.[64] Discussing the new agencies created within the last few years—UNRRA, Food and Agriculture Organization, the Assembly of the United Nations, to take but three—Ranshofen-Wertheimer notes that as in the case of the League the policy-making bodies in each case "are governmental (diplomatic) bodies, dependent upon the free will of the national governments and/or national legislatures for the execution of their decisions. They are *periodic* diplomatic conferences or, as foreseen in the case of the Security Council of the general

[64] See E. J. Phelan, "The New International Civil Service" *(Foreign Affairs,* January 1933), pp. 307–14.

international organization, *permanent* conferences."[65] This circumstance puts the administrative agency in a unique position; whereas a national government agency (say TVA, or the Interstate Commerce Commission) is subject to continual scrutiny, such is not the case in the international sphere. In the League, for example, "the administrative machinery was the only permanent functioning element . . . . The Assembly met once a year for four weeks; the Council three or four times annually for a few days."[66]

Not only that, we have seen that in many instances general international conferences conferred on permanent commissions authority to make changes within certain limits if technical or other developments warranted such a step. Subordinate-rule making on an international scale has become quite common, and to that extent international agencies are modifying the methods by which national citizens have their lives politically organized. Now this development of international administrative bodies involves a number of important and intricate questions as, for example, whether international agencies are to be regarded as corporate entities and, if so, whether under municipal or international law. This matter has not been sufficiently clarified, and Percy E. Corbett urges that a careful examination should be made to see whether the ambiguities of status may not be removed by the development of a new body of principles and possibly new developments in international judicial organization.[67]

The growing extent of state control over and participation in economic life is having wide effects on international economic relations, and possibly international public corporations along the general line of the national public corporations may be found to provide an answer to the question whether adequate commercial and developmental functions can be systematically developed in the future. A national public corporation of the TVA type is freed from political management and has an autonomy of legal and financial status. A noted authority urges that a similar method may be worked out for similar international bodies. The

[65] Egor F. Ranshofen-Wertheimer, "The International Civil Service of the Future" *(International Conciliation,* February 1946), pp. 64–65. Also the same author's "The Position of the Executive and Administrative Heads of the United Nations International Organizations," *American Journal of International Law* (1945), pp. 323–30.

[66] *Ibid.,* p. 63.

[67] P. E. Corbett, "World Order—Agenda for Lawyers," *American Journal of International Law,* 1943, p. 218.

instrument establishing them should provide for their operation for at least a period of five years; the corporations should have legal ownership of funds and come under some adequate control, perhaps of a permanent international commission which may well be the Social and Economic Council of the United Nations. The controlling body should, Friedman suggests, create a regular staff of international auditors whose reports, as well as the reports of other officials, should go to the Social and Economic Council and to the interested national governments.[68]

The Fund and the Bank created by the Bretton Woods Conference have been given full juridical personality; they have the capacity to make contracts, to acquire and dispose of property, and to institute legal proceedings. Also the Food and Agriculture Organization of the United Nations has the status of a legal person. Obligations and securities issued by the Bank cannot be taxed, and the Bank's property and assets are to be free from search, confiscation, and expropriation. The governors, executive directors, and other employees of the Fund and the Bank are to be immune from legal process with respect to actions which they perform in their official capacities. Arthur Kuhn notes that, while there are good reasons for extending immunities to international bodies, certain dangers exist, for, as he puts it, "experience teaches that when immunity from process is granted to a state or governmental agency, either by customary, international, or municipal public law, officials, even when acting in good faith, are more apt to make interpretations *ex parte* and to delay settlement than if they were answerable to an impartial tribunal."[69]

If the number of international agencies is to increase and if they are to deal not with urgent war problems but with the normal day-to-day economic conditions, the immunity which they enjoy may well lead to a widening area of international official irresponsibility. Prudence as well as the hope of encouraging private banks to lend freely suggests the need of an adequate system of juridical protection. Kuhn urges that the jurisdiction of the International Court of Justice be greatly enlarged or that other institu-

[68] D. W. Friedman, "International Public Corporations," *Modern Law Review*, 1943, pp. 185–207.

[69] Arthur K. Kuhn, "The United Nations and Monetary Conference and the Immunity of International Agencies," *American Journal of International Law*, October 1944, p. 665. Also Philip C. Jessup, "Status of International Organizations: Privileges and Immunities of Their Officers," *American Journal of International Law*, 1944, pp. 658–62.

tions be created to deal with international claims arising in connection with the activities of these international agencies.

We have noted above the development of the Secretariat of the League of Nations and have seen how the League regulations attempted to insure that the officials of the Secretariat would owe their prime loyalty to the League and not to the national state from which they came. The hope was that they would be "citizens of the world," and this same philosophy has been carried over into the United Nations. Here, too, certain complex problems confront the international organization of the future. International civil servants, if they are to do effective work, must enjoy independence from the control of national public authorities.

A sound public administrative system demands the opportunities for adequate enlistment, remuneration, promotion, and pension service of those who enter international institutions. C. W. Jenks urges that special provisions be made for recruiting civil servants and that the United Nations heads of departments be not burdened with the task of "scouting" in order to find the best persons available. In his judgment, formed after several years' experience as legal adviser to the International Labor Organization, a special body should have charge of this important work, which will increase in scope as the United Nations expands its activities in the many fields which it is called upon to serve. This body might well be designated an International Tribunal and perhaps should be closely associated with the International Court of Justice in order to decide major questions of principle, including disputes arising between the international civil servants and the United Nations or particular international organizations to which they belong. Under the League they were given general diplomatic privileges and immunities but this step, while in the right direction, did not give certain nationals in the employ of the League of Nations, the International Labor Organization, and the Permanent Court of International Justice sufficient freedom from possible pressure by their own governments. For example, national military duty might be required of an international agent at a time when his duties in the international service would be gravely affected; national governments might also refuse to issue passports to an international agent of their own nationality.[70]

[70] See Jacques Secretan, "The Independence Granted to Agents of the International Community in their Relations with Wartime Public Authorities," *British Year Book of International Law, 1935.* The Preparatory Commission of the United Nations has a detailed report on "Immunities and Privileges"

Articles 105 and 100 of the United Nations Charter deal with these questions, and while some advance is made, the status of the United Nations officials is not entirely free from ambiguity.

It is important to remember that diplomatic privileges and immunities may be abused as in the case of foreigners in Turkey, Egypt, and indeed in several of the countries which had to endure capitulatory regime in days gone by. If international organization grows to such a degree that it will employ many thousands of people, the task of balancing efficient international administration and legitimate national safeguards may become more difficult.[71]

Preuss concludes that the Act "constitutes a notable step toward an adequate solution of one of the more important legal problems created by the establishment of the seat of the United Nations upon American soil. Its defects lie in its incomplete recognition of the principle that the international interest has as great a claim to protection as has that of national states. . . . . The local authority has also its legitimate claims, but these can be reconciled with the international interest on the basis of the mutual advantage of all" (p. 345). Ranshofen-Wertheimer agrees that an international civil service office could serve a valuable purpose. Its main tasks would be (1) to assist in recruiting personnel, (2) to organize investigating machinery, and (3) "to provides facilities for the holding of competitive examinations."[72]

Other important questions that affect the future of the international civil service include: (1) A fair nationality distribution. Here the problem is to balance wide participation of member states, obtaining the best experts, and avoiding "padding" agencies in order to gratify national *amour propre.* (2) "Staff division and proportionate share of staff categories."[73] The League

and recommends that the General Assembly take early action on the application of Sections 1 and 2 of Article 105 of the Charter.

[71] See Lawrence Preuss, "The International Organization Immunities Act," *American Journal of International Law* (April 1946, pp. 332–45), for a discussion of the Act passed by Congress which will not only "protect the official character of public international organizations in this country, but also strengthen the position of international organizations of which the United States is a member when they are located or carry on their activities in other countries."

[72] Egor F. Ranshofen-Wertheimer, *op. cit.,* p. 92. See C. Wilfred Jenks, "Some Problems of Our International Civil Service," Public Administration Review, III, 93–105.

[73] Egor F. Ranshofen-Wertheimer, *op. cit.,* p. 75. The author treats these questions fully in his large and authoritative volume, *The International Secretariat: A Great Experiment in International Administration* (Carnegie Endowment for International Peace, Washington, D.C., 1945). I am indebted to these writings.

was overstaffed with officials of administrative rank compared with the clerical and supervisory staff. (3) The length of contracts of service. The League of Nations at first made five-year contracts, then guaranteed permanency (except for Directors whose appointments were for seven years, and were renewable), but in the late 'thirties the principle of permanency was considerably modified. (4) The extent of interchange between national and international administrations. Should national officials be "seconded" to the United Nations or the Food and Agriculture Organization for a period? Would the national officials acquire a breadth of understanding through association with those from other lands, or would the tendency to lower the enthusiasm and international character of the international body manifest itself and constitute a real danger? (5) Promotions. What principle should hold? The European conception that the higher administrative posts should be filled from a given stratum, or the ideal of opportunity to rise in the administrative scale from one category to another? This problem caused many anxious hours to those responsible for the League of Nations personnel. (6) Wages and salaries. The great contrast between American salaries and those paid to officials in other lands has been responsible for many difficulties too numerous to recount here. (7) Experience and ability. The caliber of officials of the League of Nations was extremely high, but the United Nations Relief and Rehabilitation Administration,[74] although it attracted many outstanding persons, was embarrassed by the character of a large number of its personnel. Moreover, there have been reports, from quarters which can be trusted, that in some cases national authorities have been glad to kick upstairs into international positions some of their misfits from home. (8) Difference of language and tradition play their part, although they were overcome to a surprising degree in the League of Nations. (9) Loyalty. Is the international servant to owe his prime loyalty to the international organizations or to the government of the country of his origin? The Balfour Report of 1920 described members of the Secretariat as servants

[74] For the experience of UNRRA see William F. Howell, "The Personnel Program of the United Nations Relief and Rehabilitation Administration," *Public Personnel Review* (1945, pp. 154–60); Herbert H. Lehman, "Some Problems in International Administration," *Public Administration Review* (1945, pp. 93–101) describes the difficulties met in negotiating with governments, in solving the personnel problems arising from differences in language, tradition, rates of pay, and in co-ordinating groups of officials operating in widely separated areas.

of the League of Nations, and the staff regulations adopted by the Assembly on October 2, 1930, specified in more detail what was required of the officials. Sir John Orr drafted an oath of loyalty for himself and other officials of the Food and Agriculture Organization, and the same principle applies to the members of the United Nations Secretariat.

Above all, the nature of international administrative leadership must be appreciated. We have pointed out above that in the League of Nations and other international bodies the Conferences have met infrequently. Representatives of the members continually change; statesmen are likely to be preoccupied with their own national tasks and are therefore likely to depend, even more than they would in domestic affairs, upon the research and judgment of the international permanent officials.

Consequently the character of the Secretary General of the United Nations or the Director of the Food and Agriculture Organization or of the International Labor Organization is a matter of profound importance. Should he be primarily "statesman or civil servant"? M. Albert Thomas did much to make the I.L.O. a dynamic institution and strongly urged policies which he deemed to be important. Sir Eric Drummond, Secretary General of the League of Nations, was far less enterprising, yet under him the Secretariat grew in prestige and influence. It strengthened its position in three ways: (1) It set up a liaison bureau with Latin America. (2) It established an information section in the capital cities of states which were permanent members of the Council. (3) Several of the League members maintained permanent delegations at Geneva whose day-to-day contacts with Secretariat officials had important results.

"The head of the international administration," writes Ranshofen-Wertheimer, "has a peculiar position. . . . . He is comparable neither to an international prime minister nor to the head of a ministerial governmental department. There is nothing corresponding to a government, a head of a government, or a cabinet officer in international organization."[75]

The United Nations within less than two years of its establishment had some 3,000 civil servants. The organizing of so great a number of persons of many nationalities in so short a space of time was not accomplished without stress and strain. The diffi-

[75] Egor F. Ranshofen-Wertheimer, "The International Civil Service of the Future," *International Conciliation* (February 1946), p. 65.

culty of finding living quarters in and near New York, the high cost of rentals and, indeed, of all phases of life, the impersonality occasioned by the great pressure under which the new officials were forced to work, and finally the need of curtailing the services of several departments owing to budgetary reduction—all these factors placed a severe strain on United Nations morale. Several members of the Secretariat who had been in the League of Nations tended to look back with a kind of nostalgia to the days in Geneva when a zeal and sense of mission inspired the smaller and more compact body; whereas the new members were inclined to resent any suggestion that the older men "knew the ropes," for had not the League of Nations failed in its task?

Moreover, the blending of American and European administrative methods proved to be a difficult problem, as well as the higher costs involved in establishing the headquarters of the United Nations in New York. The meeting attended by an estimated 2,500 employees of the United Nations at which considerable dissatisfaction was expressed at the conditions of service indicated the "growing pains" of international administration in a time of general uncertainty and difficulty.

THE TRAINING OF INTERNATIONAL OFFICIALS

Undoubtedly the creation of many international agencies will require plans for the training of a large number of international civil servants—probably many thousands.

Dr. Frank Munk, who has been Director of Training for the UNRRA, points out that "no single agency could or should undertake the training of prospective international civil servants by itself. The secretariat of the new international bodies should be recruited on as wide a geographic and ethnographical basis as possible."[76] However, the United States may well have to recruit a large percentage for some time to come because of the disruption and even destruction of educational institutions in many other countries. We already have had some experience under the foreign area and language courses of the Army Specialized Training Program. Moreover, Columbia and Harvard have begun special courses for persons hoping to enter the international civil service. Haverford College and the Pacific School of Religion prepare people for foreign relief and rehabilitation work. The

[76] Frank Munk, "Education and Training for International Work," The Association for American Colleges, *Bulletin*, XXXI (May 1945), 231.

University of Maryland is the center of training for UNRRA in this country; training centers exist for the same purpose in England and France and are being set up in China. The American Red Cross undertook a training program at the American University for those who were to serve the Armed Forces. "Although their training was of a more practical character and less international in substance, it also has produced remarkable results."[77]

Munk suggests that American colleges and universities should decide "whether training for foreign and international service should be made available to a larger number of graduates of American institutions," or whether specialized institutions should take over the task, presumably forming a type of advanced studies center to which outstanding graduates from the general American universities could go. He notes the establishment of the School of Advanced International Studies, an institute for overseas service founded in Washington, D.C., and in effect issues a challenge to the higher institutions of learning of this country, and indeed of all countries, to take time by the forelock and not be guilty of an educational "too little too late." For without an adequately trained international civil service, skilled in language and the particular technical fields which they have to serve, as well as a wise appreciation of the psychological and historical background of the countries in which they are to work, the United Nations will have forged a chain which however strong in other respects will have been rendered dangerous by the weakness of the link comprising the civil service.

One should not underestimate the difficulties involved in attempting to set up a training program for would-be international civil service. Our experience with training young men for American Military Government posts abroad shows how easy it is to rush into a project and how unfortunate can be the results of hastily conceived over-all plans.

Authorities on government are not agreed as to the content of such training. Should it include detailed instruction in international organization or should this knowledge be left to experience? Should the candidates first and foremost be trained in the constitutional and political arrangements of the member countries on the ground that they should know intimately the countries with which they will have to deal? Should education be broad and cultural, enabling the trainees to become sensitized to the "climate

[77] *Ibid.*, p. 234.

of thought and feeling" of civilizations different from their own? Is it to be training primarily in "international techniques" or rather in the "history and civilization of foreign lands"? These questions are of utmost importance; scarcely less so is the question whether it is wise to give too specialized a training, since the openings for careers in international organization will in all probability not be overnumerous, especially in the formative years of the United Nations. We should avoid arousing false hopes among many young people, and not repeat the error of training too many persons for foreign and international service. In other words, we should keep an eye on the market.

THE FINANCING OF INTERNATIONAL AGENCIES

Finally we must recognize that sound government requires adequate finance; the wide extension of national government has been made possible only by the development of an extended system of taxation based upon ultimate coercion. The voluntary principle of taxation has long since ceased to suffice for national purposes, but in the international sphere that principle still holds. National governments agree to pay a certain amount each year to the League of Nations, the United Nations, the Universal Postal Union, to take three examples only. While payments have generally reached a high level, nevertheless defaults on the part of certain governments have caused serious difficulties in international agencies which have operated on a relatively meager budget. The League of Nations for example did not have more than approximately seven million dollars a year and even ten per cent defection would cause much hardship. Moreover, unpunctuality added to the drawbacks of the system of voluntary payments. A notable and regrettable example is seen in the difficulty which the United Nations Relief and Rehabilitation Administration has had in obtaining quotas from the member countries. The financial plan finally adopted provided that each Member should give approximately one per cent of its national income for the year ending June 30, 1943, "as determined by the Member government."

Unfortunately very few countries had reliable estimates of national incomes; poor countries found the same percentage basis heavier burdens than rich countries and were permitted to lower their contributions if the one per cent payment would be unduly burdensome. Moreover, no definite dates for making contribu-

tions were set. The member governments took an unduly long time to approve UNRRA despite the urgent character of the tasks confronting that organization. Moreover, not a few countries remained totally delinquent on their administrative payments by July 1945, and several had made their payments only in part. The slowness of national constitutional machinery and the general indifference to the sufferings of the unfortunate countries are probably the major explanations of the unsatisfactory record up to date.

> Even on the basis of partial experience, the hope of the planners of UNRRA that it would not be necessary to go through the mill of national constitutional processes periodically has apparently failed. It has so far failed in the cases of the United States, Iceland, Siberia, Union of South Africa, and a few South American countries. . . . . It is not out of the question that other governments, still to be heard from, may also require the periodical submission of appropriation bills for UNRRA to their national legislatures.[78]

Sumberg also notes that UNRRA, not having deposits in its own name, cannot engage "in independent procurement of supplies, though this is also prevented more directly by the war-time supply controls of the national governments." While there is reason to believe that other international organizations may not suffer so many disappointments, since UNRRA does not offer most of its members an equivalence of gain with sacrifice, nevertheless its experience, in Sumberg's judgment, raises the question of the ways and means by which national constitutional machinery can be adapted and perhaps streamlined to the requirements of the successful performance of international institutions, in particular to the matter of promptness in giving approval and in providing appropriations, and also in developing restraint in attaching special conditions to national participation in membership.

C. W. Jenks has set forth the principles which should govern the financing of international institutions. In his judgment statesmen and financial experts should ascertain whether international revenue might not be obtained from international banks, corporations, airways, and also whether national quotas to the United Nations and other international bodies should not be made more definitely a legal obligation upon the member governments. He urges that sums which are contributed to the funds of international

[78] Theodore A. Sumberg, "The Financial Experience of UNRRA," *American Journal of International Law*, XXXIX, 707.

institutions should be regarded in the fullest sense as a legal obligation and should become the absolute property of the international organization, the individual member states having no right to withdraw funds or obtain credit for surplus funds remaining at the end of the fiscal year.[79] Contributions should be payable on determinate dates, and interest should be paid on late payments, and the right of redress against defaulting states in the International Court of Justice or some other appropriate tribunal should be clearly established. In the last resort, Jenks urges that the international agency have the right to initiate proceedings in the court of any state for the attachment of any assets of the defaulting government. No plea of sovereign immunity should be a bar to such proceedings or to the forcible execution of the decision given.[80]

We are not likely to see this last-named recommendation adopted in the near future, and presumably the voluntary system will continue. Fortunately the habit of including national contributions or quotas in the international agencies has developed a great deal in the last twenty years, and, unfortunate as have been the experiences of institutions such as UNRRA, they do not compare with the shoestring finances of the League of Nations in its very early days, as Sir Herbert Ames, its first Treasurer General, has vividly described. Nevertheless the problem of providing a systematic and efficient set of procedures to enable Congress to deal promptly with the several, indeed many, bills to authorize appropriations for international agencies is becoming acute. It is reliably reported that the task of sandwiching these measures in an already overcrowded calendar has reached serious proportions. Under the circumstances we may well consider the suggestion of Lionel Curtis that the international government responsible for the common defense and welfare of nations should receive its revenue from nations "in proportion to their taxable capacity as ascertained by a judicial committee of experts." These proportions would constitute a first charge on the consolidated revenue of each national government, payable to the international treasury without a vote from the national legislature. Each national government, in framing its budget, would then be free to decide what kind of national taxes were needed to provide a consolidated

[79] As under the League of Nations.

[80] C. W. Jenks, "Some Legal Aspects of the Financing of International Institutions," *Transactions of the Grotius Society*, 1943, pp. 87–132. This lengthy article well repays reading.

revenue large enough to meet its quota due to the international government as well as the funds required for its own national administration.[81] Whether a judicial rather than an economic committee should determine taxable capacity may be open to question.

Much may be done to improve procedures and administrative devices; the Preparatory Commission of the United Nations made a number of specific recommendations along these lines which because of their highly technical character remain outside the scope of this volume. But the fundamental question remains whether the financial resources which the United Nations and its affiliated agencies will require must have an independent source of revenue or not. Is the International Authority to have taxing power, and, if so, what will be the nature and extent of that power? Is it to rely for collection upon the instrumentalities of national states, or will it, should it acquire that power over independent sources of revenue, have its own corps of tax officials? In the long run must not the International Authority have power, in the event of default of payments, to attach assets of the defaulter? These questions will require long and serious thought if international society is to be adequately organized.

NATIONAL INSTITUTIONS AND INTERNATIONAL ORGANIZATION

I have spoken above of the necessity of adapting national constitutions to the new world organization so that international obligations may become constitutionally binding. Such a step, while necessary, by no means exhausts what will be required in national adjustment to present-day international requirements. Paul H. Appleby in his stimulating book, *Big Democracy*, refers to the general difficulties that confront diplomatic conferences and intergovernmental undertakings, difficulties arising from "defective communication between national delegations and their home governments, from differences in language, from the need to be constantly solicitous of every nation's self-esteem, from the clash of national economic interests, and from the fact that all problems have to be approached through national channels even though that very approach may tend to make them less soluble."[82]

[81] Lionel Curtis, *Faith and Works* (Oxford University Press, 1943), pp. 47–48. Curtis has expanded his proposals in *World War, Its Cause and Cure* (G. P. Putnam's Sons, New York, 1946).

[82] Paul H. Appleby, *Big Democracy* (Alfred A. Knopf, 1945), p. 180.

More than that, defects exist within nations which seriously impede effective international action and render rapid decisions almost impossible. Federal governments may undertake international obligations only to find that their implementation rests with the states or provinces. Constitutional requirements for treaty ratification, such as the two-thirds rule, or the separation of the legislature from the executive, or inadequate administrative integration all tend to slow up the international process with the result that measures which are urgently required for the welfare and even survival of hundreds of millions of people are held up and misfortune and even disaster are the consequences.

We see then that it will not be sufficient to have what might be called mere constitutional adaptation in the broad sense of the term; we will also need "practical, day-by-day intergovernmental collaboration." And this collaboration will require the adjustment of domestic institutions in a more intimate manner than is generally realized. Until the member states of the United Nations organization are much more efficiently organized, until nations are better equipped "for international decision and action," and until foreign offices and government departments are geared to the new tasks, the UN will continue to creak and groan and get far behind in the urgent business of organizing the world efficiently, not only to prevent war but also to organize daily life on a reasonable basis. The practical requirements for daily management and policy and a multitude of details therefore confront countries which have accepted the UN in principle but have not seen the widespread ramifications of that acceptance. Appleby warns that "perhaps the greatest danger facing the world right now is that the people of the United States will become divided into firm and opposing schools of thought on the question of the way in which this nation should co-operate in international organization. If very many Americans take the position that they are for the *purpose* of what is planned but flatly against the *method* proposed for its accomplishment, that will be the same as if they decided to do nothing."[88]

The question of adapting national political and administrative agencies to new international tasks is an urgent one.

The League of Nations Opium Section found that it could not deal with the international opium menace in an adequate manner unless certain countries adapted their domestic administration

[88] Paul H. Appleby, *op. cit.*, p. 180.

to the new situations created by world-wide problems.[84] Many governments did not possess the machinery to deal satisfactorily with matters on a national, let alone an international, level. Fortunately Great Britain led the way by creating a special department in 1920 within the Home Office, and other governments took similar action. Much, however, remains to be done to bring national organization into line with international needs, as can be seen in the unfortunate experience which the United Nations Relief and Rehabilitation Administration has had in this country. The director, former Governor Herbert Lehman, found himself hopelessly entangled in departmental jurisdictional delays, obstruction from unsympathetic officials, and the inertia arising out of the absence of any effective international agency possessing authority to bring the various departments into line. So the International Sockeye Salmon and Halibut Fisheries Commissions had difficulties with government departments in the United States and Canada and experienced much needless delay resulting in set-backs to the work of conservation. In 1943, I suggested that if several overlapping international commissions were to engage in North America for the conservation of fisheries, a number of relatively low-class organizations might well be the outcome with a deterioration in the quality of experts attracted to the work, and unless great care were exercised, national government departments might tend to regard the representatives of the international commissions as subordinate officials. In addition heads of departments might be tempted to hand over important questions to minor officials who could in this way gain power over the international commissions. "It is important therefore to insure that the commission should always have direct access to the highest national authorities and continue to enjoy the maximum autonomy."[85]

Recently events have shown the serious consequences of long delay in national action upon international issues. The United States at the end of February 1946 still owed UNRRA six hundred million dollars on its 1946–47 commitment, and Congress took from September 6 to December 15, 1945, to appropriate the last half of the 1945 commitment; UNRRA had to cancel fifty million dollars in contracts for supplies abroad because of the fact that money voted had not been appropriated. A deterioration

[84] See *supra*, chapter v, p. 283.

[85] Linden A. Mander, "The Future of International Commissions," *American Journal of International Law*, 1943, p. 129.

of international relations has also occurred from the long delay of the United States in adopting a definite atomic policy. Appleby well points out:

> In public discussions much has been made of shortcomings of the State Department, while not enough attention has been paid to the insularity and other limitations of the other departments as contributors to adequate foreign policy. Their responsibilities and outlooks are overwhelmingly intranational. The pressures on them are almost exclusively internal pressures. In consequence they are inclined to be excessively nationalistic and narrow when dealing with international matters. There is therefore a considerable gap between the State Department and other departments, and State Department policy often is left too little modified by realistic internal considerations. In other instances the State Department is elbowed out of its proper role by an aggressive Cabinet member who attempts to project his own attitude in a single field into governmental foreign policy in that field. . . . .
>
> The great new administrative necessity in the conduct of our foreign relations is the effective organization of the resources of the United States government behind the Department of State. The effective organization and administration of the State Department itself is, however, a plain prerequisite to the satisfaction of that need.[86]

Appleby's judgment is confirmed in a report issued by a committee of the Royal Institute of International Affairs in 1944. It recommended that foreign offices should not attempt to monopolize relations with the new International Organization. The growing specialization and consequent complexity of international affairs would make such an attempt a dangerous one, although of course the foreign offices should be kept fully informed of what is going on. The committee also urged that governments establish special departments in their foreign offices to deal with what is now the United Nations, such as France had done in setting up the "Service français de la Société des Nations" which was a major division of the Quai d'Orsay. It maintained constant contact with the League of Nations in Geneva, assisted delegates to conferences and members of League committees in their duties. It was organized into several sections and was headed by a Director who held the rank of Minister Plenipotentiary. The committee also recommended that the international organization have branch offices in the major member countries so as to maintain a "constant

[86] Paul H. Appleby, *op. cit.*, pp. 195–96.

and mutually beneficial contact" between member governments and the organization itself, a contact which would be improved also by the maintenance of permanent national delegations at the international headquarters.

Our own State Department was reorganized in January 1944, and for our purposes further modifications were made by Departmental Order 1301 of December 1944.[87] This order provided for an Office of Special Political Affairs which is to have responsibility under the direction of the Special Assistant to the Secretary in charge of International Organization and Security Affairs for formulating and co-ordinating policy and action relating to such affairs, "with special emphasis on the maintenance of international peace and security through organized action. The office is to consist of the Division of International Organization Affairs, the Division of Department Area Affairs, and the Division of Territorial Studies.

According to the *New York Times* of February 2, 1946, the State Department has proposed a Secretariat comprising representatives from interested government agencies and bureaus for the purpose of co-ordinating the relations of the United States with the United Nations organization. Apparently it will endeavor to cope with the problem mentioned above, namely "funneling and directing" policy "into the appropriate agencies of the whole International Organization." The proposed Secretariat is to be made up of representatives of four interdepartmental committees which already exist and a fifth which is to be formed. The four existing committees are the Executive Committee on Foreign Economic Policy, the chairman of which is the Assistant Secretary of State for Economic Affairs, and other representatives are from the Commerce, Treasury, Labor, and Agriculture Departments, and the Tariff Commission; the National Advisory Council, dealing with Financial Relations, was established after Congress approved the Bretton Woods Agreement. It is made up of the Secretary of the Treasury, Secretary of State, Secretary of Commerce, the Chairman of the Federal Reserve Board, and Chairman of the Export-Import Bank. An International Air Co-ordinating Committee deals with matters relating to world air transport. The committee to deal with intellectual co-operation includes various departments, and the fifth committee is to deal with problems relating to telecommunications. The members will be drawn from

[87] *Department of State Bulletin,* December 17, 1944, *Supplement.*

the State, War, Navy, and Commerce departments and the Federal Communications Commission. According to Walter N. Waggoner, the formation of the new Secretariat may be expected when department and agency heads "agree on its basic structure."

We must expect the process of national adjustment to go farther than a reorganization of governmental departments which have to do directly or indirectly with international affairs. Critics may say that the international organizations described above do not in reality touch the heart of the problem of law but are merely a number of institutions devised for mutual convenience. But if life becomes so interdependent that international institutions have to be created on such a wide scale as to touch practically every aspect of human life ranging from an eighteen-billion-dollar Bretton Woods Financial Institution to a possible international allocation of oil to a possible World Trade Authority, ranging through the vast scope of human activities to such apparently simple things as protection of wild life, then we may see a transformation in process not only in the extent of law but in its institutional manifestations.

We may expect to see a modification of the division between internal and external national affairs; indeed this may come more rapidly than many of us suspect if the world is to maintain the peace. I take one example only in conclusion to show how far national institutions may be affected by international realities. I refer to the influence which international air transport may have upon the air rules and regulations within the United States. Seago and Furman suggest that the ratification of the Chicago Civil Aviation Convention "will have a profound, but generally unpremeditated, influence on domestic aviation, in that it promises to eliminate our state lines with respect to many air-traffic rules and regulations."[88] After their technical analysis of the Convention, they come to the conclusion that air rules and regulations must now be standardized "not only on the national, but also on the international level" and hope that Congress in ratifying the Chicago Convention "will thereby be empowered to take all steps necessary to conform national flight practices and procedures to the international standard," and they conclude:

The consequences of this are all to the good. We see no fundamental objection to the elimination of state lines insofar as most air rules and

[88] E. Seago and V. E. Furman, "Internal Consequences of International Air regulations," *University of Chicago Law Review*, June 1945, p. 333.

regulations are concerned. National uniformity in such matters will avoid much confusion and uncertainty, materially encourage private aviation, foster intrastate, interstate, and international air transport, and fulfil some of the obligations of this country to promote international good will and peace.[89]

This example must suffice. But it should serve in conclusion to point the way to the wisdom of the Ninth Recommendation submitted by the Special Committee on the Organization of the Nations for Peace and Law of the House of Delegates of the American Bar Association, namely:

That an amendment of the Constitution of the United States be submitted to the States and the people, in such a form as to clarify and confirm beyond doubt the legislative powers of their Government to deal adequately with all of the questions which have arisen or may be in prospect as to international law and organization, the prompt prevention of aggression and enforcement of peace, and the co-operation of the United States in concerted measures for security, justice and law.

The Committee well realized that in the present emergency condition of the world needs will arise which will call for action, in which case what should be done should "not be left open to doubt and challenge on constitutional grounds," and should not be "sustained only by doing violence to the existing constitutional provisions and their long-established interpretations."[90]

The House of Delegates appears to have desired more time to consider the recommendation which has been withdrawn by the Committee. It is to be hoped that the American Bar Association will see the importance of harmonizing as far as possible our national constitutions and our international obligations, and that

[89] Seago and Furman, *op. cit.*, p. 351.

[90] The difficulties imposed by national constitutions upon international action may be illustrated from the doubts which arise concerning the authority of the United States Congress to enter into a treaty providing for international regulation of communications since, in the opinion of at least one outstanding authority, "treaty stipulations and those of treaty implementing instruments must be, or be construed to be, consistent with the due process and just compensation of the Fifth Amendment to the Constitution or be held inoperative as domestic law." (W. B. Cowles, *Treaties and Constitutional Law, Property Interferences and Due Process of Law,* 1941, p. 302; quoted in Stratford Smith's "Regulation of International Communications Rates by Treaty," *George Washington Law Review,* XII, 206.) Smith notes that if one does not agree with the conclusion just stated and takes the view that due process and just compensation clauses do not constitute an obstacle, then the problem of applying an international regulation is much simpler.

its example will be followed by other professional associations and indeed governments throughout the world. Such harmonization however will probably not be attainable until the other recommendation of the House of Delegates can be carried into effect, namely a comprehensive and authoritative statement of the principles of international law as rules for the conduct of the Nations, as well as the certainty of their application and enforcement.

Conclusion.—What of the future of international law? No precise answer is possible. But one may predict with some confidence that international law must either go forward very much, or be quite discredited. It cannot remain in its present position, containing as it does so many contradictions. If law is defined as a set of rules obeyed by a given society, then the set of rules that world society will adopt in the coming years will depend upon what principles and purposes triumph in the present tension. We have already seen that the Catholic theory of international law differs from the Austinian theory, and that certain proposals have already been made for the strengthening of international law based upon theories which do not accept the position of the Austinians. We must also recognize that the Soviet theory of international law bears little resemblance to the theories at present in operation. To the Communists, international law is the outcome of capitalistic society with its intra-capitalistic struggles and agreements on the one hand and its hostilities to the workers on the other. A complete realization of communist international law would involve the suppression of capitalism, the elevation of the proletariat, and the dethronement of the "bourgeoisie state" throughout the world. The victory of Nazism would have brought a new international order with its own rules based upon the Nazi racial conception of law, the suppression of minorities, the elimination of small sovereign states, and the undoubted hegemony of Germany. The law which would then have been in operation may not correspond to what we consider law, but it would have provided rules which would have to be accepted by the conquered as well as by the victorious peoples.

If it be true that international law as we have known it has proved inadequate, because it has recognized the legality of war and the validity of treaties imposed by force, because it has not had legislative and executive organs suitable for its development, because it has not determined whether international law is primarily an act of agreement between sovereign states in the exercise of their will or is binding unequivocally upon member states;

and, finally, because it disregards changing functions of groups and states in modern life—then there is much ground for Niemeyer's claim that "political reality has become unlawful, because the existing system of international law has become unreal," that the traditional law of nations is no longer adequate "to check the action of political units, to hamper governments, to restrict states," and that today it is used, or rather abused, as a weapon "in the struggle between states."[91]

We have seen that modern war has become so transnational in character that it cannot be kept in bounds by the existing state system, and that sovereign communities can no longer by themselves guarantee the conditions necessary to maintain their health, commerce, and culture. The new continental or world unit of government which will be the minimum necessary for controlling and harnessing the great forces of modern life, the new rules, which must be considerably more far-reaching than those at present in existence, will constitute a new international law, built upon the experience of the past but enlarged and modified in accordance with new purposes and conditions.

Chief of the new requirements will be the maintenance of order without which all other rules rest upon foundations of sand. Such an international authority must have sufficient power, as does the United States government within its borders, to guarantee peace and order.

But this political power must be used in accordance with rules which can be legitimately described as rules of law. The new international society, if it is to be a genuine society, will have an international law which will closely approximate constitutional law. The constitutions of the respective states must be geared to the constitution of the larger regional and world unit, so that an infraction of international law or what will be transnational law will at the same time be an infraction of both national law and the fundamental law of an effective United Nations.

Whether such a constitution (and a constitution is nothing more than a formal setting forth of the rights and duties of individuals, groups, and communities and the methods of prescribing, enforcing, and interpreting those rights and duties) should contain a sharply detailed division of powers, such as obtains in the American Commonwealth, with a judiciary to decide on disputed points of jurisdiction, or whether it should incorporate the principle of federal disallowance as in Canada, or the principle of

[91] G. Niemeyer, *Law without Force* (Princeton University Press, 1941), p. 98.

paramountcy which Great Britain exercises over the Native States of India, will depend upon the deliberations of the statesmen of the world and public opinion throughout the nations. What seems to be unquestionable is the need of eliminating the obstacles at present placed in the way of international government by the existence of the claims to exclusive domestic jurisdiction by the sovereign states. Under modern conditions there are no final distinctions between "domestic affairs" and "international affairs." The "domestic" or "international" relevance is not inherent in affairs or matters as such. "The criterion of difference between the two categories lies in the functional objective toward which the operation of the states is directed."

Since a state or a nation is, in the words of Mommsen, a society for certain purposes, the kind of nation or state will depend upon those purposes; if problems arise within the boundaries of a state which intimately affect the welfare of other states, and new and wider purposes come into being, a new society for those purposes will result. And rules must be adopted to meet the changing circumstances; the more actions take place across boundaries the greater must be the growth of rules to channelize these actions to constructive ends. There is nothing surprising, therefore, in the contention that international law must be tremendously expanded in scope and in institutions if the modern world is to regain some degree of order.

If it be objected that law must grow out of the organic life of a people, the answer clearly must be that the intensive development of applied science has forced mankind to quicken its power of adaptation. Radio, not a generation old, has become so intimately a part of our life as to be called organic; and the same holds true of automobiles and airplanes and of most of our material culture. Only by ignoring the world in which we live can we refuse to make out a case for changing the scope of government and of law.

If a small percentage of the energy and propaganda which are used to divide men's loyalties were used to enlarge them, the problem would be relatively simple. Indeed, it must be pointed out that the fall of France, Yugoslavia, and other nations has been due to the fact that the boasted organic unity of these countries has not existed (even in the case of France) and that in each the more local purposes and interests triumphed over national interests. It follows that only if there is a wide enough understanding of, and enthusiasm for, the forces which are continental and world-wide in character, can international law and organization be expanded

sufficiently to minister adequately to the needs of the contemporary world.

Today international society is at least so interdependent (whatever men's attitudes may be) that civil wars have immediate international repercussions (as in Spain); international wars produce national revolutions, as was witnessed on a large scale at the end of the World War of 1914–1918; tariffs, although allegedly a domestic matter, may affect the economy of a foreign country to its very foundations; minority problems within a state cause international strife; and arbitrary action by a government may ruin thousands of foreign investors. If, therefore, the world refuses to give political and legal expression to this interdependence, the consequences will be disastrous.

This conclusion may be compared with the views stated at some length and expressed in a striking publication, *The International Law of the Future*, issued by some 260 North American scholars following a number of regional conferences held during the years 1942 and 1943. In the introduction it is suggested that, at the end of World War II,

> a world situation may exist in which the further progress of organized effort can be assured. To this end, departures will have to be made, new methods will have to be tried, new institutions will have to be created, and sound legal foundations will have to be laid.

The authors then set forth their evidence and conclusion under three headings: postulates, principles, and proposals. The emphasis in the postulates and principles is upon the legal duty of states to carry out their obligations under international law, to refrain from intervening in the internal affairs of another state, to prevent activities within its own territory which may foment civil strife in another state, to co-operate with other states in establishing and maintaining adequate agencies, to employ other pacific means in settling disputes with other states, to refrain from the use of force and the threat to use force, to co-operate with other states in suppressing the use of force. Similarly, another writer in discussing the international law of the future urges that it

> (1) . . . . must be posited on an affirmative philosophy; (2) . . . . must emphasize the legal duties of states as well as their legal rights; (3) . . . . must make the sovereignty of the state compatible with its obligations under international law; (4) . . . . must hold states . . . . to definite obligations to keep the peace; (5) . . . . must change the basis and the legal status of war; (6) . . . . must result

in a more determinate system, enacted and renewed from time to time by a competent international legislative body; (7) . . . . must provide courts of international justice, regional, and universal, to settle international disputes of a justiciable character."[92]

The American Bar Association has supported the idea of an international conference to strengthen international law by means of a comprehensive and authoritative statement of the principles of international law as rules of conduct of the nations. The Canadian Bar Association is joining in the enterprise, and it is planned to hold some three hundred regional group conferences in the United States and five or six in Canada. The first pronouncement will be a Declaration of the Rights and Duties of States. Moreover, the American Bar Association is holding a contest under the terms of a bequest left by Judge Erskine M. Ross; a prize of $2,500 will be awarded for the best essay on the very important question, "How can International Legislation best be improved—by multipartite treaties or by giving powers to the General Assembly of the United Nations?"

The pronouncements just quoted are all to the good. They recognize the necessity of a substantial advance if international law is to survive. But it is important to realize that "new categories of thought must replace those now holding sway in international relations. Indeed, we are at one of the turning points of history when events are outstripping the legal logic of those who confine their thinking to categories which have become outmoded. . . . . Such political and legal mutations have occurred in the course of history, and they provide a valuable clue to the situation confronting the world today."[93] A legal mutation occurred when out of feudal rivalry a more powerful knight at a certain point claimed that war by another knight against him was not the war of an independent knight but the treason of a subject. "Now this was progress *per saltum;* the new law of treason involved a shift to another plane of political thought and value."[94] A mutation occurred in European politics when the new sovereign states broke from the older medieval order in which treaties had to have the counter-signature of the Pope in order to be valid. "Theoretically,

[92] Charles E. Martin, "The International Law of the Future," *If Men Want Peace,* Harrison, Mander, Engle (editors), (The Macmillan Company, 1946), pp. 50–58.

[93] Linden A. Mander, "The Immediate Tasks of International Law and Organization," *Washington Law Review* (January 1946), p. 15.

[94] *Ibid.,* pp. 15, 16.

the princes could not have become sovereign powers independent of the Papal sanction; logically the sovereign states could not emerge from the universal system represented by Papal control. The fact that they did so constituted a political revolution in defiance of the logical impossibility postulated by formal political theory."[95] A similar mutation took place when the thirteen American states which had declared their independence and had become thirteen sovereign entities became welded into a new federal system. Writers like Calhoun claimed that the sovereign states which had entered the federal system could by virtue of their sovereignty withdraw from it if they so desired. Calhoun's logic was extremely consistent within the prior system of relations, and it took a political mutation in the form of a civil war to create a new set of categories which became accepted in the United States.

So with the transition of the British Dominions from a subordinate status in the British Empire ruled by a theoretically legally omnipotent Parliament to independent sovereign entities. In formal logic the transition could not be made, but life proved stronger than logic and the Dominions today enjoy a status theoretically equal with that of Great Britain.

And in 1946 Mr. Justice Jackson at the Nuremberg trials issued a most challenging doctrine that the launching of an aggressive war constituted an illegal and criminal act in international society. Mr. Jackson's legal reasoning may be open to serious question from the viewpoint of international law as existing between 1920 and 1940.[96] Since they have adopted and acted upon it, the Allies "have deliberately chosen to adopt new standards by which to judge aggression." The question is whether "they will so organize international society that those standards will continue to apply."

Justice Jackson's statement reveals perhaps the most potentially far-reaching political mutation of modern history, but mankind must give long and earnest thought to the full implications of the step and other methods by which the new United Nations will insure an efficient form

[95] *Ibid.*, p. 16.

[96] For a similar view of the one here expressed, and which I have analyzed at length in the article referred to, see Max Radin, "Justice at Nuremberg," *Foreign Affairs* (April 1946), pp. 369–84; and Professor Pitman B. Potter's letter to the *New York Times*, (June 2, 1946), "War Trial Discussed: Nuremberg Proceedings queried on legal grounds." Also George A. Finch, *The Nuremberg Trials and International Law*, and (for a different emphasis) Quincy Wright, "The Law of the Nuremberg Trial," *American Journal of International Law*, January 1947.

of government to carry out the necessary functions of rule-making, rule administering, rule interpreting and the maximum of order which may be described as a police function on an international scale."[97]

The world faces a great choice, perhaps unprecedented in its complexity and in the consequences which will flow from that choice. At the moment considerable doubt and pessimism have spread over many countries as to man's capacity to find a solution of the baffling questions which now confront him. And yet great reasons exist for optimism. Never has the human race enjoyed the fruits of scientific discovery to so great a degree. We are indeed a fortunate generation if we could but realize it. Medical discoveries have placed health within the reach of the great majority of mankind; and applied science has made comforts possible to every man, woman, and child, if the nations will only turn their attention to the production of goods which will serve human welfare.

Nor should the magnitude of the task of international government appall us. The League of Nations and United Nations have shown that people can organize on a world scale. Previous chapters should have made clear that extensive international organization has been at work, all for a few million dollars a year. The League and other organizations have shown also that it is possible to depoliticize many problems and to bring to them the technical experts who can point the way to solutions. Moreover, these experiences have revealed that international government can grow from within and can appreciate the tasks which unfold before it. Nevertheless, the League and its allied institutions were sacrificed because they were not properly appreciated; they did not enter into the everyday consciousness of the average man and woman nor become a matter of importance to them.

It is sometimes said that events will force mankind to make adjustments. To a degree this is true; but in a complicated world people may misread the meaning of events; they may misinterpret the direction in which society is moving; prejudice and ignorance may cause men to see things out of perspective. Thus one of the great tasks of the immediate future is to make certain that men and women can adapt themselves psychologically and intellectually to the changes which have occurred, that they appreciate the nature

[97] Mander, *op. cit.*, p. 20. For a comprehensive analysis of the comparative law of the constitutions of international organizations, see C. Wilfred Jenks, "Some Constitutional Problems of International Organizations," *British Year Book of International Law*, 1945, pp. 11–72.

of the world in which they live, and that they cease living in a past which cannot return. To enable them to do so, a vast program of political education will be required. For several years it should be the major consideration of the statesmen and leaders of democracy to make possible, over the radio and in public forums, town meetings, the universities, high schools, clubs, churches, and all other associations, the widest discussion of the fundamental problems which confront the world in its effort to obtain peace, order, and good government.

The great political and economic changes demanded by the international conditions today require a mental change which may well amount to a mental revolution. Not only must our political concepts be radically revised but our views on economic organization must be greatly expanded. It will be impossible, however, for these two things to take place unless also there develops a much graver attitude toward life as a whole. People do not change their political and economic values as they would change a suit of clothes. Changes in values arise from philosophies; and what is required today is a more comprehensive philosophy to take the place of the confusion and uncertainty which beset men's souls.

It does not lie within the province of this book to attempt to outline what should be the nature of the philosophic changes which alone would be adequate to encompass the necessary political and economic adjustments. But it may be suggested that one of the deep-seated causes of present contradictions and conflicts is the fact that mankind has allowed the merely intra-human and political things to come so close to it and absorb its attention so exclusively as to block out all but the immediate foreground of our human activity. As a penny held close to the eye may shut out the universe, so excessive preoccupation with economic and political rivalries has impaired our philosophic perspective.

We have not seen life steadily nor have we seen it whole. We have become unduly preoccupied with the pressing tasks of organization and have made politics and economics almost completely the objects of our attention. We have thought of man as primarily a citizen, when in reality he is primarily a creature of the universe. Without heat and light and gravity, the rain, the soil, the trees, and the foodstuffs which nature provides, man could not exist, and his relation to these things which are part of the universe is fundamental. But in political and economic theory we take little account of these obvious facts; we abstract man from his total setting, and then think it is possible adequately to place

him in a stable political order. Not until we evaluate the personality of man in the light of his whole environment can we escape the consequences of seeing life in false perspective. Today men seem politically hypnotized. Yet much of that which is necessary and good for us goes on irrespective of our political strivings—the sunshine, the rain, the blossoming of the flowers, the ripening of the harvests, the passing of the seasons. The hills still stand, friendships remain precious, men and women fall in love, children play and dream, and the stars look down on human life. It has been said that we cannot argue ourselves out of a dilemma and, given many of the values that are commonly held today, there may be no way out of the international dilemma. We can, however, raise ourselves above the dilemma by considering problems from a new level of comprehension, imagination, objectivity, and insight. A deeper appreciation of the totality of life may permit us to have the mental ability and restraint necessary to control the vast forces unleashed by science, which today have revealed the bankruptcy of international political institutions as they are and the insufficiency of man's purpose to channelize them. Dominating all the international problems of today may be the problem whether or not man can control the great things which he has invented, whether or not he has the morality to use what he has created or must succumb to his creations.

The answer may well depend upon whether or not we can discover better understanding of the wholeness of life and the sense of perspective mentioned above. If we can see our human problems in their wider setting, we will indeed not find simple solutions to the grim political complexities which now beset us, but we may consider them in a spirit and temper which will deliver us from undue pessimism and cynicism. We shall not be overimpressed by man's achievements, knowing that, although he has recently made airplanes to fly at 400 miles an hour, the Author of light has been causing light waves to travel at 186,000 miles per second for what may have been an infinite period of time, and that man's great engineering and architectural feats are as flecks of dust compared with the majesty and silent wonder of the mountains, the planets, and the stars.

We shall not overestimate man's goodness, nor fall prey to the romantic belief in inevitable progress, but will take into account his propensity to evil. We shall see that many human pretensions —individual, social, and national—are vain and foolish and that they deny many essential relations of man with man and man with

nature. Deeper insight will reveal the creative power of the moral ideal; the restraints of law are not mere inhibiting conventions but the source of man's entry into the kingdom of larger personality and values; freedom from prejudice—religious, racial, economic, and national—opens up the friendship of men of different race, class, and creed and stimulates mental and spiritual growth, while intolerance closes the gates of mutual inspiration. One's freedom is not insured until all men are free: the employer is the slave of anxiety as long as his workers are hostile; the teacher is not free while his students remain indifferent; and the culture of the scholar has no guaranty that it will not be destroyed unless antirationalism and bigotry cease to dominate human souls. Few people in the world today are free from the scourge of war, and their condition has arisen because some leaders in distant lands were enslaved by resentment and ambition and because millions of common people are bound by national pride and prejudice and class fear and hate.

Fortunately there are signs that the deeper aspects of man's nature are demanding legitimate expression and the adoption of political methods and institutions which will permit the development of truer values than at present can be realized. It is reasonable to hope that an age which has produced its Faradays, Pasteurs, Einsteins, Brantings, and Woodrow Wilsons may develop its Platos, Goethes, and Michelangelos, and that its failure to make the best use of its inventions will cause it to re-examine the ethical and spiritual truths uttered by the great religious leaders of the past and the philosophers of the present, so that by insight and discipline it may draw upon the inexhaustible resources of the universe which lie ready at hand to serve the constructive and creative purposes of human life.

Today the fruits of victory threaten to turn to ashes; the one-time Allies seem to be drifting dangerously apart. Whether they will continue to be dominated by mistaken concepts of self-interest, or whether they will realize the expanded political, economic, and cultural institutions which are necessary not only to realize the deeper values at stake but even for survival, remains an open question. The range of choice narrows until it may be literally true to say that with the coming of atomic energy we must choose this day what we desire—One World or None.

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