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Elements of

INTERNATIONAL RELATIONS

BY

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Preface

Many different methods are employed in the systematic study of international relations. Several reasons explain this. The field of international affairs, as a distinct field of study in the realm of human knowledge, is relatively new. Consequently there is no standardized method of treating the subject matter. International relations are exceedingly complex in the modern world. This fact has encouraged specialization in some particular aspects of international relations such as international law, international organization, international politics, or international economic relations. Such specialized study is desirable and beneficial, but unless a student is aware of other aspects of the subject the specialization may lead to a warped and unreal picture of the field as a whole. Some international relations are essentially dramatic, especially the field of international politics. This sometimes encourages a preoccupation with solely the "blood and thunder" aspects of international affairs and a neglect of legal, economic, and institutional aspects of the subject. There is often a temptation to deal with international affairs as "current events." The danger of this is superficiality, loss of a sense of perspective, and failure to grasp the fundamental features of international life.

The present text is intended as an introduction for the elementary student to the whole field of international relations as a political science subject. An effort has been made to define terms and to organize the material in such a manner as to lead the student gradually into the more difficult aspects of the subject. The text is short. It is not a treatise and does not attempt to give encyclopedic infor-

mation or to give an answer to every question in this complex field. The book is not meant to eliminate the function of the teacher in emphasizing, explaining, and illustrating points. At the close of each chapter readings are suggested which amplify the text. It is hoped that these will assist the teacher and the serious student in finding contact with some of the excellent minds concerned with international problems.

An effort has been made to avoid conscious bias and intentional indoctrination of the reader with favorite views or convictions of the authors. It has seemed more important to supply the student with a technique for examining and analyzing the international life around him.

F. A. M.
C. H.

COLUMBIA, MO.,
April, 1940.

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PART ONE

Historical Background

CHAPTER I

Early Political Organization

In order to understand contemporary international relations it is necessary to know something of great historical movements of the past which have shaped the modern world. It is obvious that one cannot condense all of world history into a few pages. Furthermore, it is not essential to know all of the past in order to have a framework for understanding modern international relations. It will suffice to sketch a selected number of institutions, events, and movements of the past which have significance for modern international relations. It will be seen that modern international relations have been dominated by the ideas, customs, and political institutions of Europe to such an extent that European history is the core to an understanding of the contemporary political world. This is the reason for centering attention upon certain subjects such as the Greek city-states, the Roman Empire, the barbarian kingdoms, the Holy Roman Empire, the regime of feudalism, and the Roman Catholic Church.

1. THE GREEK CITY-STATES

THE CITY-STATE. In ancient Greece the chief unit of political organization was the city-state. Physically the city-state consisted of the population of a city and of the surrounding countryside. The typical city-state had a small population and a small territorial area. Each of these city-states had its own government and regarded itself as independent of all the others. From time to time one of these might conquer and subdue others, but during most of

this period no single city-state was able to subjugate the others and establish its rule over a large area and population. The city-states employed a variety of forms of government, some tending toward a broad popular control, as in the case of Athens, others operating under the control of a single dictator or small oligarchy, as in the case of Sparta.

Contributions of Greece to Modern Civilization. In many different fields the Greeks have contributed to the culture of the modern world. The ideas which they developed respecting art, poetry, philosophy, and science have come down to later generations. Especially in the field of political philosophy did the Greeks affect the thought and action of later ages. Many of the ideas of Greece were taken over by the Roman conquerors, and through Rome by later ages. Thus, for example, the idea that the Church is subordinate to the state, accepted in Greece and Rome, became a weapon in the struggle at the close of the Middle Ages in favor of the kings attempting to establish exclusive control over their subjects and to eradicate the claims of authority of the papacy. In the field of political philosophy the Greeks were primarily concerned with internal problems of the state, rather than with interstate relations. Plato and Aristotle, sketching the ideal state, thought of it as a small isolated city-state lacking contact with other states. Seeing that in the actual states such isolation was impossible they found it necessary to envisage the problem of defense against other states.

Interstate Relations. Several hundred Greek city-states dotted the shores of Greece, of the Aegean Sea, and of the Black Sea. In the course of time relations naturally developed between them. The relation was often that of competition and war, but it was also that of cooperation according to definite rules or customs. In the later period some special organs were created to deal with common problems, though the Greek cities were never willing to give up their autonomy to form a larger territorial state, even when endangered and engulfed by outside conquerors. In time of war the Greeks were more humane than peoples of an earlier period. Mutilation and torture of prisoners

were not approved. However, those who surrendered were not always spared and frequently the conquered were sold as slaves. In general, theory disapproved of the institution of war between the Greeks and sought to limit it and to regulate its severity and its disastrous effects. Nevertheless, the other theory that justice has no part in interstate relations was often asserted, so that "the powerful exact what they can, and the weak grant what they must."

CUSTOMARY RULES. No body of principles and rules comparable to modern international law existed, but some common rules were accepted as "Customs of the Hellenes." Among these rules were those providing for the inviolability of official representatives such as heralds and diplomats, for right of asylum, for immunity of temples during war, and for truces during burial of the dead or during religious ceremonies. The city-state acknowledged no general obligations to the resident alien. However, aliens enjoyed some privileges under the religious duties of hospitality and by virtue of treaties made between the city-states. Usually aliens could enjoy rights only through a resident patron. The *proxenus* was a resident citizen who represented foreign communities in dealings with local assemblies and courts. In the later period of the Greek city-states the alien enjoyed a more favorable position than in the earlier.

USE OF ARBITRATION. One of the most striking features of the relations between the Greek cities was the use of arbitration as a method of settling disputes or of bringing a war to a close. Arbitration was used more extensively among the Greeks than among earlier peoples. Arbitration is a method of settlement of disputes by judges chosen by the parties. Individuals, cities, and the Oracle of Delphi were employed as arbitrators and the questions covered disputes relative to religion, commerce, boundaries, and ownership of territory. Sometimes treaties contained the "arbitral clause," *i.e.*, an agreement to submit future disputes to arbitration. Thucydides foreshadows the Pact of Paris of 1928, in his statement that "it is not right to attack as a transgresser him who offers to submit to judicial decision." While the Greek city-states acknowledged obliga-

tory customs toward one another they regarded non-Greek peoples as barbarians. Even toward them, however, they felt some obligations under the "Law of all mankind," including the inviolability of heralds and envoys, the sanctity of treaties accompanied by oaths, and obligations of alliance and hospitality.

INTERCITY ORGANIZATION. The Greeks made no sharp differentiation between religious life and temporal life of the state. Common religion led to creation of religious leagues called amphictyonies, which were primarily religious but sometimes were used for political purposes. The oath of members of the Delphic Amphictyony provided: "We will not destroy any Amphictyonic town, nor cut it off from running water, in war or peace; if any one shall do this we will march against him, and destroy his city." From time to time leagues, confederacies, and federal unions of city-states were formed for political purposes. Leagues were sometimes formed to curb a city-state which was seeking or had obtained control over others, called the leader or *hegemon*. At various times Sparta (550–478 B.C.), Athens (478–412 B.C.), Sparta (404–386 B.C.), and Thebes (371–362 B.C.) gained hegemony. Philip of Macedon seized hegemony of all Greece (338 B.C.) terminating the independence of the Greek city-states. Both the practice and the theory of the balance of power were employed by the Greek city-states; *i.e.*, an alliance or a combination of cities united to prevent hegemony of a single city.

EMPIRE SUPPLANTS GREEK CITY-STATES. Greece fell first under the empire of Philip of Macedon and of Alexander the Great, and later under the empire of Rome. Alexander broke with Greek tradition by fostering a common culture among the various peoples within his empire, whether Greek or non-Greek, and laid the foundation for a unified empire in contrast with small city-states. This revolution of thought, says Professor Barker,

> . . . contradicted two axioms hitherto current in the political thought of the Greeks—that a multiplicity of separate self-governing and self-sufficing cities was the best constitution of politics, and that differences and inequalities between the members (enfranchised and disfranchised, citizen and alien) were inevitably implied by the very genius of the city.

Denying these two axioms, Alexander asserted as the proper principles the idea of "a single cosmopolis of the inhabited earth, transcending cities as it transcended tribes and nations," and the idea of the equality of all free men in the life of a common humanity. The same philosophy was supported by the Stoics, a school of philosophers believing in "One universal society, one state of the whole world; one law of nature, with which all its members must live in conformity. . . . " Alexander and his successors borrowed from Oriental states the idea of deification of the ruler to act as a cohesive force in unifying authority over an extensive empire. These ideas were later adopted by the Roman Empire.[1]

2. THE ROMAN EMPIRE

GROWTH OF THE ROMAN EMPIRE. Rome was, in the beginning, a city-state. In the course of time this city-state was successful in subduing other city-states on the peninsula now called Italy. After this consolidation of power Rome began its policy of imperialism which resulted in bringing under its power most of the civilized world of that period of history. In the earlier period Rome was a republic with representative assemblies, in the later period an empire headed by an emperor. The Roman Empire reached its greatest territorial extent in the second century of the Christian Era. It covered all the lands bathed by the Mediterranean Sea, including a wide strip along North Africa, most of Asia Minor as far east as the Caspian Sea, and all the European Mediterranean coast from Gibraltar to Constantinople. In addition it covered that portion of the Continent south of the Danube River and west of the Rhine River, and extended also to England.

INTERSTATE RELATIONS OF ROME. Rome survived for a thousand years. In the earlier years, before gaining hegemony over most of the then civilized world, Rome had dealings with other existing states. Rome followed rules similar to those employed by Greece in case of warfare and

[1] ERNEST BARKER, "The Conception of Empire," pp. 47–48, 50–55 in *The Legacy of Rome*, ed. by Cyril Bailey, 1923. By permission of the Clarendon Press, Oxford.

in dealings with aliens. Rome, however, had as an ideal an empire with Rome as the superior, and showed no enthusiasm for a multistate system in which all parties should have equality of status. Rome made treaties of commerce and alliance, acknowledged the inviolability of heralds and envoys, admitted certain obligations to aliens, and developed ceremonial procedures and institutions for the conduct of relations with foreign states.

THE JUS FETIALE. Two branches of Roman law may be noted: *jus fetiale* (fetial law) and *jus gentium* (law of peoples). The *jus fetiale* was a body of rules defining the procedure for declaration of war and for the making of treaties. The College of Fetiales, a body of priests, applied the rules, but usually conformed to the desires of the Senate. Four just causes of war were recognized: (1) invasion or violation of Roman territory; (2) violation of rights of an ambassador; (3) violation of treaties or alliances; and (4) the giving of support to an enemy or an attack upon Rome's ally. A spear was hurled into enemy territory to indicate the beginning of war.

THE JUS GENTIUM. The *jus gentium* was a body of rules found to be common to all the different parts under the empire of Rome. It covered a variety of matters such as verbal contracts, partnerships, loans, acquisition by alluvium, rights over slaves, rights of occupation of *res nullius*, capture of enemy property, and war. That is, different laws and customs were found in different parts of the empire, and the *jus gentium* was the body of laws and customs found uniformly in the different parts. This body of law was developed for cases involving a Roman, on the one side, and a non-Roman subject of the empire, or a foreigner, on the other side. A Roman magistrate, the *praetor peregrinus*, had jurisdiction of such cases, and the series of decisions of this magistrate helped to develop the *jus gentium*. The *jus gentium* had direct and indirect effects upon later ages, including the present. In the first place, many of its principles were incorporated into the Roman civil law, which later became the foundation for the legal systems of most continental European states. In the second place, certain principles of the *jus gentium* applying

to the relations of individual persons were accepted by early writers on international law in the seventeenth and eighteenth centuries as rules applicable to the relations of states. This is true especially of rules for acquiring title to territory, including acquisition by occupation and alluvium.

ROMAN CONTRIBUTIONS TO POLITICAL THEORY. When the study of Roman law was revived in the later Middle Ages it gave support to ideas helpful to the kings who were attempting to subjugate their obstreperous vassals and who were also looking for a means of combating the pretensions of the Holy Roman Empire and of the Papacy to a position of superiority above the kings. Among these ideas were the following. The state is the ultimate secular authority, and the Church is subordinate to the state. The basis of authority for government is consent of the people. These ideas formed weapons employed by kings in establishing national secular monarchies, and were employed by the Holy Roman emperors in their struggles against the popes. However, the Roman example also kept alive the tradition of a universal empire enduring for centuries. Succeeding generations tended to look back to the period of the Roman Empire as a golden age, to remember with yearning the *pax romana*, and to regard a universal empire as the ideal. Thus, for centuries, a multistate system was discouraged. The ideal of universal empire was fostered, too, by the Roman Catholic Church. The Bishop of Rome became the Pope, and the Church was organized in an hierarchy with the Pope at its head. Furthermore, the Church claimed jurisdiction in spiritual matters over all territory within the Roman Empire, and it emphasized principles of Christianity which disparaged particularism and which encouraged cosmopolitanism and the idea of Christendom or humanity.

3. THE BARBARIAN KINGDOMS

At about the beginning of the Christian era there began a great migration of peoples from Asia into Eastern Europe. The causes of this migration are not certainly known but it appears that among them was the drying up of pasture lands in Asia which led the nomadic peoples to seek new

lands and a closing of immigration into China. Some of these peoples pressed into Europe and eventually broke the Roman defenses and caused the dissolution of the Roman Empire. Among them were the Franks, the Vandals, the Goths, and the Huns. After the fall of the city of Rome the empire was broken into two parts, the Western and the Eastern (A.D. 476). The Eastern Empire had its capital at Byzantium (later called Constantinople) and retained control of Asia Minor and the Balkan Peninsula as far north as the Danube River until the fifteenth century. The Western Empire was invaded by different groups of the barbarians. The Vandals took part of the North African coast and the islands of Corsica (419–711) and Sardinia (439–534). The West Goths took most of Spain and part of southern France (419–711); the East Goths part of southern France, and with the Lombards all of Italy and land north of Italy to the Danube (493–555). The Franks took most of France and the western part of Germany. Angles and Saxons from northern Germany invaded Britain. While these groups became the basis for the later barbarian kingdoms, originally control was exercised by various tribal chieftans over small territorial areas. Much of the commerce, intellectual activity, and culture which were found in the Roman period declined and they disappeared completely in many places. The centralized authority of Rome was broken and law and order tended to disappear.

Absence of International Law. The period from A.D. 476 to 800 has been called the Dark Ages. International law during this period "reached its nadir in the West." The brutality and treachery of the times is summarized by Walker as follows:

> The war-practice of the Teutons stamps them as barbarians devoid of all conception of international right.
>
> The Goths, Vandals, and Thuringians, like the Vikings of the North in later days, burned, pillaged and slew without mercy. They ravaged fields, uprooted vines, cut down olive trees, and burned without distinction all buildings, sacred or profane, leaving their track behind them in smouldering ruins. Valhalla, the Barbarian Heaven, was to be won by a violent death alone, and for Odin's worshippers accordingly life had

no value. They slew in attack alike priest and layman, man and woman, and put to death their prisoners in the most cruel fashion.[1]

Some of them "decked their war-horses with the scalps of slain enemies," and one victorious Lombard made a drinking cup out of the skull of his conquered father-in-law.

TRIBAL ORGANIZATION AND INTERTRIBAL RELATIONS. These barbarian peoples did, however, take over some things from the preceding civilization, and the mixture lies at the foundation of modern western civilization. When the Germans invaded the empire they possessed a tribal organization based on blood or kinship. The supreme governing authority was a popular assembly in which every freeman had the right and duty of participation. Tribal chiefs held their positions by seniority and exercised a limited authority, as did the elected military leaders and the pagan priests. The German acknowledged subservience to law as embodied in custom. The tribal government did not make law but maintained the sanctity of customary rules which were regarded as sacred, eternal, and immutable. The different tribes were virtually self-sufficient. The production, distribution, and consumption of goods were for the most part limited to the territory occupied by the tribe although there was a limited trade between the tribes. Except for the limited exchange of goods the only relation between tribes was that of warfare. The territory of the empire was divided among various kingdoms but there was no highly centralized authority within each kingdom and in the course of time most of Western Europe came to be regulated by the system of feudalism.

4. THE HOLY ROMAN EMPIRE

Some of the barbarian kingdoms were subjugated by an invasion of the Arabs during the seventh and eighth centuries. The Arabs, who were of the Mohammedan faith, conquered Syria, Armenia, and Persia. Then they passed west along the North African coast, seized Egypt, and conquered the Vandal kingdom in Africa and the Suevian

[1] T. A. WALKER, *A History of the Law of Nations*, pp. 64–65, Cambridge University Press, 1899. Quoted with permission of The Macmillan Company, New York.

and the East Goth kingdoms in Spain. Their invasion was stopped in France by the Frankish king Charles Martel at Tours in 732. Charles Martel had consolidated the Franks in France and eastward of the Rhine into a large kingdom. His son, Charlemagne, brought additional territory under control. Charlemagne revived the tradition of empire established by Rome and was crowned emperor at Rome by the Pope on Christmas Day, A.D. 800.

The empire was divided on the death of Charlemagne into the Western Kingdom, which formed the nucleus of France; the Eastern Kingdom, which formed the nucleus of Germany; and the Middle Kingdom of Lothar, consisting of Lorraine, Burgundy, and northern Italy. It proved to be impossible to establish imperial authority over a large area. Upon the death of Charles the Fat (A.D. 888), France broke off from the empire, and the whole area fell under the control of individual kings, such as the king of the West Franks, the king of Burgundy, the king of Italy, etc. In none of these kingdoms did the kings exercise an extensive territorial control. Turbulent barons controlled different provinces and were often at war with one another or with the king. The emperor, though holding the imperial title, had little effective control over the kings, barons, counts, and lesser lords who ruled within the boundaries of the Holy Roman Empire.

Kings of France, of England, of Denmark or of Aragon might from time to time formally acknowledge the precedence of the Holy Roman Emperor, but they were in fact independent; and, whilst a king of France might find himself confronted by a body of nominal vassals whose power individually often rivalled, sometimes exceeded, his own, the Emperor even in his own Germany was scarce more than the head of a loose federation of powerful princes. Everywhere Private War reigned; everywhere turbulent barons attempted to assert their local independence. In such a state of society the ground-plan of International Law was necessarily ill-defined. The times called for an interbaronial rather than for an international law. The Empire of Karl, of whose fallen stones Otto built up the smaller Holy Roman erection, with its high claims and actual narrow powers, was a makeshift until a new stable international system could arise in the West.[1]

[1] WALKER, *op. cit.*, pp. 83–84. Quoted with permission of The Macmillan Company, New York.

5. THE REGIME OF FEUDALISM

Feudalism was gradually developed as a method to gain some peace and order so that the people might be able to supply their material needs and gain some measure of protection against warfare and lawlessness. It began to appear in France by the fifth century, in Italy by the sixth century, was introduced into Britain by William the Conqueror in the eleventh century, and had reached its height by the ninth century. Under the regime of feudalism certain relations were established between the people of a geographical region and a superior or overlord, for the mutual benefit of the parties.

CHIEF CHARACTERISTICS OF FEUDAL REGIME. The chief characteristics were as follows: (1) the ownership of all land was vested in an overlord who was usually a powerful nobleman of the region; (2) the individual gave to the overlord a personal pledge of loyalty and service and became the overlord's man by taking an oath of homage and fealty; (3) the overlord returned to the vassal the right to use a portion of land as a *fief;* and (4) the overlord promised to give protection to his vassal. There were variations in the scheme in different parts of Europe and it gained a greater influence in some parts than in others. In its highly developed form, the Anglo-Norman of the eleventh and twelfth centuries, it had the following characteristics:

> The foundation of the feudal relationship proper was the *fief*, which was usually land, but might be any desirable thing, as an office, a revenue in money or kind, the right to collect a toll, or operate a mill. In return for the fief, the man became the *vassal* of his lord; he knelt before him, and, with his hands between his lord's hands, promised him fealty and service. . . . The faithful performance of all the duties he had assumed in homage constituted the vassal's right and title to his fief. So long as they were fulfilled, he, and his heir after him, held the fief as his property, practically and in relation to all undertenants as if he were the owner. In the ceremony of homage and investiture, which is the creative contract of feudalism, the obligations assumed by the two parties were, as a rule, not specified in exact terms. They were determined by local custom. . . . In many points of detail the vassal's services differed widely in different parts of the feudal world. We may say, however, that they fall into two classes, general and specific. The general included all that might come under the idea of loyalty, seeking the lord's interests,

keeping his secrets, betraying the plans of his enemies, protecting his family, etc. The specific services are capable of more definite statement, and they usually received exact definition in custom and sometimes in written documents. The most characteristic of these was the military service, which included appearance in the field on summons with a certain force, often armed in a specified way, and remaining a specified length of time. It often included also the duty of guarding the lord's castle, and of holding one's own castle subject to the plans of the lord for the defense of his fief. . . . Theoretically regarded, feudalism covered Europe with a network of these fiefs, rising in graded ranks one above the other from the smallest, the knight's fee, at the bottom, to the king at the top, who was the supreme landowner, or who held the kingdom from God. . . . [1]

Thus there was built up a series of grades of authorities, the superior and inferior in each case regulated by a contractual relationship of mutual benefit. It may be noted that the ecclesiastical authorities of the Roman Catholic Church, in addition to their spiritual authority, frequently exercised power in lay matters as feudal lords, as the Church had acquired extensive holdings of land.

CONTRIBUTIONS OF FEUDALISM. Feudalism illustrates an arrangement of relations which is neither an empire nor a multistate system. In one sense public law had disappeared and relations became covered only with private law. Feudalism operated to prevent the rise of the modern nation-state system because power was parceled out into tiny units, and direct relations of authority and obedience between a central authority and the individual were supplanted by an hierarchical arrangement diffusing authority and decentralizing it. Furthermore, since social and political rights were based upon land, it was a system which could not successfully fulfill the requirements of a highly industrialized, trading, and commercial economy depending upon an extensive market. Feudalism discouraged these requirements by the multiplicity of petty local controls, hampered communications by lack of extensive peace and order and by exaction of local tolls, and in general was discouraging to urban life. Nevertheless it was a substitute for total anarchy. It also paved the way for the accumulation of authority in the hands of the greater nobility, and

[1] G. B. ADAMS, "Feudalism," *Encyclopaedia Britannica*, 14th ed., 1937. Quoted with permission of Encyclopaedia Britannica, Inc., New York.

in the ensuing period this facilitated the gathering of power into the hands of a central monarchy which became the pivotal fact in the creation of the nation-state. In spite of the chaos and anarchy which reigned during much of the feudal period, the people of Western Europe were gradually being prepared for a more stable and ordered life. Nomadism ceased and the individual became attached to the soil. Local customary law and institutions were developed which later permitted a welding into national units. With settlement of the various tribes in definite geographical regions there began a differentiation in language, mode of living, customs, and institutions which became eventually distinguishing characteristics giving the basis for a doctrine of nationalism.

6. THE ROMAN CATHOLIC CHURCH

In the beginning, Christians were persecuted by the Roman government. Before the fall of Rome, however, Christianity had been accepted as the state religion. The Roman Catholic Church was the institution which propagated the Christian religion and took it by missionaries to the ends of the empire. The bishops and the clergy of this church had a powerful influence upon the culture and civilization of Europe for centuries. The Bishop of Rome eventually made good his claim to the headship of the Church and took the title of Pope. The Church was organized into an hierarchy, headed by the Pope, and thus resembled kingship or empire in its form of organization. It was claimed that St. Peter, as a disciple of Christ, had founded the Church and that the Pope was the vicar of Christ. The Church played an important part in the life of the Dark Ages and of the Middle Ages.

Civilizing Role of the Church. During the Dark Ages the Church converted the barbarians to Christianity and disseminated Christian doctrines which had a humanizing and softening influence upon the cruelties of these tribal peoples. It continued to keep alive the ideal of Christendom, of a world spiritual empire, after the empire of the Roman world state had disappeared. It assisted in the revival of temporal empire by its support of the Holy

Roman Empire. It helped to keep alive the learning salvaged from the period of Roman grandeur; the clergy became the repository of learning and possessed the monopoly of literacy when even kings could only make their marks and could not sign their names. It supplied important services to the community at a time when private action and state organization were lacking. Among these services were the provision of charity to the sick and dependent and administration of rules of canon law which covered an extensive field of human relations including questions of birth, baptism, legitimacy, marriage, divorce, oaths, contracts, wills, and usury. This canon law was applied by ecclesiastical courts.

During the Middle Ages the Church claimed the power to invest monarchs with their crowns. The doctrine of the Church was that God handed the two swords, spiritual and temporal, to the Pope; and that the Pope then handed the temporal sword to the ruler of the state. At times the Pope was successful in compelling, by excommunication or by the interdict or by the sword of war, the acknowledgment of this power of investiture from reluctant emperors and kings. The Church played a part, too, in "international" or interfeudal relations. It used its influence to ameliorate the savagery of warfare and to give immunity to noncombatants, women, children, the aged, and the clergy. It was successful in placing some limits on the time spent in warfare. The famous Truce of God prohibited hostilities from Friday to Monday and on religious holidays. The views of some of the theologians were influential upon early writers on international law regarding such matters as the morality or immorality of warfare, the definition of the "just" war, and the obligation of good faith between princes. At times the Church assumed the position of mediator or arbitrator of disputes and in this way tended to reduce conflict and warfare.

Suggested Readings

I. *Short Treatments*

HERSHEY, A. S., *The Essentials of International Public Law and Organization*, rev. ed., Chap. III, New York, Macmillan, 1927.

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CHAPTER II

The Development of the Modern State

Before the modern state could develop, it was necessary to disrupt the system of feudalism, to determine the relations between the spiritual authority (Church) and temporal authority (state) upon a new basis, and to extend economic life and political authority over large areas of territory. Various factors contributed to these changes. For purposes of analysis they may be examined under the following topics: the Crusades, the discoveries of new trade routes and of new territory outside Europe, the Commercial Revolution, the establishment of absolute monarchy, the Reformation, the establishment of constitutional monarchy and of democratic and representative government, and the Industrial Revolution.

1. THE CRUSADES (1096–1270)

UNION AGAINST THE INFIDELS. The seven expeditions organized between 1096 and 1270 to capture Jerusalem and the Holy Sepulcher were inspired by the Papacy. Recruits for the expeditions joined from various motives. Some went on a religious pilgrimage with the promise of a heavenly reward; some were swayed by the prestige of the Church; some obviously sought adventure. From the point of view of the Church the Crusades failed because the Holy Land was not permanently redeemed from the infidel despite the great sacrifices which were made. The

by-products were, however, very important. Through the Crusades all of Western Europe had come to share in a great common movement. A common ideal and common interests had unified the discordant elements of a chaotic feudal society on one point at least. The Christian world was pitted against the Mohammedan and the consciousness of the essential unity and solidarity began to emerge. The Crusades injected into the narrow, stationary, feudal society a great emotional ferment which affected alike those who stayed at home and those who tore lose from their old environment and went on the adventurous journey to the Holy Land. Prince, noble, and peasant, the old and the young, responded to the call.

EFFECTS OF THE CRUSADES ON THE POWERS OF KING AND MIDDLE CLASSES. In numerous ways the Crusades affected political institutions in Europe. For a time they helped to increase the power and authority of the Papacy. In general they tended to reduce the power of the feudal nobles. In some cases the feudal lords, in order to gain funds to finance the pilgrimages, sold freedom to the growing urban communities thus releasing them from the restraints and limitations of their feudal obligations. In other cases, especially in the case of France, the royal power was increased at the expense of feudal lords who either remained abroad for a long period of time or never returned from the Crusades. The middle classes gained in prestige from sharing equally in the pilgrimages and gained in power by acquiring the lands of lords who did not return.

THEIR EFFECTS ON COMMERCE. The Crusades stimulated commerce by producing an extensive transportation of men and supplies between Western Europe and Asia Minor. New types of goods and new customers were discovered and improvements in navigation increased the developing commerce.

2. REVIVAL OF MEDIEVAL TRADE AND COMMERCE

GROWTH OF COMMERCE AND INDUSTRY. After the fall of Rome and during the early period of feudalism economic organization was primitive, with each local unit satisfying

almost all of its limited needs. The wants of the barbarians were few and easily satisfied by a crude system of barter. The conditions which existed as late as the eleventh and twelfth centuries and which had to be removed if commerce was to thrive, were:

> . . . bad roads and no bridges; the robber-baron or band of outlaws to be expected in every favorable spot; legalized feudal exactions at the borders of every little fief; no generally prevailing system of law uniform throughout the country and really enforced; a scanty and uncertain currency, making contracts difficult and payment in kind and in services almost usual; interests and desires narrowed down to the mere neighborhood . . . [1]

During this period a limited market for goods produced outside the locality was supplied by the officials of the Church and the noble class, but commerce and industry did not directly touch the lives of the population as a whole until the close of the medieval period. Between the twelfth and fifteenth centuries the economic life of Western Europe was revolutionized. An extensive commerce developed on the Mediterranean Sea between India and other Oriental countries, on the one hand, and European merchants, on the other hand. The wealth and brilliance of the Italian cities was due in large part to the fact that they monopolized the sea route to Asia Minor and beyond, and derived large profits from this monopoly as middlemen for Europe. At the same time there was an increasing commerce in the north of Europe, carried on especially by the Hanse towns of the Baltic Sea.

Results, Economic, Social, Political. The results of the development of this industry and commerce were far-reaching. First, several problems relating to commerce were raised, such as the establishment of currencies and an international basis of exchange, the need for protective legislation which began to be felt as early as the fourteenth century, and regulatory and price-fixing legislation. A second result was to make feudalism inadequate. The growth of towns led to a demand for local independence and self-government, free from the restraints of a feudal over-

[1] G. B. Adams, *Civilization during the Middle Ages*, p. 280, New York, 1903. Quoted with permission of Charles Scribner's Sons.

lord. It now became possible to accumulate wealth in forms other than land and the new capitalist class which acquired wealth from commerce and trade eventually gained political power at the expense of the clergy and nobility. This new class joined the king in his efforts to subdue the nobles and to extend his authority. Payments of feudal dues in money began to replace payments in goods and services. The more general use of money, added to the increasing wealth, made taxation possible. The use of the power of taxation increased the power of the king, because it could be employed to hire military forces with which to fight the nobles. The requirements of this new economic class could not be met by the feudal system. Trade could not thrive if restricted to the narrow confines of the petty feudal unit or even to the larger principalities, and the new economic class required uniform regulations and effective governmental order over a large area. Arbitrary dues and irksome restraints and interruptions imposed by petty local authorities hindered the merchant who needed greater protection, at home and abroad, than feudalism could provide. He desired the armed force of a powerful government to protect him abroad, the official representative of his government to protect and promote his interests in the remote trading centers, and peace and order conducive to uninterrupted and profitable business. What feudalism failed to give, and what monarchial control supplied, was order, uniformity in law, judicial procedure for the settlement of disputes, uniform currencies, protection internal and external, domestic peace, and a larger geographical area subject to the authority of a central government.

3. THE DISCOVERIES (1450–1700)

INTELLECTUAL AWAKENING. A great impetus was given to the forces already produced by the Crusades and the growth of trade and commerce by the discovery of new trade routes to the Orient and by the discovery of the New World. Life in the feudal period had not been conducive to curiosity or inquiry about mundane matters. Much of the time was taken by toil for subsistence. The doctrine of the Church taught that life on earth was preparation for and

subordinate to life in the next world. The Church thoroughly and effectively discouraged inquiry of a scientific nature. It settled by fiat such questions as whether the earth is round or flat, deciding it is flat, and whether the sun or the earth is the center of the universe, deciding that the earth is the center. Interest in extending man's knowledge of the world was quickened, however, by the Crusades, the revival of knowledge concerning Greece and Rome, and the development of trade and commerce. This interest arose in part from desire of discovery for its own sake, in part from desire for material gains to be derived from establishment of new trade routes to the rich markets of the Orient. At that time these routes were a virtual monopoly of the Turks who controlled the known communication lines between Europe and the Orient.

A number of European travelers, notable among whom was Marco Polo, made extensive explorations of the Asiatic continent and reached China during the thirteenth and fourteenth centuries. Jealous of the monopoly of trade with the Orient enjoyed by Genoa and Venice, the Portuguese in the fourteenth century began to navigate southward along the West African coast, discovering the Canary Islands, Madeira, and the Azores, and finally rounding the Cape of Good Hope at the southernmost tip of Africa (1486–1487). A decade later they reached India (1498), opening an all-water route to the East and its rich spice trade. Meanwhile (1492) Columbus discovered the New World while seeking a shorter water route to the Orient.

4. THE COMMERCIAL REVOLUTION (1492–1800)

The term Commercial Revolution refers to the changes produced in the field of trade and commerce after the discovery of overseas lands. Numerous inventions facilitated navigation, making distant voyages easier and safer. Better facilities for navigation were provided by lighthouses, harbor improvements, pilot service, and protection of stranded vessels. Larger, swifter, and more seaworthy ships were developed. The epoch-making effect of the discoveries of America and the route to India is stressed by Barnes in the following words:

The two most significant steps were thus taken in bringing about that great revolution in commerce, thought, and politics which, in the totality of its dynamic reactions on European civilization, was to produce the modern world and to initiate that process of national development, differentiation, and rivalry which has since persisted without abatement.[1]

There was ushered in a period of competition for the spoils. The European was no longer limited to the confines of a petty environment or even to the European horizon. He became dependent upon the world for things sought at first as luxuries and later as necessities. Vast new areas which contained riches exceeded only by his own imagination were opened for settlement. While at first only trade followed the flag of the discoverer and explorer, soon colonists began that westward movement of the Europeans which has ceased only in the past generation. Those peoples of Europe which were already knit into a strong national unity were the ones that took the lead in acquiring colonies and in developing commerce and industry. These were Portugal, Spain, England, France, and the Netherlands. The period between 1500 and 1763 has been called the era of the "rival commercial empires." Central and Eastern Europe did not participate in this expansion. The German and Italian states lacked unity and Germany was distracted by religious wars. Russia was in proximity to vast land areas in Asia and far from the western seaboard facing the New World.

ECONOMIC CHANGES. The most important economic changes produced by the Commercial Revolution as a result of the expansion of Europe were:

. . . improvement in navigation and shipbuilding, increase in the volume of trade, widened geographic scope of trading operations, the growing supremacy of western seaboard towns, an increase in the supply of precious metals, dislocation of prices, the beginnings of modern capitalism, the rise of banking and produce and stock exchanges and of insurance, the development of commercial monopolies, the development of the system known as mercantilism, the stimulation of manufacturing, a revolution in agriculture, and general preparation for the industrial revolution of the eighteenth century.

[1] H. E. BARNES, *World Politics in Modern Civilization*, p. 18, New York, Alfred Knopf, Inc., 1930.

CULTURAL AND INSTITUTIONAL CHANGES. Many changes followed, including the rise of modern science, a greater intellectual perspective, the development of new commodities from overseas, the transformation of social classes, the rise of the absolute dynastic state, and significant changes in religion and the position of the Church.[1]

5. THE REFORMATION (1519–1648)

THE RELIGIOUS ASPECT. The Reformation is the name given to the period during which a revolution occurred in the field of religious thought, which had important repercussions upon the development of the modern national state. In its religious aspect the Reformation was a protest upon the part of Martin Luther and others against the system of organization of the Roman Catholic Church and also against the claims of the Church to a monopoly of control over the spiritual life of Christians. It was argued that the Bishop of Rome (Pope) had usurped the headship of the Church and that the various officers of that Church had assumed the power to dictate to the community of Christians. It was protested that such usurpation of power should be done away with and that a Christian community might itself choose the agents who would perform the duties of the clergy in behalf of the community. It was denied that the hierarchy of Rome had a monopoly in the control of Christians and in ordering their lives according to the interpretation by Rome of the will of God. In general it may be said that Protestantism found favor among the peoples in states of the Baltic, Great Britain, and northern Germany, while Catholicism continued its hold among the populations bordering the Mediterranean and in the states of southern Germany.

THE POLITICAL ASPECT. In those countries where Protestantism became established, the kings often supported the movement as a means of increasing monarchial power and of unifying their states under secular authority. The kings were intolerant of the exercise by a foreign authority of jurisdiction over their subjects in spiritual matters and were jealous of the power and wealth of the

[1] *Ibid.*, Chaps. 3–4.

Catholic clergy within their territory. The kings preferred a Church subservient to the state, with the clergy subject to a national rather than to a universal foreign authority. Church property in the national territory tempted the avarice of kings, and the kings gained in wealth from seizure of the domains of the Catholic Church. On the other hand, the kings of Catholic states did not always act from purely religious motives. Sometimes support of the Catholic Church was primarily a blind to justify attacks on Protestant lands which would increase the territorial dominions of the king. Thus Philip of Spain might attack England ostensibly with the purpose of restoring Catholicism, while actually with the purpose of monarchial aggrandizement. Similarly, the various electors and princes of the German states in the Holy Roman Empire were concerned less with matters of religious faith than with earthly ambitions for the consolidation of their authority within their domains.

THE RESULTS OF THE CONFLICT. The religious struggle resulted in the Thirty Years' War (1618–1648), which ended with the recognition of important principles. The political authority in each territorial division should have the right to determine whether Catholicism or Protestantism should prevail, so that the Roman Catholic Church lost its claim to universal monopoly over spiritual affairs of all Christians. The kings, princes, and electors made the temporal authority supreme over the church organization within their respective territories.

6. THE DYNASTIC STATE

THE INFLUENCE OF KINGS IN THE FORMATION OF STATES. The modern state was developed under dynastic monarchies. A dynasty is a line of kings from the same family, who inherit the office by descent. It has been seen that kings had little control in fact during the period of feudalism, although they might in theory stand in the position of feudal overlord with respect to the barons who were their vassals. Eventually the kings succeeded in subjugating their immediate vassals and the lower nobility, and in extending the royal authority directly down upon the mass of people

at the base wherever they might be located in a large territory. The kings were assisted in the destruction of the feudal hierarchy by a number of things, including: the weakening of the baronage by the Crusades; union with the growing cities and the new economic classes produced by the Crusades and the revival of commerce, who found feudalism irksome and inadequate; increased financial resources, resulting from the possibility of taxation and the seizure of lands of the barons and of the Church; and changes in warfare resulting from introduction of gunpowder, which made the medieval castle no longer a stronghold. Eventually, also, the kings were able to eliminate the competing claims of a Church ruled from abroad for the allegiance of their subjects.

Absolute Monarchy and International Relations. The monarchs regarded the populations and lands within their states very much as their own personal property, and international relations were largely intermonarchial relations. The king and a small group around him had full authority in dealing with foreign states. They made treaties and alliances, declared war and made peace, and laid claim to new territories in their own names. They inherited from other monarchs vast territories and received others as dowry in marriage. No provision for popular control over the monarch in his foreign policy was to be found. Populations were transferred from one king to another without consulting their views.

Foreign and Military Policy. The machinery of diplomacy was controlled directly by the monarch. At first no foreign offices existed and the monarch dealt directly with monarchs of other countries by means of ambassadors who were regarded as representing the person of their sovereign. This helps to explain the origin of many of the privileges and immunities of diplomats and to account for the elaborateness of diplomatic ceremonial. Diplomatic ceremonial reflected the ceremonial and the ideas of honor and prestige of the royal court. The touchiness of monarchs and their capacity for taking umbrage and looking for insults were introduced into international relations. The armed forces, likewise, fell under the exclusive control of

the monarch, and it was only when the monarch felt under the necessity of getting financial support from representative bodies that any effective restraint was exercised over military and naval policy.

OBJECTIVES OF FOREIGN POLICY OF MONARCHS. The objectives of policy of a state thus mirrored as a rule the ambitions of the monarch. The ambitions of the monarch were ordinarily power, prestige, and glory and were expressed in the form of a struggle for superior rank among fellow monarchs, a desire to extend political authority over additional territory, a policy of developing armed strength, and a system of brittle alliances contracted against the most threatening ascending competitor among the monarchs. From time to time there arose a particularly ambitious king who set out after empire over all the rest, and in each case a coalition was formed which succeeded in thwarting success. The competition between monarchs was not limited to the territory of Europe but extended to the Orient and America. The chief characteristics of this struggle will be discussed later. Here it suffices to say that the objective of acquiring colonial possessions was, in its economic aspect, to exploit the resources of the colony, maintain the colonial market as a monopoly, and through development of the merchant marine to establish the basis of naval power. At this time much of naval warfare consisted of preying upon the commerce of the enemy by means of privateers; *i.e.*, by granting public permission to private merchant vessels to visit, search, and seize vessels flying the enemy flag. Development of a large, monopolistic carrying trade in time of peace therefore contributed to naval strength in time of war.

LIMITED COOPERATION. A limited cooperation was practiced by the monarchs. Some cooperated with one another in alliances to preserve themselves against a common enemy. Most European states favored a European state when in conflict with an Asiatic state. All Europe feared the Ottoman Turks, and France was severely criticized when she made a treaty with the Turks in the sixteenth century. There was also a certain fraternity among the monarchs. All were interested in the preservation

of monarchy as against threats of dominance by the Papacy or of substitution of republican institutions for monarchial. There were frequently blood ties between the dynasties as the result of intermarriage of the royalty of different countries.

INTERNATIONAL RELATIONS DID NOT VITALLY AFFECT THE MASSES. Finally, it may be pointed out that the average European person was not very vitally affected by relations which passed the national frontiers. Life remained primarily local and not even national as yet, much less international. The individual lived throughout his life within a narrow geographical circle. He traveled little. He was rooted on the neighborhood soil. His food, shelter, and clothing were produced locally. His great disasters were not produced by international politics. The small economic return for long hours of arduous labor were inevitable in an agrarian society lacking industrial machinery and techniques. The shortness of life was due more to pestilence, as yet unfathomed by science, than to warfare. The individual felt no mental suffering at the transfer of territory or population from his monarch to another monarch, as his loyalty remained provincial and was not directed towards the people or to the nation as a whole. Questions of religion, especially the question of immortality and salvation, threw the emphasis upon the next world rather than upon political affairs of this earth.

7. REPUBLICANISM AND POPULAR GOVERNMENT

RESTRAINTS UPON THE POWER OF KINGS. Almost all the states which were created in Europe were united and formed into permanent members of the family of nations under the institution of monarchy. The most noteworthy exceptions were Switzerland and the Netherlands. The monarch became the symbol of centralization of authority throughout the nation. The king was supported by the clergy and nobility in most countries. In the course of time, however, the unrestrained prerogatives of kings became unpopular and resulted either in a constitutional monarchy or in the abolition of the institution of monarchy and the substitution of republican institutions. This is not the

place for detailed analysis of the democratic movement. It was due in part to dissatisfaction with the extensive control exercised by government over all aspects of life, particularly economic activity, in part to a changed philosophy regarding the value of the individual. A struggle took place regarding religious faith, and the supporters of the idea of individual freedom of worship paved the way for the idea of a constitutional monarchy or of a republic in which the individual should be left uncoerced by government in the enjoyment of fundamental rights, such as freedom of conscience, freedom of worship, freedom of speech, and freedom of the press. The ideas of the Englishman, John Locke, and others of the seventeenth century at the time of the English revolutions to curb monarchial power, were widely disseminated and became influential in the American and French revolutions of the eighteenth century. The emphasis upon the idea that government is founded upon the consent of the people, and that there are certain inalienable human rights which may not be taken away by governments instituted for the people, clearly challenged the idea of absolute monarchs decreeing laws as they might see fit. The natural corollary that the people should be consulted with regard to laws produced the movement for a parliament or a representative body which should represent the will of the people.

SPREAD OF DEMOCRATIC AND REPRESENTATIVE FORMS OF GOVERNMENT. The adoption of representative and democratic institutions took place in different countries at different times and at different speeds, sometimes by peaceful and often by revolutionary means. The Swiss Confederation and Holland had for a long time been republics. The English Parliament had long existed and in the seventeenth century revolutions increased its powers at the expense of the monarch, but it was not until the nineteenth century that modern democratic government was established in Great Britain. The thirteen American colonies revolted in 1776 against Great Britain and established new governments founded on democratic and representative principles. France revolted in 1789 against Louis XVI and, despite subsequent revolutions, has been based upon

democratic institutions ever since, whether under a monarchy or a republic. The contagion of the ideas born of the French Revolution affected much of Continental Europe and the countries of Latin America during the first quarter of the nineteenth century. Later in the century it took effect in the Italian peninsula, especially after the union of the Italian states (1859–1870). During the nineteenth century it had not yet become effective in Russia, Germany, Austria-Hungary, Spain, most of the Balkans, or anywhere in the Orient. China revolted in 1911 against monarchy. While retaining an emperor Japan adopted some of the elements of democratic government in the last years of the nineteenth century. The Russian revolutions of 1917 swept away the czarist regime and substituted a system claiming to derive its authority from the proletariat. The remnants of the defeated Central Powers in 1918 turned against their former monarchs and substituted forms of democratic and representative government. All the new states created in Europe at the close of the war of 1914–1918 adopted democratic forms of government. At this period it seemed that democracy was to be the universally accepted doctrine. The subsequent reaction against democratic and representative institutions and the substitution of dictatorships in many parts of Europe have been striking features of recent political developments.

Effects of Democracy upon International Relations: Conflicts between States. This democratic movement has significance for international relations. The introduction of democracy in a country, particularly when produced by revolutionary means, has usually had international repercussions. It has often meant the substitution of a new ruling class for the one dispossessed, and has consequently upset relations with other states unfriendly to the new governors. In the earlier period, when monarchs dominated most European countries, they acted to thwart democratic movements against brother monarchs and to restore them if possible when dispossessed, because an attack on monarchy in one country might stimulate revolutionary movements against monarchy in their own countries. The outstanding example is the restoration of the

monarchy in France following the Napoleonic Wars and the projected attempt of the powers in the Holy Alliance to restore to Spain and Portugal their revolted colonies in America. The reverse tendency was also apparent; those countries already republican and democratic tended to favor democratic movements in other countries and to interfere directly or indirectly in their behalf. There was here a seed for international conflict between supporters and opponents of democracy among the various states of the world. The degree to which forms of government are important as determining factors in the foreign policy of a state will be considered later. However, it may be pointed out that, other things being equal, two states based upon the democratic tradition, just as two states based upon monarchial power or dictatorial forms of government, find a ground in common when they desire to cooperate. It is true that international politics may produce strange bedfellows; that Republican France may eventually ally with a Czarist Russia, or a Nazi Germany with a Communist Russia, but such cooperation is made more difficult than if both had the same form of government. This is even more true today than formerly in view of the widened participation of the people in control of their governments in democratic countries. People tend to identify their form of government with their way of life and to apply to it the fervor of nationalistic admiration and to resent any disparagement of it coming from other countries. In other words, reference to the form of government often evokes popular support at home, and, in the case of conflict with a state having a different form, becomes a handle for working up enmity against the other state. The use made by Woodrow Wilson of democracy as a symbol of union among the allied and neutral countries, and his attacks upon autocracies as a method of undermining the Central Powers will be remembered. Today similar use is being made in the catchwords of "peace-loving democracies" and "warmongering dictatorships," on the one side, and of "warmongering democracies," on the other side.

CLASS INTERESTS IN FOREIGN POLICY. When constitutional monarchy supplanted absolute monarchy, or when

a republic based upon democratic principles supplanted monarchy completely, the usual result was a shift of power from the aristocratic class to the middle class. It has long been observed that the class which is able to control the machinery of government controls it in its own interest, or what it conceives to be its interest. The term *bourgeoisie* was used to describe the new middle class which came to power by the French Revolution. It usually includes the professions such as law, medicine, and education, the larger employers and salaried workers, and those who feel identified with the group by a community of ideas. It excludes the nobility or aristocracy, peasants, most farmers, and the wage earners in the lower economic scale such as day laborers and factory workers. Without going into detail, it may be suggested that middle-class policy might favor development of a merchant marine, the procurement abroad of markets for goods and investments, the acquisition of foreign territory, and other objects which would not be desired and might well be opposed by an agricultural aristocracy, or by the class of small farmers, or by the proletariat consisting of wage earners in industry.

8. THE INDUSTRIAL REVOLUTION

TRANSFORMATION OF ECONOMIC LIFE. The Industrial Revolution refers to the changes wrought by the application of inventions to economic life which began in the third quarter of the eighteenth century and which is continuing at the present time. By the development of new mechanical devices the production and distribution of goods has been vastly changed from the situation existing in all previous history. It has led to the mechanization of agriculture, commerce, and industry and to a vast increase in the per capita production of goods and services. It has made possible urbanization on a scale never before known with the release of vast numbers from agricultural hand labor. It has led to the manufacture of most goods outside the home in large factories employing great numbers of workers at the machines. It has transformed economic life through improvements in the means of transportation which have made possible the carriage of large quantities

of heavy goods great distances at small cost by rail and ship, and through increasing the speed and ease of communication by post, telegraph, radio. It has made possible a doubling of the population of the world in a single century. It has made possible, through development of weapons, a destructiveness and a range of use of force unparalleled in any other age.

EFFECTS UPON INTERNATIONAL RELATIONS. The manifold transactions crossing national frontiers have made the economic community world-wide while the political community has remained limited within state frontiers. This has increased the causes of conflicts between states while at the same time it has required an increasing cooperation between them. It lays the material foundations for a greater degree of political unity in the world. Only a few consequences of this revolution in the field of international relations need be suggested here, as many will be described in subsequent pages. The Industrial Revolution, like the democratic revolution which was almost coterminous in time with it, both dating from the latter part of the eighteenth century, has spread over the earth gradually during the course of decades. It was in Great Britain that the Industrial Revolution first developed, whence it spread during the nineteenth century to other countries of continental Europe, particularly to France and Germany, but it is in the present century that its full force is coming to bear upon some portions of the globe, for example, China and India. The significance of this is obvious. Great advantages were gained by those countries in which the Industrial Revolution early developed as it gave to them a higher standard of living and also gave the elements of national power which could be employed to control other parts of the world. As other parts of the world were also industrialized new difficulties were created for those already industrialized and depending upon the rest of the world for raw materials and markets, as these ceased to be readily available. For a while this problem was partially solved by opening up vast new areas of territory in Africa and the Orient during the last quarter of the nineteenth century. It might be expected that during a period marked by

revolutionary changes in economic institutions, in geographical scale of operations, and in ways of living, there would be many new problems created. Unless the problems solved themselves there was necessarily a need for the application of human intelligence to the problems, while at the same time it might be anticipated that facts would move more quickly than the capacity of people to alter their traditional ideas. This seems to be the case. It is to be expected that during a period of rapid and profound change a good deal of suffering, maladjustment, friction, and dissatisfaction should exist.

9. SUMMARY

This chapter has noted some of the main features of the last five hundred years which have made possible and caused the present world of states. The static conditions of feudalism were disrupted by the consequences of the Crusades, the discoveries in the New World, and the Commercial Revolution. The loosely knit arrangements of feudal obligation were supplanted by large territorial units in Western Europe subjected to the authority of kings who made themselves supreme over the feudal nobility. In those countries where this unification took place early the way was prepared for the kings to seize dominions outside Europe when new trade routes and new lands were discovered. Thereafter the competition of monarchs was no longer limited to Europe but extended to a much wider area and resulted in numerous wars. The monarchs in Protestant countries successfully balked at control by the Papacy, and claimed for themselves the power in spiritual matters previously exercised by Popes. They also threw off the pretensions of the Holy Roman Emperor to obeisance from all kings. Thus monarchs made their states national and they made them secular. Although unrestrained monarchial control later vanished from most of the earth, the control over foreign affairs exercised by the kings left its mark upon subsequent international relations. In some countries the monarch was retained as a symbol, though actual control of government fell into the hands of representative bodies claiming authority from the people. In other countries the

monarchs were ousted from power and republics were established. From the French Revolution to the present day this development has been in progress. Power came to be exercised in most states by the middle classes which arose to a position of wealth and influence when the Commercial and Industrial revolutions had transformed the economic system based upon peasant agriculture and had substituted a mechanical production of agricultural and other goods, thus opening the way to wealth from industry, commerce, trading, and banking over a wide geographical area. These changes in the economic system gave rise to new classes having power in the control of national policy and at the same time made possible, facilitated, and necessitated a vast expansion of international economic relations.

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PART TWO

The Multistate System

CHAPTER III

The Modern State and the Family of Nations

In order to find one's way about in discussions of international affairs it is essential that one define his terms carefully. This is because many of the terms employed by the man on the street, the politician, and the political scientist have either a very vague meaning or have multiple meanings. The student should be aware of this so that he may be conscious of precisely what is meant when he employs a term, and so that he may translate into his own thinking the meaning of the term as employed in a particular sense by others.

1. THE MODERN STATE

The term "state" is employed to describe various quite different things. As used in this book it refers to those political entities which have rights and duties under international law and which collectively are known as the family of nations. France, Germany, Great Britain, Italy, Japan, the Soviet Union, and the United States are states in this sense.

ELEMENTS OF THE MODERN STATE. The elements essential for the existence of a state are (1) a fairly numerous population of human beings, (2) which resides permanently within a fixed land territory, (3) having a political organization which is ordinarily obeyed, and (4) possessing independence. The first element is easily grasped. The state is a

concept developed to explain an aspect of human group life; it is a human institution, meant for human beings, and having no sense with reference to other animals or to inanimate objects. The requirement that the population should be fairly numerous is arbitrary; the exact number required as a minimum is not set, but a single individual or even a numerous family would be inadequate. The question is rarely of any practical importance today because the typical state contains at least some thousands. The population of existing states varies between one thousand (Vatican City) and more than four hundred and fifty millions (China). The second element is likewise easy to grasp. Since it is scarcely conceivable that a population should live permanently on the sea and none does, it is clear that some land is required as a place of residence and sustenance. The idea that a state must have a territory which is fixed is relatively modern. Klüber, writing in 1817, is said to be "the first writer to define the state as a society of citizens 'having a determinate territory.'" The purpose is to exclude pastoral and migratory peoples or tribes who have no fixed territorial limits within which they live. For generations during antiquity and during and after the fall of the Roman Empire migratory peoples invaded Europe from Central Asia and during the modern period migratory peoples have been discovered in America, Central Asia, and parts of Africa. A basic idea connected with the modern state is that political authority is exercised over definite territorial domains. This idea seems to have been incorporated into the modern idea of the state as a result of the emphasis given under feudal law to ownership of land with possession of ancillary rights. As Wilson states it:

> During the decline of the Roman Empire, the unity of law on a territorial basis was broken and different peoples lived side by side under different laws; political authority was personal and not involved merely in the control of the land. With the rise of the modern national state, however, and the incidental overthrow of the feudal legal system, the jurisdiction of the central government became territorial as well as personal. This situation continues today in public law, for the jurisdiction of the state is both personal and territorial.[1]

[1] FRANCIS G. WILSON, *The Elements of Modern Politics*, p. 62, New York, McGraw-Hill Book Company, Inc., 1936.

POLITICAL ORGANIZATION AND OBEDIENCE. The element of a political organization, or government, which is ordinarily obeyed, is required so as to set off the state from other types of associations and assumes that one of the ends of the state is to assure obedience to governmental authority. The requirement that the association shall be political is to differentiate from those associations of a private type, as distinct from a public type and to differentiate from those claiming spiritual authority as distinguished from secular, human authority. Thus a band of pirates is ruled out because the ends are purely private; the Church is ruled out because its ends are spiritual; and the trade association, the labor union, and the other associations are ruled out because having specialized ends. The requirement that there shall ordinarily be obedience is to exclude anarchy, which by definition is lack of authority and obedience. In international law it is assumed that each state will be represented by a government which acts as the agency of the state. The state continues without interruption despite alterations in the form of the government and despite substitution of personnel in the offices of government. Thus changes in the person of a reigning monarch, or election of a new head of state, or the substitution of a new government by revolution against the preceding government does not affect the enduring quality of the state wherein these changes occur.

INDEPENDENCE. The requirement that a state must be independent is a natural corollary of a multistate system based upon equality of the members of the family of nations before the law. It developed historically as a reaction against claims to overlordship by either Pope or emperor. It is also the negation of the right of any one state or group of states to supreme authority as a matter of legal right over other members of the family of nations. This idea of independence is not one of arbitrary freedom of action to commit any act whatsoever but is rather the idea of liberty under law, the freedom of action left to a state within the limits established by rules of international law and by treaty rules accepted as binding by particular states. The requirement that an entity otherwise having the

attributes of a state shall be independent is also meant to exclude political entities from the family of nations which are legally subordinate to a higher political authority. It thus excludes from the family of nations the subordinate entities composing a federal union, such as the states of the United States, the cantons of the Swiss Confederation, and the provinces of Canada. It further excludes colonies and dependencies subordinated to an imperial state, even though a large measure of autonomy in the conduct of their own affairs may be granted such colonies.

DIFFERENT MEANINGS OF SOVEREIGNTY AS ULTIMATE AUTHORITY WITHIN THE STATE. One of the most confusing terms of political science is sovereignty. It has been particularly provocative of muddled thinking in the realm of international relations. It is a term which covers a number of different theories regarding the state and the problems of political authority and obedience. When the term first attained a vogue it embodied a political theory which was attempting to explain, justify, and foster some ultimate authority within the state which should have supremacy of command over all persons and things within the territory.

Bodin (1530–1596), a French lawyer, developed a theory of sovereignty which had great influence. He was interested in bolstering the power of the French king as against the nobles, the provinces, and other bodies which claimed to be the final authority with respect to given questions. In other words, his theory dealt with the problem of an ultimate political authority which could be the fountain of all authority within the state; and believing such an authority was desirable, claimed that it existed and that it was vested in the monarch. However, it was admitted that the powers flowing from possession of sovereignty were not unlimited, because there existed the restraints of fundamental customs, divine law, and international law within which the sovereign might operate. It is unnecessary here to examine all the subsequent political speculation, assertion, and counterassertion relating to the nature of sovereignty, its location, its divisibility, its alienation, and so on. It suffices to say that the term gathered around it a whole series of theories of little direct interest for international relations

and that many of the controversies relative to sovereignty related to the nature, location, and limits of ultimate authority for political authority regarded from the point of view of the state as an abstract entity and usually thinking of an isolated state having no relations with other states.

SOVEREIGNTY CONCEPT IN INTERNATIONAL RELATIONS: ABSOLUTE POWER. This fuzzy term has entered into theories of international relations causing much slipshod thinking. It is employed to signify several distinct things. It is often said that the state is sovereign in its relations with other states, meaning by this that the state is in law and in fact absolutely unrestrained by rules in dealing with other states, and that the only restraint upon a state is one which it accepts and which it may throw off at will. This doctrine is false when measured by actual facts of international life. Yet it is an influential doctrine because it may be offered to an ignorant, unthinking, and emotional nationalistic mass of people as an excuse for illegal acts by their government.

SOVEREIGNTY CONCEPT IN INTERNATIONAL RELATIONS: INDEPENDENCE WITHIN THE LAW. The term is used by governments and international courts in a technical legal sense to mean the possession of the legal right by a state to determine its own acts except as restrained by legal obligations arising from international law or treaty obligations. The prevalent doctrine now accepted is that sovereignty is an attribute of the state and that as long as the state does not alienate sovereignty, it may restrain or limit the exercise of its sovereignty in particular matters. In a number of instances states have claimed that treaties should be interpreted restrictively on the theory that otherwise the sovereignty of the state would be impaired. The Permanent Court of International Justice has in several cases expressed its views on such contentions. In the early case of the Wimbledon, the Court said:

> The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be

exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty.[1]

In an advisory opinion the Court found that the obligations assumed by Greece and Turkey under the Treaty of Lausanne (1923) were "absolutely equal and reciprocal," and concluded that "it is therefore impossible to admit that a convention which creates obligations of this kind, construed according to their natural meaning, infringes the sovereign rights of the High Contracting Parties."[2] Even when the obligations assumed by the parties are not reciprocal, the Court takes the same view. The guarantee of complete equality of treatment for persons in the Belgian Congo "does not imply the slightest encroachment on the sovereignty of Belgium, since it was in the exercise of this sovereignty that the Belgian Government accepted the obligations contained in the Convention of Saint-Germain."[3] Judge Anzilotti, interpreting the clause "independence of Austria" as used in Article 88 of the Treaty of Saint-Germain, said that it

> . . . is nothing else but the existence of Austria . . . as a separate State and not subject to the authority of any other State or group of States. Independence as thus understood is really no more than the normal condition of States according to international law; it may also be described as sovereignty (*suprema potestas*), or *external sovereignty*, by which is meant that the State has over it no other authority than that of international law. . . . Where there is no such relation of superiority and subordination it is impossible to speak of dependence within the meaning of international law.[4]

This conception of sovereignty is now the prevailing one among international tribunals.

The same view has been expressed by Max Huber, who says: "Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the

[1] *Publications of the Permanent Court of International Justice*, Series A, No. 1, p. 25.

[2] *Ibid.*, Series B, No. 10, p. 52.

[3] Chinn Case, *ibid.*, Series A/B, No. 63, p. 93.

[4] *Ibid.*, Series A/B, No. 41, p. 57. For other cases and advisory opinions see H. Arthur Steiner, Fundamental Conceptions of International Law in the Jurisprudence of the Permanent Court of International Justice, *American Journal of International Law*, Vol. 30, pp. 427–432.

globe is the right to exercise therein, to the exclusion of any other state, the functions of a state."[1]

2. THE STATE AS A SUBJECT OF POLITICAL PHILOSOPHY

There are numerous conceptions of the state, regarded not from the point of view of members of the family of nations, but purely from the point of view of speculation. Thus, to some people the state is merely an idea, an invention of the imagination, by which ruling classes have come to dominate and to exploit the masses of the people; or again, the state is power; or the state is the highest expression of human accomplishments and the supreme value. To some the state is identical with society and comprises within itself all individual persons and associations of persons, while to others the state is merely one association among many which is on a level with or subordinate to other types of associations, and which is or should be circumscribed in the sphere which it has the right to control. To some the individual person is the servant or slave of the state; while to others the state is merely an instrumentality devised to promote the purposes of the individual. With such theories, international relations are not directly concerned. It is true that disagreement in different countries regarding fundamental aspects of the purposes or ends of the state may complicate the understanding and conciliation necessary between states in cases of disagreements and may cause international misunderstandings. It is true that the glorification of the state as the final development of human civilization intensifies nationalism and puts barriers in the way of international cooperation. It should be noted, however, that when one is employing the term state as a member of the family of nations, one is laying down only certain minimum essential requirements of population, territory, government, and independence, which are matters of fact, and that as far as international law is concerned the purposes or ends of the state are not stated. Each member may determine this question for itself provided that it fulfills its international obligations.

[1] Max Huber, arbitrator, *The Island of Palmas Arbitration*, 1928.

The same is true as regards the form of government which acts as agent for the state in its international dealings.

3. THE FAMILY OF NATIONS

The term "family of nations" is commonly employed to refer to that group of states which has been admitted to membership in the community of states among whom rules of international law apply. The term is thus synonymous with the group of states which has rights and duties under international law. For the present international law may be defined as the body of principles and rules which determine the rights and duties of members of the family of nations toward one another.

WIDENING OF THE CONCEPTION OF A FAMILY OF NATIONS. During the period of development of modern international law in the seventeenth and eighteenth centuries, membership in the family was restricted to European states having a Christian civilization. This was a natural result of the facts that European states had relations almost exclusively with other European states; that the tradition of the Middle Ages of Christendom so far survived that peoples holding non-Christian religious faiths were not regarded as possible members of the same legal community; and that most of Africa was unknown, the discovered portions of America were held as colonies by European states, and the Oriental countries either were held as colonies or remained aloof and isolated from European influences. The beginning of the modern national state system and of international law is usually dated from 1648, the Peace of Westphalia, which terminated the Thirty Years' War. The older European states admitted to the European family at this time the Netherlands and Switzerland. New states were from time to time admitted and existing states from time to time ceased to be members as a result of their disappearance. The concept of the family of nations was expanded in the later eighteenth and early nineteenth centuries to include states outside Europe, provided that they were of European civilization. This development came, of course, as a result of the revolutions establishing the independence of the United States from Great Britain and of the various

Central and South American states from Spain and Portugal. In fact quite late in the nineteenth century writers and statesmen continued to use the term "the public law of Europe" to express the idea of international law. The latter term seems to have been invented by Jeremy Bentham.

A World Family of Nations. Meanwhile European states maintained some relations with entities outside the family of nations, as in the case of dealings with some of the states in North Africa, the Ottoman Empire, Persia, and China. These relations were not regarded as regulated by rules of general international law but by contractual agreements in the form of treaties. Turkey was admitted to the public law of Europe by the Treaty of Paris (1856). China and Japan were opened in the nineteenth century to Western influences and for a time were not regarded as members of the family of nations. At the present time legal doctrine and the practice of states has discarded the idea of requiring Christian civilization as a prerequisite for membership in the family of nations. Several reasons for this may be suggested. (1) The copying of European institutions, especially in the drafting of new codes of law, has brought such states as China, Japan, Persia, and Turkey more nearly into harmony with European ideas on many fundamental matters. (2) The great multiplication of relations between the Western world and the Orient during the later nineteenth and the twentieth century, as a consequence of trade and commerce, has produced a need for regulation of relations on an orderly basis and existing international law supplied this need. (3) The growth of religious tolerance and the separation of Church and state in Europe, and the efforts of European missionaries to convert the non-Europeans to Christianity have reduced the gulf between the East and West caused by different religious faiths. (4) The awakened nationalism in non-European countries has led to a demand on their part for treatment on the basis of equality with the European states. (5) Various international organizations, such as the public international unions, the League of Nations, the International Labor Organization, and the Permanent Court of International Justice, have sought a wide or

universal membership of states in order that the purposes of the associations may be effective over a wide geographical area.

4. ADMISSION TO THE FAMILY OF NATIONS BY RECOGNITION

The states composing the family of nations decide the time and the occasion for the admission of new members into the family. The act by which an existing member signifies its intention to deal with an entity on the basis of international law is called the recognition of a state, or the recognition of the independence of a state. The family of nations has not instituted a common authority for according recognition to new members, so that the decision to recognize a new state is made by each member. It is thus possible that some states may regard an entity as a member of the family of nations while other states do not; such is the case at present as regards Manchukuo (Manchuria), which has been recognized only by Japan, Germany, Italy, Hungary, and Salvador. Those states which accord recognition may do so individually or jointly with other states. There is some difference of opinion as to whether an entity which satisfies all the requisites of a state may demand or claim membership as of legal right. The majority opinion and the practice of states is conclusively in the negative; the decision is left to the discretion of existing members and they are free to determine as a question of policy whether and when they will recognize new members, unless international law restrains such an act in particular cases. The question, on the other side, is whether international law lays limits on the power of a state to recognize a new state. The question is of importance chiefly in the case of a new entity which has revolted and claimed independence from an existing recognized member state. If a state recognizes the new entity as independent before the claim to independence is made good in fact and while serious attempts are being made to subdue the entity, such recognition is called premature, and is regarded as an illegal intervention in the affairs of the state wherein the revolution occurs. In recent years some states have by treaty or declaration

accepted a common policy of refusing to recognize new states when produced by certain methods, and this may possibly foreshadow the development of a restrictive rule of international law for the future.

Acts Which May Indicate Recognition. An act of recognition may take various forms. The important fact is the intention of the recognizing state to accord recognition, as a state cannot recognize another by mere accident or inadvertence. Recognition may be accorded expressly by a communication stating the intention to recognize, or it may be accorded tacitly by accrediting a diplomatic representative to the government of the new state or by officially receiving a diplomatic representative from the government of the new state or by negotiating a treaty with the new entity or its government. Tacit recognition may take other forms when the intention of some act is clearly to accord recognition. The issue of an *exequatur* to the consular representative of a new state is often mentioned as an example. The *exequatur* is an acknowledgment by the receiving state of the right of the individual to exercise his office within the territory. Tacit recognition might be indicated also by certain ceremonial acts, such as a salute to the flag or to the head of state; it depends upon the intention of the government authority vested with power to accord recognition.

Recognition an Executive Act. According to the law of all countries recognition is an executive act, and not one which lies within the power of the legislative or of the judicial branches of the government. The courts of each state adopt the decision of the executive whenever the question of recognition of a state is raised before them.

Occasions for Recognition of a State. New states may be produced in a number of ways. Some of the non-Christian states had long existed in fact before their recognition. An existing state may be broken into two or more states, either by peaceful or forcible means. Thus most of the states of North and South America were the result of colonial revolutions. When in 1905 Norway and Sweden agreed to terminate the real union which had united them for decades, two separate states were formed. When a num-

ber of separate states, or the states associated in a confederation join a federal union, the component members cease to be members of the family and it is the federal union alone which constitutes a new member; as in the case of the United States from 1789. The states of the Balkan peninsula in the nineteenth century revolted from Turkey as did also the states on the Arabian peninsula in the twentieth century. The Austro-Hungarian Empire which had formed one member of the family of nations, because a real union, was broken into a number of states as a result of the World War. Finland, Esthonia, Latvia, and Lithuania, fringing the eastern Baltic Sea, were portions of the Russian Empire before 1917. They were set up as separate states by the Treaty of Brest-Litovsk, between victorious Germany and defeated Russia. After the defeat of Germany by the Allied and Associated Powers most of the clauses of that treaty were voided, but the new peace treaties recognized the same Baltic states as independent. At the Conference of Versailles a new Poland was recognized, whose territory had previously been under the jurisdiction of Austria-Hungary, Germany, and Russia; and Czechoslovakia, whose territory had previously been under the jurisdiction of Austria-Hungary, was recognized at the Conference of Versailles.

5. TERMINATION OF MEMBERSHIP IN THE FAMILY OF NATIONS

Recognition of a state is irrevocable, and a fundamental right of the state is existence, but international law conforms to reality in foreseeing that a state may cease to be a member of the family of nations. History is strewn with the ghosts of deceased states. A state may disappear as the result of conquest and annexation by two or more states; for example, ancient Poland which was partitioned among her three neighbors, Austria, Prussia, and Russia, in the last quarter of the eighteenth century, and the new Poland partitioned by her two neighbors, Germany and the Soviet Union, in 1939. Italy annexed Ethiopia in 1936, Germany annexed Austria in 1938, and Czechoslovakia disappeared as a state in 1939. A state may disappear by

dissolution into two or more states, as in the case of Norway and Sweden upon dissolution of the real union in 1905, and Austria-Hungary as a result of the World War, or in the case of a federal union which breaks up into the component parts. Or existing states may disappear by joining with others to form a real union, a federal union, or a simple state. The union of German states and the union of Italian states during the second half of the nineteenth century was accomplished in part by conquest and in part by acceptance of federal union. Texas and Hawaii, once independent, were annexed by the United States following offers of union by those states. Korea was annexed by Japan in 1910, five years after Japan established a protectorate over it.

RECOGNITION OF ANNEXATION. When a state disappears in fact as a result of conquest and annexation by another state or states, third states are faced with a decision of whether or not to recognize the acquisition of territory by the annexing state. In some instances third states have refused for long periods of time to recognize the acquisition and have continued to regard the old state as still in existence. Thus many states refrained for more than two years from acknowledging that Italy had acquired title to the territory of Ethiopia and continued to receive diplomatic representatives of Ethiopia. France, Great Britain, the United States, and other states have continued to recognize Poland after conquest of its territory in 1939 and have continued to treat with a government of Poland whose personnel is outside Polish territory and is established within the territory of France. A number of states, including the United States, are parties to a treaty by which,

> They declare that as between the high contracting parties territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms.

LEGAL AND POLITICAL CONSEQUENCES OF DISAPPEARANCE OF A STATE. The disappearance of states creates numerous international problems. The extent to which the new state assumes the rights and obligations of the disappearing state with respect to third states and their

nationals is determined by international law, but the application of the rules often creates disputes. Disappearance of a state by transfer of its territory to one or more states upsets the *status quo* among the remaining states because it alters geographic, strategic, and economic factors which are basic in determining the foreign policies of states.

6. FORMS OF STATES

A better understanding of international relations is possible if it is realized that states are of different forms and that this creates certain problems in the conduct of international relations. The political scientist, as distinguished from the international lawyer, has attempted to classify states according to different criteria and has distinguished a number of classes, such as the simple states which are either a single state or a personal union, and composite states which are either a real union, a confederation, or a federal union.

Simple States. The simple state "has one supreme government and exerts a single will, whether it be the individual will of a sovereign ruler, or the collective will of a popular body or of a representative assembly." A majority of existing states are of this type; examples are France, Germany, Italy, Japan, the Netherlands, Belgium, Denmark, Portugal, Persia, Spain, and Turkey. A personal union exists when two states that have the same ruling monarch remain separate and distinct states. Examples are Great Britain and Hanover (1714–1837), Spain and the Holy Roman Empire during the reign of Charles V, Saxony and Poland (1697–1763), Schleswig-Holstein and Denmark (1773–1863), Prussia and the Principality of Neufchatel (until 1857), the Netherlands and Luxembourg (1815–1890), and Belgium and the Independent State of the Congo (1885–1908). Each state, in a personal union, is distinct, with populations having different nationalities and with separate governments representing them in international affairs. With the rather general disappearance of monarchy in the modern world there are likely to be few examples of this form of state.

COMPOSITE STATES. "A composite state is one composed of two or more states. The character of the international person thus constituted depends upon the nature of the act by which the union was created and the extent to which the sovereignty of the component parts is impaired or taken away."[1] The first type, the real union, exists "where states are not only ruled by the same prince, but are also united for international purposes by an express agreement. . . . Such a union is susceptible of great variation, and its character can be determined in each individual case only by the particular terms of the agreement."[2] Examples are Norway and Sweden (1815–1907) and Austria-Hungary (1723–1919). Austria and Hungary had separate laws and administrative organization for many purposes but single ministers for foreign affairs, war, and finance. The second type, the confederation, is an association of states in a permanent manner "for the exercise in common of their rights of sovereignty for the general advantage." A common organization is provided by an agreement called a compact. The component states "retain their internal, and, to a greater or less extent, their external sovereignty. Their personality in international law is not destroyed."[3] Examples are the Germanic Confederation (1815–1866), the United Netherlands (1580–1795), the United States (1781–1789), and the Swiss Confederacy (1815–1848). Finally, the federal union exists when states "are united under a central government, which is supreme within its sphere and which possesses and exercises in internal affairs the powers of national sovereignty. . . . " and the composite state alone is a person of international law.

The act by which the union is effected, is called, not a compact, but a constitution. In its external relations, the federal union resembles a real union rather than a confederation. It differs from the former in possessing still greater centralized powers, powers which, in their relation to foreign affairs, can, and in the case of some federal states, scarcely be distinguished from those of a simple state. It has the exclusive right to

[1] J. B. MOORE, *A Digest of International Law*, Vol. I, p. 22, Washington, Government Printing Office, 1906.

[2] *Loc. cit.*

[3] *Ibid.*, p. 23.

enter into general treaties and to make war and conclude peace, although, by its constitution, the component states may exercise certain powers of foreign intercourse, subject to the control of the central government. Its inhabitants have a common citizenship or nationality. If war breaks out between the component states it is civil war, not international.[1]

Examples are Switzerland, the United States beginning in 1789, the German Empire (1871–1918), and the German Republic (1919–1934), the Soviet Union (1923), Argentina since 1860, Brazil since 1891, Mexico since 1857, Venezuela since 1893, and Canada since 1919.

SIGNIFICANCE OF FORMS OF STATE. The variations in forms of states affect international relations in two ways. States of the family of nations must determine which are the entities that are bound to them by rules of international law and are responsible under the rules for given acts. Usually they will look to the constitutional law or to the compact or other documents establishing the relations between composite states to determine whether they are to be recognized as states of international law. In the case of federal states there is sometimes friction in international relations due to the inability under the constitution for the central authority to fulfill its obligations under international law, or to assume certain obligations under treaty because the subject is one falling within the powers of the component states. Thus the United States has in the past become involved in international controversies because of failure of state governments to defend the rights of aliens. Likewise, when the International Labor Organization was created, it was found necessary to take into account the special problems of federal states which might not vest in the central government power to become parties to treaties dealing with labor questions. From the point of view of politics, also, forms of state may be significant. Generalizing broadly it may be said that in the case of composite states, the form of state reflects a lack of unity of national purpose which is a source of weakness in times of stress; while, on the other hand, it may provide a method of promoting unity or at least of avoiding disruption, by leaving a large degree of autonomy in certain matters to minorities who

[1] *Ibid.*, pp. 23–24.

would revolt against centralized control. Thus the Soviet Union appears to have dealt satisfactorily with the problem of numerous different nationalties within its borders by leaving to them autonomy and by employing a federal form of state.

7. LEGAL STATUS IN THE FAMILY OF NATIONS

The idea of a family of nations under a system of law defining the rights and duties of members was developed in Europe among states having in common a similar civilization and a similar conception of law within the states as a result of the legal heritage of Rome, the canon law, and feudal law. As a reaction to the claims to dominance by the Holy Roman Empire and by the Papacy great emphasis was placed upon the independence or external sovereignty of states. The logical corollary of a system of independent states was the principle of equality of states before international law; *i.e.*, each state claimed an equality of legal status. Each state claimed all those legal rights claimed by others, and opposed a doctrine which would classify states into groups, some having more extensive legal rights than others. The principle of equality came to be accepted as a general principle, and it has been supported particularly by small and by weak states which did not wish to be placed in a subordinate legal position. Corollaries of this principle are that (1) no state is bound by a new rule of international law unless it gives express or tacit consent to the rule, (2) no state is bound by provisions of a treaty without its consent, and (3) each state has equal voting power in international conferences in the absence of its consent to inequality.

Inequalities in Legal Rights. In general, an independent state has under international law the right to exercise jurisdiction over its territory, to make treaties and alliances, to acquire or to alienate territory, to declare war and to make peace, and to conduct its relations with other states as it sees fit through an agency of its own choosing. However, some states have by treaty with other states agreed to a restriction upon the exercise of some or many of the rights normally exercised by a state or have

agreed to permit other states to exercise certain of their rights. Thus, in the case of a state known as a protectorate, the protectorate has granted to another state called the protector, the exercise of the power to conduct its foreign relations with third states in exchange for a promise of protection of its independence as against third states. In legal theory the protectorate retains independence, but this independence in the sense of external sovereignty is exercised by the protector. In other cases, a state may transfer to another state the exercise of certain of its rights, while retaining the power to exercise directly the control of its remaining foreign relations; or it may agree by treaty not to exercise rights enjoyed under general international law. Thus a state may grant to another the right to exercise jurisdiction over nationals of the latter while in its territory, whereas normally a state exercises jurisdiction over aliens who enter its territory. Such is the system of exterritoriality still in existence in China, and at one time applied to the Ottoman Empire, Persia, Siam, and Japan. A state may grant to another by treaty the right to exercise extensive jurisdiction over a given portion of its territory, as in the grant made by Panama to the United States over the Canal Zone. A state may agree with another state not to alienate its independence, not to make offensive war, not to make treaties of a particular kind without prior consent of the other contracting party, or not to fortify a given portion of its territory.

Utility of the Legal Inequalities. By means of treaties making such arrangements it has been possible to retain the principle of equality of states under general international law, while at the same time permitting a wide departure from equal exercise of rights. Furthermore international law regards as valid treaties negotiated even under threats or as a consequence of employment of force or war by one of the parties. Consequently, legal theory regards as valid a treaty produced by force by which one party transfers the exercise of important rights to the other. It explains the act of consenting to the treaty as an exercise of independence or external sovereignty. It regards the acceptance of an exceptional obligation by a state or

the granting of an exceptional right to the other contracting party as merely an exercise of independence or sovereignty on the part of the state and not the actual transfer of sovereignty. There is often apparent among those who regard themselves as realists, whether among students or among statesmen, a tendency to snort in contempt or in disgust at such ideas. They assert that such hairsplitting cannot change the fact of loss of independence, that one should call a spade a spade and a protectorate a colony, and that one should call restrictions on the power to build fortifications an impairment of "sovereignty" or a sacrifice of independence. On the other hand, there is something to be said for the legal doctrine from the point of view of utility in present international relations. The establishment of a protectorate, for example, may be preferable to outright annexation from the point of view of the protector, protectorate, and third states. The protector may experience less difficulty than if annexation occurred, by leaving internal affairs to be carried on in traditional ways by natives and may find less opposition from the ruling class and the masses if the theory of independence is retained. The protectorate has frequently a choice as to which of several states may be given the right of protector, and the ruling class may retain many of the advantages previously enjoyed under independence in the form of retention of property, privileges, and offices. The rank and file of the population may be better off in the sense that traditions and customs are permitted to survive whose disappearance would be disruptive of the whole community life. Third states, unless they themselves had an exceptionally privileged position in, or expected to annex, the protectorate, may benefit because they retain existing treaty rights and will usually benefit from any progress made in the community in the way of improvements in government, bettered standards of living, and an increased security of life and property for their nationals in that area. The chief protectorates of the nineteenth century were those of "Great Britain over the Ionian Islands (1815–1863), and the Transvaal (1881–1902) and of Austria, Prussia, and Russia jointly over the free city of Cracow (1815–1846). Existing protectorates are

those of Great Britain over the Malay States, Borneo, and certain islands in the Western Pacific" and of "France over Tunis, Annam, Cambodia, and Morocco."[1] The term protectorate has been employed to describe Manchukuo, protectorate of Japan (1932), Slovakia, protectorate of Germany (1939), and Albania, protectorate of Italy (1939).

8. POLITICAL INFLUENCE IN THE FAMILY OF NATIONS

Among the sixty-odd states which at present compose the family of nations there are numerous differences which affect the part which they play in international life. Probably the most striking and significant differences are those based upon the power which they are capable of employing in order to defend their legal rights and to gain their objectives in foreign policy in that large realm of international relations unregulated by law. Here power is used in the sense of the capacity to employ force with shot and shell. This difference between states is the basis for speaking of some states as Great Powers, others as secondary powers or second-rate powers, others as little powers or weak powers. These adjectives are not employed in any scientific sense. The chief index to the power of a state today, as in the past, consists of military, naval, and air equipment and personnel in the fighting forces. No one seems to have difficulty in determining which states deserve the name of Great Powers. Today the Great Powers are France, Germany, Great Britain, Italy, Japan, the Soviet Union, and the United States.

9. ASSOCIATIONS OF STATES IN THE FAMILY OF NATIONS

The family of nations consists of the group of states whose relations are covered by international law. Within the family there are numerous groupings of states which associate for particular purposes. Some are limited in time and others are meant to be permanent associations. Thus states may by treaty form alliances and customs unions. In the last quarter of the nineteenth century some twenty

[1] AMOS S. HERSHEY, *The Essentials of International Public Law and Organization*, rev. ed., pp. 186–187, New York, The Macmillan Company, 1927.

public international unions were created by multipartite treaties. In these the states agreed upon general principles and established permanent international organs for their realization, as in the case of postal and telegraphic communications, promotion of public health, European rail transport, and other objects. Additional public unions have been established in the present century. Many states have been associated in the Pan-American Union, the League of Nations, the International Labor Organization, and the Permanent Court of International Justice.

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CHAPTER IV

Nationalism

One of the most significant factors in modern international relations is nationalism. Nationalism is a sentiment or feeling of loyalty to the nationality. A nationality is a group of people inhabiting a definite territory which constitutes or is believed by members of the group to constitute a distinct cultural society. Thus the sentiment of nationalism is a "fusion of patriotism and nationality." The phenomenon thus defined dates from the seventeenth century. It is important because it has come to be the cement which binds people together into large groups, making possible the unification of large numbers of people scattered over a large territory into single states. In other cases, where several different nationalities live upon territory of the same state, the sentiment of nationalism of each group acts as a disruptive force because each group tends to desire a separate political entity (state) or to join with others of its group who may be subject to the jurisdiction of another state. Thus, depending upon the circumstances, nationalism may serve either to strengthen or to disrupt existing states; in any case it is a dynamic factor which affects the foreign policies of states.

1. NATIONALITY AND STATE DISTINGUISHED

It is important to note that a nationality and a state are two distinct concepts. A nationality is merely a group of people who constitute or think they constitute a distinct cultural society. The group may regard itself as distinct because the members speak a particular language, or

because the members are thought to possess distinctive physical and mental characteristics setting them apart from other peoples, or because the members believe that they are descended from common ancestors. If there are other features common to the group which seem to set them apart from other peoples they may also be regarded as evidence of uniqueness: for example, a particular religion or an aptitude for industrialization or music or literature. A state, in contrast, is an association or community of people living in a given territory, organized politically under a government, and independent of foreign or external political authority. The people who are citizens or subjects of a state do not necessarily constitute a nationality. A state may comprise within its borders one nationality and all members of that nationality, in which case it is called a nation-state. A state may comprise within its borders two or more different nationalities, in which case it is called a multinational state. In some cases, a nationality may be distributed over the territory of two or more different states.

2. HISTORICAL DEVELOPMENT OF NATIONALISM

The phenomenon which is called nationalism began to assume form by the seventeenth century but flowered fully in the nineteenth and twentieth centuries. In earlier times patriotism or loyalty was known, but it was a patriotism directed not to a nationality but to a particular village or locality, or to a feudal overlord, or to the person of a monarch, or to a high priest, or to a deity. Why did patriotism come to be attached to the nationality above all these other entities?

THE UNIFYING INFLUENCE OF MONARCHS. Nationalism originated in Europe. The monarchies which had developed in England, France, and Spain eventually threw off the claims to superiority of the emperor and of the Pope. Meanwhile the monarchs had united their territories by subduing the feudal nobility and by reaching down from centralized government to the individual in the town and countryside, thus welding together into a larger unit the provinces formerly isolated from one another. The king served as a focus of loyalty.

GROWTH OF DIFFERENTIATION BETWEEN PEOPLES. The ideal of universality and of Christendom had been discarded with the rise of independent monarchies and the rise of Protestant sects in competition with the Roman Catholic Church. Latin, which had served as a common language for the learned world, lost its predominant position, and vernacular languages came to be used in literature. The old ideal of universalism, inherited from Rome and admired in the Middle Ages, no longer appealed to the powerful monarchs of the western seaboard of Europe. The competition between these new states for commercial supremacy and colonial spoils in America and Asia provoked wars which stimulated a feeling of hostility to the foreigner and gave rise to written histories of the nations in victory and in defeat.

IDEAS OF THE FRENCH REVOLUTION AND REACTION AGAINST FRENCH CONQUEST. It was not until the French Revolution that nationalism of the modern vintage was bottled. It has been frequently noted that democracy, the rise to power of the *bourgeoisie*, and nationalism appear together. It was natural that, with the disappearance of the king as a focus of loyalty, the nation as a whole should be substituted in his place in France, where the people had already been knit together into one nationality. While at first the revolutionaries in France stressed the rights of man in general, later they set out on a policy of liberation of other peoples from the oppression of their kings. The conquests made under Napoleon of a large part of continental Europe had two results. First, they aroused among the peoples in conquered territories a national self-consciousness, an awareness of their likenesses with one another and of their unlikeness to the French. Second, they produced a coalition of states to curb the power of France which eventually forced the French back into their former borders.

STIMULATION OF NATIONALISM BY WAR AND BY REVOLUTIONARY MOVEMENTS. By the close of the first quarter of the nineteenth century, therefore, nationalism had taken a strong hold. The Germans and the Spanish had been aroused by the foreign invader. English patriotism to the nationality had been increased by the Napoleonic war and

the experiences of this war became a part of historical tradition. The United States had for half a century been independent of Great Britain, had fought two wars (1776, 1812), and the former colonies were being welded more closely into a people feeling themselves American. The former colonies of Spain and Portugal in America had successfully revolted and, despite the cultural affinities with their former mother countries, had begun an independent existence. The Greeks had revolted from the Ottoman Empire, and Belgium and the Netherlands, which had been joined together in 1815, were disrupted by revolt for independence of the Belgians in 1831. During the following century nationalism became a more powerful sentiment where it already existed and was developed in additional peoples all over the world which had not yet felt its operation.

3. THE BASES OF NATIONALITIES

INADEQUATE EXPLANATIONS OF NATIONALITIES. Why do nationalities exist? Many different answers have been given to this question. Some of the answers are clearly inadequate or unsound, such as human nature, geography, race, "soul of a people." Gregariousness is a human characteristic and helps to account for the joining of persons into groups, but it does not explain why these groups should be nationalities rather than other groups, such as people believing the same religion or upholding similar political theories or having common economic interests. Geography alone cannot explain nationalities and there are no natural frontiers for nationalities, because different nationalities are found side by side in the same geographical situation and a single nationality is found covering a highly diversified geographical area. In so far as geography forms barriers which isolate a people, a situation is created making for differentiation from other peoples, but the isolation does not in itself create the nationality which may or may not develop there. The idea of race is the idea of a distinct people who have descended physically from a common ancestor, who have a common blood tie, and who inherit through germ cells certain physical and mental character-

istics. Anthropologists disagree regarding the number of races and also regarding the features to be taken into account in attributing persons to one race or another. In any case there has been such an extensive mixture of races, due to successive waves of conquest, intermarriage among peoples brought into the same empire, and immigration of people individually, that there is no pure race today. People of mixed races may undoubtedly constitute a nationality. Furthermore, a group of people who may seem to be predominantly of one race may be found grouped into several different nationalities. While nationalities are not based upon race, the myth that a nationality constitutes a distinct race may be influential in uniting the nationality. The idea, however false, of descent from a common ancestor permits the analogy that members of the nationality constitute a family, creates the psychology that blood is thicker than water, and national characteristics are regarded as evidence of common racial inheritance from a common forebear. Finally, there is a theory that each nationality has a "soul," a "group mind with peculiar and constant mental qualities and endowments." This, too, is a myth. It is true that at any given time a nationality may have distinctive characteristics, but these are based on tradition and custom and are by no means immutable. The group may unite in action and it may support a prevailing idea, but there is no need to resort to some metaphysical soul in order to explain the phenomena. However, as in the case of the racial theory, this soul theory, if accepted, may stimulate unity of the nationality. If the group is personified and endowed with a soul the nationality gains immortality. As Professor Hayes says,

> The conclusion is forced upon us that the basis of nationality is not to be found in inherent mental or spiritual differences among human groups, or, for that matter, in racial heredity or physical environment. Nationality is an attribute of human culture and civilization, and the factors of zoölogy and botany are not applicable to it.[1]

LANGUAGE AS A UNIFYING FACTOR. The factors which contribute to the formation and development of nation-

[1] C. J. H. HAYES, *Essays on Nationalism*, p. 12, New York, The Macmillan Company, 1926.

alities are a common language, a common historical tradition, a belief that the group constitutes a distinct cultural society.[1] Of these, language is highly important. A people speaking the same language tends to be like-minded and to develop a group consciousness, while they find a foreign language to be an obstacle to understanding and a mark of strangeness and foreigness. In the case of most nationalities there is a common language, *e.g.*, French, German, Italian, Japanese, Chinese, English, American, Hungarian, Polish. In some cases, however, a nationality may comprise several language groups, as in the case of the Swiss with four languages, and of the Belgians with two. In such cases there are other factors which serve to knit the people together, despite linguistic differences, and the different languages employed by such a nationality tend to create subnationalities based on the differences of languages. The general use of Latin in Europe by the educated classes during the Middle Ages helped create a cosmopolitan rather than a national point of view. Recent attempts to develop Esperanto or some other universal language are aimed at increasing understanding between peoples and at promoting cosmopolitanism or internationalism rather than self-contained nationalism.

USE OF LANGUAGE AS A TOOL FOR UNIFICATION. There is ample evidence that statesmen realize the importance of language in creating nationalities and developing nationalism. The recrudescence of Gaelic in Eire or Ireland, formerly the Irish Free State, is a modern example. For a long time governments of multinational states have attempted to eliminate loyalty to minority nationalities by stamping out use of the minority languages and by substituting the language of the controlling group. The resistance of the minority nationalities to elimination of their language is evidence of the importance they attach to its survival.

COMMON HISTORICAL TRADITIONS. Language, oral or written, is also the instrument for transmitting the common historical tradition of a group, which is an important factor in developing a nationality. The member of a

[1] HAYES, *loc. cit.*

nationality projects himself into the past by learning of the victories and defeats of his people, their struggles and tribulations, their periods of grandeur in power and wealth and artistic accomplishments. The history of the nationality is usually presented in the most favorable coloring and on a heroic scale so as to create a favorable and powerful emotion enlisting patriotism. The nationality is personified and glorified. All the devices of stimulation are applied in making the nation a reality: emblems, ceremony, celebration, indoctrination. Nationalism has provided many people with a feeling of immortality, as part of a nationality which will survive the individual's death, in a period when many people have lost faith in an individual and personal immortality promised by the old religions.

IDEA OF DISTINCT CULTURE OF THE GROUP. Finally, each nationality regards itself as a unique cultural society.

> Every nationality has a culture-pattern of its own, a distinctive complex of institutions, customs, and art, and the same is true even more strikingly of primitive tribes. Certain types of family relationship and social organization, certain modes of artistic expression, certain religious tenets and observances, certain habits of work and play, certain forms of clothing and shelter, are found among primitive peoples in all the continents, but no two tribes, speaking different languages, show the same combination of such habits, observances, modes and types. The component elements may be identical, but the *tout ensemble*, in every instance, is distinctive.[1]

RELIGION AS A FACTOR. Among the elements of cultural differentiation religion and political institutions may be important. In some cases a religion may intensify the feeling of unity of a nationality, as in the case of the Jews. More frequently, however, religion is an unimportant element. This is because most of the prevailing religions are universal and make their appeal to persons whatever their nationality and are supranational. In addition, most states now have adopted a policy of toleration of different religions and do not identify the nationality with a particular religion. On the other hand, persons with different religions may with difficulty be united in a single nationality.

POLITICAL INSTITUTIONS AS A FACTOR. Peoples under the same political institutions may come to regard such

[1] *Ibid.*, p. 18.

institutions as making it a unique cultural society. At the present time great pride is taken in Fascist forms of government in countries where they exist, just as great pride was taken in the past and has continued in the case of democratic forms of government. Over a long period of time a common political institution may facilitate the fusing of several nationalities into a larger one, as in the case of Switzerland, Spain, and Belgium. Nevertheless nationalities may survive although they lack their own political institutions, as in the case of the Polish nationality for a century and a quarter, and of the Germans, Poles, and Hungarians since 1919 outside the boundaries of the territorial states.

4. THE PROPAGATION OF NATIONALISM

PREACHERS OF THE DOCTRINE OF NATIONALISM. Nationalism became strong during the nineteenth century as a result of the development of doctrine emphasizing and glorifying it, the adoption of these doctrines by the higher classes in the national societies, and the eventual inculcation of the doctrines into the masses by various instruments of propaganda. Those who developed doctrines in support of nationalism were both the scientific scholars and the popularizers of subjects such as philology, anthropology, law, political science, economics, history, and literature. The philologists, for example, collected dictionaries of the national languages and some of them advanced theories regarding the superiority of a particular language over other languages. It was also assumed by some that language indicated necessarily racial difference, and that those regarded as having the superior language also constituted a higher race and a superior nationality. The early anthropologists advanced theories about race, now generally discarded, which gave credence to the idea of national differences based upon blood origin. Written history books, formerly concerned with a particular locality, or with world history in general, or with religious history, became concentrated upon national history. Histories of literature also stressed the national contributions and tended to give a favored place to the literature of the writer of the history.

It was likewise with the work of the other intellectuals and pseudo intellectuals.[1]

A Middle Class Doctrine. The upper middle classes helped to spread the doctrines of nationalism. Their rise to power had been based upon the idea of popular sovereignty and representative government, as opposed to government by monarch, nobility, and clergy. The emphasis upon the people in the case of both nationality and democracy is obvious. They came to believe, either consciously or unconsciously, that their class interest was identical with the national interest. Indoctrination of the masses with nationalistic fervor served to divert the masses from anarchy or revolution, and to divert them from socialism with its implications of class interests passing across frontiers. Furthermore, the middle classes often desired an economic policy of protection by tariffs, made more palatable on the theory that the nationality was an economic unit.

Propagandizing Nationalism. The inculcation of nationalism into the masses of people was accomplished by both old and new devices. Popular education by means of conversations, orations, sermons, and the arts was employed to advance nationalism. However, during the nineteenth century new devices became available. Compulsory public education on a wide scale was then adopted and has become the instrument for stamping the younger generation with patriotism to the nationality. The general practice of conscription of the whole male population for military service, begun by the French and quickly followed in other countries, provided a new channel for indoctrination. Soldiers were trained in patriotism as well as in use of arms. With the extension of military activity to the rank and file of citizens there was also a growth of patriotic societies and of veterans of war organizations which specialized in upholding national traditions. The development of the newspaper in the early nineteenth century provided an inexpensive medium for reaching the masses. More recently the radio has supplied still another instrumentality for inculcation of ideas. In many of the dictatorial countries almost all

[1] *Ibid.*, pp. 62–69.

of life is drawn into the orbit of the state. Sports, theater, and cinema are censored, controlled, and directed with a view to creating the desired opinion among the masses.

5. DOCTRINES OF NATIONALISM

The factors which create and develop a nationality, and the methods by which a loyalty to the nationality, called nationalism, is created, have been examined. Now it is necessary to examine the body of theories which have grown up around nationalism. At one end of the scale is the doctrine which accepts as natural and desirable the division of humanity into nationalities and teaches that loyalty to the nationality is desirable. However, other loyalties are permitted: whether to family, province, labor union, or church, on the one hand, or to humanity in general, an international religion, or an association of nations, on the other hand. In other words, loyalty may be divided, and is not invariably and exclusively the monopoly of the nationality. At the other end of the scale is the doctrine which demands for the nationality an exclusive loyalty, enshrines the nationality as the ultimate value for members of the nationality, and condemns loyalty to any person, thing, place, or idea which would compete for allegiance. Furthermore, it demands as a matter of course from its members a sacrifice of everything in the promotion of whatever is determined to be in the national interest. Nationalism of the second type has been called "integral nationalism," and is found usually in the case of nationalities which are already possessed of a separate state. In other words integral nationalism is found in national states. Often integral nationalism is joined with a theory that international relations are relations of competition, conflict, and war and which denies that principles of justice or morality apply as between states. Integral nationalism glorifies military prowess, conquest, and imperial domination, and supports a belief that the nationality has a mission to perform, especially the mission of extending the sway of civilization over other people who are unenlightened. The policies of the state, both political and economic, are to

be determined solely upon the basis of selfish national interest.

6. NATIONALISM AS A DYNAMIC FACTOR

As a Unifying Factor. Throughout the nineteenth and twentieth centuries the sentiment of nationalism has been a dynamic factor in international affairs. Depending upon the circumstances it has been a force leading to unification of states or to the disruption of existing states. If the population within the boundaries of a given state believes that it constitutes a nationality, this belief facilitates centralization of governmental authority and permits a subordination of local units of government, while at the same time it permits the state to assert primacy over the Church. Thus, for example, with the growth of American nationalism the national government has gained in power and influence at the expense of component state governments and sectional groupings. The development of Italian national feeling made possible the fusion of the various Italian cities and states into one kingdom in the last half of the nineteenth century. Bismarck stimulated German nationalism in order to consolidate the various German states. His policy of militarism and war was dictated in part at least by a desire to create intense patriotism for things German. The Franco-Prussian War resulted in the addition of the southern German states to the North German Confederation, to form the German Empire of 1871. The extreme nationalism of the Nazi government, reinforcing the nationalism produced by the war of 1914–1918, has led to complete political unification of Germany, and to the termination of the federal scheme of government which had been retained under the Weimar Constitution of 1919. Germany annexed Austria, traditionally a German people, and the Sudeten Germans of Czechoslovakia in 1938. In 1939, Germany annexed the city of Memel, the Free City of Danzig, and Polish Upper Silesia, all having German populations. However, Germany annexed other nationalities also in Czechoslovakia and in Poland. The World War raised nationalism to a high pitch in the places where it already existed and stimulated it in places where

it had previously been dormant. The final success of Chiang Kai-shek in eliminating the various feudal war lords in China during the 1920's and the propagation of Chinese nationalism since Sun Yat Sen portended a unification of China which would transform her into a powerful state. The policy of Japan has been to crush this movement, to break off portions of Chinese territory, and to incite internal separatism so as to prevent the consummation of the movement. Whether the Japanese policy can succeed is problematical, for the method of crushing nationalism by force and war has in recent times always been a boomerang, intensifying nationalism rather than eradicating it. The fostering of a passionate nationalism is a logical corollary of a multistate system lacking a common organization for promotion of peace and justice. Those states which seek empire must produce a religion of nationalism among the population which will engender the attitudes necessary to pay the costs in money, property, and life. States which do not plan expansion must foster nationalism in order to meet force with force.

NATIONALIZING FOREIGNERS. The anxiety of governments to have behind them unified nationalities affects their policies along many lines. Thus, countries look with suspicion on immigrants who come to be naturalized there, in case the new members retain a loyalty to their former country. During the nineteenth century the United States followed a policy of "Americanizing" immigrants, molding them to the American pattern and obliterating the foreign connection. The American policy of exclusion of Asiatics from immigration and naturalization is based partly upon the fear that peoples from China and Japan would retain loyalty to their former countries. Considerable minorities of Germans and Italians have gone to various South American countries and their activities have recently been placed under surveillance to prevent disloyalty to their adopted states.

AS A FORCE DISRUPTIVE OF EXISTING STATES. Nationalism has been a potent influence underlying the disruption of existing states. To the growth of nationalism may be attributed the disruption of the Ottoman Empire in the

Balkan peninsula and in Asia Minor, and of the Spanish and Portuguese colonies in America, during the nineteenth century. The Austro-Hungarian Empire dissolved during the World War into the numerous nationalities which composed it. The Austrian policy toward Serbia, which helped to precipitate the war of 1914–1918, was dictated by a fear that the Serbian agitation would lead to loss of the Serbian peoples under Austro-Hungarian domination. Russia lost Finland, Esthonia, Latvia, and Lithuania and portions of territory to Poland. Frequently the policy of a state whose population is multinational is centered upon converting the minorities to the majority nationality, or to their eradication by suppression or expulsion. Forceful measures for suppressing a national minority are sometimes successful but more frequently merely intensify nationalistic feeling and create a movement for political separation. The doctrine of self-determination of peoples is the thesis that each nationality should have the right to its own political state, and that all members of the nationality should be united in the population of one state. This is a political or ethical doctrine and finds no foundation in existing international law. The doctrine was employed by the Allied and Associated Powers during the World War and was announced as one of the allied war aims. It contributed to the collapse of the Central Powers. It was applied extensively in the territorial arrangements made at the peace conferences closing the war. As a result, the number of persons under minority status in Europe was reduced from about fifty millions to less than twenty millions. While it may be true that the principle was applied primarily where it would weaken the defeated states and was not carried out as applied to the victorious states, the number of people under foreign domination was greatly reduced. The doctrine has been revived in recent years by Germany and by the Soviet Union as a justification for their seizures of territory, though they depart from it when expedient.

As a Force Disruptive of Colonial Empires. Nationalism has been stimulated in the colonial empires of the world. Great Britain has experienced its disruptive influence in India and, while retaining control, has given

much greater autonomy there. Egyptian nationalism has sought to throw off British influence. Arab nationalism in Palestine has been heightened by immigration of Jews into Palestine under the Zionist policy pursued by Great Britain, and has been stimulated by propaganda inciting the Arabs to unrest which has been fostered by Italy. France has kept down by force the nationalistic movements among the Arabs of her African colonies and among the Syrians. In the Philippines the nationalistic urge has led to a policy of autonomy and a plan for independence from the United States in the near future. In China the nationalistic movement has taken expression in a policy seeking the termination of foreign rights of extraterritoriality, treaty ports, and international settlements.

Irredentism is a term derived from the Italian word *irredento*, meaning "unredeemed." Before 1914, the Irredentist party in Italy laid claim to Austrian territory north of Italy which contained Italian population. Irredentism is the term which is now generally used to describe a policy of annexing territory which contains people of the same nationality as that of the annexing state. There are many irredentist claims in Europe today. The policy has been put into operation by Germany in the case of Austria, the Sudeten Germans, the Free City of Memel, and during the summer of 1939 as regards the Free City of Danzig and Polish Upper Silesia. It has been put into operation by Poland and Hungary as regards Czechoslovakia. It has been put into operation by the Soviet Union as regards eastern Poland. At the present time Greece, Rumania, and Yugoslavia contain minorities which continue to stimulate irredentist ambitions on the part of other states. The Nazi government of Germany has irredentist ambitions for most of the territories of which Germany was dispossessed at the close of the war. However, it has declared that it is reconciled to the loss of Alsace-Lorraine and to the Austrian Tyrol, transferred to Italy by Austria in 1919 in order to give Italy a strategic frontier at the Brenner Pass in the Alps. Italy, since the war, has followed a policy of attempting to Italianize the populations of the Tyrol, but with indifferent success. The policy adopted in 1939 was to offer

the population of the region a choice of returning to German territory or of retaining Italian citizenship and moving out of the region into other portions of Italy.

CONCLUSIONS. It is obvious that nationalism is a highly dynamic factor in international relations which tends to upset the *status quo* of territorial boundaries. It leads to disruption of existing states in the case of a state having a multinational population. It leads to transfers of territory containing minority populations, usually as a result of revolution, outside intervention, and war or threat of war. While nationalism has led to these results primarily in Europe, there has already been a growth of nationalism in Asia and parts of Africa which promises to disrupt colonial empires unless some solution is found.

7. ATTEMPTED SOLUTIONS OF THE PROBLEM OF NATIONALITIES

A number of different methods have been employed in an effort to solve the problems created by the rise of nationalism. They may be considered under the following heads: (1) forcible assimilation or eradication, (2) peaceful assimilation, (3) a national policy granting autonomy to minorities, (4) international protection of minorities, (5) transfer of minorities, (6) complete self-determination.

FORCIBLE ASSIMILATION. The method most frequently employed in Europe during the nineteenth century was forcible assimilation or eradication. The state whose population contained a national minority usually attempted to eliminate the minority by stamping it out and substituting loyalty to the majority nationality. This usually entailed a policy of prohibition of all those things which were regarded as contributing to the distinctive character of the minority, and led to prohibition of use of the minority language, prohibition of schools and churches which would perpetuate the differences, and insistence that children of the minority attend schools where they might be molded according to the pattern of the majority, suppression of the literature distinctive of the minority, imprisonment or expulsion of leaders promoting minority consciousness, and a policy of "colonizing" the territory occupied by the

minority with members of the majority who filled the government offices, policed the area, and occupied it by military force to thwart revolt. It is difficult to assess the results of such policies but most observers agree that they were usually unsuccessful. Instead of eliminating the minority differences, such policies tended to exaggerate them. The older generation handed orally to the younger the traditions of the minority. Attempts to stamp out the distinctive language, customs, literature, or religion were resented and opposed and gave the group a greater consciousness of distinctiveness under a sense of oppression. Leaders who were prosecuted became martyrs, and the colonizers from the dominant nationality, being in the position of officers enforcing unpopular laws or gaining the most lucrative economic positions, were hated. The Ottoman Empire carried the policy to its logical conclusion. They put to the sword and massacred a large proportion of the Armenian population in successive steps. Even this policy has its limitations, due to outside interference on humanitarian grounds and the impossibility of murdering thousands or millions of persons. The treatment of the Jews in Germany in recent years illustrates this.

At any rate, nationalities have survived decades or centuries under alien rule where active steps have been taken to eliminate them, as in the cases of the Poles, Czechs, Hungarians, and of the Balkan peoples under the Ottoman Empire.

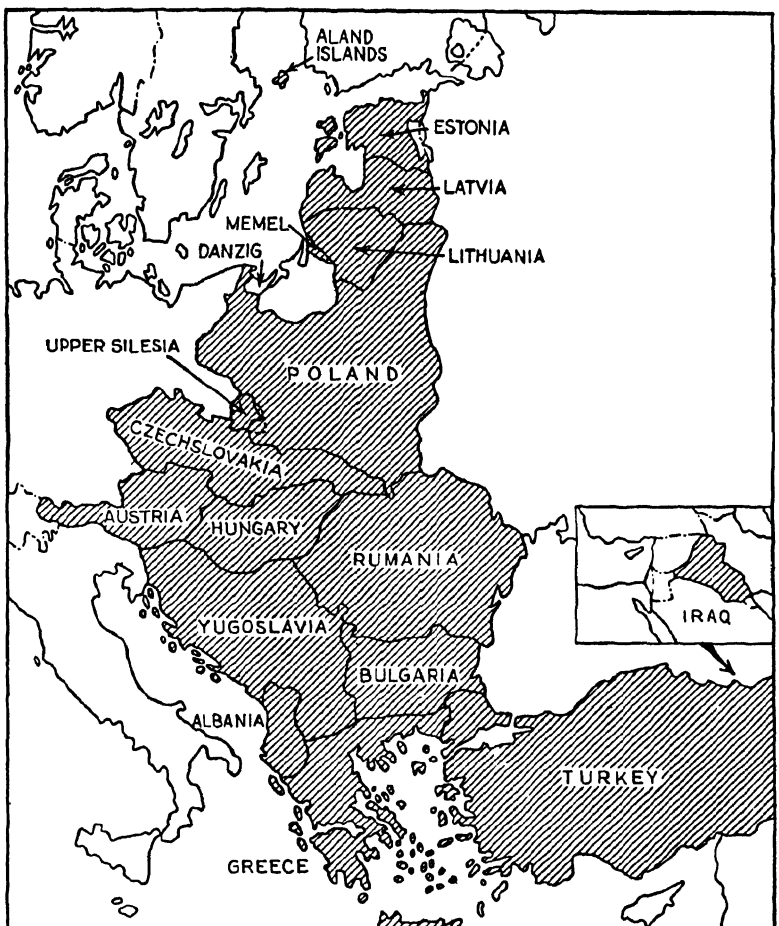
PEACEFUL ASSIMILATION. The most successful case of peaceful assimilation of alien minorities is that of the United States in dealing with the different nationalities which arrived as immigrants from Europe. The reasons for the success seem to be as follows. The immigrants arrived at intervals over a long period of years as individuals or families and tended to dissolve their former national characteristics when thrown into the existing American civilization. While some immigrants tended to settle in certain districts of the big seaboard cities others went to agricultural regions and were dispersed over the country. The system of free public education and the granting of practically universal white male suffrage, along with a

system of government having a bill of rights which prevented serious discrimination on the basis of religion, language, or other grounds, helped the assimilation. At the same time, it must be remembered that many of the immigrants had left countries because of persecution, famine, poverty, or to avoid military consciption, and had arrived in the United States thinking of it as a land of opportunity. The problem of assimilation is quite different under such circumstances from a situation where a population has existed for centuries on the same land and cherishes its peculiar characteristics. Other examples of peaceful assimilation are to be found in the South American countries to which many Europeans emigrated and in Canada, where the French Canadians retain distinctive characteristics but are able to work in harmony with subjects of English origins.

AUTONOMY. Russia comprises a greater number of different nationalities than any other country. Under the Soviet Union a policy has been followed of allowing an extensive cultural autonomy to the different nationalities. While government throughout the Union must be based upon communist principles and while the Communist party dictates economic policy, different nationalities are encouraged to retain their distinctive languages, customs, and costumes. The religion of the regime is not Russian nationalism but a religion of communism which is intended to appeal to the proletarian classes throughout the world. Whether the autonomy permitted will result eventually in a tendency to dissolve into a number of different states, it is impossible to predict.

INTERNATIONAL PROTECTION OF MINORITIES. In the last half of the nineteenth century the Ottoman Empire made a number of treaties with European states by which the former promised to grant a certain minimum of rights to minorities in the Balkan territories under Ottoman jurisdiction. No permanent machinery was established to supervise the execution of the promises. Protests against violations were made through the usual diplomatic channels, but without success. At the Conference of Versailles and other conferences terminating the war of 1914–1918, the

problem of minorities in the defeated states and in the new states created in the war period and postwar period was considered. The general features of the scheme adopted were (1) assumption by the state of obligations toward the



MAP II.—Showing the states which have assumed international obligations toward minorities. (*Adapted from map in League of Nations, Information Section, Essential Facts about the League of Nations, Geneva,* 1938, *p.* 201.)

minority populations with the object of guaranteeing a certain minimum of rights and (2) supervision by the Council of the League of Nations of the execution of these obligations.

NATURE OF THE MINORITY RIGHTS. The rights accorded to minorities usually included the following: (1) all inhabitants are entitled to protection of life, liberty, and free exercise of religion; (2) all citizens belonging to racial, religious, or linguistic minorities are guaranteed equality in civil and political rights, including the right to vote and to hold office. Consequently minorities may employ their language, establish religious, educational, and charitable institutions for their members, and have the right to public primary schools employing the minority language where there is sufficient minority population. (3) Every person may become a citizen if he was born in or has lived in the territory, otherwise he may be required to change his place of residence. The state accepting these obligations agreed to recognize them as fundamental rights under its constitutional law and also recognized that they constitute obligations of international concern. The interpretation of the obligations and the supervision of their execution was entrusted to the Council.

STATES BOUND BY OBLIGATIONS TO MINORITIES. These principles have been accepted by a large number of states. (See the map on page 77.) The obligations have been assumed sometimes in multipartite treaties, sometimes in bilateral treaties, and sometimes in unilateral declarations. The principal Allied and Associated Powers were parties, on the one side, and the following states individually, on the other side:

Armenia	1919	Hungary	1920
Austria	1919	Poland	1919
Bulgaria	1919	Rumania	1919
Czechoslovakia	1919	Turkey	1923
Greece	1920	Yugoslavia	1919

France, Italy, Great Britain, and Japan, on the one side, and Lithuania, on the other, made a similar treaty relative to Memel in 1924. Bilateral treaties include the ones between Germany and Poland relative to Upper Silesia (1922), between Austria and Czechoslovakia, between Poland and each Baltic state, and between Finland and the Soviet Union. Obligations accepted in the form of declara-

tions made to the Council of the League of Nations were assumed by the following:

Albania	1921	Iraq	1932
Esthonia	1923	Latvia	1923
Finland	1921	Lithuania	1922

PROCEDURE IN CONSIDERING COMPLAINTS BY MINORITIES. The function of the League in supervising the execution of treaties to protect minorities is not laid down in the Covenant but in the treaties or declarations mentioned above. The procedure for considering grievances of minorities has been outlined in the treaties and further developed by the Council. Petitions stating grievances are sent to the Secretary-General. To be receivable by him the following conditions must be met: (1) Petitions "must have in view the protection of minorities in accordance with the treaties." (2) They must

> . . . in particular not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part. (3) They must not emanate from an anonymous or unauthenticated source, (4) must abstain from violent language, and (5) must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure.

If the petition is receivable, it is submitted to the governments concerned and to members of the Council. The petition is examined by a Minorities Committee, composed of the President of the Council and two other Council members appointed by him, along with observations relating to the petition. The Minorities Committee may make one of several alternative decisions. They decide whether any action should be taken. They decide whether the question can be settled without a formal decision by means of nonofficial negotiations with the government concerned. They decide whether to refer the matter to the Council. They communicate to other members of the Council for their information the results of their examination and may consider the possibility of publishing the results, with the consent of the government concerned.

CRITICISMS OF LEAGUE ACTION AND PROCEDURE. A number of criticisms have been made of the method employed by the League in dealing with the international protection of minorities. (1) Only a member of the Council may bring before the Council a minorities question. This means that important questions may not be brought before the Council, because members of the Council may hesitate for political reasons to raise the question if they are not directly involved by having an interest in the minority, and because a state which may wish to raise the question because of its interest in a minority may not possess a seat on the Council. None of the Great Powers has accepted obligations toward minorities. Germany had such obligations reciprocally with Poland while a member of the Council, but treatment of minorities of one in the territory of the other was dealt with through bilateral negotiations after 1933. (2) In the case of petitions, criticism has been made of the Minorities Committee of the Council as unsuitable for the wide discretion given to it. It has been suggested that an improved procedure would be to establish a Minorities Commission similar to the Mandates Commission, or that the Council should consider petitions as a committee of the whole.

ADVISORY OPINIONS ON MINORITIES. In three instances the Council has requested an advisory opinion of the Permanent Court of International Justice concerning the legality of action of a state in treatment of minorities. Two of these involved the obligations of Poland toward German minorities. In one (September 10, 1923) the Court upheld the right of German settlers who had become Polish nationals to continue to occupy and cultivate the land on which they had been settled, deciding that Poland had violated international obligations in expelling them from the land occupied by them. In another (September 15, 1923) the Court was of opinion that certain former German nationals had become Polish nationals and consequently had the minorities rights granted to citizens. Poland had contended that nationality acquisition depended upon domicile of the parents of the child at the time of birth, and furthermore upon the coming into force of the minorities

treaty. The Court was of opinion that domicile of the parents at the moment of birth of the child was by itself sufficient to confer Polish nationality. In the third instance (April 6, 1935), Albania decided to abolish private schools completely and argued that since the majority and the minority populations were affected equally there was no violation of the obligation to permit private schools for the minorities. The Court was of a contrary opinion.

Question of Practical Operation of Protection of Minorities. The following conclusions may be made relative to international protection of minorities: (1) The position of minorities is improved beyond the position of minorities having no international protection. Whatever measures of subterfuge a state may employ to circumvent its obligations and whatever the failure to realize minority rights to the full extent of the text of the treaty obligations, the situation is better than it was before. (2) A greater protection in practice would probably result from alterations in the machinery and procedure of the League. (3) It is unlikely that minorities will ever enjoy to the full the rights granted to them by treaties or declarations. This seems a valid observation for the following reasons: (1) A government bound to such obligations regards them as restrictions invading its internal relation toward its subjects, particularly when many states are not bound by minority obligations though containing minorities. (2) There is probably a skepticism on the part of the obligated states in the guarantee to the minority of rights as a method of gaining the loyalty of the minority to the state and a preference for the method of stamping out differences. (3) The government is controlled in the interests of the majority and reflects the feelings and passions of the nationalism of the majority, in most cases feeling dubious of the loyalty of the minority, feeling superior to the minority, and desiring a centralization of political control which is thwarted by a minority. An American may understand the difficulty of enforcing the letter and spirit of the American fundamental law by remembering the situation in states of the Solid South, where the dominant control

is by whites who do not desire enjoyment by Negroes of political rights.

TRANSFER OF MINORITIES. Another attempted solution of the problem of minorities is the transfer of minorities from the territory where they are living to the territory of another state with whose population the minority regards itself as identified. The outstanding example of this is the exchange of Greek and Turkish populations following the war between the two states in 1921–1922. A proposal for such an exchange had been made between Greece and Turkey in 1914 but was not put into effect. Greece and Bulgaria agreed by a treaty of 1919 to exchange populations. The execution of such treaties is left to a mixed commission, composed of nationals of the parties and neutral members, which facilitates the transfer of population by seeing to the liquidation of property and by assisting in the financing of the movement of population. The compulsory exchange of Greek and Turkish populations was agreed upon in a Convention of January 30, 1923. More than a million Greeks were expelled from Turkish territory and returned to Greek territory. This was upsetting to economic life and created a serious problem of readjustment. The problem of refugees created led to action by the League of Nations in the form of financial assistance. The action of Turkey in expelling Greeks in Constantinople led to a dispute which was brought before the Council under Article 11 of the Covenant of the League of Nations. A request was made of the Permanent Court of International Justice for an advisory opinion concerning the scope of an article of the Convention of 1923.[1] There are obvious limitations upon the use of transfer of populations as a solution of the minority problem. The expelling and the receiving state must both desire the transfer. It often causes severe hardships to the individuals who are transferred. Some kind of governmental assistance is necessary to finance such a scheme. During the summer of 1939 an agreement between Germany and Italy was reached for the voluntary departure to German territory of Italians of the German minority in the Tyrol, particularly Bolzano. In

[1] Series B, No. 10.

some instances a transfer of population will be opposed by the acquiring states because of an ambition to annex the territory along with the population at the first favorable opportunity. This is generally true in cases where the territory is rich in resources or has strategic importance or constitutes territory lost in some previous war, *e.g.*, Polish Upper Silesia and Danzig. Large numbers of the German minority in the various Baltic states (Esthonia, Latvia, Lithuania) were returned to Germany in the autumn of 1939.

SELF-DETERMINATION. Finally, a solution of the minorities problem may be sought through the full application of the principle of self-determination of peoples. The minority breaks off from the majority to form a separate state or the minority is permitted to become a part of an existing state of its choice. In the second case the desires of the population are often determined by a plebiscite, which is an election held to determine the will of the population. The accuracy of a plebiscite in reflecting the will of the population is dependent upon a number of factors: (1) fair conduct of the election and counting of ballots without intimidation by government authorities or private groups; (2) the particular alternatives offered on the ballot; and (3) the qualifications required for participation in the balloting, because the suffrage may be widened or restricted and the results of the election may be altered in consequence. The device of the plebiscite has been frequently employed in modern times for limited areas. Some nine plebiscites were provided for in the peace treaties which terminated the war of 1914–1918. The most recent plebiscite was the one held in the Saar Territory in 1935, in accordance with provisions of the Treaty of Versailles and under the auspices of the League, which resulted in reunion of the Saar with Germany.

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CHAPTER V

International Law

In all human societies rules are found which regulate the conduct of the members of the society. One of the prime functions of a government is to create, interpret, administer, and enforce rules of law. An elaborate machinery is created for the purpose of fulfilling this function. During the past three centuries there has been developed a body of principles and rules called international law which defines the rights and duties of members of the family of nations toward one another.

1. THE ORIGINS OF INTERNATIONAL LAW

International law can be better understood in the light of its origin and historical development. During the period of development of the modern European state, from the close of the Middle Ages to 1648, the relations of states were frequently those of competition, conflict, and war. Persons reflecting upon this situation began to wonder whether the relations between states were regulated by rules of law as were the relations between individual persons living within the state. They asked particularly about the justice of war and the righteousness of methods employed during times of war. The early writers on international law were often Christian theologians who approached the questions from the point of view of the duty of the true Christian. Competition among certain states, notably Great Britain and the Netherlands, for domination of commerce with the East, led to a prolonged controversy as to whether a state might appropriate portions of the high

seas to its own exclusive enjoyment, or whether the high seas were open to the common use of all states. Disputes arose also concerning the grounds upon which a state might rightfully claim title to land territory discovered in the New World. Questions were raised about the rights of the American aborigines as against the European claimants. When permanent diplomatic representation was established, controversies arose as to the scope of the privileges and immunities of a diplomat while resident at a foreign court.

GROTIUS AND HIS WORK. Hugo Grotius has become the acknowledged father of international law because of his treatise on *The Laws of War and Peace*, which was published in 1625. In the introduction, Grotius shows that the suffering and cost of the Thirty Years' War then in progress had raised the question of international law. The wide influence which his book rapidly attained gave an impetus to the study of international law by other scholars and also affected the thought of statesmen. Gustavus Adolphus, the Swedish king, is said to have slept with the book underneath his pillow while conducting his military campaign on the Continent.

2. THE SOURCES OF INTERNATIONAL LAW

SOURCES OF LAW IN GENERAL. Jurisprudence is the study of the theory of law. The ideas concerning the nature of law have varied at different periods of history and in different societies. The person having curiosity will be tempted to explain this phenomenon in human societies. The person who is interested in abiding by the law, or in knowing his rights under the law within a modern state, usually does not concern himself with the nature of law and is satisfied if he is able to determine the particular rules of law which apply to his case. Furthermore, the average person relies upon the advice of a professional lawyer and upon the courts established by the state to determine the question. An American, for example, will think of the sources of law as constitutional documents, statutes passed by legislative bodies, ordinances passed by local government units, the common law and rules of equity applied by the

courts, and administrative rules or orders such as those of the Interstate Commerce Commission.

THREE VIEWS AS TO SOURCES OF INTERNATIONAL LAW: 1. NATURAL LAW. In the case of international law there is much more difficulty in determining precisely what rules regulate the relations between states. Three schools of thought concerning the sources of international law have prevailed in the past: (1) the natural law school, (2) the positivists, and (3) the eclectics or Grotians. The natural law school believes that, entirely aside from the question of consciously formulated rules, there are certain broad principles and rules which regulate the conduct of persons with binding force. These principles and rules are conceived as existing objectively and as being inherent in human societies. This law is "natural" in the sense that it is in the nature of things that such rules should exist. Nature itself requires the rules. This is a very old idea and was widely accepted by lawyers, philosophers, and theologians at the time when international law was being developed as a science. Often this law was regarded as synonymous with divine law or the will of God. The early writers on international law accepted the view that natural law applied not merely to relations between persons within the state, but also to relations between states. How, then, were these rules to be discovered? They were to be discovered by "right reason," *i.e.*, reasonable men would recognize certain rules as being in the nature of things, human beings as they are. The early textwriters on international law often referred to the principles found in the Bible, in the writings of the Church fathers, the political philosophers of Greece and Rome, and the principles of Roman law in showing that certain rules of natural law had been widely recognized by right reason.

CONTRIBUTION OF NATURAL LAW. The concept of natural law is usually difficult for the modern person to understand. In many cases, obviously, the subjective ideas of a writer were often assumed to be natural law. There was no strict line drawn between law and morality. The concept of natural law was important, however, in helping to found international law. Since it was a concept

accepted by theologians and lawyers it made possible the general acceptance of certain principles of international law at a time when there was little proof that states had affirmatively accepted the principles. Subsequently some of these principles were followed by states, so that they helped to establish some basic outlines of the system of international law.

2. POSITIVE LAW. The positivist school seeks to determine rules of international law, not by reference to natural law, but by reference to some definite human authority. The positivist accepts as law the principles and rules which have been accepted by states as binding upon them in their relations with other states. The emphasis is thus upon acceptance, or consent, of the persons bound by the law. This consent may be given in either of two forms: custom or agreement. A custom is defined as an habitual way of acting, generally observed, so that from it may be inferred that the parties act or refrain from acting because of a sense of legal obligation. Thus, if states refrain for a long period of time from capturing in time of war small coastal fishing vessels of a belligerent which do not participate in hostile acts, the custom tends to become binding. Thus the Supreme Court of the United States has decided that this custom gives evidence of a rule of international law of the immunity from capture of these vessels. Consent in the form of agreement may be given in the form of a treaty, protocol, or series of declarations.

3. THE GROTIAN SYNTHESIS. Finally, the Grotians or eclectics, accept both natural law and positive law as sources of international law. This school of writers follow the method of Grotius. The favorable reception accorded in the seventeenth century to Grotius' *Laws of War and Peace* is due in part to the method employed by Grotius in attempting to determine the existence of rules of international law. He derived his principles and rules both from the "Law of Nature" and from the customs of states as recorded in their historical practice. The idea of a natural law determining rules of conduct between individuals within the state was expanded by Grotius to include also the relations between states. Grotius derived other rules by

inferences from the customary practices of states. He inferred that if an act had been approved or disapproved by states and individuals in different countries and at different times, this gave evidence of acceptance or rejection of a rule of law. One reason for the success of his book is that Grotius was trained in the law of his country and was familiar with the Roman law on which Dutch law was based, so that Grotius spoke the language of the lawyer and injected private law principles by analogy into international law.

3. THE EVIDENCES OF INTERNATIONAL LAW

Some scholars make a distinction between the sources of international law and the evidences thereof, while others deal with sources and evidences as synonymous terms. Source is used by analogy as the starting point, or place of origin, as the source of a stream. The evidences of international law are the various proofs establishing the existence of a rule of the law. These include: text writers, state papers of various kinds, especially correspondence between governments through diplomatic channels, certain treaties, and the decisions of both national and international courts.

TEXT WRITERS. The views of text writers are given considerable weight, especially if there is general unanimity among them. However, their views are examined and weighed to see whether they are recording the consent of states or whether they express merely the personal views of the writer as to what the law should be. In determining whether a custom exists it may be necessary to consult and to evaluate many types of evidence.

DIPLOMATIC PAPERS, STATUTES, COURT DECISIONS. Thus it may be found that a large number of governments have, in their diplomatic correspondence, insisted upon a given rule as a rule of international law. Again, it may be found that a statute has been passed by almost all states and that each statute incorporates the same rule; this may imply that each state considers the rule imposed by international law. Similarly, if the highest tribunals of many states have enunciated a rule as a rule of inter-

national law, this would seem to be evidence of the general acceptance of the rule.

CERTAIN TREATIES. Some treaties, but by no means all treaties, may give evidence of a rule of international law. It depends upon the treaty. In the case of a multipartite treaty to which many states are parties, which expressly affirms a rule to be a rule of international law, the evidence is imposing. In the case of other treaties, the situation is less clear. Some treaties are mere contractual agreements, making law for the parties as long as the treaty exists, but not constituting a general rule of law. Even if many bilateral treaties contain the same provision respecting the rights and duties of the parties toward one another, this does not prove existence of a rule of international law. It may show, on the contrary, that the parties have reached agreement to treat one another in a manner at variance with the general rule of international law.

SOME ARBITRAL AWARDS. Finally, the decisions of international tribunals are of unequal importance as evidences of international law. Arbitral tribunals usually apply rules to the cases before them in accordance with rules laid down by the parties to the dispute in a special agreement or *compromis*. If the tribunal is directed to decide the dispute in accordance with rules of international law, the award of the tribunal may be evidence of a rule of law; otherwise it may have no such significance.

THE PERMANENT COURT CASES. The Permanent Court of International Justice is a special case. Some of the opinions and decisions are of no general interest for international law, since they concern merely the interpretation of a particular treaty agreement. Others involve a decision upon a general principle or rule of international law. The types of evidence for determining rules to be applied by this Court are specified in the statute creating this Court.[1]

CODIFICATION OF INTERNATIONAL LAW. To some extent the rules of international law have been codified; *i.e.*, they have been classified logically and written in the form of a code. Noteworthy illustrations are the conventions adopted at the two Hague conferences of 1899 and 1907 relative to

[1] See p. 456.

certain laws of war and of neutrality. In the postwar period some progress has been made in the codification of other portions of international law.

4. THE SCOPE OF INTERNATIONAL LAW

International law may be divided into the following parts: the persons of international law, the fundamental rights of states, and the laws of peace, war, and neutrality. The number of detailed rules has increased during the past three centuries because, on the one hand, of the application of general principles to a series of concrete factual circumstances and, on the other hand, of the adoption of new rules to deal with new relations which have developed between states during this period. Generalizing broadly one may say that the fundamental conception of international law has been little changed, that the ruling trend today is in the direction of positivism and away from that of natural law theory, that in order of historical development the laws of war were first highly developed, next the laws of peace, and finally the laws of neutrality, and that the recent tendency is to develop new rules by treaty agreement because problems are too insistent to wait upon the development of a rule based upon custom, which ordinarily grows slowly.

5. THE PERSONS OF INTERNATIONAL LAW

International law regulates relations between states. Some recent discussion favors recognition of individual persons as endowed with rights and subject to duties imposed by international law. This would revolutionize the content of international law and its method. It has no prospect of acceptance by states in the early future. Since international law applies to states, it is important to understand the attributes which must exist in order that an entity may be considered a state for the purposes of international law. These have been mentioned above, in describing the development of the modern state, as land territory, population, political organization, sovereignty, and independence. The mere possession of these attributes

does not of itself make an entity a member of the family of nations. They are prerequisites.

RECOGNITION BY THE FAMILY OF NATIONS. Admission to the legal community of states is controlled by those states already members by the process called recognition of states. The recognition of a state by a second state is the act by which the latter acknowledges that the former has rights and duties under international law.

6. THE STATUS OF PERSONS

Originally the European states regarded the system of international law as extending only to themselves and as excluding non-Christian, Oriental, and African communities and states. Relations with states and peoples outside the legal community were regarded as being either unregulated by international law, or as regulated to a limited extent in so far as similarities between the state and the typical European state made possible the application of international law rules.

QUALIFIED STATUS IN SOME CASES. It was regarded as impossible in some cases to permit the newly admitted Oriental states to exercise all the rights customarily exercised by European states, because of the great differences between the legal systems of the states relating to persons and property. The Europeans were unwilling to permit Oriental states to exercise jurisdiction over their nationals traveling or resident in Oriental states. The adjustment was therefore made in some cases for an exercise of jurisdiction by the European state over controversies involving its nationals while in the Oriental state, under a system known as exterritoriality or capitulations. Thus the new state could not exercise those rights over aliens within its borders which were ordinarily exercised by a European state over aliens within its borders. In such cases the new state was regarded as a person of international law, but with a qualified status; *i.e.*, without as extensive a bundle of rights as those having full status.

In other cases European states, desiring a control over other states or peoples but being unable or not desiring to annex the territories involved, have established protec-

torates. A protectorate is a state which has transferred the exercise of control over foreign affairs to a second state, the second state usually assuming the obligation to protect the first state against outside enemies. The territory of certain states has been neutralized in the general interest of other states; *e.g.* Belgium, Switzerland.

There are entities other than states which may enjoy a qualified status under international law, notably belligerents and insurgents. A group or community in revolt against their government, when recognized as belligerents, are accorded the rights and are bound by the obligations of a belligerent under the laws of war, but they have no further rights. Among these rights are the right of visit, search, and seizure, and blockade on the seas, and exercise of hostilities on land.[1]

7. THE NATURE OF INTERNATIONAL LAW

Is International Law Really Law? When it is said that the rules of international law are binding upon states, the word "binding" means legally obligatory, and not merely ethically or morally proper. A vast amount of ink was used by writers in an earlier day arguing whether or not international law is "really law."

Negative Arguments. Many writers argued that the principles and rules were not legal rules, but moral precepts, and thus outside the category of law in general. This argument proceeded somewhat as follows. First, law was defined as the command of a political superior enforced upon subjects. Next, it was stated that because states acknowledge no political superior there cannot be a lawgiver and that, therefore, there is no international law. Sometimes it was admitted that law may be created by common consent to a rule, but it was stated that, because there was no external force to cause enforcement of the rule and because the rules between states are frequently violated with impunity, the body of rules cannot be called international law.

Sometimes the argument took another variation. It was argued that an essential attribute of the state is sover-

[1] See pp. 258–259.

eignty, which was then defined as absolute power or authority above which there is no superior. Then, it was argued, although a state may give consent to a rule of conduct by an act of will, the state may at any time withdraw its consent by a later act of will, which by the chosen definition of sovereignty cannot be permanently restrained; and therefore there can be no international law, which assumes a permanent body of rules irrespective of the will of a state at any particular moment.

AFFIRMATIVE ARGUMENTS. The proposition that international law is "really law" has been supported in various ways. First, it is argued that the definition of law as the command of a superior to inferiors is purely arbitrary and restricts improperly the scope of the concept of law. It is pointed out that some kind of order prevails in all communities on the basis of rules of conduct and that, in early communities and for a long time during the course of history, law was not thought of as a command of a superior but as an expression of the mores and customs of the people of the community. It is argued that too much emphasis is placed upon the modern idea of man-made law produced by legislative bodies, and that even today a large part of the law in all countries cannot be discovered in statute books and law codes enacted by legislatures, *e.g.*, English and American common law.

Second, it is argued that the idea of enforcement of obedience is given too large a place in the definition of law. It is contended that, within the state, the essential element of the idea of law is that of consent and of habitual obedience to rules of conduct, and that such obedience is found in the case of international law rules. It is argued that the insistence upon ultimate enforcement of rules by force neglects the more important element of consent as the basis of obedience to law.

Third, it is claimed that there are in fact sanctions causing obedience to international law in case of disobedience. Some find this in the self-interest of all states in supporting a regime of legal relations and in the desire of states for approval of their conduct by other states of the community. Others find this also in the practice of state self-help. It is

pointed out that for a long time within the state, the community did not supply machinery to assist the individual in the enforcement of existing legal rights, but left the matter to the parties concerned in a dispute to settle by feud, trial by battle, or duel. Therefore, it is said, if an eventual recourse to force be needed as an element of law, this is present for international law because of the recognition of the right of a state to employ force in self-help.

Finally, it is argued that a rule of law does not cease to be law by the mere fact of violations of the rule with impunity by a lawbreaker. This happens within the state legal system as well as in the realm of international law.

Conclusions Regarding the Debate. What is the significance of this debate? It is not merely a tempest in a teapot. The prestige which attaches to the idea of law in all countries and which conduces to regulated behavior is needed also for the family of nations as a means of gaining obedience to the rules. In fact all states employ the term "international law" in their dealings with one another through diplomatic correspondence; they solemnly codify its rules and acknowledge new rules in formal treaties; they claim rights under it and pay claims for violation of duties under it; and their highest tribunals, regarded as ultimate expositors of the law within the state, talk of it as international law. If the will of states is to be accepted as authority international law is properly termed law without apology or equivocation. Nevertheless the debate shows important differences between the system of law and its administration within a state and the system of international law and its administration in the community of states.

8. INTERNATIONAL LEGISLATION

Contrast between National and International Law. The instruments for creation and modification of international law differ from those employed within the state. International law is created by consent as evidenced either in custom gradually developed in the course of time or in a treaty meant to incorporate a rule of law. Treaties may be negotiated either through the diplomatic channel

or in international conferences. International law is modified by the same procedures. The treaties to which many states have become parties are sometimes called international legislation. The process of arriving at such agreements is different in important respects from the process of legislation within the state. In the one case the diplomats attending international conferences are instructed delegates while in the other case legislators are to a considerable degree free to determine their policy. Again, in the one case the body of diplomats representing states cannot bind all states represented irrespective of their consent while in legislative bodies a majority of representatives is ordinarily sufficient to create or modify a law. Finally, treaties usually require subsequent ratification by governments, while ordinarily a legislature is competent to determine the law without further ado.

9. ADMINISTRATION OF INTERNATIONAL LAW

The methods employed for determining, interpreting, and applying the rules of law differ in the two systems. In the case of international law the determination and interpretation of the rules is conducted for the most part by the foreign offices of the states concerned. Exceptionally a controversy over such a matter is submitted to an international body, such as an arbitral tribunal or the Permanent Court of International Justice. In these exceptional cases the states concerned must give their consent to the jurisdiction of the tribunal or court. This system contrasts with the situation within the state, where an administrative body or the courts may take jurisdiction of a controversy between parties despite the opposition of the parties to the jurisdiction.

10. ENFORCEMENT OF INTERNATIONAL LAW

In the case of enforcement of international law, two aspects may be distinguished: first, the means by which states fulfill their obligations, and second, the situation created when states disagree concerning the existence or nature of a legal right. On the one hand, if two states agree upon the existence and interpretation of a rule of inter-

national law, the governments of the states then employ the means at their disposal for carrying out their obligations. The means employed are, for the most part, the existing governmental machinery of the state, such as sheriffs, police, militia, army, navy, and courts. Thus, the obligation of the state to protect a diplomat is fulfilled by providing penalties for violence to diplomats, the prevention of such violence, and the arrest, prosecution, and conviction of the person guilty of an offense.

On the other hand, if two states disagree concerning the existence and interpretation of a rule of international law and one state charges violation of a right by the other, the international community does not provide a compulsory settlement of the dispute by a third party judge as is the case when disputes occur within a state between persons. If the parties agree to submit the dispute to an international tribunal to be decided upon the basis of international law, and this is rather frequently done, there is a close parallel to the method employed within the state. If, however, one state refuses this procedure the other state is faced with the problem of attempting to realize its right. In the past the state with greater power has usually had its way, meaning that the state with greater power has usually enjoyed its rights to the full, while occasionally violating the rights of weaker states with impunity. As a result there has been an incentive for states to combine for the defense of their rights and the common form of combination is an alliance. In other cases strong states, primarily motivated by their own interests, have guaranteed weaker states. Following the war of 1914–1918, experimentation has been made with a plan of joint action of Members of the League of Nations against a state violating rights. The degree of success in attaining this object and the procedure followed will be considered in detail later.

11. GENERAL OBSERVANCE OF INTERNATIONAL LAW

There are several reasons why international law is commonly observed. The primary one is that the law is so closely based upon consent of all states that a rule is unlikely

to be adopted if it would curb the freedom of action of a state unless a great permanent interest is thereby promoted. There is a close correlation between the rule and the interest of the state, particularly in that portion of international law known as the law of peace. A second reason is that states find it to their permanent interest to promote respect for international law as a means of guaranteeing their rights without resort to force. This is particularly true of the weaker states in their relations with stronger states. Finally, states find it easier to obey international law because there is such a large scope of freedom of action left to them outside the law. In other words many important relations are political and states are unwilling to limit their freedom of action in these relations by rules of law of universal application.

EXAGGERATED NOTION OF VIOLATIONS OF INTERNATIONAL LAW. It is untrue that there is a general, constant violation of international rights with impunity. The violations which occur are spectacular and dramatic and often involve the employment of violence, so that there is a tendency to give to them greater weight than their frequency warrants. Furthermore the common man often takes as an illustration of a violation of international law a conflict over a matter primarily political although no international law covers the subject. Nevertheless there are certain portions of international law, particularly the laws of war and of neutrality, which are likely to be violated because they attempt to regulate the conduct of hostilities or to formulate a rule that is in the nature of a compromise between seriously conflicting interests of states.

12. FUNDAMENTAL RIGHTS OF STATES

The doctrine that a state has under international law certain fundamental rights has had a powerful influence upon the development of international law. Different writers have listed as fundamental rights such things as equality, independence, existence, self-preservation, development, and respect. The idea of fundamental rights of states has several important aspects. First, it represents an attempt to distinguish great guiding principles as to the

general nature of the legal system, emphasizing the fundamental as distinguished from the merely secondary rights. Second, from these guiding principles corollary principles have been drawn for application to concrete cases. In this way certain principles and rules of international law were developed by the early school of natural law writers and to a considerable extent acknowledged by states as true in practice. Third, the attempt to formulate these fundamental rights was in a sense an endeavor to lay down principles inherent in a properly working multistate system based upon the idea of permanence and the idea of territorially delimited governmental authority. Finally, the emphasis long remained an emphasis upon the rights of states, rather than upon the duties or obligations of states. This was perhaps only natural. The idea was developed at a time when the national state was battling to free itself from the pretensions of the Holy Roman Empire and of the Papacy to authority within the territory of the national state. Furthermore it was an era in which the idea of the absolutism of the state, personified in the monarch, had wide currency. Today there is a tendency to emphasize duties as well as rights and to emphasize the rights of the community of states and the duties of the individual state. Nationalism has, however, focused attention upon the rights of states and has sometimes pushed into the background the idea of the duties of states.

THE RIGHT OF EXISTENCE. The right of a state to exist is the basis upon which states justify defense of their territory, populations, and interests. It is the assumption of international law that the persons, the states, will endure over a long period of time or indefinitely, and that when recognized they possess a right to continue to exist and to employ any legal means for enforcing that right. It is also on this reasoning of the necessity of permanence of the persons, that the idea has been adopted that the state continues despite alterations in the form of government acting as the agency of the state for the expression of its will. Nevertheless international law admits the possibility of the disappearance of states, by dissolution into several states, by conquest and annexation of the state by another state,

or by the union of two or more states to form a single state. The principles and rules which determine the extent to which the obligations and rights of a state which disappears are transferred to the state which acquires the territory are called laws of state succession.

THE RIGHT OF INDEPENDENCE. In a multistate system where no common superior is acknowledged by the component units it is to be expected that each state should claim independence. This means that a state has the legal right to do what it pleases except as restrained by a rule of international law or by the obligations of a treaty. The state therefore claims to possess power to exercise jurisdiction over its territory and the things and persons within its jurisdiction unless a restriction has been accepted by the state in these matters. It is on the basis of this right that a state repels the attempts of other states to interfere with its independence, as, for example, in interfering in the internal affairs or government of the state or in attempting to dictate its foreign policy. An application of this principle is that the foreign diplomat must refrain from expressions of opinion concerning the affairs of the state to which he is accredited.

THE RIGHT OF EQUALITY. The right of equality of states, as a legal concept, should be sharply distinguished from any allegation that all states are in material fact equal. It is not the proposition that all states do or should have an equality of territory, population, resources, or political influence. It means merely that all states have equal rights before the law; that a tribunal applying international law cannot apply rule one to state *A* and rule two to state *B*; that a state cannot be bound by a new or different rule of international law unless it gives its consent. This right of equality is a natural, though not inevitable corollary, of a multistate system. It has been important as a means of protecting weaker states against arbitrary action of stronger states. Reinforced by democratic dogmas of equality, it still receives official support.

TREATY RESTRICTIONS AND FUNDAMENTAL RIGHTS. Very few persons could picture existing rights and duties of states merely by drawing deductions from the funda-

mental rights of states. In some cases, a rule which might appeal to a closet philosopher as a natural corollary of the right of independence may not be law due to the fact that a contrary positive law has been adopted by consent. In many cases the fundamental right is affected in its exercise by the acceptance of treaty obligations which delimit the sphere of activity of the state. Thus, a state may agree by treaty with another state to refrain from fortifying a specified portion of its territory. The equality of the state under international law is not affected and not violated by such a treaty but the contractual agreement restricts liberty of action. In the past international law has regarded as valid a treaty engagement accepted by a state impelled to accept a treaty as a result of use of force. This means that the equality of states is a highly formal concept. It does not mean that all states in fact enjoy the exercise of identical rights.

13. THE LAWS OF PEACE

A detailed statement of specific rules of international law cannot be given in this short general survey of international relations. Yet a knowledge of its general content is of value. The laws of peace are the laws which regulate the relations between states at peace with one another. The laws of peace determine the qualifications necessary for statehood in international law. They lay down rules for succession of states when a state ceases to exist; *i.e.*, they provide how far rights and duties must be assumed by the acquiring state or states. They define the methods by which a state may acquire jurisdiction over territory and persons and things, such as discovery and occupation of new territory, conquest and cession. They provide rules for the determination of boundaries of states whether the boundary be land, rivers, lakes, or the territorial waters beyond which the high seas commence. They indicate the jurisdiction possessed by states over their territory, over the territorial waters bathing their coasts, in the air space above their territory, and over their nationals abroad and the merchant and public vessels flying their flag, when on the high seas and in foreign jurisdiction. They define the

immunity from jurisdiction possessed by heads of state, diplomats, consuls, and public vessels in the territory of foreign states, provide numerous rules relative to the making and termination of treaties, define the procedures available to a state for the enforcement of its rights, short of war, and provide standards for the determination of compensation due one state by another state as a result of illegal acts.

14. THE LAWS OF WAR

The laws of war determine the relations between states which are at war legally with one another. They provide for a declaration of war or an ultimatum. They prescribe detailed rules concerning the methods which may be employed in gaining military or naval objectives, distinguish between the combatant and noncombatant portions of the population, specify the treatment which shall be accorded to prisoners of war and to sick and wounded in the field of battle, and prohibit the employment of certain methods or weapons of warfare, such as poisoning wells, use of poison gas, and dumdum bullets. They define the rights of a state as to capture of enemy merchant vessels and their cargoes, and give the belligerent certain rights to interfere with the peacetime rights of neutral states and their nationals including the visit, search, and seizure of vessels, the right to confiscate contraband, and the right to seize vessels and their cargoes for breach of blockade.

PURPOSE OF THE RULES. The laws of war were the earliest laws of international law to be developed. Warfare continues today to be highly destructive of property and life but the rules which exist give some protection. Their object is to reduce cruel and unnecessary suffering and to avoid, as far as possible, destruction of property which is either irreplaceable, such as works of art, or which is of permanent value and of nonmilitary use, such as religious and educational buildings. These restrictions upon the fury and destructiveness of war are due in part to humanitarian feeling and in part to a recognition by states that their permanent interests require such restrictions. Be-

sides, in the case of some rules such as those dealing with prisoners of war, a state incurs risk of reprisals for violation of the law which negative any advantage. The development of some of the rules of war was made possible by the changes which have occurred in administering military and naval affairs. When armies were unregulated hordes, and when naval warfare was made by private ships commissioned to prey upon the enemy, it was difficult or impossible to enforce rules because of the lack of discipline over military personnel. Today with the highly disciplined branches of the armed forces subject to control from the top there is a greater possibility of enforcing such rules.

Breach of the Rules. International law as a whole usually suffers in prestige during a period of war because of the actual or alleged violations of some of the rules of war. This was the case during the war of 1914–1918. Some of the laws of war were broken flagrantly, but to less an extent than was commonly supposed at the time by persons subjected to false propaganda by their own and other governments. In some cases acts which were violations of existing law were claimed by some belligerents to be legal in view of basic changes which had occurred. The laws of war may be supplanted to a large extent by illegal acts as a result of a series of reprisals by opposing belligerents, each one justifying its illegal act as a reprisal against the prior illegal act of the other.

Considerable portions of the laws of war are codified in the form of multipartite treaties, especially some of the conventions drafted at the Hague Conferences of 1899 and 1907.

15. THE LAWS OF NEUTRALITY

During the early period of modern international law a state had no generally recognized right to remain outside a conflict between two states at war. During the eighteenth century steps were taken by certain states, notably the United States, to sponsor the development of what is now known as the law of neutrality. The laws of neutrality regulate the relations between two states at peace when one is engaged in war with a third state (international war), or with a community in revolt against the state and

recognized as a belligerent (civil war). During the past twenty years there has been a controversy relative to the laws of neutrality. Some believe that the status of neutrality should be or has been abolished, as a consequence of the methods provided in the Covenant of the League of Nations for dealing with states which violate the Covenant. Others, while claiming that neutrality status still exists, debate the extent to which the laws of neutrality acknowledged before 1914 have been modified, if at all, by the practice of 1914–1918.

Obligations of a Neutral State. The law of neutrality accepts the right of the neutral state to maintain friendly relations with belligerent states, subject to a modification of the rights it would possess in times of peace by the rights of belligerents, such as the right of visit and search, and condemnation of vessels and cargo for transport of contraband or unneutral service. Further, the neutral state becomes bound by important duties toward the belligerents which are not obligatory under the laws of peace. The state must maintain an impartiality toward both parties and is prohibited from doing certain things for either party. For example, it has an obligation to prevent the use of its territory as a base for military operations, to prevent the fitting out and arming of vessels within its territory for use against a belligerent, and to refrain from lending money to either belligerent.

Conflict of Interest between Belligerents and Neutrals. The laws of neutrality are, in a sense, a compromise between the rights of the state which would prefer all the rights of the laws of peace and the rights of the state which would prefer to cut all connections between his enemy and neutral states. Consequently there are frequent disputes as to the precise rules of neutrality and the neutral has frequently a difficulty with one or both belligerents who invade neutral rights. The belligerents intent upon winning a war are tempted to violate the law if necessary for victory, provided such violation can be performed without too great a risk from the neutral.

Some of the laws of neutrality were codified in the Hague Conventions of 1899 and 1907. The Declaration of London, 1909, attempted to codify existing law and gain agreement

of conflicting interests upon other points of neutrality. While it was not ratified, and thus does not form conventional law on the subject, many of its provisions are a statement of customary law binding upon states. Certain provisions to regulate rights of neutrals on the high seas were drafted at a conference of American states on February 20, 1928.

16. SUMMARY

International law has been defined as the body of principles and rules which are binding upon states members of the family of nations in their relations with one another. This system of law, usually dated from Grotius' treatise of 1625, has been extensively developed during the past three centuries by the growth of custom and by treaty agreement. The dominant school of jurists during the first two centuries relied upon the idea of natural law as the source of international law. Today the positivist school, which considers the consent of states the source of international law, is dominant. While international law can appropriately be called law, despite theoretical arguments denying its legal character, there are important differences between international law and law as it is created and administered within the state. The persons having rights and duties under international law are states. They are regarded as having certain fundamental rights, including existence, self-preservation, independence, and equality. However, there are some states which enjoy only a qualified status under international law, and communities in revolt which have been recognized as belligerents have a status which is limited to the rights and duties under the laws of war. The scope of international law has been sketched in a very general fashion under the divisions of peace, war, and neutrality. Some of the more specific rules will be treated later in appropriate places.

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PART THREE

National Foreign Policies

CHAPTER VI

National Foreign Policy: Nature, Bases, and Instruments

It has been indicated that states are not legally free to act toward other states in any manner whatsoever which they may prefer but that they are restricted by rules of international law. The nature of international law has been described. Many of the relations of states are not regulated by rules of international law, however, and in this realm the state is legally free to determine its own course of action with respect to other states. Nevertheless, even in this realm of politics, as distinguished from legal relations, no state is completely at liberty in fact to do as it pleases. There are various facts which place limits to what may be done. Within broad limits, however, the state is legally free and to a considerable degree in fact free, to adopt those policies which it prefers.

1. THE MEANING OF FOREIGN POLICY

The foreign policy of a state has been defined as "the more or less consistent attitude adopted by the nation in its relations with other nations in matters outside the scope of customary law or specific treaty agreement. Or it may be defined in terms of the special objectives held in view by a

government in its diplomatic intercourse with foreign states."[1]

ILLUSTRATIONS OF POLICIES. Following are examples of questions of policy. Shall the state permit free trade or limit trade by import tariffs, or by export tariffs, or by both, and if so at which height? Shall the state permit immigration of foreigners to its territories, and if so in what numbers, from what countries, and under what conditions? Shall the state acquire additional territory, and if so by what method: cession, conquest, exchange, or otherwise? Shall the state rely for protection upon alliances, treaties of guarantees, neutralization, or land, naval, and air armament; or upon membership in the League of Nations? Shall the state, when war exists, assume a status of neutrality or join in the war as a belligerent? Shall the state recognize as a member of the family of nations a community which has declared independence and broken off from a parent state? Shall the state recognize the government of a second state which has gained control by revolution? Shall the state recognize the annexation of territory by a second state? Shall the state become a party to a treaty establishing an international organization whose object is to facilitate transfer of postal matter, or to facilitate communication across frontiers by railway, or to apportion radio wave lengths? Shall the state protect the person and property of its citizens abroad by means of use of force? Shall the state submit to arbitration the determination of a disputed question concerning boundaries, or the reparations due or claimed on account of injuries, etc.? This list of questions could easily be lengthened.

2. OBJECTIVES OF FOREIGN POLICY

A state, when choosing a foreign policy, aims at one or more of the following objectives: security, prosperity, or power. At times a state may successfully attain all of these objectives by a given policy. Thus, other things being equal, the state which seeks economic prosperity acquires economic power also and this power is a means of main-

[1] C. G. FENWICK, *International Law*, 2d ed., p. 36, New York, D. Appleton-Century Company, 1934.

taining security. However, under other circumstances a state may find it necessary to sacrifice one of these objectives to the others. Thus a state may choose autarchy, or national economic self-sufficiency, with the purpose of increasing its relative security in time of war despite the fact that the policy leads to a less prosperous economic life.

3. WAYS AND MEANS

Many different ways and means may be available for the attainment of the objectives of foreign policy of a state. For example, a state desiring to protect its territory may employ one or several of the following means: heavy armament, alliances, a defensive war against a potential enemy, promotion of a revolution within the territory of the potential enemy, or negotiations aimed to placate the enemy or divert him toward another object. Bismarck, for example, encouraged France following the Franco-Prussian War (1870–1871) to turn attention to colonial conquests so as to divert energies from a possible war of revenge against Germany. The choice of ways and means involves decision upon foreign policy.

4. RELATIONS BETWEEN FOREIGN POLICY AND DOMESTIC POLICY

In an earlier period it was usually assumed that there was a sharp distinction between questions of foreign and domestic policy. Questions of foreign policy centered about such matters as alliances, war and neutrality, acquisition and loss of territory, negotiation of treaties, and the development and settlement of international disputes. The number of matters of consequence in international relations has been vastly expanded during the recent past. There is scarcely any question which is in fact purely of local or national concern. One indication of this change is found in the subject matter of bilateral and multipartite treaties. Although a matter may be by customary international law a matter of domestic concern, its treatment by a state often has profound consequences beyond the border of the state. Thus a state has the legal right to stop immi-

gration, or to impose obstacles to importation of goods from abroad, or to devalue its currency, or to double the size of its military air force; but these acts inevitably concern other states and their populations. Many times the policy adopted by a state is a result of pressures by groups within the state which have little or no regard for the ultimate effect upon the interests of the state as a whole, and even less regard for the effects upon foreign states. This is usually the case where tariffs are controlled by legislatures. Rates are determined, and objects placed on the list at the behest of special interests and by trading of support among legislators having in mind their own constituencies. Furthermore, a state may follow two or more inconsistent policies, one growing out of considerations of domestic affairs, others growing out of consideration of foreign affairs. For example, the policy of the United States in raising tariff duties on imports placed a serious obstacle in the way of repayment of debts owed the United States by foreign governments, which could repay debts only in case they could send gold, goods, or services. They lacked a sufficient amount of gold. The amount of goods they could send was reduced by tariff duties meant to exclude or limit them.

INTERDEPENDENCE OF NATIONAL AND FOREIGN POLICY. There are numerous cases in which the state is unable to carry out a domestic policy effectively because of its limited jurisdiction, so that it must gain the cooperation of other states in order to attain its objectives. For example, it has been found that although a state has the right to exercise authority over its land territory, its vessels, and its nationals, yet it is practically impossible to prevent illicit importation of narcotics if they are produced and manufactured abroad. So, in order to protect the population against narcotics it becomes necessary to gain the cooperation of other states, including those which limit production of the raw material, control the manufacture and distribution, and cooperate in discovering and apprehending persons engaged in the illegal traffic. Similarly, during the period of prohibition, the United States found it impossible to prevent smuggling of liquors along the coast lines because

of the activity of rumrunners beyond the territorial waters, and found it necessary to gain the consent of other states to extend by treaty its maritime jurisdiction with respect to vessels engaged in such activities.

The lack of a general jurisdiction over the high seas causes the need for cooperation of states which desire to regulate and preserve important resources of the sea, because the regulation by each state is limited to its own nationals and to vessels flying its own flag and this is inadequate for the attainment of the desired object. As a result it has been found necessary for states to cooperate in order to preserve from extinction certain fish, seals, whales, and other sea fauna and flora. The oil and other waste from ships at sea often floats to shore and destroys oyster beds and pollutes waters so as to endanger health.

Finally, there are a number of cases in which a state has the right under international law to make regulations which apply within its territory, as in the case of hours and conditions of labor, but if the regulation is enforced in one state alone, the industries will be penalized or even destroyed if their products must compete on the international market with products made in a country lacking similar regulations. Therefore regulation simultaneously by both states or a large number of states is necessary in order to better the position of labor without destroying the industry in one country acting unilaterally.

5. BASIC FACTORS DETERMINING FOREIGN POLICIES

Before examining some specific foreign policies of states, it is useful to examine the basic factors which determine the foreign policies of states. A scientific study of the subject involves a careful study of the policies of all states over a long period of time, followed by certain generalizations from the information thus obtained. Such a method is not possible within the compass of this book. However, certain valid generalizations may be made, based upon the studies of foreign policies already made by others and upon the conclusions of students and statesmen who have studied the problem.

The factors which appear to be basic in determining the foreign policies of a state are (1) the geographical location of the state, (2) the stage of economic development within the country, (3) the natural resources within the country, (4) the size and (5) character of the population inhabiting the country, (6) the sentiment of nationalism, (7) national traditions, and (8) the use of force in international relations.

Most of these factors are fairly constant; *i.e.*, they cannot as a rule be changed rapidly, if at all. They form a series of surrounding conditions which restrict or limit the government in the choice of policies which a state may be able to pursue successfully. It is within the framework of these conditions that the government of the state must operate in dealing with foreign states.

1. Geographical Factor: Proximity to Other States. The importance of the geographical location upon the foreign policy of a state is evident. A state which is geographically isolated from other states is relatively more secure from attack than states in close juxtaposition. The insular position of Great Britain and of Japan, and the geographical isolation of the United States illustrate this. This factor may alter in importance as a consequence of other factors; for example, in the case of Great Britain geographical isolation from the continent of Europe has been modified by the development of modern aircraft. Nevertheless geographical location is by its nature permanent in influence, except as modified by new inventions or as modified by the acquisition or loss of territory of the state.

Position on Trade Routes. Again, since the policies of a state are intimately connected with economic factors, it is clear that states favorably situated upon the great trade routes of the world are influenced by geographical situation. This has long been recognized. The prosperity and subsequent decline of the republic of Venice in the Mediterranean Sea was due largely to a monopoly of trade in the Mediterranean Sea followed by a shift in trade routes to the Atlantic seaboard. The shift of trade routes from the Mediterranean to the Atlantic seaboard gave greater importance to the states of Western Europe. The United States today enjoys a highly favorable position

on the highways of the world and it controls the Panama Canal Zone, the key to an important crossroad of the world. Geographical features such as natural harbors and a coast line touched by important trade routes are advantageous. The state which possesses them gains in wealth and power and the state which desires them and does not possess them may adopt a policy of trying to acquire them.

ACCESS TO THE SEAS. Everyone familiar with history can recall numerous cases in which the policy of a state has been dictated primarily by attempts to change the geographical factor; *e.g.*, the desire of Russia to acquire ice-free ports in Europe and on the Pacific Ocean, the desire of various landlocked countries for access to the sea, such as Russia and some of the Balkan states seeking an outlet to the Mediterranean, Bolivia seeking an outlet on the Pacific or Atlantic, and Poland given a corridor to the Baltic Sea. The expansion of the United States westward so as to acquire first control of the Mississippi River, valuable as an outlet to the Gulf of Mexico, and eventually the Pacific Coast, illustrates the same point.

TESTIMONY OF STATESMEN. Persons who have played an important part in directing foreign policy in modern states attest the prime importance of the geographical factor. Thus, Sir Austen Chamberlain, for many years British Secretary of State for Foreign Affairs, says that " . . . the geographical situation of Great Britain has been in fact the dominant factor in determining her development whether consciously planned, or, as has happened far more often, instinctively pursued." Jules Cambon, an able French diplomat, says that

> Revolutions do not work any definite change; the institutions which a people set up are only the expression of its ideas at a certain moment, and they do not modify its position with regard to other nations. The relations of a government with foreign governments may be affected, but not the necessities imposed upon it by its geographical position, its history, its need to live . . . The geographical position of a nation, indeed, is the principal factor conditioning its foreign policy—the principal reason why it must have a foreign policy at all.[1]

[1] Council on Foreign Relations, *The Permanent Bases of Foreign Policy*, pp. 1–2, 32, New York, 1931.

There have been attempts by some theorists to explain the whole of foreign policy by geographical factors. Certain theories of "geopolitics" seem to have influenced the views of Adolph Hitler.

2. Economic Factors. The general nature of the economic life of a country has an important bearing upon the foreign policy of the state. The typical state of the modern world has a population which has long since passed beyond the pastoral and hunting stages of economic life. Yet among modern states one may find populations which are primarily engaged in agriculture, or which are primarily industrial, or which are "balanced," *i.e.*, partly agricultural and partly industrial.

Agricultural States. In a state where the population is engaged primarily in agriculture it is usual to find people living for the most part in rural areas, not in cities, and to find that the standard of living is relatively low. The agrarian state is one in which sufficient food can be produced for the population of the country, and there is an exportable surplus of foodstuffs, raw materials, or minerals, but in which no considerable industrial production is possible because coal and iron are lacking. In such countries the government is as a rule controlled by those who possess wealth in the form of landed estates. A state based primarily upon an agricultural economy is necessarily dependent upon other states for its prosperity, because it must depend upon other states, first, as markets for its agricultural raw material and mineral exports and, second, as sources of manufactured products. Today such a state is in a weak position because it is dependent upon other countries for war materials. The position of a state whose produce is limited to a narrow range of goods is particularly dependent upon the outside world. Brazil, whose chief crop is coffee, is notably dependent upon the United States, which takes a large percentage of this product. The states which are today primarily agricultural are all those in Central and South America, Africa, and continental Asia as well as most of those of Central and Southeastern Europe.

Industrial States. In contrast, a state in which the population is primarily industrial is usually highly

urbanized and possesses a higher average standard of living. Most industrialized states are dependent upon other states for some or most of their foodstuffs, as well as other raw materials and minerals required in industrial production. A state may become highly industrialized even though it lacks coal or iron, provided always that it can import what it lacks from other states at a reasonable transportation cost. In a highly industrialized state wealth ceases to be composed chiefly of landed property and comes to be composed chiefly of intangible forms of wealth, especially stocks and bonds. Those who possess this wealth supplant the old landed aristocracy in the control of the government of the state. While a state such as this is in a much more secure position than a purely agricultural state, it must depend upon other states as a source of part or all of the food supply, as a source of raw materials, and as a market for goods and a place for investments. The states in this class are France, Germany, Great Britain, Italy, and Japan.

"BALANCED" ECONOMY. The state whose economy is "balanced," *i.e.*, partly agricultural and partly industrial, is one which possesses within its territory the resources of food, coal and iron, raw materials, and minerals requisite for support of large industry. The states which fall in this class are the United States, the British Commonwealth and Empire combined, and, potentially, the Soviet Union. All of the industrial states have passed through this stage and the agricultural states are desirous of entering this stage. The control of the government of the state is usually shared in the case of a balanced economy between the landed and industrial interests.

Generalizing broadly, one may say that occupations become more specialized in nature as the agricultural economy is left; that there is a potential and often an actual development of divergent class interests among the population of the state; and that these divergent class interests employ the machinery of the state for realizing their respective interests. Sometimes one class or another wins and sacrifices the interests of the others. Sometimes the various classes accept a compromise of their interests. In any case these divergencies of interest are dynamic

factors in government and lie in the background of both domestic and foreign policies. This is not to accept the whole theory of Karl Marx and his followers with respect to class struggle, materialistic interpretation of history, and so forth.

3. NATURAL RESOURCES. Closely related to the preceding factor of the stage of economic development of the state is the factor of natural resources. By this is meant the totality of material goods contained within the territory of the state and subject to human exploitation, including soil fertility and climate, agricultural products, mineral resources, and water for irrigation and power purposes. The distribution of these resources over the surface of the earth seems to be without any logical rhyme or reason. The territory within a few states, notably the territory of the British Commonwealth of Nations, of the Soviet Union, and of the United States, contains resources of such a variety and of such a size as to make the populations of the territories practically self-sufficient, at least potentially. This condition is highly exceptional, taking the world as a whole.

Within the borders of most states there is a complete lack of one or more of the resources essential for the production of goods desired by the populations of the modern world. This means that the populations of different states are all to a greater or less extent dependent upon one another. It means that, for most states, complete economic self-sufficiency is impossible of fulfillment under present conditions; *i.e.*, unless new techniques are developed or present boundaries are altered. It means that most states can never become primarily industrial states. It means that the policies which states employ to control or direct the movement of natural resources by import or export regulations and other methods will necessarily affect the other states in a vital manner. As many of these resources are vital both for national prosperity and for security in time of war, there will be competition in efforts to gain control over them. This competition may eventuate in conflict or the adoption of a policy which takes into account the interests of different states. The history of the past half century is replete with illustrations of the factor of diversity of natural

resources as an influence upon the foreign policy of states and it promises to be equally important in the future.

Relation to Policies of Conquest and Imperialism. The desire of states to gain control over territory containing material wealth is disclosed in the war aims of states during wars of the last half century; *e.g.*, the coal and iron of Alsace-Lorraine, the oil of Mesopotamia, the mineral resources of Manchuria and North China. The drawing of territorial boundaries at the close of the World War was based not merely upon the principle of self-determination of peoples, but also in order to give economic resources to friends and to take them from the enemy; for example, the division of Upper Silesia and the rounding out of the frontiers of Czechoslovakia containing the Sudeten Germans and also coal and iron. The German invasion of Poland in September, 1939, struck directly at the rich industrial regions, and the Russian invasion of Poland gained oil along with Ruthenians. The French attack centered upon the Saar coal-mining and industrial regions of Germany.

4. Size of the Population. Other things being equal, a large population is an element of power which may be employed by the state to force other states to its will. Obviously the population is basic for the power of a state depending upon an army. France, Germany, and Italy are illustrations.

The tendency throughout the Western World since the Middle Ages, and more recently in the Orient as well, has been in the direction of an increasing population. The population of the world has doubled during the past century. This increase has been produced, on the one hand, by a reduction in the death rate as a result of the science of public health with a resulting longer span of life and, on the other hand, by the ability of society to feed, clothe, and shelter a vastly greater number of people upon the same territory as a consequence of the technological changes which permit a greater exploitation of nature and a greater per capita production than was possible in earlier times. This trend toward rapid increase of population has turned since the middle of the nineteenth century in the direction

of stationary or declining population in most of the countries of the Western World, but it has continued in the case of Africa and the Orient.

Population Policies. In those countries which possess large populations but which contain comparatively small resources within the territory for their support the state is affected in its foreign policy by this fact. The state may seek a solution by attempting to acquire additional territory, or by sponsoring industrialization and foreign trade, or by encouraging emigration of inhabitants to other countries and by discouraging immigration from other countries, or by a combination of these means. In a country having scantly populated territory the state may desire to encourage an increase of population in order to increase its man power or to permit a greater exploitation of natural resources. This was the case of the United States until the postwar period and of Canada, Australia, and New Zealand. Those countries concerned with a declining natural population, such as France, often attempt to increase the number of their inhabitants by encouraging an increase in the birth rate and by encouraging immigration from other countries. Some states have encouraged the immigration of certain types of foreign labor to their colonial possessions as a means of exploiting natural resources where the native supply is defective in numbers or ability.

Increased Importance of Man Power. The rapid increase of populations was coterminous with the technological changes of the period starting with the Industrial Revolution. This was a factor leading to complications within the state, especially the need for alterations in institutions, urbanization, and the creation of a more complex society. At the same time a change took place in the power relations of states. Man power of the nation became an important factor in the military strength of the nation when the principle of the nation-in-arms was adopted by France and then by other continental European states during the nineteenth century. Henceforth the total population became an important index to the strength of the state. This is still an important consideration in the policies

of states. Most states desire to increase the population as a means of increasing their power. Others, seeing a neighboring state increase in population at an accelerated rate, find in this fact a cause for alarm. While most cases of modern imperialism are to be traced to other causes, yet in some of them the idea of a colonial reservoir of troops has been important; for example, French colonies in North Africa.

Surplus Population Theory of Conquest. The aspect of population which has recently been given publicity as a factor in foreign policy is "overpopulation" or population pressure. Stated in its simplest form this is the doctrine which asserts that a state with a heavily populated territory must seek relief from its problems by war and conquest of desirable territory for the "surplus" population. This is a theory which requires careful examination.

It is not sufficient merely to examine the number of persons per square mile contained within a country. Some perfectly pacific states have large populations per square mile. It is preferable to examine the population in connection with, not total area, but the area suitable for sustaining life. Thus it is clear that a numerous population dependent solely upon one square mile of desert land or ice could not survive, whereas it might easily do so in a territory rich in resources. Therefore it is necessary to refine the theory by examining the total population not merely in relation to area but in relation to the area having a given amount of resources. If this is done in the case of Japan, the problem of overpopulation will seem to appear serious.

Even this refinement of the theory is insufficient because it neglects the question of the general standard of living of the population. Probably the masses accept the overpopulation theory because they oversimplify the whole thing and think only of food supply. In fact, the argument about overpopulation usually is an argument for a higher standard of living for the population and not merely a question of physical existence. One might state the theory as follows: A state is overpopulated if it has a numerous population per square mile and the area is too poor in resources to

support the population, given the existing knowledge and methods used to exploit the resources, and assuming that the population ought to enjoy a given standard of living.

POPULATION AND INTERNATIONAL TRADE. Third, even as the theory has just been stated, it either conceals or neglects to consider a most fundamental matter. It assumes or implies that a population's life and standard of living depend exclusively upon natural resources within the territory of the state. This is not true, because of the possibility and the practice of international trade, whereby food and raw materials may be imported from abroad and other food, raw materials, and manufactured products may be sent abroad in payment, and the possibility and the practice of selling services to foreigners, such as transportation, personal service, and business service. This obvious fact is frequently ignored. Most persons would readily see that the "surplus population" theory is merely fanciful as applied to New York or London, with their huge populations per square mile. They would recognize the fact that the city population exists by trading services and manufactured goods to the rural regions in exchange for the required food and raw materials from the country. The presence of a national frontier seems to stop thought. However, the presence of a huge population on a poor and small territory does present problems.

The problem has been intensified by the policies of states which place obstacles in the way of international trade and which discourage immigration. It may be indicated, without passing any moral judgment, that those states which are faced with the problem of "surplus population" have often followed policies which discourage international trade, which discourage acceptance of emigrants from their territory, and which encourage growth of population as a means of increasing man power.

5. CHARACTER OF THE POPULATION. Even more than the size of the population does the character of the population of a state affect its foreign policy. By the character of the population is meant both its social and national composition and its general standards of intelligence, education, technical skill, and general cultural condition.

6. CHARACTER OF THE POPULATION. The unity of action of a state is dependent largely upon the degree of homogeneity of the population in matters which are not political but social and cultural. It is a realization of this fact which accounts, in part, for the insistence during the nineteenth and twentieth centuries upon nationalities as units upon which states shall be founded. It has been seen above that various factors contribute to the creation of nationalities and that a nationality has a consciousness of kind which is based upon a common language, race, religion, geographical location, historical experience, tradition, or a combination of these factors. On the one hand, the state which is based upon a single nationality is in a stronger position to carry out its foreign policy because it gains a concentrated support from its inhabitants and does not need to fear the disruption of its external force by internal animosities and conflicts. On the other hand, the state which is based upon several nationalities may find its foreign policy limited by this fact because of internal dissension which may be played upon by other states as a means of weakening the policy of that state, especially in time of crisis. During the war of 1914–1918 the Allied and Associated Powers adopted this means of weakening the Austro-Hungarian Empire. At certain times Russia and Italy have attempted to weaken the strength of the British Empire by encouraging dissatisfaction in the territories dominated by Great Britain. Germany took full advantage of the divisions in the population of Czechoslovakia as a means of its dismemberment in 1938–1939, and of similar divisions in the population of Poland in 1939.

FOREIGN-BORN IN THE UNITED STATES. The United States, with a large proportion of its population drawn by immigration from Europe, often found its policy limited during the nineteenth and early twentieth centuries by attitudes of groups of "hyphenated" Americans. The influence of the Irish elements in America, critical of the treatment by Great Britain of the people in Ireland, frequently caused American foreign policy to irritate relations with Great Britain. The Jews in America have frequently attempted to assist their brethren in foreign countries by

invoking the assistance of the United States government, as in the case of Germany under the Third Reich. Catholic groups have occasionally tried to gain diplomatic intervention of the United States government on behalf of Catholics in neighboring countries, as, for example, in the controversy between Church and state in Mexico in recent years. The spiritual connections between immigrant Americans drawn from Europe and their native countries have often caused the formation of passionate blocs in America favoring one side or the other in European conflicts and have thus made more difficult a policy of neutrality and isolation from European affairs.[4]

CULTURE, EDUCATION, AND TECHNICAL SKILLS. The general cultural conditions of a nation, including average intelligence, education, and technical skill, are not qualities inherent in different peoples, but are acquired from generation to generation through traditions and institutions. Yet there are great divergencies between the different populations of the world in these respects and the states whose populations possess these qualities are in a more favored position in carrying out their foreign policies than are other states. It is possible for a population to acquire these qualities, if they do not already possess them, but the process is a relatively slow one. It took literally centuries in the case of the Western European states and their influence has been spread subsequently to most of the rest of the world. The rapidity with which Japan has acquired these things since 1856 is exceptional. The states whose populations are already in possession of these qualities are favored in the pursuit of their foreign policies, since their population can support a highly industrialized civilization which is intimately related to a high standard of living and to national power. The efforts of the Soviet Union and of China during the present century to achieve these results have illustrated on a great scale the difficulties lying in the way of such accomplishments. The difficulties arise partly from inertia, the reluctance of the people to alter traditions and customs, and partly from opposition by those whose interests would be adversely affected by change, both within the country and among foreign states.

7. National Traditions. In the case of states which have existed for a long period of time, there is likely to be developed a set of foreign policies which are retained in part because of tradition. A tradition is an attitude or way of thinking which is transmitted from one generation to the next by social action, education, and other means. It may be that a traditional foreign policy continues to be based on valid grounds but it is also possible that a foreign policy is retained long after the period in which it was developed under different circumstances. A traditional foreign policy tends to act as a brake upon innovation, and tradition helps to explain why some policies go practically unaltered for decades or even centuries. The frequent wars between certain European states, notably between France and Germany, have left their impression upon the present policies of these states. The Monroe Doctrine, however much it may have been in fact reinterpreted since 1823, has continued for more than a century to win the support of the United States. Modification of American policy with respect to neutrality illustrates opposition which arises when proposals are made to alter long-established policy. The policy of maintaining a large navy has become a tradition for Great Britain.

The permanent staff of the foreign office of a state tend to be conservators of traditional policies. This may be explained as follows: (1) Much of the work of a foreign office is based upon historical precedent in the case of international law and the ceremonial accompanying diplomatic life, and it is natural to carry the same point of view in the realm of policy. (2) Democratic control is exercised with difficulty if at all over foreign offices, so that they may not reflect changing views held outside the office. (3) There is also as a rule inertia among the masses of people, who find it easier to follow traditional ways than to modify their ideas and accept innovations, and this conservatism is bolstered by the thought that what has succeeded in the past should be retained.

8. Use of Force. Finally, a basic factor which affects the foreign policies of all states is the use of force. In the past a state has found it necessary to depend primarily upon its

own power to force recognition of its legal rights, since the community of states had created no effective common organ of government to enforce the rights of individual states. States, faced with the problem of self-help, have employed various methods in their search for protection, such as strategic frontiers, large armaments, neutralized zones, buffer states, and alliances. This factor is usually regarded as the most vital of all in determining the policy of states, since it is based directly upon the desire for self-preservation.

CONCLUSION REGARDING THE BASIC FACTORS. This analysis of basic factors affecting national foreign policy is intended only as a technique of approaching the study of foreign policy. In order to interpret the foreign policy of a particular state, however, an examination of these factors in the case of that state will be helpful in giving an insight into the policy pursued. These factors do not operate with equal force in the case of each and every state, and some factors are more important than others.

Furthermore it is not meant to suggest that there are no other factors of importance in the determination of national foreign policy. Phenomena of relatively short duration in time may be highly significant in shaping foreign policy, such as powerful personalities in the control of the machinery of the state, economic crises and depressions, and alterations in political philosophies and practices in government. Nevertheless this analysis does disclose that, during comparatively long periods of time and within rather broad limits, a state cannot as a matter of fact adopt any policy whatsoever that it pleases, and that some states will be more restricted than others in the choice of policies which they may successfully pursue.

6. THE INSTRUMENTS OF NATIONAL POLICY

It has been seen that all states are restricted in their policies by certain basic factors. What are the instruments available to states for gaining their objectives of security, prosperity, and power? They may be classified for purposes of analysis under the following heads: (1) armed forces, whether army, naval, or air, (2) various economic and

financial weapons which may be employed so as to increase power or weaken a potential enemy, (3) diplomatic negotiations, and (4) propaganda.

ARMED FORCES. War and the use of armed forces still remain the ultimate instruments which the state employs in a contest with an opponent. All states maintain some military establishments. They rely upon armed strength to ensure defense of their existence and other legal rights and they also employ armed strength at times to invade the rights of others and gain their objectives. In some cases international law provides no rules regulating the subject matter of a controversy, *i.e.*, the question is political, and the disputants may terminate the controversy by resort to arms. Consequently all states, feeling insecure in their rights or being ambitious for objectives attainable only by force, build up armies, navies, and air forces and auxiliaries to them. Most states rely upon an army rather than a navy, as they expect an attack from bordering land neighbors. States having an insular location or a long coastal frontier may rely upon a navy as the most important defense. Still others depend upon a combination of army and navy. The decision depends upon the capacity of a state to acquire and support an army or navy and upon an estimate of the dangers arising out of the geographical region in which the territory of the state is located. The United States, having no great powers as close neighbors, depends primarily upon naval defense. Great Britain for a long time held naval supremacy of the world, in part so as to protect the home territory against blockade and in part to maintain communication with outlying portions of the empire. Italy, exposed in the Mediterranean to blockade and separated geographically from her African possessions, has developed naval power. Japan, like Great Britain having an insular homeland, ranks third as a naval power. Landlocked states rely upon armies supported by air forces. The Soviet Union, entirely contiguous in territory and having little access to the sea, relies upon armies for defense. The great naval powers have often been the states which follow policies of colonial imperialism, because they have had the capacity for conquest, the ability to control

colonies at a great distance, the desire to acquire raw materials and markets available in colonies, and a need for coaling stations and naval bases to assist in maintenance of sea lines of communication.

A majority of the family of nations have armies or navies of negligible importance. The smaller and weaker states do not as a rule have ambitions of conquest of neighbors or, if they do, they know that the ambitions are not possible of realization. They depend upon the power of other states for their protection and attempt to follow a policy of neutrality which will avoid entanglement in wars. Thus the Scandinavian countries have relied upon friendship with Great Britain and a policy of neutrality. Belgium and the Netherlands have realized that their safety depends upon opposition by Great Britain to their absorption by a continental great power. The same is true of the continued possession by the Netherlands of the rich Dutch East Indies and by Portugal of her African colonies. The countries of the American continent know that their defense against a non-American state is buttressed by the power of the United States. Their geographical isolation from non-American great powers is an element of security.

The state which desires naval power also endeavors to build up a merchant marine which may serve as an auxiliary in time of war, which will facilitate the maintenance of sea commerce enjoyed in time of peace, and which will provide the personnel trained in navigation necessary to an expanded naval force.

Economic Weapons. Both in time of peace and in time of war a state may bring pressure to bear upon another state by means of various economic weapons. One group of weapons consists of the various obstacles which a state, by virtue of control over its own territory, may place in the way of trade with the competitor state. These weapons have varying degrees of destructiveness.

Embargoes. The most drastic, in time of peace, is the placing of an embargo on trade with another state. An embargo is a prohibition upon either the imports from or the exports to another state or a prohibition upon both. An example is the embargo placed by the United States at

the close of the eighteenth century on goods going to both England and France, as a protest against various alleged illegal acts committed by both states against the United States. An embargo may extend to all goods, or it may be limited to goods of a particular kind, such as arms, ammunition, or specified raw materials. The effectiveness of an embargo depends a great deal upon the circumstances of particular cases. Thus an embargo will be harmful to a country which depends heavily upon a large market in the embargoing country. Japan exports more than 60 per cent of her silk production to the United States, so that closing of the American market would cause serious injury to an important Japanese industry. If there is little trade between the countries an embargo would be little more than a pin-prick. A serious limitation upon the use of embargoes is obvious; it is apt, in most cases, to injure the embargoing country as well as the one embargoed. Another limitation is that, as in the case of all means of pressure, the other party may take harmful retaliatory measures or resort to use of force or war.

Control of Foreign Trade. Tariffs and other devices for controlling imports and exports may be employed in such a way as to bring pressure upon a competitor. Of course there are numerous motives for controlling the flow of goods in addition to using the control as a weapon of compulsion such as the "infant industry" argument, the desire to build up a local war industry to promote greater security, and a general policy of economic self-sufficiency. As instruments of policy tariffs may be levied particularly on goods coming from particular countries, so as to injure the country; or higher rates may be applied to goods coming from a particular country. Thus various countries have applied discriminatory rates against other countries with the purpose of discouraging subsidy of exports, or the use of forced labor in production of the goods, or in retaliation for high tariff rates or discriminatory treatment applied by the other country. Many countries applied discriminatory rates against products coming from the Soviet Union so as to make unprofitable the practice of "dumping." The United States levied a surtax rate upon products coming

from Germany in 1939 under the provisions of a statute which directs higher rates on goods coming from countries where bounties or subsidies are granted in order to favor the exporter in capturing the foreign market. In addition to tariffs many other devices have been developed whose object is the prevention or regulation of trade and commerce with foreign countries, such as establishment of quotas on imports and restrictions upon the use of foreign exchange. Some of these devices were employed during the past decade with the primary object of protecting the national economy and not with the object of injuring a competitor, but they may be employed for such purposes.

FINANCIAL WEAPONS. The countries in which credit is available for foreign lending may control loans in such a way as to bring pressure upon a foreign state. Loans may be officially embargoed or otherwise discouraged for specific purposes with the purpose of thwarting the policy of foreign states or groups within the foreign states. For example, the Department of State has discouraged loans by American banks to interests abroad which were developing nitrate industries in competition with the American nitrate interests. It has discouraged loans to countries in Central America having governments not recognized by the United States and has thus tended to cause their ousting from power. The Johnson Act of 1934 prohibits lending in the American money market to states which are in default on their intergovernment debts to the United States contracted during and after the World War. The neutrality legislation of 1937 and of 1939 provides for prohibition of loans in the American money market to all belligerent parties in future wars. On the other hand, loans have been encouraged by the American government to assist Brazil to reduce restrictions on foreign exchange, with the result of giving Brazil a greater freedom of action in an economic sense and thus reducing the effectiveness of the German barter system there. Loans to China have been encouraged by the United States and Great Britain during hostilities with Japan. Great Britain made credit available to Rumania in the summer of 1939 to assist her in avoiding an excessive dependence upon German trade. France has fre-

quently encouraged loans to allies, as in the case of Imperial Russia, Poland, and the countries of the Little Entente. France used her financial power to compel alterations of the policies of her opponents. She encouraged withdrawal of loans which gave impetus to the collapse of the banking system of Central Europe as a method of causing the abandonment of the Austro-German customs union plan, which France regarded as violating international treaties and conducive to the termination of Austrian independence which France wished preserved. Germany has had few resources of this type in recent years. However, the German government has apparently made available to *agents provocateurs* funds for fomenting discontent and revolt among disaffected groups in Central European states as a prelude to ultimata and direct military action.

Only a few of the great powers possess the financial weapons. The great majority of states therefore lack this weapon and can as a rule expect only to be its victim, unless they can find a friend among the small group of states having financial resources.

DIPLOMATIC NEGOTIATIONS. Diplomacy is the art of conducting foreign relations. It is a procedure which may be employed either to promote cooperation with other states or to combat and destroy an opponent. There is nothing inherent in the procedure of diplomacy which makes it either good or evil. It is the policies of the states employing the procedures which are good or evil. Nevertheless, diplomacy has come to be associated with the idea of "Machiavellianism," and to connote fraud, lying, and sharp practices because during its period of development in the Italian city states and later in Europe the policies of states often were of this kind. Diplomatic negotiations remain an important instrument of policy today. During a period of power politics the astute negotiator may promote the policy of his state beyond what could be expected in view of its fundamental elements of strength.

MULTISTATE RELATIONS CAUSE NEED FOR BARGAINING. This is because, with a multistate system, international relations are complex. Most states are concerned not with one other state only but with a number of other states and

this opens up alternatives which make negotiation an important part of the arsenal of a state competing with others. Thus, through diplomacy, a state may play off its opponents against one another or may divert the attack of its potential enemy elsewhere. Hungary and Poland took advantage of German threats upon Czechoslovakia in September, 1938, to seize portions of this country and these acts were doubtless the result of prior understandings between each of them and Germany. It worked to the advantage of all three. The policy of Premier Laval in January, 1935, was to placate Italy by cession to her of French territory and other rights and by leaving Italy an open field for conquest of Ethiopia. The purpose was to cement relations between France and Italy so that Italy would preserve Austrian independence and would not ally with Germany. In recent years, Germany, Italy, and Japan have followed imperialistic policies which would have proved difficult of accomplishment if each state had been the sole disturber of the *status quo* at the time. Great Britain could not at the same time engage in conflict with chance of success in both Europe and in the Orient. Italy and Germany took successive turns in causing commotions from 1935 to 1939. It was during the period when sanctions were being employed against Italy in 1936, during the conquest of Ethiopia, that Germany illegally reoccupied the Rhineland. While Italy and Germany were alarming Europe, Japan resumed hostilities in China in 1937. In a number of instances other states were able to gain revision of restrictive treaty obligations by negotiations during this period of treaty violations. The success of these states was due largely to the conjuncture of events. States wishing to bolster the principle of good faith in fulfillment of treaties preferred to give consent to revision rather than to face unilateral repudiation and at the same time the revision by agreement lent support to the argument that changes could be produced by peaceful negotiations. For example the disarmament provisions restricting Bulgaria were terminated and the status of the Straits of the Bosphorus was modified so as to give to Turkey fuller control over her territory.

Diplomacy has evolved an etiquette which permits states to indicate various gradations of displeasure with the acts of another state. Various phrases may be employed, such as "views with grave concern," "will have to consider what action may be necessary in the circumstances," "cannot be responsible for the consequences, and retains full liberty of action," which indicate the degree of importance attached to a policy. The withdrawal of the head of a diplomatic mission to another state, or the complete breach of diplomatic relations by withdrawal of the whole mission, or the dismissal of the envoy of the other state, are used in more serious conflicts. Sometimes a state may dramatize and emphasize its policy by departures from normal diplomatic procedures. Thus, on several occasions, the President of the United States has addressed communications in recent years directly to the heads of states, whereas normally communications would be made through foreign offices. After the sinking of the American gunboat *Panay* (1937) with the loss of American life by a Japanese military plane, the President addressed a communication directly to the Emperor of Japan. As the Emperor is regarded as a divinity in Japan, this act impressed the Japanese people, placed the Japanese government in a difficult position, and implied the seriousness with which the United States regarded the episode.

FRAUD AND DECEIT. A state may enjoy an advantage in gaining an immediate objective by employing deceit. Thus, the German government apparently gave to the British government assurances that they would not invade Austria in 1938 within a few hours of doing so and thus paved the way for a *fait accompli*. Chancellor Hitler has on several occasions in recent years made public declaration that Germany has no further territorial demands in Europe, with the purpose of allaying uneasiness, only to violate the pledge upon the next suitable occasion. The violation of promises made at the Munich settlement in September, 1938, by occupation of Czechoslovakia and establishment of a protectorate over Slovakia in 1939, caused a reversal of the British and French policy of appeasement adopted at Munich.

Diplomacy has sometimes been defined as merely hostilities in time of peace. It is true, of course, that in times of crisis the armed forces and economic weapons of a state are in the background of diplomatic negotiations, and that the hand of the diplomat looks like an iron fist in a velvet glove. On the other hand diplomacy is also the chief instrumentality through which international cooperation becomes effective.

PROPAGANDA. Increasingly in the modern world attention must be directed toward the opinions held by great masses of people when attempting to affect government policy. Governments not merely respond to opinion but are actively engaged in creating and directing it. This is true of both democratic and dictatorial governments. The task of government propaganda is threefold: to affect (1) home opinion, (2) opinion of the state which is in competition, and (3) opinion of states neutral in the competition. When a strong home opinion is in support of a government's foreign policy that policy will be more powerfully felt in the competing state. Thus, until the introduction of peacetime conscription in Great Britain, in 1939, there was a tendency to belittle the British policy of alliances in Europe as a means to oppose aggression, on the theory that the public failed to support it. Sometimes, through diplomacy, a state makes use of the state of opinion at home in its arguments with an opponent so as to avoid making concessions or so as to gain concessions. It has been indicated that a unified opinion is a source of strength and that nationalism tends to produce it. It reaches its high point in time of crisis or of war, and the maintenance of high morale among both fighting forces and home population is essential to military success. When there are strong divisions of opinion the foreign policy of a state is weakened.

PROPAGANDA TO WEAKEN A COMPETITOR OR ENEMY. A state attempts to gain advantages in competition with another state by affecting the opinion held in the latter. During 1917–1918, Wilson's Fourteen Points were successfully aimed at breaking the internal unity of the Central Powers by appealing to minority groups and by attacking the form of autocratic government so as to produce revolu-

tion. During the early months of the Manchurian episode in the autumn of 1931 the United States and Members of the League of Nations avoided language or actions which would cause a rising of opinion in Japan that would discredit the liberal government then in power and cause transfer of the government to the military element in the country. Germany has followed a policy of promoting internal struggles within neighboring countries with the purpose of weakening them so as to make them a prey. Italy has taken advantage of discontent among Moslems as a method of undermining British colonial power, especially by inflammatory radio talks. Germany, Italy, and Japan by the Anti-Comintern agreement attempted to capitalize upon the enmity of groups in third countries toward spread of communism. The battle of propaganda between Prime Minister Chamberlain and Chancellor Hitler during the period before and following the outbreak of war in September, 1939, shows the importance attached to this method of weakening an enemy.

PROPAGANDA FOR NEUTRALS. A state occupies itself with opinion in third states in order to gain understanding and support for its policies. The campaign of the allies during the World War was highly effective in bringing into the war many countries not directly and vitally concerned with the struggle. Many states follow in times of peace a policy of cementing cultural relations with other countries so as to create mutual understanding and friendship. France, as a center of education and of literary production, has used cultural propaganda for a long period. The cultural relations between Spain and her former colonies in South America have been close. This is one reason for fear by opponents of Fascism that the victory of Fascists in Spain in 1939 might be employed so as to affect thought in South America favorable to the Fascists of Spain, Italy, and Germany. The friendship of the ruling classes in Spain for Germany, based upon training in German universities and exchanges of army officers, assisted in causing Spain to remain neutral during the World War. Great Britain obviously has advantages over other states when seeking to affect opinion in the United States as a result of language

and of certain common traditions and institutions. The United States has endeavored to cement relations with Latin-America through the Pan-American Union and the activity has been accelerated in recent years.

No avenues for disseminating propaganda to foreign countries are neglected. They include the press, lecture tours, visits of royalty or heads of states, exchange of students and of scientific and military missions, the motion picture, and the radio. Of course diplomatic representatives regard it as an important function to explain and to interpret their countries and to justify and to explain in the most favorable light the acts of their governments.

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CHAPTER VII

National Foreign Policy: Control, Formulation, Execution

States are the persons of international law and the government is regarded as the agency expressing the will of the state. The right of a state to change the form of its government, whether from monarchy to republic or from a republic to a dictatorship, is unrestricted by customary international law. The legal rights and duties of a state arising under international law and treaty are unaffected by changes in the form of government.

RIGHT OF A STATE TO CHOOSE ITS FORM OF GOVERNMENT. Legally a state has the right to determine its own form of government as a corollary of its right of independence. Of course, as a matter of fact, states do occasionally intervene in the affairs of their neighbors to oppose the adoption of a particular form of government in those neighbor states if they regard the change as injurious to their interests. Examples are the intervention by members of the Holy Alliance in Spain, Naples, and elsewhere directed at the restoration of the principle of hereditary monarchy and opposition to the principles of democracy and republicanism during the early nineteenth century; the attack by the Allied and Associated Powers upon the principle

of autocracy exemplified in the governments of the Central Powers during the war of 1914–1918; and, in recent years, the support given by Soviet Russia to communism, and by Germany and Italy to Fascism, in Spain. Such interference constitutes illegal intervention in the internal affairs of another state and is usually resisted by the state affected.

FORMS OF GOVERNMENT. The forms of government of states show great variety. During the period of development of the modern state most European states had absolute monarchies, though some were republican in form. In the course of time absolute monarchies were supplanted by constitutional monarchies. Some of the powers formerly possessed by the monarchs were transferred by the fundamental law to representative bodies called parliaments or legislatures. After the American and French Revolutions an impetus was given to republican forms of government and an increasing amount of control was given to the masses of the people operating through elected representatives in parliaments or legislatures. Generalizing broadly, one may say that the trend throughout the civilized world during the latter part of the nineteenth century was in the direction of democratic government by means of an extension of the suffrage to large proportions of the adult populations and the granting of control to representative institutions answerable to the electorate. Two types of democratic government were employed. Under the presidential system, exemplified by the United States, the executive and the legislature are independent bodies, separately elected and each exercising certain governmental powers. This system was widely copied in the constitutions of the other American republics. The other type of democratic government is the cabinet system. In this there is a fusion of executive and legislative powers in the hands of one body. The executive is, in a sense, a committee of the legislature, and retains its power as long as it receives a majority vote in the legislature. The cabinet system, exemplified in Great Britain, has been adopted by the British Dominions and by many European states. Under a third type of government, dictatorship, governmental powers are vested in a single person who lacks

responsibility to any representative body. Dictatorships are very old. At present dictators head the governments of Germany, Italy, the Soviet Union, Spain, and many other countries.

DISTINCTION BETWEEN FORMS AND ACTUAL CONTROL. The mere form of government, as sketched in the constitution or fundamental law of the state, usually does not indicate the actual sources of control over the policy of government. Various persons, groups, and classes exert an influence over the policy of a government which is highly disproportionate to their numbers and to the amount of power which the constitution extends to them. During the period of development of the national state monarchial governments in most states were controlled by the aristocracy, nobility, clergy, and king. The great masses of the population were conceded the right to govern neither in theory nor in practice. During the nineteenth century there was a general movement in the direction of extending political power to new classes which had not previously been consulted, by extending the right to vote to new classes and by admitting them to office in the government. During the twentieth century a reaction set in opposed to making government depend upon general popular consent of the population. This reaction took the form of communism in Russia, where a dictatorship of the proletarian class was regarded as the proper method of assuring to this class the enjoyment of the rights to which they were believed to be entitled. It took the form of Fascism in Italy and in Germany, where the dictatorship of a particular leader, backed by a single political party, was defended because of the alleged failure of representative and democratic institutions to produce desired results.

1. THE CONTROL OF FOREIGN RELATIONS

Whatever may be the form of government the immediate control over foreign relations is exercised by the executive. The executive has this power under most constitutions because of the tradition early established that control over foreign affairs is by its nature an executive matter. The conduct of foreign affairs often requires secrecy impossible

to attain through legislative control. It demands at times swift decision and action which cannot be obtained from a legislative body which is in session only part of the time. It is impossible to lay down in advance controlling rules of policy by legislation to fit particular cases as they arise because of the complexity of foreign relations.

CHIEF EXECUTIVE AND OFFICERS OF THE FOREIGN OFFICE. The executive, whether prime minister, premier, president, or dictator, is assisted in the formulation and control of national foreign policy by a cabinet minister called usually the minister of foreign affairs. In the United States the title of this officer is Secretary of State. In some cases the chief executive himself takes an active part in the control of foreign affairs, while in other cases he may leave control largely in the hands of the minister of foreign affairs. Other cabinet ministers may also play an important part in the control of foreign policy, notably the ministers heading army, navy, and air departments in time of crisis and of war, the minister of colonies, and the minister of commerce. The minister of foreign affairs, though formally in charge of the department, is often greatly influenced in his decisions by the higher permanent officials of the department, known variously as undersecretaries or assistant secretaries. The minister and the higher permanent officials of the department of foreign affairs are influenced in their decisions relative to policy by the field service, *i.e.*, by the diplomatic representatives sent abroad and resident in foreign capitals. The latter, by virtue of their knowledge of the facts and of their power to advise the home officials, often play an important part in formulating policy. Their power to negotiate with foreign governments is limited by instructions from the home government. In an earlier period it was often necessary to leave them wide discretion in negotiations for treaties. Today, while this discretion is reduced because of the possibility of consultation with the home government quickly through cable or telephone, the diplomat still has an important part in the formulation of policy.

LEGISLATIVE CONTROL OVER FOREIGN RELATIONS. While control is vested primarily in the executive, it is not to be

assumed that there is no legislative control over foreign relations. The extent of legislative control varies widely in different states. In the case of dictatorships it is nonexistent. In several states either one or both houses of the legislature possess power to accept or reject proposed treaties negotiated by the executive. In most states the legislature has the power to appropriate or to withhold money requisite for carrying out a given policy. Thus the legislature might prevent adoption of a policy which requires for its execution large expenditures for armed expeditions. In some states the legislature has the power to declare war and to annex territory. The legislature, in adopting legislation with respect to particular matters regarded as of domestic concern, may vitally affect relations with other states. Examples are acts controlling immigration of foreigners, regulating commerce of foreign ships within the territory, specifying the imposition of embargoes on arms in the event of war between foreign states, or conferring nationality upon the subjects of foreign states. The legislature may legally control the executive in numerous cases, and in still other cases it may greatly influence the executive as a representative of the popular will in those states having representative forms of government.

Popular Control over Foreign Relations. There has for a long time been a debate as to whether or not there should be popular control over foreign relations. It is the view of one school of thought that the mass of people should control the foreign policy of the government. This view is supported with the following arguments: (1) Since the great mass of people of a country are vitally affected by foreign policy they have a right to control its formulation. (2) If popular control were made effective, there would be greater harmony among states on the assumption that international friction is the result of struggles between particular groups controlling the governments in each country and that this would be eradicated if control were by the mass of people. Another school holds, on the contrary, that popular control is both impracticable and undesirable. It holds popular control to be impracticable on the ground that the great mass of people in each country lack the

interest, the knowledge, and the ability to control foreign affairs. It holds popular control to be undesirable because it is believed that in such circumstances policy would be based upon emotional grounds rather than upon a rational decision based upon facts and devoid of emotionalism. Certainly there has been little movement towards giving direct control to the voters by means of the initiative or referendum on questions of foreign policy. The provision in the constitution of Switzerland which requires consent of a majority of voters as prerequisite to ratification of a treaty is unique. In the United States the proposal that a referendum should precede declaration of war by Congress has strong adherents and strong opponents, but there seems to be no likelihood of its adoption.

Political Party Ineffective as Instrument of Control. The platforms of political parties are a relatively inefficient mode of determining the desires of voters with regard to questions of foreign policy. There are several reasons for this. Parties often concentrate upon questions of a domestic nature and do not take a definite stand upon questions of foreign policy. When they do take a stand upon a question of foreign policy, the voter may be faced with the alternative of choosing between a candidate and a platform supporting a desired foreign policy and an undesired domestic policy. Thus an American voter favoring the "good neighbor policy" of Franklin Roosevelt in 1936 might not favor the planks sponsoring the New Deal.

Public Opinion in Democracies. Nobody knows to what extent popular control is exercised upon the executive and legislature through that elusive thing called public opinion. The pressure brought to bear upon legislators by their constituents in the form of conversations, letters, and telegrams from individuals and groups, and in the form of press opinion doubtless has considerable influence. The resolutions, petitions, and lobbying agents of important groups also influence legislators and the executive. It is difficult to determine the real source of public opinion. As in the old dilemma of whether the chicken or the egg came first, it is a question whether the public opinion dictates public policy or whether the government manufactures the

opinion to which it later appears to submit. The activity of officials of the Department of State in supporting the policy of the Roosevelt administration of executive trade agreements illustrates this question. In time of war all governments control opinion extensively by withholding some information, by issuing propaganda, and by prohibiting the expression of certain views.

MONOPOLY OF OPINION BY DICTATORS. This is true of those states operating under representative institutions. It is far more true in existing dictatorships where there is a general negation of the idea that the masses should control affairs of government and where it is openly avowed that opinion is to be controlled by government by means of censorship of the press, pulpit, theater, and radio, and to be molded by means of an official government ministry of propaganda, charged with the creation of opinion desired by the government having monopoly of thought on public questions.

2. EXECUTION OF NATIONAL FOREIGN POLICY

The control of national foreign policy should be distinguished from the actual administration or execution of the policy. The formulation of a policy is the process of deciding upon a definite course of action with regard to a matter, the process of choosing definitely between several alternative courses of action. The formulation of policy includes both a choice of objectives and a choice of the means to be employed in gaining those objectives. The administration or execution of a policy is the process of carrying into effect the policy which has been formulated and adopted. Thus, for example, a government which desires to assure the security of the state and of its nationals, may decide to pursue one or more of several courses in endeavoring to attain this object. It may choose an increase in armament, an alliance with one or more other states, or the development of procedures for the pacific settlement of disputes which might lead to conflict and danger. The decision to adopt one of these methods is the decision of a question of policy. The next step in logical order is to carry out the decision. Thus the negotiation of a treaty of alliance is a

step taken in the execution of the policy of alliance for defense. Upon the ministry or department of foreign affairs falls the chief burden of administration of national foreign policy. This department performs the day-by-day routine of administering foreign policy. It consists of the staff of officers and employees at the capital and the corps of diplomatic and consular representatives maintained in foreign countries. Since the ministry or department of foreign affairs controls and directs the diplomats and consuls abroad, it might seem logical to describe first the department of foreign affairs. However it is easier to understand the work of the department when one has gained a knowledge of the functions performed by representatives abroad.

3. THE DIPLOMATIC SERVICE

A diplomat is the official representative of a state accredited to a second state. He serves as the official channel of communication between the two states. He requests information, delivers messages and protests, gives explanations, and enters into negotiations with the foreign government in accordance with instructions from his government. He gathers information for his government, gives interpretations of the facts, and offers advice and explanations to his government. In various ways he assists his countrymen who are traveling or in residence or doing business in the country to which he is accredited.

ORIGIN AND DEVELOPMENT OF THE DIPLOMATIC SERVICE. At an early date (about the fourteenth century) the European states established the practice of sending official representatives abroad on temporary missions to promote the interests of the state. Later, with the increase in the necessity for intercourse between states, permanent missions were established by the leading European states in foreign capitals. There are more than eleven hundred diplomatic missions in the world, so the number of diplomatic representatives is very large, because each mission includes a number of representatives. The chief function of diplomats in the early period was the negotiation of treaties of alliance, peace, and commerce. Today, as a result of the

greatly increased number of questions entering into foreign relations, there has been a corresponding increase in the scope of work of the diplomat.

Originally the diplomat was regarded as a representative of the person of his sovereign, at a time when monarchy was the prevailing form of government and when the monarchs largely controlled foreign affairs of their states. Now the diplomat is regarded as a representative of his home state, rather than of a particular sovereign, in those countries wherein monarchy does not exist.

CLASSES OF DIPLOMATIC REPRESENTATIVES. At present the titles given to different classes of diplomatic representatives are standardized. Two chief classes are to be distinguished: first, diplomats who are the heads of missions; and second, diplomats who are subordinate members of a mission. The heads of missions may be one of four classes: (1) ambassadors, legates, and nuncios, (2) ministers plenipotentiary and envoys extraordinary, (3) ministers resident, and (4) *chargés d'affaires*. A mission headed by an ambassador is called an embassy and other missions are called legations. The distinctions between these four classes have today relatively little significance for the conduct of international relations. The first three classes are accredited to the head of the foreign state (king, president, etc., as the case may be), while the fourth class is accredited to the minister of foreign affairs. The rank has importance for ceremonial purposes, as in the order of precedence or location at table. In general it may be said that only the larger and more important states exchange ambassadors. In earlier times the conduct of foreign relations was frequently impeded by controversy regarding the rank and precedence of various classes of diplomats. These controversies often reflected the struggle between states themselves for prestige accruing from acknowledgment of priority of the diplomat over other diplomats. In other cases they reflected jealousies and pride of the diplomats themselves, vying for position and honor. In any case these controversies stood in the way of settling the questions of substance with which the diplomats are expected to deal. The second chief class of diplomats, *i.e.*, those who are subordinate members of a mission,

includes first, second, and third secretaries of embassy or legation, counselors, and various attachés, such as military attachés, naval attachés, and commercial attachés. These officers perform the detailed work of the mission under instructions from the head of the mission. Military and naval attachés obey instructions of the head of mission unless the instructions conflict with instructions given to them by the war or navy department, respectively, in which case the question is referred to the home ministry of foreign affairs.

FUNCTIONS OF THE DIPLOMAT. The functions of the diplomat may be classified as the observation, interpretation, and reporting of facts to his home government, the giving of advice as to policy to be pursued by his government, and the conduct of negotiation with the foreign government concerning matters which affect his government. These functions grow naturally out of the fact that a diplomat is employed primarily in order to protect and promote the rights and interests of his state and nationals in accordance with the policy adopted by his state.

OBSERVATION AND INTERPRETATION. A very practical purpose is served by the observation and interpretation of facts by the diplomat. The home government, in order to formulate and carry out its policies, must be in command of a great amount of factual information. It cannot depend upon mere chance or hearsay. It cannot depend upon the press, which may be inaccurate, prejudiced, or purposely misleading. It requires collection of materials by a person and a staff trained especially for this purpose.

WIDE SCOPE OF INFORMATION. The scope of information concerning a foreign country which is required by another state is today almost boundless. In an earlier period, when diplomacy was in the hands of a monarch, a diplomat could limit his attention to affairs of the court. Today, when the policy of one state may vitally affect other states, due to the increasing interdependence of peoples and states, and when the scope of governmental activity is very extensive, a diplomat must necessarily observe and interpret more matters of great complexity. The home government will desire knowledge of alterations

in the fundamental law and in current legislation or proposed legislation, particularly if this legislation affects foreigners. Thus a statute on the nationality of citizens, the subsidizing of the merchant marine, the assumption by the state of ownership over mineral resources, or an increase in the military or naval strength, would be reported immediately to the home government. An attempt to foresee the probable policy of the government in the future requires that the diplomat determine the degree of stability of a government, know the facts concerning chances of success of one political party or another and the platforms advocated, and follow developments in public opinion which may affect the policy of the foreign government. Prompt notification is made of uprisings, revolts, and civil wars, with an interpretation of the probable outcome and the proportions of the disorders. The diplomat also seeks to determine the nature of the relations between the state to which he is accredited and third states, such as alliances, other treaty agreements, and disputes between them. Today, with the extension of commerce, trade, and finance beyond national frontiers, it is necessary for the diplomat to observe and report upon many subjects of economic activity. Problems of labor, shipping, banking, currency, investments, production, and trade all have a more or less intimate relation with foreign policy.

SOURCES OF INFORMATION. There are numerous avenues through which the diplomat gains the information desired. The most formal channel is through the foreign minister of the country to which he is accredited, in written or oral communications. The heads of missions usually have access also to the head of state. The diplomat may gather information and expressions of opinions from influential members of the legislative body, from political party leaders, and from the published documents of the government. A considerable part of the social activity of a diplomat has as object the acquisition of information, as well as the cultivation of acquaintance and the creation of opinion favorable towards the interests of his government. The diplomat employs other resources available to him such as expressions of opinion through the press, interviews with

foreign press correspondents, and conversations with other diplomats accredited to the same capital. Other members of the embassy or legation assist in this work. The military, naval, and commercial attachés make available to the diplomat the information which they assemble. Further information is supplied by the consular officers stationed in various cities of the country to which the diplomat is accredited, particularly as regards economic matters and as regards protection of the rights of nationals and their property within the territory.

IMPORTANCE OF INTERPRETATION. The importance of interpretation of the facts by a person resident in the country, knowing the officials in charge of the government, and understanding the view of the people can be appreciated from a few examples. Thus, Mr. Walter Hines Page, while ambassador of the United States in London, showed his government the importance attached by the British government and ruling class to a repeal of the American laws exempting American merchant vessels from tolls at the Panama Canal, which exemption was regarded by the British government as a violation of a treaty right of Great Britain. Again, when a resolution was passed by the Senate of the United States favoring the independence of Ireland, the British ambassador at Washington could point out to his government that the motivation was primarily a political one of gaining support in elections by the Irish vote in the United States. Consequently the British government could choose to look upon the incident in its true proportions and refrain from taking it as a serious matter of unwarranted interference in the internal affairs of the country. The German ambassador at Washington, Count Bernstorff, gave to his government ample indications in 1917 that ruthless submarine warfare endangering American lives on the high seas would probably produce war between Germany and the United States. The diplomat spends much of his time and energy in endeavoring to interpret the policies of his government to the government to which he is accredited, and to the social circles in which he lives. He is on the alert to correct misstatements of facts, to explain in the most favorable light the policy and

intentions of his government, and to seek to explain his people to those of the country in which he is resident. As guest, as host, and as speaker before groups, he attempts to interpret his country to the other.

DUTY OF DIPLOMAT TO AVOID INTERFERENCE IN INTERNAL AFFAIRS. The diplomat is limited in the remarks which he may make for publication. It is his duty to refrain from criticizing or interfering in the affairs of the country to which he is accredited. It is also dangerous for him to discuss certain matters pertaining to his own country, as, for example, criticism of political opponents within his country. Consequently the public addresses of a diplomat deal with the nonexplosive topics such as the constitutional system, education, art, science, or literature of his country.

ADVICE AS TO POLICY. Complementary to the function of observation and interpretation is the function of advising the home government. From his point of vantage the diplomat is often enabled to secure an insight into a problem affecting the relations of states impossible to secure in the home ministry of foreign affairs. This function requires, in addition to facts and their interpretation, sound judgment, a seasoned experience in dealing in affairs, and an ability to judge personalities. Sound advice, especially at critical junctures, may be of great service, just as unsound advice may be of disastrous consequences to a state.

NEGOTIATION. The most exacting function of the diplomat is negotiation. Negotiation is the process by which an agreement is reached by two or more states. Negotiation is the method first employed when two states become involved in a controversy. The controversy may arise as a result of a difference of views concerning either the existence of certain facts or the existence of certain rights, whether claimed under international law or treaty, or as a result of conflicting policies. The object of negotiation is to settle the controversy. Many controversies are settled before they become serious by an agreement on the facts and an application to the facts of an acknowledged rule of international law or of a treaty provision. A controversy whose decision cannot be determined by reference to inter-

national law is often settled by a process of bargaining, concession, and compromise. The great proportion of controversies between states are settled by this process. When negotiations are not successful, diplomacy may be superseded by arbitration, judicial settlement, the use of force, or ultimately by war. Negotiation is employed not only as a method of attaining agreement solving controversies which have arisen but also as a method of attaining agreement upon a common policy to be pursued by states. This agreement may result in the creation or recognition of a rule of international law or the adoption of principles and rules of common policy for a specified period of time.

The qualities required for able negotiation cannot be easily catalogued. They include, however, intelligence, energy, perseverance, vigilance, self-control, experience, prudence, and a knowledge of technical procedures and forms, as well as knowledge of the matters under negotiation.

Narrowing Discretion Granted to Diplomats. The diplomat, when negotiating, is limited in the discretion which he may employ as regards both the substance and the procedure to be followed in reaching agreement. The limitation on discretion is a limitation imposed by the home minister of foreign affairs by means of the instructions and powers defining the scope of action of the diplomat. Thus, in the negotiation of a treaty, instructions of the diplomat may prevent the consideration of certain topics and may define the extreme limits of concessions which he is authorized to make in bargaining for an agreement. In an earlier period the diplomat was usually given wider discretion in his instructions than he is given today, because then the distance from his country and the difficulty and slowness of means of communication made consultation with the home government difficult. Today the cable and telephone make it possible for the diplomat to consult rapidly with his home minister of foreign affairs or travel home by airplane, and there is therefore a tendency for the minister of foreign affairs to direct more in detail the process of negotiation. An illustration is the control exerted by the prime minister, the secretary for foreign

affairs, and the cabinet over the negotiations by the British ambassador to Berlin with the German government preceding the outbreak of war in September, 1939.

PROCESS OF NEGOTIATION, ORAL AND WRITTEN. Negotiation upon a particular matter may require a short or a long period of time. It requires a sounding out of the positions of the parties and an exchange of views which may be expressed in either oral or written form or both. Ordinarily negotiation begins with oral discussions carried on between the diplomat and the minister of foreign affairs of the state to which the diplomat is accredited. The advantage of oral discussion is the relatively greater speed with which a final agreement may be promoted, especially if the personal contacts of those conducting the negotiations are of a salutary nature. It is customary in the case of oral discussion to draft a *note verbale* following the conversations, which is a written but unsigned document containing a résumé of the points discussed so as to record what was said, the demands of the parties, and the progress made towards agreement, but without an attempt to fix finally the results attained. The advantage of written discussion, carried on in the form of exchanges of notes, is that a consecutive written record exists of the steps taken towards agreement—a slow, cautious, but definite procedure. There are serious disadvantages, however, in using written discussions. They may in some cases needlessly delay a final agreement. They may militate against achievement of final agreement because the definite and irrevocable record may too rigidly join the issues outstanding between the parties. They may create broader commitments than were intended and they may make difficult a later retreat on a point, unless great care and skill is employed in drafting the notes. Skill in drafting such notes implies usually that definite, specific, clear, and unambiguous statements are avoided so as to permit a graceful retreat if necessary. The last stage of successful negotiation, namely, agreement, is recorded in a treaty, protocol, or exchange of notes.

NEGOTIATION IN INTERNATIONAL CONFERENCES. The process of negotiation described above refers to the case of negotiation between two states through the ordinary

diplomatic channels. This process is an old one and continues to be employed today. However, during the past half century there has been an increase in negotiations conducted in international conferences attended by the diplomatic representatives of several or many states. This method of negotiation has required the development of a different procedure for carrying on this function of the diplomat, and it has influenced the nature of negotiation itself. This development will be examined later.

PRIVILEGES AND IMMUNITIES. The diplomat enjoys in the country to which he is accredited a personal inviolability and an immunity from the jurisdiction of the state which is defined by international law. The reason for this exceptional status was originally that the diplomat was regarded as the personal representative of a sovereign and that it was thought logical to extend to the personal representative those privileges and immunities which appertained to a sovereign while within the boundaries of a foreign state. Today the privileges and immunities are justified primarily upon the ground that they are essential to the satisfactory performance of the functions of the diplomat, and that such performance is of such public importance to his home state that he should be safeguarded by an exceptional status. Whatever the basic reason, it is universally agreed that the diplomat is exempt from arrest and from suit before the courts of the local state in both criminal and civil cases. These immunities are generally accorded to the chief of the mission, the official suite of the mission which comprises secretaries, counselors, and attachés, and the members of the immediate family of such persons who are resident in the embassy or legation. These immunities may be waived and the person submitted to local jurisdiction if the home government of the diplomat and the head of the mission consent. The persons enjoying diplomatic immunities are bound to obey the local laws, and may be restrained though not arrested or prosecuted during the period of immunity for disobedience of the laws. Failure to obey the laws may result in a protest by the local state, a request that the diplomat should be recalled by his home government, or as a last resort the dismissal of the

offending diplomat. The inviolability of the diplomat requires that the local state should take appropriate measures to prevent attacks upon the diplomat and to prosecute the persons guilty of such an attack. As the diplomat is frequently blamed for the policy of his state by persons or groups it is necessary to take extraordinary precautions in these respects.

INVIOLABILITY OF LEGATION, ARCHIVES, AND CORRESPONDENCE. The official residence of the chief of mission, called the embassy or legation, is not subject to local jurisdiction and cannot be entered by officers of local government without consent of the head of mission. The archives of the embassy or legation, consisting of the official documents, are likewise inviolable. Communication with the home government is facilitated by the provision that mail pouches sealed in the embassy and legation are not subject to examination by the local government.

4. THE CONSULAR REPRESENTATIVE

Distinct from the diplomatic representative of the state abroad is the consular representative. Both officers are subject to the direction and control of the department of foreign affairs. The diplomat serves as the official intermediary between his own state and a foreign state and deals with the national authorities concerning political relations. The consul serves as the official representative of his state and of his countrymen within a given geographical area of a foreign state, dealing with local authorities and private persons, and is engaged primarily in the promotion of commerce and trade between the two countries, and in assisting the nationals of his country who enter his consular jurisdiction.

ORIGINS AND DEVELOPMENT. The consular service developed in Europe earlier than the diplomatic service, beginning about the eleventh century. The increase of commerce between states in the Mediterranean Sea created a need for some person who might assist the alien merchants and sailors while in a foreign port. The early consul often exercised jurisdiction over his fellow countrymen and settled their disputes with one another and assisted them in

case of difficulties with the local authorities. At first the consul was chosen by these private persons, not by his home state. He might be chosen by the aliens in a foreign port either from among their own number or from among the local inhabitants. Today the consul is regarded as an official representative of his government, and it is customary to employ in most cases only citizens for the office. For the most part the aliens within a country are subject to the local laws, so that the consul no longer acts as judge for his fellow countrymen, unless permitted by treaty to do so in cases of internal affairs of a ship, or unless he is located in a country subject to the system known as extraterritoriality.

With the growth of economic interdependence and the opening of new territory to economic exploitation, there has been a very great increase in the number of consuls in the world. Every important industrial and commercial state maintains consular offices in all the important business centers of the world. At the present time there are approximately 17,000 consuls permanently stationed abroad.

Classes of Consular Representatives. The chief classes of consular representatives today are: consuls general, consuls, vice-consuls, and consular agents. A consul general, whose office is usually situated in the capital city or the city of chief commercial importance, has general direction and supervision over consular representatives and their work in the territory comprised within his geographical jurisdiction. A consul general's jurisdiction usually extends over the territory of an entire foreign state, though in some cases it extends over the territory of more than one state. A consul is higher in rank than a vice-consul and is usually stationed in the more important industrial and commercial cities, while a vice-consul is stationed in a less important city. A consular agent is a noncareer representative stationed at a relatively unimportant post and devoting only part of his time to the official business. The classes of consular representatives are determined by the law of each state, and not, as in the case of diplomatic representatives, by international law.

FUNCTIONS OF CONSULAR REPRESENTATIVES. The functions of consuls may be classified as: the promotion of trade and commerce, the protection of shipping, the protection of the persons and property of fellow countrymen, the administration of laws of the home state intended to carry into execution policies relative to collection of customs duties, immigration, restrictions upon introduction into the home country of things harmful to public health and safety and numerous other matters, and the collection of information regarding the country in which he is stationed which is required by all departments of the home government.

REPORTS IN AID OF BUSINESS. A few illustrations of the method of performing some of these functions will indicate the nature of his work. Regular and special reports are prepared and transmitted to the home government concerning a vast number of matters important for trade and commerce, such as general business conditions, agricultural and industrial production, opportunities available in the territory for marketing certain raw and manufactured products, and laws and decrees which have a bearing upon the chances of profitable business, such as tariff rates, quotas on imports, methods of labeling and wrapping packages.

ASSISTANCE TO FELLOW NATIONALS. The consul assists in many ways his fellow countrymen who enter the region. He investigates and protests to the local authorities against violation of treaty rights, assists persons in protecting themselves and their property in cases before local courts of justice, and gives assistance and information helpful to them in pursuing their business. His office provides notarial services which give credence to facts important to the individual in his own country, such as registry of births and marriages. The consul is especially designated as the officer to give protection to seamen entering the port, as in cases of disputes over wages and destitute sailors. The consul performs valuable services for fellow countrymen at home by tracing relatives, administering the estates and conserving and transmitting the personal effects of deceased persons, and in arranging for the care or passage

home of persons who die, become ill, or become incapacitated while abroad.

Privileges and Immunities of Consuls. Both the privileges and immunities of consuls are more restricted than are those of diplomats. The privileges and immunities are, as a rule, determined by a consular treaty or provisions of a commercial treaty between two states, rather than by general rules of international law. While there is some variation, these treaty provisions usually extend immunity from jurisdiction to consuls only as regards civil matters, not as regards criminal matters, and in civil matters only to those cases in which the consul acted in an official capacity as distinguished from a private capacity. The consulate, which is the name given to the official quarters of the consul, is inviolable, along with the official papers of the consulate. The local authorities have a duty to safeguard the consulate, which is frequently the scene of demonstrations and violence by mobs and groups desiring to find a target for their disapproval of the policy followed by the home state of the consul.

5. CORRELATION OF DIPLOMATIC AND CONSULAR ACTIVITY

There is a need for cooperation between the diplomatic and the consular representatives of a state accredited to a foreign state. The consul requires the consent of the local state in order that he may perform the work for which he was commissioned by his state. This consent is sought by the diplomatic representative, on behalf of the consul, and when the *exequatur* or formal document granting authorization is issued by the foreign office, the latter transmits it to the diplomatic representative who in turn communicates it to the consul. While the consul takes the first steps to protect the person or property of his fellow countrymen, by making representations and protests to local officials, it may be necessary to refer the matter to the diplomat in order that he may bring the matter to the attention of the central government through the minister of foreign affairs. Much of the information collected by consuls relating to economic matters is useful to the diplomatic representative

in promoting and protecting the interests of his state and it is desirable that the diplomat be supplied with such information. Cooperation is often attained in the capital city by housing together the embassy and the consulate and by the holding of frequent meetings of diplomatic and consular officers. The practice adopted by the United States of appointing persons as foreign service officers, and not as diplomats or consuls, but with the possibility of shift of the personnel from one type of work to the other was intended to promote cooperation. The information collected by consuls, after being digested and analyzed by the home ministry of foreign affairs, is available to the diplomat through the channel of his home ministry of foreign affairs.

6. THE MINISTRY OF FOREIGN AFFAIRS

One is now in a position to understand the problems of administration of the ministry of foreign affairs. The title of this department is customarily the Ministry of Foreign Affairs, but the terminology varies. The department is called the Foreign Office in the case of Great Britain and the Department of State in the case of the United States. The internal organization, or machinery, of the department reflects the various functions which it is called upon to perform. For purposes of analysis these functions may be classified as: (*a*) recruitment, training, supervising, and promoting the personnel employed in the conduct of foreign relations; (*b*) the reception, recording, classification, and analysis of information received from diplomats and consuls abroad; (*c*) the preparation and transmission of instructions to diplomats and consuls and of information requested from them; (*d*) the specialized investigation, analysis, and decision of questions of law and of economic policy; (*e*) care of the archives and analysis of history; (*f*) the issuance of publications; and (*g*) the reception of diplomats and conduct of negotiations with them.

PROBLEMS OF PERSONNEL. As in the case of all governmental work it is necessary to have a personnel properly trained and qualified in order to have an efficient and successful administration of foreign affairs. The high quality

of men required for success in conduct of foreign relations, and the unusual abilities necessary, make this a matter of pressing importance to all states. Both diplomatic and consular services have for a long time been career services in most of the leading countries of the world. Likewise there is everywhere the established tradition of retaining over long periods of time the same persons in the ministry of foreign affairs, except for the highest posts charged with determination of policy. In the early period of development of diplomacy the conduct of foreign affairs was under the control of monarchs and it is easily understood that the monarchs should choose persons from the aristocracy to represent them abroad. The prestige of the office and the romance popularly associated with it have made the diplomatic office a coveted one. In most countries the long preparation and expense involved and the high qualities required have limited the recruiting of diplomats to a small proportion of the population of a country. As a result there has been criticism leveled against the institution of diplomacy as bureaucratic, undemocratic, and not representative of either the will or the interests of the people of the state as a whole. It has also been alleged that the secrecy and intrigue of diplomacy have permitted the adoption of low standards of political ethics making for misunderstandings and conflicts between states.

DEVELOPMENT OF A CAREER SERVICE IN THE UNITED STATES. During most of the nineteenth century the higher ranking foreign service officers of the United States were chosen under the "spoils system," that is, under a system according to which the political party which was victorious in an election repaid its supporters by appointments to political office. This is a system which gave only secondary, if any, consideration to the requirements of a qualified personnel and sacrificed the advantages accruing from experience in a given career. Toward the close of the century and during the first decades of the twentieth century this spoils system has been reduced to narrow limits in the foreign service of the United States. Only ambassadors and ministers may now be appointed without examination by the Department of State, and the appointments to some of

those posts are now held by career men. The Rogers Act of 1924 and the Moses-Linthicum Act of 1931 contain provisions which are intended to promote the following objects: the recruitment of a personnel upon the basis of merit as determined by written, oral, and physical examination; the proper training of this personnel; the maintenance of records permitting promotion to higher rank on the basis of merit; the payment of more adequate salaries; the interchangeability between diplomatic and consular work; the interchangeability between work in the foreign service and work at Washington in the Department of State; and the provision of suitable quarters at public expense for American embassies and legations in foreign capitals. Various officers and boards exist in the Department of State for carrying out these objects.

Analysis of Information from Abroad. The information received in daily reports by post, cable, or telephone from diplomats abroad and the regular and special reports of consuls concerning a great variety of subject matter, must be handled in the department of foreign affairs so that it may be of some value. One device employed by most large states is to create several geographical divisions within the department, each division dealing regularly with the affairs of a particular area of the world's surface. This permits a specialization within the department in the affairs of a particular group of countries. Here the reports are recorded, read, digested, and, if the subject matter is of sufficient importance, sent to the higher officers of the department and to the minister of foreign affairs for their information. These divisions are in command of the whole field of relations of the geographical area. Specialized matters, such as legal questions, may be referred to the law officer, called in the United States the legal adviser. If the subject matter relates to negotiation of a treaty it will at some stage be submitted to the treaty division.

It is primarily upon the basis of this information that the policy-determining officers depend for guiding their policy, although they may gain additional information directly from the foreign diplomats accredited to their own country, in the form of notes or of oral conversations.

Much of the information supplied by consuls is referred to other departments of the government, especially the department of commerce.

INSTRUCTIONS TO DIPLOMATS ABROAD. Many of the communications from foreign service officers require no response. In other cases the officer requests information or instructions as to how he should proceed and the foreign office answers the request. Frequent instructions are necessary during the negotiation of a treaty carried on at the foreign capital, besides the original full powers and instructions. Highly important facts concerning policy are ordinarily sent in code with the purpose of preserving secrecy.

SPECIALIZED SERVICES OF THE DEPARTMENT. Several specialized services are available to assist the higher officers in reaching decisions and in administering the work of the department. The legal adviser, assisted by a specialized staff, deals with technical questions of international law, the interpretation of treaties, questions of nationality, the consideration of claims of nationals against foreign states, and other similar matters. The great increase during recent years in the number of cases submitted to arbitration or judicial settlement means added work for the legal staff in preparation of the case and its presentation before the tribunal. The economic adviser does not deal with the minutiae of economic matters but is expected to study and advise concerning world trends, their effects upon the interests of the state, and desirable policy. This is an office of recent origin in most states, though of course the function has always been performed to some extent. The historical adviser facilitates solution of problems by supplying facts from past experience. In a field where precedent is important and where continuity and consistency of policy are desirable, this officer may be of considerable assistance.

PUBLICATION OF INFORMATION. Much of the material which enters the archives of a foreign office is unavailable to the public for a generation or more and in some cases to other organs of the government. The publication policies of states vary, but there is a general tendency to refrain from

publishing many facts for fifteen years to a half century. Various reasons explain this. The ostensible reason, and often the true reason, is that earlier publication might embitter and complicate the relations between states and injure the national interest. Earlier publication might also affect the destinies, political and otherwise, of men still living. Tradition of an earlier period supports the policy. One state cannot well depart far from customary practice in this respect, because early publication of notes from a foreign state without consent of the latter is resented and protested and would usually merely place the publishing state in a position of disadvantage with reference to other states. Nevertheless, materials are published officially, which are often called "Yellow Books," "Green Books," and so on, because of the color of the binding of the publications. The Department of State publishes *The Foreign Relations of the United States*. An increasing amount of information becomes available quickly as a result of the necessity of satisfying the press and the public, which accounts for the press releases made available. Rarely is the whole story made available in press releases and the account is subject to careful censorship before it is distributed to the press. The censorship is tightened during time of war.

Conduct of Negotiations with Foreign Diplomats. The minister of foreign affairs conducts negotiations by exchanges of notes with foreign diplomats and also by oral conversations. He is assisted by the higher officers of the department in this work. It is obvious that these officers should possess in high degree those qualifications which have been catalogued already as desirable in a diplomat. The minister of foreign affairs formally receives a *chargé d'affaires* upon arrival at the capital and assists in the presentation of diplomats of higher rank to the head of the state. Because of the continuing emphasis given to questions of precedence and prestige, most foreign offices have a specialized officer or division to assist in the application of the rules when applicable, as in the case of formal receptions, dinners, and ceremonial occasions.

7. THE INFLUENCE OF THE MINISTER OF FOREIGN AFFAIRS

The minister of foreign affairs holds an office about which it is difficult to generalize. There is no doubt that in all states it is regarded as a position of high honor and great importance. Whether or not the minister dominates and controls foreign policy depends upon a variety of factors.

CONTROL BY CHIEF EXECUTIVE. The prime minister, in states with a cabinet form of government, frequently assumes the portfolio of foreign affairs, and in most cases maintains close contact with the minister if another member of the cabinet is chosen minister of foreign affairs. Nevertheless, there are cases in which a foreign minister is left almost entirely to his own devices, as illustrated in the case of Delcassé, French foreign minister, 1898–1905. At some times the Secretary of State of the United States has been able to dominate the control of foreign affairs, while in other cases the President, if of a dominating personality and interested in affairs of the kind, has taken direction of affairs into his own hand and has made the Secretary little more than a dissatisfied office boy. The signal instance is that of Woodrow Wilson in his treatment of Robert Lansing.

INFLUENCE OF THE PERMANENT BUREAUCRACY. Another factor of importance is that those officials who have been for a long time in charge of matters in the ministry may, consciously or unconsciously, oppose control by the minister and retain the actual control over foreign policy. Since it is utterly impossible for the minister to consider all matters, many things must be left to those under him. Much depends upon the character and force of the minister.

RELATIONS WITH THE LEGISLATURE. The minister may be circumvented by the legislative body, particularly in the sense that treaties negotiated may be defeated, and that not much can be accomplished through the inadequate machinery supplied by an inefficient, ill-equipped, and inferior foreign service.

8. SUMMARY

Given the facts that the foreign policies of a state are limited by numerous basic factors and that there are numerous controls working to influence the formulation and enforcement of policies, it remains true that the ministry of foreign affairs has considerable discretion in the determination of many questions of foreign policy. Furthermore, the day-to-day administration of foreign affairs depends upon the ability of the diplomatic and consular representatives abroad and upon the ability of the staff of the foreign office. A description of the historical origins, classification, and functions of diplomatic and consular officers has given some indication of the nature of the problems of foreign relations. A knowledge of the work of the diplomat and consul makes it relatively easy to comprehend the tasks confronting the foreign office in directing, coordinating, supervising, and controlling these officers abroad, and of dealing with the foreign diplomats resident in the home state. There are variations in the machinery of internal organization of the foreign offices of different governments but this machinery reflects the work falling upon the foreign office of receiving, digesting, and analyzing the information received from abroad; the sending of instructions; the importance of questions concerning personnel; the negotiations with resident foreign diplomats; and the interrelationships of the questions before the department which require geographical, legal, and economic specialization.

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PART FOUR

International Organization

CHAPTER VIII

International Organization: General Survey

States developed specialized machinery, in the form of foreign offices and diplomatic and consular services, at a time when their relations were far less frequent and intimate than they are today. With the increase in the number and complexity of international relations, the growth of interdependence, and the increased cost and destructiveness of war, specialized procedures and organs have been created to supplement the old methods of conducting international relations. These procedures and organs are called international organization or international government. It is desirable to survey them briefly at this point since they play an important part in the conduct of foreign affairs under modern conditions and their development is itself a significant indication of international interdependence.

1. PROCESSES OF GOVERNMENT

The political scientist who studies the processes of government within the modern state distinguishes several aspects of government which are distinctive. Some believe that the process falls into two main categories: first, politics, second, administration. Politics comprehends all that is concerned with the struggle for control of machinery of government and with the contentions over the choice of policies which shall be enacted into law. Administration is the execution or carrying out of the policies when formu-

lated and written into law. Other political scientists follow a threefold division into politics, administration, and adjudication. Adjudication refers to the action of the courts in interpreting law and in applying it in cases of controversy to particular cases. In the case of most modern states special organs of government are provided for exercising each of these distinctive functions. In both the national and state governments of the United States the legislatures make the laws, the president or governor with other administrative officials executes or administers the laws, and the national or state judiciary interprets and applies the laws. Is there any comparable machinery for carrying on the processes of international government?

INTERNATIONAL LEGISLATION. It has been seen that the sources of international law are custom and treaty. Custom, of course, develops without the operation of any special organ for its formulation. Treaties which recognize or lay down rules of international law of general application may be negotiated through the ordinary channels of foreign offices and diplomats. However, during the past half century and increasingly during the past twenty years, states have employed the international conference as an instrument for facilitating negotiation of such treaties. Some of the conferences have sought universality of participation by all members of the family of nations, while others have been regional or have included only states primarily concerned with the subject under discussion. It has been explained already that the processes of legislation within the state and through negotiation of treaties by conference in the family of nations are quite different, but in each case the result is the adoption of a policy in the form of law.

INTERNATIONAL ADMINISTRATION. For the most part the family of nations has left to each member the function of carrying out international law and treaties. As the law is one based upon consent of the members, it is expected that they will fulfill obligations in good faith. In case the right of a state is violated, international law gives to the injured state the right to exact compensation. Various means are available to the state, including protest, negotiation,

reprisals, use of force, and war. A few states or a large group of states may join together for combined action to protect their rights. In the past and today alliances of states are aimed partly to protect their fundamental legal rights, though of course they may be for a quite different purpose, the violation of the rights of other states with impunity. It is only during the past twenty years, as a result of the Covenant of the League of Nations, that there has been official recognition by many states of the desirability of collective action by the whole community of states to protect the rights of any member violated by a law-breaking state. The difficulties in the way of the realization of this principle and ideal of collective action for defense of legal rights will be discussed later. It is in this respect that there is the most striking contrast between the community living within states and the community of states forming the family of nations. The community within the state provides machinery and force to compel submission of violators of law, deprives the violator of means of opposition, and may deprive him of liberty or life for the well-being of the community. The community of states still permits and requires a state to depend upon its own devices in order to assure enjoyment of its legal rights.

THE BUREAU OF THE PUBLIC INTERNATIONAL UNION. There are many fields of relations covered by international agreement in which the parties are unlikely to oppose fulfillment of the treaty. They may employ the machinery of their own government to carry their obligations into effect or they may create specialized international machinery for the purpose. The creation of such machinery dates from the last quarter of the nineteenth century, during which period some twenty public international unions were created by multipartite treaties. A public international union is an association of states which join together for the promotion of specific common objects, lay down the general principles of the association, and create a bureau and perhaps other bodies to see to the execution of the principles. The bureau is an international organ, created in accordance with provisions of a treaty, and its staff is composed of a personnel which performs duties for the association of states

forming the union rather than for a particular state. The duties and the scope of powers of the bureau are defined by treaty. In the case of most unions the bureau performs ministerial duties; that is, duties outlined in detail by treaty and leaving little discretion in administration. The bureaus of most unions perform routine tasks such as the collection, analysis, and distribution of information, the preparation of the work of the periodic conferences which assemble to modify the treaty and to supervise the work of the bureau, and the giving of advice. Public international unions have been created to deal with various aspects of international communication (postal, telegraph, radio), transportation (waterways, railways) and many other fields of activity.

Growth in Complexity and Coordination of Activity of Administration. The Secretariat of the League of Nations and the International Labor Office perform the administrative work in their respective organizations. They cover a much more heterogeneous field of activity than the public international unions, such as economic and financial questions, communication and transit, limitation of armament, traffic in dangerous drugs and in women and children, minorities questions, mandates, and intellectual cooperation. The Secretariat thus may act to coordinate international activity in these different fields and its organization is in some ways comparable to the organization of administration under departments of the national governments; whereas the bureau of the unions tends to act in isolation from other bureaus and has a highly specialized subject for its concern.

Adjudication. Disputes between persons within the state relative to legal rights are subject to the compulsory jurisdiction of courts supplied by the state. States, when in dispute with other states, are under no general obligation to submit the question to a tribunal. However, there has been a marked tendency during the past seventy years for states to consent to settlement of international disputes by pacific means. Most disputes are settled by diplomatic negotiation or by specialized procedures known as the tender of good offices and mediation or conciliation.

ARBITRATION. If a dispute arises in which the parties disagree upon a question of legal obligation, states may resort to arbitration or to judicial settlement. In the case of arbitration a tribunal is established by the disputing parties, who choose the members of the tribunal to hear the arguments of the parties and render an award which is binding upon them. The rules to be applied by the tribunal are laid down by the parties to the dispute in the treaty or special agreement which provides for arbitration. The parties may provide that the award shall be made in accordance with the rules of international law or they may agree upon special principles or rules for application by the tribunal. States have employed arbitration extensively since 1871, the date of the Alabama Claims arbitration between Great Britain and the United States. An impetus was given to the use of arbitration by the two Hague Conferences of 1899 and 1907, which codified the customary law relative to pacific settlement of disputes and provided for the Permanent Court of Arbitration. This Court is not, properly speaking, either a court or permanent. It is a list or panel of names of persons who have been nominated by states as suitable arbitrators. A state is not, however, limited to this list when it chooses an arbitrator to give an award concerning a particular dispute.

JUDICIAL SETTLEMENT. The Permanent Court of International Justice, established in 1922, is to be sharply distinguished from the Permanent Court of Arbitration. It was created by a treaty which was agreed upon at a conference held under the auspices of the League of Nations in accordance with the provisions of Article 14 of the Covenant. It is a permanent body of judges, at present fifteen in number, who are elected by the Assembly and the Council. The Court may give advisory opinions, at the request of the Assembly or Council, and it may issue orders and render judgments in disputes which states have submitted to it. States have conferred jurisdiction upon the Court in various instruments. As in the case of arbitration, a special agreement may be made after a dispute arises, submitting the dispute to the Court. In some bilateral treaties a clause has been inserted granting to the Court jurisdiction to

decide questions which may arise in the future concerning interpretation or application of that treaty. In still other cases, states have signed and ratified the so-called "optional clause" by which they agree in advance to submit to the jurisdiction of the Court certain types of disputes. Some forty states have agreed to the compulsory jurisdiction of the Court for certain types of questions. The Council is given certain powers to deal with disputes between states. When a dispute is submitted to the Council for inquiry and conciliation, the Council sometimes requests a legal opinion on specific questions in dispute from a specially appointed committee of jurists, and at other times it requests an advisory opinion of the Permanent Court of International Justice on legal questions before dealing with the whole of the dispute. The Assembly of the League also has the right to request advisory opinions of this Court.

INTEGRATION OF INTERNATIONAL GOVERNMENT. The various organs of national government have been developed gradually over a long period of history. They cooperate with one another and facilitate the whole process of government. Especially in the case of a unitary government do the organs of government appear to be closely articulated in their action; to be efficient and effective in their ability to make and modify laws, enforce them through administrative officers, boards and courts, and to provide the various services undertaken by governments on behalf of group and general interests. Except for times of revolutionary upheaval, the competition between individuals, groups, and classes must be carried on by peaceful means and with respect for existing legal rights. Political parties and legislative bodies have the power to modify existing laws and to compromise conflicting interests. In the case of international government there is a much more rudimentary form of government. Organs have been created for *ad hoc* purposes to meet particular pressing needs but with strictly limited spheres of action. Thus for a long time arbitral tribunals have been constituted for pairs of states to deal with a particular dispute or group of disputes. The international conference would be called only on occasion, without regularity, and only to solve a limited number of

problems. For the most part states retained for themselves the execution of laws, until they found it preferable to leave certain matters to the bureaus of public international unions; and here the functions conferred were usually limited.

2. THE INTERNATIONAL CONFERENCE

The international conference developed as soon as it was found desirable for several states to negotiate on the same question. Of course it would be possible for negotiations to take place bilaterally between pairs of states through diplomatic channels, each of these in turn negotiating in pairs with other states. Such a process, however, takes a long time, negotiation is more difficult, and it becomes impracticable as a procedure when large numbers of states are involved in seeking agreement on a question. Consequently there has been an increasing use of conferences attended by the representatives of several states.

CREDENTIALS. As in the case of permanent diplomatic representatives, so in the case of diplomats attending conferences, it is necessary that their authority to represent their government and that the scope of their powers shall be indicated by formal documents such as the letter of credence, full powers, and instructions. These documents are usually examined early in the conference by a credentials committee chosen for the purpose, which then reports to the conference.

ORGANIZATION: OFFICERS, COMMITTEES, SECRETARIAT. The organization of a conference may be simple or relatively complex. It includes a presiding officer, called the president or chairman, who is elected by the conference. By tradition, the chief delegate of the government which is host to the conference is chosen as president. Besides the president, there is usually a secretariat or secretarial service supplied by the host state, to keep the minutes, file and distribute documents, prepare treaty documents, etc. A large conference usually elects several committees. In these committees, each state has a representative and the preliminary negotiations take place in committees, the committee later reporting to the full conference through its chairman

or *rapporteur*. The number of committees employed by a particular conference will depend upon the variety and complexity of the subjects on the agenda of the conference. Besides the committees dealing with the subject matter of the negotiations there is usually a credentials committee and often a steering committee. The latter, composed usually of the presiding officer of the conference and the committee chairmen, serves as an agency to guide the general program of the conference, to arrange priority of matters coming before the conference, and to agree upon the time for meeting in plenary sessions of the conference. The particular organization of a conference may vary somewhat but above are given the typical features.

SESSIONS. The conference will usually have two or more plenary sessions. The opening plenary session ordinarily includes an address of welcome by the chief delegate of the inviting state, election of officers of the conference and of committees, and decision upon rules of procedure. In some cases more than one plenary session is required for the period of organization. In the following days the work of the conference proceeds in the committees, and of course negotiations between delegates may take place informally over teacups or in hotel rooms and restaurants. At the closing plenary session the delegates will usually sign the various treaties, protocols, agreements, and other instruments resulting from the conference. In most cases there will be other plenary sessions, for the purpose of deciding on procedure or of hearing reports of committees when these become available.

PUBLICITY. During recent years it has become customary to hold public sessions, though secret sessions may be employed for particular matters. In the latter case a communiqué is usually issued to the press afterwards, stating in a condensed form and often in an ambiguous manner, what has transpired. The sessions of committees may or may not be public; there is a tendency to keep them private, because it is in the committee meetings that the real debates occur and differences of opinion emerge which lead to the necessity of negotiation and compromise in case agreement is to be attained.

FUNCTIONS OF A CONFERENCE: 1. DISPUTES. The conference may be employed, like ordinary diplomatic negotiations, to perform one or more functions: (1) to conciliate disputes, (2) to make law, and (3) to create temporary or permanent international organs. A conference may attempt to settle a dispute between two or more states by a process of conciliation or mediation. Here the multiparty conference may be more successful than bilateral diplomatic negotiations due to the presence of third states, not directly involved in the dispute, who may be able to exert a conciliatory influence because they are impartial or because it is easier for a disputing party to make concessions and compromises at the request of third parties than at the demand of the other disputing party when questions of honor and prestige have become involved in the dispute.

2. ALTER LEGAL RIGHTS AND DUTIES. A conference may be employed to create or to alter the legal rights and duties of states. It has been seen that many new problems have arisen in recent years which cannot be handled satisfactorily by states acting individually, because the problem of control extends beyond the legal jurisdiction of the state (*e.g.*, growth or manufacture of opium) or the problem cannot be handled unless other states adopt a similar policy (*e.g.*, traffic rules on the high seas), at least without a heavy sacrifice (*e.g.*, a forty-hour week for workers, increasing costs, and placing the product in a less favored position for market competition with products made under a sixty-hour week). Furthermore there are many matters which require immediate international regulation so that it is impossible or costly to await the slow growth of customary rules of international law. The fields of transit and communications illustrate this point. Such matters as navigation rights in the air, allocation of frequencies of radio air waves, and protection of submarine cables were necessarily regulated by international agreements produced at international conferences. It becomes necessary to abolish old rules, substitute new rules, and modify existing rules, in order to give satisfactory solutions to problems altered by different circumstances. The failure to make these

alterations is likely to result in alterations produced by illegal and forceful means.

3. Creation of International Organizations. Until recently no special emphasis was placed upon the distinction between constitutional law and ordinary law in the field of international relations. This is because few permanent international organizations were created until the last quarter of the nineteenth century and following. However, with the development of the public international unions, the creation of permanent courts of arbitration and justice, and the creation of the League of Nations and of the International Labor Organization, there came into existence organs with a truly international personnel and with functions to be performed on behalf of several states. As a result there is now recognized a distinction between, on the one hand, the fundamental or constitutional law, creating an institution, defining its organization, and indicating the powers of the organ, and, on the other hand, the detailed rules and regulations of less fundamental importance or of merely temporary application. In either case the law results from agreement of states, and this agreement is usually reached by means of a conference. Nevertheless, there has long been the idea that certain treaty provisions are of fundamental importance, especially those by which a new state is collectively recognized, or the special status of a state is defined, as in the case of neutralized states, or an international guarantee of a state or territory is made in the general interest of the family of nations.

4. Supervision of International Organization. In the case of permanent international organizations entrusted with the daily administration of duties in accordance with the provisions of a treaty, there arises the need for occasional supervision of this administration. In the case of international unions conferences are held periodically at intervals of a few years and there is provision for calling a special conference upon request of members of the union. In the case of the International Labor Organization the conference meets annually and reviews the work of the Governing Body and of the International Labor Office. In the case of the League of Nations, the Council examines

the report of the Secretary-General which describes the work of the Secretariat. This report is transmitted to the Assembly at its annual session, where it is reviewed by the committees of the Assembly and by the Assembly as a whole. In the case of the Pan-American Union, the Governing Body periodically reviews the work of the Bureau, and the conferences which assemble each three years or oftener likewise review it.

SUMMARY. Thus, the conference may be used to perform one or several of the following functions: conciliation of disputes, creation or alteration of law (legislation), and the creation and supervision of international organizations.

GROWTH OF THE USE OF CONFERENCE. For several centuries the general international conference was employed solely as a means of negotiating a treaty of peace at the close of a general war. The conferences of 1648, 1713, 1815, 1856, and 1919 are examples. Such conferences, meeting to settle a particular problem and closing forever with the final session, are called *ad hoc* conferences. In the recent period there has been a definite trend in the direction of using the periodic conference or "conference system." The periodic conference system contemplates that states will assemble in conferences at regular intervals in the future. The recognition of the desirability of periodic conferences was made by the creation of the Pan-American Union as early as 1889. The Hague Conference of 1899 was followed by that of 1907 and the anticipated third conference was prevented by the war of 1914–1918. Most public international unions contained in their fundamental laws a provision for periodic conferences whose function would be to amend the law and supervise the administration.

Ad hoc AND PERIODIC CONFERENCES. There are several respects in which the periodic conference is superior to the *ad hoc* conference. In the first place there is wider participation in the preparation of the agenda. In the case of the *ad hoc* conference the duty falls upon the government of the inviting state to prepare an agenda which is then sent to the invited states, which may request the elimination or the addition of some topics. In the case of the periodic conference the agenda may be suggested at a preceding con-

ference and new topics may be added during the interval between sessions, so that there is likely to be greater satisfaction with the agenda on the part of participating states. In the second place, at an *ad hoc* conference it may be impossible to reach agreement on a point during the session and the preparatory work and the work of the conference is permanently lost; whereas, if another conference is to follow, the point might be put on the agenda of the next conference and a solution reached which is based upon progress made at the previous conference. In the third place, the success of a conference in attaining agreement is closely related to the preparatory work performed prior to the conference. This work will, on the average, be better performed in the case of periodic conferences, since sufficient time is allowed and the topics of the agenda are formulated far in advance. Finally, the rules of procedure and the organization of the conference tend to become definitely established in the case of periodic conferences, which makes for more rapid and efficient functioning than is the case of the *ad hoc* conference which must determine all these matters as a preliminary to consideration of questions on the agenda.

Special Divisions in Foreign Offices for International Conferences. The participation by states in conferences has become so frequent that the function is reflected in the organization of the foreign offices. For example there is in the American Department of State a Division of International Conferences and Protocol.

3. THE PUBLIC INTERNATIONAL UNION

Duties accepted by states in a treaty may be carried out either through the national governmental machinery of the parties or through special international machinery created for the purpose by the parties. In an early period few tasks were entrusted to international organs, except temporarily as, for example, commissions empowered to mark the joint boundaries of two states, or tribunals authorized to give arbitral awards upon specific questions.

Definition of Union. During the nineteenth century, especially the last quarter, a large number of international

organs were created for the purpose of carrying out continuously and permanently specified functions laid down by treaties. These have come to be known as public international unions. A public international union is a number of states associated for certain purposes, which typically consists of the following organs: periodic conferences, a bureau or office, and sometimes an additional body such as a board of governors. The conference has already been described. Usually a meeting of experts prepares a draft treaty which becomes the basis of discussion at the conference of diplomats representing their governments. The first conference results in the creation of the union, lays down in general terms the purposes and guiding principles of the union, provides for the creation of the various organs of the union, and indicates their powers and their relations to each other. Usually the more fundamental matters are contained in the treaty or convention, whereas the detailed regulations are contained in one or more annexes to the treaty. It is usually made more difficult to alter the treaty than the annexes. The latter may sometimes be modified by less than unanimity.

Classification of Unions. Public international unions may be classified as to their objects as follows: (*a*) transit and communication, (*b*) establishment of standards, (*c*) protection of certain kinds of property, (*d*) health, and (*e*) general. The following are examples of the first class: Telegraphic Union (1865), Bureau at Berne; Universal Postal Union (1874), Bureau at Berne; International Union of Railway Freight Transportation (1890), Bureau at Berne. The following are examples of the second class: Metric Union (1875), International Office of Weights and Measures at St. Cloud; of the third class: International Union for the Protection of Industrial Property (1883), Bureau at Berne; of the fourth class: Health Union (1907), International Office at Paris; and of the fifth class: The Union of American States (1889–1890), and Commercial Bureau, Pan American Union (1906).

Bureau Functions. The functions of the bureau or office vary considerably depending upon the union in question. Almost all perform certain routine work, such as

serving as a central agency for exchanging information among the member governments; collecting, analyzing, digesting, and publishing information; preparing for the periodic conferences and acting in a secretarial capacity for the conference; and similar acts. Some bureaus have greater discretionary powers such as the power to make rules and regulations in application of general principles laid down in the convention or statute. Some bureaus have power to make interpretations of the convention or statute in case of disagreement between states of the union. In a very few cases (*e.g.*, Sugar Union) the bureau is empowered to issue orders binding upon the members.

BUDGET. Usually the members of the union contribute financially to the costs of the union, not in equal shares on the basis of equality as states, but on the basis of population, wealth, area, or some other criterion requiring a heavier contribution from those states which have a greater capacity to pay or which gain a larger benefit from the work of the union. Thus a large, populous, and wealthy state may contribute one hundred units, while another may contribute only a few units.

VOTING. There are frequent departures from the general principle of equality of states in voting. While the original treaty establishing a union requires the acceptance of each state desiring to join the union, the statute annexed to the convention may usually be amended by less than unanimity, in some cases by agreement of a simple majority or a two-thirds or three-fourths majority. Sometimes the power to vote is unequal, some states being given several votes.

SIGNIFICANCE OF UNIONS. Views differ regarding the significance of unions. On the one hand, some admit that the creation of unions reflects an official recognition of the need for international cooperation in specific fields of international relations, but assert that in final analysis too much weight should not be given to the trend because (1) the fields covered by unions are primarily nonpolitical and no clash of national interests had to be reconciled because it was obvious that all states had an interest in facilitating improvement in communication across national frontiers, in matters of health, in collection of statistical

information, establishment of general standards of measurement, and so on; (2) unions have not been created in those realms where conflicts of interest are to be expected, as in economic competition, questions of security, and in general political questions; and (3) states have been unwilling to confer upon the bureaus or offices anything but purely ministerial powers, so that no real prospect of international government is to be anticipated from experience with unions. On the other hand, it has been argued that the development of unions is of great importance because of the following considerations: (1) It proves conclusively that governments recognized the need and the desirability of cooperation by collective action through truly international organs. (2) It was not always a simple matter to form a union because various states had, or thought they had, conflicting interests and consequently the fact that they did reach agreement was the fact which removed the subject matter from politics to administration. (3) The reduction of the field of complete legal freedom of action by states entering a union reduced the sphere of potential controversies. (4) Unions might eventually be established in the remaining fields of international relations where competition and conflict is found.

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CHAPTER IX

The League of Nations: General Survey

The League of Nations was established in 1920. The League can be better understood when something is known of its historical origins. Likewise it can be appraised today only in the light of the alterations which have occurred during its evolution of the past twenty years. Political institutions may be analyzed in terms either of organization or of functions, preferably in terms of both. The first describes and explains the organs or machinery provided for carrying out the work or purposes of the second.

1. THE ORGANIZATION OF THE LEAGUE

The main lines of the organization of the League are simple. First, there is the Assembly, a body of representatives of the Members of the League, which meets annually in September and occasionally in special sessions, at Geneva. Second, there is the Council, a body of representatives of a smaller number of Members of the League, at present twelve. Of these representatives, two represent Great Powers which have permanent seats on the Council and ten represent nonpermanent Members elected by the Assembly. The Council meets three times a year with occasional special sessions. Third, there is the Secretariat, headed by a Secretary-General and other permanent officials, which had in 1938 a staff of over six hundred.

Finally there are a number of technical and auxiliary Organizations which assist the other organs.

2. THE FUNCTIONS OF THE LEAGUE

The functions of the League of Nations are (1) to promote cooperation in the preservation of peace; (2) to promote cooperation in the pursuit of common interests in the fields of science, communications and transit, economics, finance, health, elimination of immoral practices, and humanitarian activities; and (3) to fulfill some of the provisions of the peace treaties which terminated the war of 1914–1918.

3. ORIGINS OF THE LEAGUE

The League's immediate origins are to be found in the programs of private groups and of governments during the period of the war of 1914–1918. The ideas contained in these programs, however, may be traced back historically to an earlier period. Plans for an association of states having an organization to preserve peace were advocated from time to time during the seventeenth, eighteenth, and nineteenth centuries. Among these plans may be mentioned the *New Cyneas* of Emeric Crucé (1619), The *Grand Design* of Henry IV and Sully of France (seventeenth century), and the plans of Benjamin Franklin, William Penn, Immanuel Kant, and William Ladd. The European Great Powers during the nineteenth century frequently dealt with critical situations through the Concert of Europe, the name given to the practice of consultation among the Great Powers. The increasing use of arbitration after 1870, and the creation of the Permanent Court of Arbitration (1899) had made familiar the idea of settlement of disputes in accordance with respect for law. There had long been advocacy of a permanent international tribunal empowered to render judicial decisions. The creation of a large number of public international unions during the last quarter of the nineteenth century had disclosed the advantages of permanent machinery of international cooperation in the fields of health, communication and transit, and intellectual cooperation. The experience of the war period had forced

upon the Allied and Associated Powers an extensive cooperation in order to protect themselves and to win the war. Finally, the havoc wrought by the war had created a general conviction that something should be done to prevent a repetition of such a disaster.

WRITTEN PLANS FOR A LEAGUE. The immediate origins of the League Covenant are to be found in numerous private and official plans for a League drafted during the war period, particularly during 1918 and the first months of 1919. The official plans include those prepared by Great Britain, France, the United States, and a number of the Scandinavian states. Other plans suggested by private associations and by individuals had influence upon the final draft of the Covenant. This is notably true of the ideas of General Jan Christiaan Smuts of South Africa. It is undesirable to trace in great detail at this point all the features of all these plans.

SOURCES OF THE CHIEF PROVISIONS. The original plans of most states proposed the creation of a League of simple design but with great power to prevent aggression. The plans usually envisaged a diplomatic conference of states, in some plans limited to the Great Powers. The powers to be employed against a state guilty of aggression were suspension of economic and financial relations, blockade and armed force, and collective war against the aggressor. The French plan envisaged an international army with a commander-in-chief and general staff.

A LEAGUE OF GREAT POWERS VS. A LEAGUE REPRESENTING LARGE AND SMALL STATES. Next came the proposal of a League to be composed of two organs, one to represent all members, and a second smaller body to serve as an executive council representing the Great Powers. After acceptance of the general idea of a large body and a smaller one came acceptance of the idea that the smaller body should include not exclusively representatives of the Great Powers, but also a minority of smaller states. The Great Powers were to have permanent representation and other states a temporary representation under some system of fixed terms and rotation. The final plan followed these lines except that the Council, the smaller body, might be

altered subsequently so as to have a minority of great powers and a majority of smaller states. At the same time, there was a trend away from the idea of the dominant position of the Great Powers and in the direction of the idea of greater representation of the small states. Nevertheless, it was assumed that the Assembly, the larger body, would meet infrequently and that it might even be limited to a consideration of subjects proposed by the Council. The final draft of the Covenant did not specify the frequency of meetings, however, and in practice the Assembly meets in regular session annually. No clear-cut allocation of powers and functions was made between Council and Assembly, and both bodies are equally competent to deal with a large number of questions which come before the League.

British Origins of Secretariat and Technical Organizations. The provisions for a Secretariat, headed by a Secretary-General, who should perform secretarial services for meetings of the League organs and carry out administration, are to be traced to British proposals. Most of the early plans ignored the possibility of a Secretariat. The suggestions of General Smuts and the proposals of the British government were the dominant influences in the designing of the Secretariat in both its general and detailed features. The idea that technical bodies should be appointed to assist the Council in the preparation of material and by advice on such subjects as economic and financial questions, health, mandates, and minorities was also British.

Creation of a Court Foreseen but Postponed. Some believed that a permanent international judicial tribunal should be made an integral organ of the League of Nations. This idea of an international court had been promoted at the turn of the century but failed because of the difficulty of agreement upon the composition of the court. The British proposals and the advice of Colonel House included a court. Wilson eliminated the proposal in some of his early drafts and appeared to put little faith in the efficacy of the agency, preferring emphasis upon other means of settling international disputes. The Covenant did not provide a plan for a court but left the task to be accomplished by the League at a later date (Article 14).

FUNCTIONS INCREASED FROM A LEAGUE TO ENFORCE PEACE TO ONE THAT ELIMINATES CAUSES OF WAR AND PROMOTES COOPERATION. The conception of the functions and the sphere of action of the League was enlarged during consideration of the various plans. The early view was one of a League to preserve peace by force. Gradually this view was enlarged so as to include an attack upon the causes believed to underlie war, such as heavy armaments and private manufacture and traffic in arms, and an endeavor to bind Members to submit disputes to arbitration or conciliation by the League. Furthermore, the new institution came to be regarded not solely as an instrument to preserve peace but as an instrument to facilitate international cooperation covering a wide scope of subject matter, such as matters relating to freedom of trade, transit, communication, health, suppression of slavery, white-slave traffic, treatment of mandates, minorities, labor, etc.

PART PLAYED BY GREAT BRITAIN AND UNITED STATES; SMALL STATES' INFLUENCE. The record of the negotiations leading to the adoption of the preliminary draft of the Covenant shows the dominant part played by the United States and Great Britain. France showed no particular enthusiasm for the Anglo-American joint proposal. Italy was interested more in attaining a strategic frontier at the peace conference than in the League plan. Japan participated chiefly as an observer. In the League of Nations Commission of the Peace Conference the representatives of the small states had considerable influence in molding certain provisions of the Covenant. A preliminary draft was published. As a result of criticism of this draft a number of provisions were modified or added. Many of these were made in order to placate critics in the United States, with the object of gaining the consent of the Senate of the United States to ratification of the Treaty of Versailles of which the League Covenant was Part I.

COMPROMISES. Several important compromises were necessary. The desire of President Wilson to gain recognition of freedom of the seas met the opposition of Great Britain and was sidetracked. The desire of the British Dominions to annex the former German colonies was

opposed by Wilson, who was successful in gaining agreement that the colonies should be mandates under the League of Nations. The small states gained greater power for the rank and file of Members of the League by insisting upon greater powers for the Assembly and by gaining adoption of provisions which would permit an enlargement of the Council by the addition of small states.

INFLUENCE OF SURROUNDING CONDITIONS. In evaluating the Covenant, it must be remembered that it was drafted at the Peace Conference of Versailles, following a long, bloody, and destructive war. Numerous difficult questions pressed for settlement. The leading statesmen attending the conference were not merely drafting a covenant but settling a war and dealing with a distracted Europe in an atmosphere of war psychology. Attempts were made to sidetrack the question of a League of Nations until a later date and to proceed directly to other pressing problems regarded as more urgent. These attempts were thwarted. Wilson believed, and probably correctly, that the chance of adoption of a plan for a League would be reduced unless the Covenant was tied into the peace treaty so that the states must take the treaty as a whole. He hoped that the League might later mitigate the severity of the Treaty of Versailles toward Germany. The defeated states were not represented on the Commission which drafted the Covenant. Russia, at the time militantly communist, was not represented at the conference.

4. THE ASSEMBLY

The Assembly is the most representative organ of the League in the sense that all Members are here represented. Each Member may have not more than three representatives, but each Member has only one vote. The Assembly meets annually in September, but special sessions may be held if necessary. The most important work of the Assembly is performed in committees. There are seven great standing committees to which the Assembly refers subjects on the agenda: (1) Legal and Constitutional Questions; (2) Economic, Financial, and Transit Questions; (3) Limitation

and Reduction of Armaments; (4) Budgetary and Administrative Questions; (5) Social Questions; (6) Political Questions; and (7) Health, Opium, and Intellectual Cooperation Questions. Each delegation may nominate a delegate and technical advisers to each of these committees. In addition there are three other important committees. The Credentials Committee consists of nine members, proposed by the president of the Assembly and elected by the Assembly. The Agenda Committee is chosen similarly and makes recommendations as to procedure to be followed with respect to new subjects placed on the agenda after the opening of the session. Finally, the important General Committee or Bureau serves to coordinate and guide the work of the Assembly. It consists of the president and of the seven vice-presidents, who are annually elected by the Assembly, and of the chairman of the seven main standing assembly committees, the chairman of the Agenda Committee and the chairman of the Credentials Committee.

5. THE COUNCIL

COMPOSITION. The Council is also a representative body but it is smaller than the Assembly. Its size has varied during the life of the League and on January 1, 1940, it consisted of fourteen Members, after expulsion of the Soviet Union in December, 1939. There are three types of seats on the Council: permanent, nonpermanent, and temporary. The permanent seats are held by representatives of the Great Powers who are Members of the League. Originally these were France, Italy, Japan, and the United Kingdom. Germany was added in 1926 and the Soviet Union in 1934. However, Japan, Germany, Italy, and the Soviet Union have ceased to be Members of the League and consequently do not have seats on the Council. The nonpermanent seats are filled by elections in the Assembly. Election is made for a term of three years, with the possibility of reelection. The number of nonpermanent seats has been increased by the Assembly from the original four in 1920 to six in 1922, to nine in 1926, to ten in 1933, and to eleven in 1936. The last two seats were called provisional

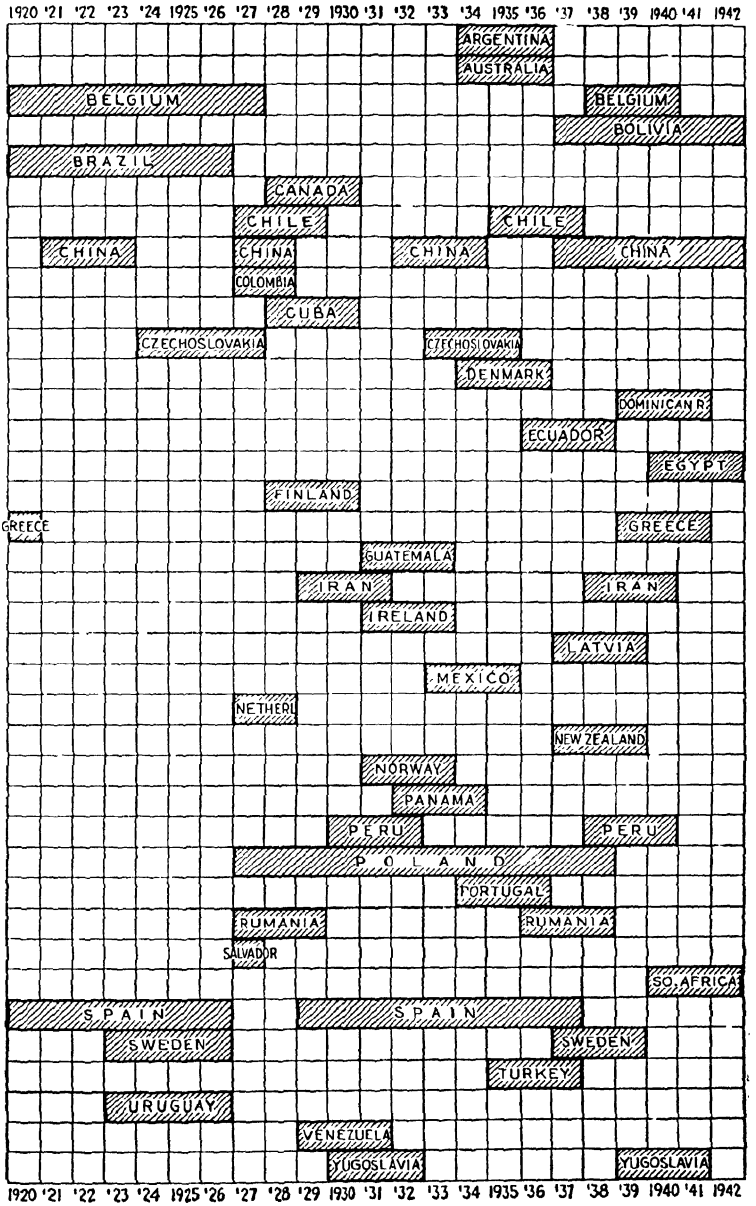


CHART I.—Showing the states which have been nonpermanent members of the Council of the League of Nations, 1920–1940. (*League of Nations, Information Section, Essential Facts about the League of Nations*, 1939, *p.* 89.)

seats. If a Member is not represented on the Council it may appoint a temporary representative to sit on the Council "during the consideration of matters specially affecting the interests of that Member of the League."

PRINCIPLES OF REPRESENTATION BY CUSTOM. It has become customary in electing the nonpermanent members of the Council to choose them so as to represent certain blocs or groups of Members, such as the Scandinavian group, the Balkan group, the Latin-American group, the British Dominions, and Asia. The nonpermanent Members often regard themselves as representing the small states or weak states or the Assembly point of view, as well as representing their own views and the views of their region or group.

ORGANIZATION. The Council has a simple organization. The presiding officer, the president, is elected by the Council. The presidency passes at each regular session to a different Council member, following the order of names of Council members in the French alphabet. There are three regular sessions annually. The Council may appoint committees, but the bulk of the work is cared for by chairmen or *rapporteurs*, each entrusted with a given subject. At the last ordinary session in each year the Council prepares a list of reporters for the ensuing year. For 1937–1938 reporters were selected for the following standing questions: (1) Budgetary and Administrative, (2) Danzig, (3) Disarmament, (4) Economic, (5) Financial, (6) Health, (7) Intellectual Cooperation, (8) Legal, (9) Mandates, (10) Opium, (11) Refugees, (12) Slavery, (13) Social, (14) Transit, and for the following special questions: (1) Constitution, (2) Procedure and Practice of League Committees, and (3) the Question of Alexandretta. Some Council reporters do independent work in preparing reports for the Council upon the subject assigned them, but frequently they rely upon memoranda prepared by the Secretariat. This is to be expected because many representatives on the Council hold high offices in their home government, as prime minister or minister of foreign affairs, and do not have time for special study of the international question entrusted to them.

6. THE SECRETARIAT

The Secretariat has an influence upon League policy because of its influence upon the Assembly and the Council, but it is primarily an administrative organ. The staff of the Secretariat consists of some 640 individuals, who are citizens of some fifty different countries. The staff is chosen to be an international civil service and not with the purpose of representing Member states. The higher officers of the Secretariat are: a Secretary-General (elected by the Council and the Assembly for term of fifteen years), a Deputy Secretary-General, and three Under-Secretaries-General. The Secretary-General appoints and removes all officials of the Secretariat subject to approval of the Council. The Secretariat is composed of the above officers, of ten sections, of a library, of various administrative services, and of auxiliary offices in different countries.

7. AUXILIARY ORGANIZATIONS

Finally, there is a whole series of organs known collectively as auxiliary organizations. Some are called organizations, some committees, and some boards. The principal ones are as follows: (1) Economic and Financial Organization, (2) Communications and Transit Organization, (3) Health Organization, (4) Intellectual Cooperation Organization, (5) Permanent Advisory Commission for Military, Naval, and Air Questions, (6) Permanent Mandates Commission, (7) Commission of Enquiry for European Union, (8) Advisory Committee on Social Questions, (9a) Advisory Committee on Traffic in Opium and Other Dangerous Drugs, (9b) Permanent Central Opium Board, (9c) Supervisory Body (Opium), (10) Supervisory Commission, (11) Committee on the Allocation of Expenses, and (12) Advisory Committee of Experts on Slavery.

APPOINTMENT. The Council adopted on January 24, 1936, the following rules relative to these bodies. "Committees appointed by the Council shall report to that body; they must indicate their program of work to the Council." The Council appoints members of committees as far as possible at its January session.

The term of office of all members of Committees is fixed at three years, but shall be renewable; in case of prolonged absence (two years) a member of a Committee shall cease to form part of the Committee . . . The manner by which Committees may ask the Secretary-General, or through him, for any information necessary for the performance of their task is indicated by the general regulations. . . . the expenses of members of Committees appointed in a personal capacity shall be paid out of the budget of the League of Nations under the conditions laid down by the Assembly; and it shall be for the Governments themselves to pay the expenses of their representatives on Governmental Committees.

FUNCTION TO GIVE EXPERT ADVICE AND ASSISTANCE. The place of the organizations in the League system is indicated briefly as follows:

The object of the auxiliary organizations is to assist the Council or Assembly with their advice, and at the same time to facilitate the performance by the different States of the duties devolving upon them under the Covenant or under resolutions of the Assembly or Council. Generally speaking, they may be regarded as experts of the League of Nations who prepare the work of the principal organs. They have been created under resolutions of the Council or Assembly. In some cases, provision is even made for their establishment in the Covenant or in a special treaty. The majority are composed of persons appointed directly by the organs of the League. In certain cases the nominations are made by the States themselves.

It should be noted that some of these organizations have a highly complex organization, having conferences, committees, and subcommittees for facilitating the performance of their duties.

8. GENERAL SUMMARY OF ORGANIZATION

This analysis of the League of Nations has centered upon the machinery through which it operates, without particular reference to the functions performed by the League as a whole and without reference to the functions performed by the various organs. The analysis indicates that the organization is far more complex than any permanent international organizations in existence prior to the League and it suggests that the various organs of the League all appear to deal with the same subject matter, such as health, economics and finance, etc. This raises the question why so many different organs have been created. The answer might be, on the one hand, that the organs have been

multiplied thoughtlessly or carelessly or, on the other hand, that each of the organs performs a special type of function. The second is the true explanation.

9. FUNCTIONS OF THE LEAGUE: GENERAL

The two main objects of the League are to preserve peace between states and to promote cooperation between states in order to attain a higher degree of human welfare. All of the activities of the League may be listed under one or both of these objects. The Covenant of the League contains provisions indicating the means to be employed for attaining these objects.

PRESERVATION OF PEACE. The means of preserving peace are indicated. (1) National armaments must be reduced and limited; the evil effects attendant upon private manufacture of munitions and implements of war must be prevented; and information should be exchanged as to the scale of armaments, military, naval, and air programs, and as to the condition of industries adaptable to warlike purposes (Article 8). (2) "Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" (Article 10). (3) "The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council" (Article 12, par. 1). This provision marks an advance over earlier treaties providing for pacific settlement of disputes in that the parties agree to try one of the three methods indicated: arbitration, judicial settlement, or inquiry by the Council; and in that they agree to place a limit upon their freedom of action in resorting to war. Other articles complete this general principle. Among these are Articles 11, 13, 14, 15, and 16. Article 16 provides for united action by Members against a state violating the Covenant, in the form of financial and economic measures and of military and naval action. Article 17 applies the same principle to

disputes in which a non-League state is a violator of the principles of the Covenant. Article 14 entrusts to the Council the formulation of a plan for the establishment of the Permanent Court of International Justice. (4) Article 18 requires registration of all treaties made by Members in order that they may be binding. The chief purpose of the provision was to eliminate secret alliances on the theory that they promote suspicion and ill-feeling dangerous to peace. (5) Article 19 provides for the reconsideration by the Assembly of situations dangerous to the peace of the world and of treaties which have become inapplicable. This article shows a recognition of the problem of legislation, of changes in legal rights and duties, as an aid to peace. (6) Article 22, relating to mandates, is an attempt to deal with the problem of backward or weak peoples as an international problem; partly so as to prevent exploitation and mistreatment of the natives, and partly so as to eliminate these areas as regions for conflict between imperial states seeking exclusive interests for themselves and their nationals. (7) Finally, the League has assumed duties, though not imposed by the Covenant, to protect minorities. The purpose is to reduce animosities between states created by mistreatment of such minorities and in this way prevent disputes and wars growing out of nationalism.

COOPERATION FOR PROSPERITY. The provisions for general international cooperation in order to promote prosperity are contained particularly in Articles 23 to 25 of the Covenant. By Article 23 the Members agree that they

> (*a*) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations; (*b*) undertake to secure just treatment of the native inhabitants of territories under their control; (*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs; (*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest; (*e*) will make provision to secure and maintain freedom of

communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind; (*f*) will endeavor to take steps in matters of international concern for the prevention and control of disease.

Article 24 provides for the coordination of existing international bureaus through the League.

10. MEMBERSHIP IN THE LEAGUE OF NATIONS

The League of Nations is an association of states. Sixty-three states have been Members of the League at one time or another, but sixty states is the maximum number of Members of the League at any one time. See Chart II. Having forty-eight Members by the close of its first year in 1920, the League averaged about fifty-five Members during the first decade, despite the loss of two Members. Membership reached its high point of sixty in 1934, after which a steady and ever more precipitate decline took place, so that by the close of 1941 the membership will be forty-three, unless some Members reconsider their intention to withdraw during the two-year period of notice of intention to withdraw and unless new Members join. In fact, the effective membership was already forty-three on January 1, 1940, because states normally do not participate in the Assembly or Council after giving notice of intention to withdraw. What are the reasons for loss of membership? A Member, when announcing intention to withdraw, sometimes gives the reasons, which may or may not be the true reasons, and sometimes does not offer reasons. (1) Some states have withdrawn on grounds of prestige, suffering from wounded pride. An example is Brazil, which terminated membership after failing to gain a permanent seat on the Council. (2) A number of Central and South American states have withdrawn on the ground that they cannot bear the expense of membership. (3) States charged by the Assembly with violation of the Covenant have withdrawn. This group includes Japan, Italy, and Paraguay. (4) Some South American states have withdrawn in protest at what they regarded as failure of the Members of the League to fulfill their obligations toward a

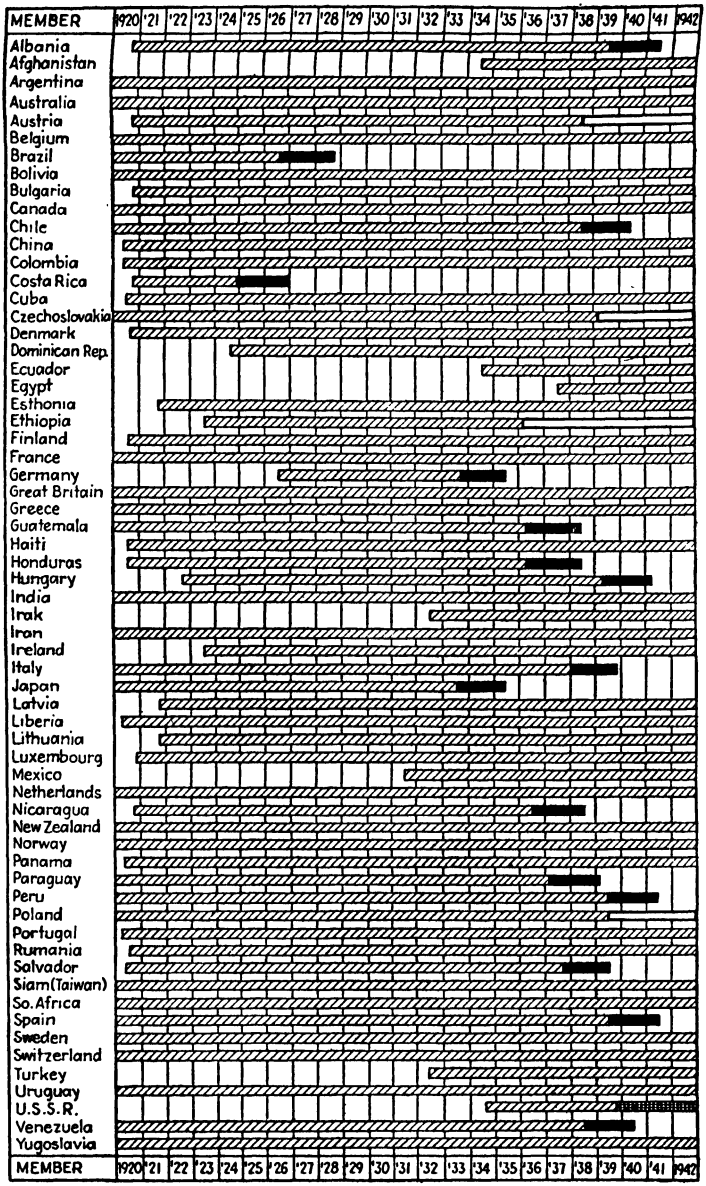


CHART II.—Membership of the League of Nations, 1920–1940.

Member victim of aggression by another Member. Chile is an example. Argentina and Uruguay threatened in December, 1939, to withdraw unless the Soviet Union should be expelled from the League in consequence of the invasion of Finland. (5) A number of Members have withdrawn as a result of the diplomacy of the Rome-Berlin axis or of the Rome-Berlin-Tokyo triangle, desirous of destroying the League. Albania informed the Secretary-General of termination of membership after establishment of the Italian protectorate over Albania in 1939. Spain gave notice after the victory of the successful revolutionary party in 1939. Hungary, in the orbit of Germany and Italy, gave notice in 1939. (6) Several Members have ceased to exist in fact as states, including Austria, Czechoslovakia, Poland, and Ethiopia. In law some of these states are regarded by third states and by the Assembly of the League as still existing. For example many states continued to recognize a government of Poland after partitioning by Germany and the Soviet Union, and Poland was represented at the Assembly in December, 1939. (7) Finally, there is only one case of expulsion from membership by vote of the Council under provisions of Article 16 of the Covenant. The Council expelled the Soviet Union on December 14, 1939. Expulsion requires unanimity except for the parties to the dispute. Seven members voted for expulsion: Belgium, Great Britain, Bolivia, the Dominican Republic, Egypt, France, and South Africa. Four members abstained from voting: China, Finland, Greece, and Jugoslavia. Iran, Peru, and the Soviet Union were not represented.

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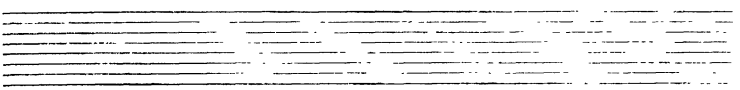
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PART FIVE

Competition and Cooperation



CHAPTER X

Competition and Cooperation

Relations between persons may be those of competition and conflict, on the one hand, or of harmony and cooperation, on the other hand. The same is true of the relations between states in the family of nations. The student of international affairs will desire to understand the reasons for the competition and conflict and the harmony and cooperation, and will desire to see the extent of each in modern international relations.

1. CAUSES OF INCREASED COOPERATION

There are several causes for the increased cooperation of states during the past half century. (1) The fundamental cause is the increasing interdependence of states. This interdependence has increased as a result of the changes produced by the Industrial Revolution, including the development of industrial production on a large scale, a general increase in the standard of living which produces a demand for more varied goods and in greater quantities, and the possibility of transporting materials, finished products, and business communications cheaply and quickly for long distances. Highly industrialized states require food for the population and materials for industry which may be found in inadequate quantities or not at all within the boundaries of the state. Agricultural states are dependent upon foreign markets for their products and are dependent upon foreigners for manufactures and other products. They are usually dependent also upon foreigners for loans to

be employed in large undertakings such as building canals, railways, and industrial plants. Many states are also dependent upon other states for transportation facilities for exports and imports. There has been a great increase in the number of individuals who leave their country to travel or engage in business in foreign countries, and a state is dependent upon the foreign state for the protection of the persons and the property of its nationals. (2) Today the state has accepted an obligation toward its citizens to perform numerous functions and to provide many services which were formerly left to private initiative or not performed at all. For example, not so long ago no relation was established between states as such in matters such as white-slave traffic, delivery of mail and parcel post, and safeguarding of the public health. Today most states attempt to prohibit, regulate, and promote many things for the benefit of their citizens. The state is limited in what it can do satisfactorily for its citizens because its jurisdiction extends only to certain portions of the earth's surface. If it is necessary to prohibit, promote, or perform an act in foreign territory, the state is therefore dependent upon a foreign state for the satisfactory fulfillment of its objects. (3) Modern warfare has a great destructive capacity, not only for those at war but also for third parties, and it interferes seriously and injuriously with the lives and interests of persons outside the region of conflict. Major wars involving several large states have a tendency to draw other states into the conflict. Consequently there has been an increased effort upon the part of states to promote peace by methods not employed in the past.

2. THE ECONOMIC POLICIES OF STATES

All states interfere to some extent in the activities of individuals engaged in the production, transportation, marketing, and consumption of goods. With the progress of the Industrial Revolution this interference has increased. Furthermore, the state itself has stepped into some or all of these economic processes as an active participant. Various different motives may actuate the state. (1) The state may desire to stimulate, to discourage, or to prohibit production

or consumption of goods. (2) The state may desire to promote some interest of the community whether or not there is an economic return. Thus it may attempt to prevent monopoly, assure minimum standards of welfare for workers in factories, provide education, improve the health of the population, stamp out narcotics, or defend the territory of the state from foreign enemies. The economic policies adopted by a state may produce and usually do produce their effects beyond the national frontiers. The terms "economic nationalism" and "economic internationalism" have been coined to refer to two different aspects of international economic relations. Both of the terms are vague and have no scientific meaning. Rather they have become catchwords under which policies of nations are classified, according as they emphasize a selfish national economic policy (economic nationalism) or an enlightened policy taking into account the interests of other nations and the desirability of international cooperation in economic matters (economic internationalism).

3. FREE TRADE AND LAISSEZ FAIRE

The thought of economists has been greatly influenced by the ideas of Adam Smith contained in his *Wealth of Nations* (1776). The doctrines of this school of economists include the following: the primary aim of economic life is economic prosperity and the best way of attaining this is to permit the individual to pursue profits without interference from governments. The whole territory of the globe is the area for economic life and the greatest prosperity will result if individuals are left to consult their own economic interests. Applying these principles, it means that the national states should not concern themselves with economic life, except to assure peace and order, protect property and contract rights, and prevent monopolies which would thwart free economic competition. Believing that increased prosperity would result from a specialization of labor, this school would give freedom to the individual to engage in the work which offered the largest profits and to trade freely inside and across national frontiers. Consequently, all government restraints and regulations should be eliminated such as

prohibitions, restraints, and tariff duties on imports and exports. Under such a system universally applied there would be no attempt to make the nation self-sufficient. The individual would have access to raw materials and to markets in other countries without restraint and competition would be an individual matter outside the ken of governments. Given the existing disparities in the world in climate, skill of workers, raw materials, etc., the specialization of labor might be carried to a high degree. Then by free exchange of goods each individual might enjoy the greatest degree of individual prosperity. The effects of such an economic system would be to reduce friction and wars between states because competition would be not between states but between individuals. State policies of control of raw materials and of interference with trade through tariffs would be eliminated as causes of friction and people in different parts of the world would be knit together in interdependence and by common economic interests.

Obstacles to Adoption of Free-trade Principles. This individualist and free-trade theory has never been fully applied. It was developed to combat the mercantilism of the eighteenth century. Under mercantilism the national monarchies had interfered with economic processes, had kept their colonial domains as closed markets and sources of materials, and had monopolized the trade and shipping of their dependencies. The free-trade theory did, however, result in lowering tariffs of some European countries during the third quarter of the nineteenth century. It was supported by Great Britain, where the Industrial Revolution had started. It was a policy which gave national advantage to Great Britain at a time when she had almost a monopoly of textile and iron industries whose production she could export to Continental Europe and the United States, which were still primarily agricultural. Successively different states turned away from free trade or low tariffs to a system of tariff protection. This shift in policy was the result of a number of changes. The Industrial Revolution began to take effect in other countries than England and the new industries desired protection against the competition of the English products made at a lower price. Farmers in the

United States, Russia, and Australia began to demand tariffs as soon as agricultural production increased as a result of industrialization and led to more competition for markets. International competition was intensified as a result of the development of steam transportation which reduced transportation costs.

4. ECONOMIC NATIONALISM

While these changes were occurring the growth of nationalism had accentuated the idea of the nation and the national state as the all-important value. It therefore seemed a logical step to control economic life in a manner to promote national security at the expense of individual economic well-being, if necessary, and to seek to promote through governmental assistance the economic well-being of groups of citizens in competition with foreigners for markets, raw materials, and shipping. During the period 1880 to 1914 the Great Powers followed policies of imperialism closely related to a desire to gain economic self-sufficiency. The World War emphasized that success in a prolonged war depended not solely upon men, but upon a great industrial machine able to support armed forces with arms, munitions, and instruments of war. While the Treaty of Versailles effectually limited the military striking power of Germany, the victors used to the full the weapon of economic disarmament of the defeated state. The many new states created in Europe followed policies of protectionism and economic nationalism. The unified economic life once existing inside the Austro-Hungarian Empire was disrupted at the new frontiers. A strong impetus to nationalistic feeling was also produced by the war and by postwar events. In the defeated states a sense of outrage at the terms of the peace and irredentist ambitions intensified the foundations for economic nationalism. In the new states, mindful of their creation by force and of the dangers latent in the defeated states as soon as they should rise again, economic nationalism was rampant. On top of all this, the new religion of communism, emphasizing the brotherhood of the proletariat, threatened internal disruption by class struggle. The cement to bind the classes together was

nationalism. The extremist nationalism of Italy and Germany is a particularly noteworthy case of the use of this cement. The possibility of collective action by Members of the League of Nations applying economic and financial sanctions further intensified efforts to attain economic self-sufficiency despite the costs. The attempt to gain economic self-sufficiency in turn led to a policy of territorial imperialism when the coveted territory would round out the list of necessary raw materials.

PRINCIPLES. The fundamental principles of economic nationalism are the opposite of those of free trade. The economic unit is the political state and not the individual person. International interdependence is eschewed and an attempt is made, within the limits of possibility, of producing within the national frontiers all agricultural and industrial products and all raw materials needed, and of depending upon home finance and shipping. Trade across frontiers is controlled with a view to national political advantage. Raw materials helpful to the foreign competitor or potential enemy are withheld. Protective tariffs are raised to encourage production at home of as many goods as possible, despite the increase in cost or inferiority of the product. Such policies produced friction, competition, and hostility between states throughout the field of international economic life. Militarism and imperialism are justified as means of gaining *Lebensraum* (living space), whereas the militarism and imperialism themselves have contributed to reducing the standard of living and have led to the economic woe. Tariff wars, struggles for raw materials, and embargoes embitter feelings. Citizens of other countries are thought of less as customers than as members of a competing economic state.

5. MIXTURE OF ECONOMIC NATIONALISM AND FREE TRADE

No state has arrived at a condition of complete economic self-sufficiency and most of the states of the world can never hope to attain it without annexing vast territories. The few Great Powers which have resources that might permit a considerable degree of self-sufficiency are unlikely to make

the sacrifices necessary to bar themselves completely from economic intercourse with the rest of the world. As a result, it is found that the states vary widely in the extent to which they apply policies which if carried to their logical conclusion would result in complete self-sufficiency. For example, most states lack within their territory the various fundamental resources necessary to supply the sinews of industry and also to supply an adequate food supply. The only alternative to going without is therefore to trade. The country which is primarily agricultural must necessarily import products available only from industrial countries, and this is an extensive list, including equipment for transportation by sea, land, and air, the complete list of armaments and munitions, and machinery for agriculture and for conversion of the commodity into other forms. Industrial countries as a rule are dependent upon other countries for all or part of their food supply. Almost always they lack coal, iron, oil, or some mineral necessary for modern industry. Lacking some new invention or process, there are some commodities which may be produced only under certain conditions of soil and climate, such as cotton, coffee, tea, cocoa, rubber, bananas, oil, and quinine. It may be possible to produce substitutes or to create some of these products through the application of science, but it can never be done for all products and in most cases the price is bound to be excessive as compared with the natural product. This has been the experience of countries which have attempted to make combustibles from coal to take the place of oil gasoline.

Economic Nationalism, by Accident or Design? In sketching the doctrines of economic nationalism, the impression may have been given that all people in all countries have unanimously supported a policy of complete economic self-sufficiency despite the cost. This is by no means the case. In most of the states having representative government, matters of tariffs, quotas, trade regulations, merchant marine, subsidy of export, etc., are subject to control by the legislative branch of government. Within the legislature there is represented a wide variety of views, ranging from support of complete free trade to complete

economic self-sufficiency. Furthermore, political parties have tended to put into their platforms statements regarding commercial policy and to establish traditional attitudes; for example, the traditional support of protectionism by the Republican party and of tariff for revenue only by the Democratic party. Consequently, the economic policy in foreign relations tends to swing in one direction or another depending upon the party in control of the legislature. Not all legislation and treaties relative to international commercial matters are a result of a carefully conceived national policy.

Lack of a National Economic Policy. In many cases the policies are adopted as a compromise between conflicting domestic interests little concerned with national welfare but greatly concerned with their own immediate interests. This might be illustrated at length. The bedlam of demands of sectional, group, and special interests in cases of Congressional revision of the American tariff is an example. The insistent bloc of legislators from silver-producing states of Western United States has at heart the owners of silver mines; it either cares nothing about the national interest or readily assumes that silver interests are national interests; and the probable consequences of American silver currency policy upon China and other countries probably never enters its head and certainly not its heart. Furthermore, in the administration of laws and treaties different departments of the national government are entrusted with the execution of specific policies, so that inconsistent policies are often followed; or the department of foreign affairs has no means of bringing to bear in favor of the national interest its knowledge of the possible consequences of certain acts. Thus the treasury department may adopt a change in currency policy disturbing to international trade while the commerce department may be fostering a merchant marine to carry international trade and the agriculture department may be applying unnecessary quarantines which will cripple trade. The United States in the postwar period insisted upon payment of governmental debts owed to the United States, payable in the last analysis only in an excess of imports into the

United States, while striving for an excess of exports. There seems to be abundant evidence that many of the obstructions to international trade are adopted by states, not with the purpose of following a well-conceived and well-rounded theory of national interest, but as a result of a series of pressures from special interests. The result may be harmful or inconsistent policies obviously deleterious to the nation as a whole. The widespread ignorance of the population regarding economic matters, particularly in the international field, makes it easier for special interests to gain the action they want from governments. Almost any proposal may be whitewashed by an appeal to the slogans of national prosperity and security.

6. CONCLUSION

Economic life in the modern world is extremely complex. It does not yet stop at national frontiers despite the policies of economic nationalism which have been pursued from time to time in the past. In order that business may be conducted under the multistate system, a considerable degree of international cooperation between states is necessary. Consequently there exists side by side with economic competition between states an economic cooperation between states in some matters. For purposes of study it is desirable to divide the subject of international economic relations into appropriate subdivisions, examining first the competitive and then the cooperative relations for each subject.

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CHAPTER XI

Trade Policies

International economic relations are composed of the following elements: (1) "imports and exports of merchandise, (2) payments for and receipts from freight services, (3) expenditures made by tourists going abroad and received from tourists coming from abroad, (4) immigrant remittances sent abroad or received thence, (5) payments for and receipts from miscellaneous sources, such as insurance, advertising, royalties for motion pictures, books, plays, patents and copyrights, communications (cable, wireless, telegraph, post), electric power sent across the border, etc., (6) current government transactions, such as the maintenance of consulates, legations, and embassies, of legation guards, of warships on foreign stations, passport visa and other fees, canal tolls, etc.; (7) philanthropies such as the maintenance of missions and schools in foreign lands, (8) loans and credits made and received, and (9) exports and imports of gold."[1] Items (1) and (9) are spoken of as "visible trade" or visibles. Items (2) to (8), being intangible, are spoken of as "invisible trade" or invisibles. This last group is also spoken of as "services."

BALANCE OF INTERNATIONAL TRADE. The sum total of a country's trade always balances. If a country exports more material goods than it imports (1), the difference must be made up by one or more of the invisible items (2)

[1] *Report of the Commission of Inquiry into National Policy in International Economic Relations*, p. 18, by permission of the publishers, The University of Minnesota Press, 1934.

to (8). The terms "favorable" and "unfavorable" balance of trade are employed as follows: If a nation exports more material goods than it imports the nation is said to have a favorable (or active) balance of trade, while if the contrary is true, and the nation imports more material goods than it exports, the nation is said to have an unfavorable (or passive) balance of trade. These terms are unfortunate, because a "favorable balance of trade" is not necessarily desirable, but the term implies that it is and is thus misleading in its connotations.

It should be remembered that international trade is called international because the trade is across national frontiers and not because the state itself is necessarily involved in the transaction as a party. A nation's foreign trade is the total of trade between individuals as well as of trade between governments as such. The greater proportion of international trade is private, not governmental. The situation during the period of the World War may illustrate this. Persons in the allied countries continued to purchase from and sell to American citizens. The allied governments, particularly Great Britain, borrowed large sums of money from American citizens by floating loans in the United States. This money was in the form of credit which was paid to Americans who sold arms and other materials to the allies. After the United States entered the war the American government itself lent credits to the Allies, and these also were then spent by the allied governments in paying for purchases of goods from American citizens. During the nineteenth century international trade was almost exclusively a transaction involving only individual persons or corporations, and not governments. This is less true today. The Soviet Union maintains a monopoly of the trade of its territory, and there has been a trend toward more participation by governments themselves as principals in foreign trade transactions.

1. COMPETITION FOR COMMODITY MARKETS

The basic reason for international trade is, of course, the fact that it is beneficial to both of the parties concerned. The goods are supplied at a cost lower than that of pro-

ducing the goods in the importing country, or goods are supplied which it is impossible to produce at all in the importing country. The argument for completely free trade is that it permits a specialization of labor over a world-wide area, an increased total production, and is beneficial to all concerned. During the nineteenth century the Industrial Revolution took place in different countries at different periods, spreading out gradually from England. In the beginning of this period Great Britain found a ready market for her manufactured goods abroad and accepted in exchange food and other raw materials which were no longer produced in large amounts in England. As time went on, however, some of the European countries and the United States also began to develop manufactures of the same type as Great Britain and began to employ protective tariffs to preserve the home market for such manufactures against the competition of foreign countries able to produce them at lower cost. The same protective policy was adopted by some countries for agricultural products after the mechanization of agriculture. The policy of protection was intended to stimulate and promote home industries and agriculture so that the import of products from other countries could be stopped or at least reduced in amount. At the same time, however, an effort was made by each country to expand its exports of goods to foreign countries. A surplus of exports over imports was desired. It is obviously impossible for all countries to export more than they import. Competition became keener between countries having similar types of exports for the markets of the world. This was a factor which contributed to the colonial imperialism beginning in the 1880's because control over the tropical regions was sought primarily to capture and develop markets there.

Increasing Production and Economic Nationalism. The competition for markets has increased with the great increase in the productive capacity of the world, accompanied by the trend toward economic nationalism by virtue of which states attempt to exclude imports of many kinds from foreign countries. The problem is accentuated during periods of economic depression when falling prices disrupt

the prevailing system and people try desperately to market their goods. During recent years there has been considerable discussion of "surplus production." According to the classical economist there can be no such thing as "surplus production," because there is always going on an adjustment between supply and demand for goods by means of changes of price. Thus, if the supply remains the same and the demand decreases, the price of the product will fall; whereupon, marginal producers will cease to produce if they cannot profitably produce at the lower price, and the supply will thus diminish. This principle is sound, but it assumes laissez faire and free trade both inside and outside the country, and it assumes that these readjustments will be made relatively quickly.

Now experience shows that these assumptions are unwarranted in many cases. A few examples may illustrate the point. A country such as Brazil, whose primary crop is coffee, continues to produce coffee in large quantities even after a disastrous fall in the world market price for coffee. The theory is that marginal producers will turn to some other type of activity, but they do not do so, partly because there is no alternative occupation which can be found quickly, partly because of a hope for a change in the demand, partly because governmental assistance can be sought and obtained to bolster the domestic price. The problem is similar in other countries producing agricultural products such as cotton, wheat, and corn. In the case of mining and manufacturing a hindrance to immediate readjustment to falling demand is found in the fact that a vast plant, representing a large capital investment, cannot be abandoned without great loss. It will seem better to continue to produce at a loss for a time, living on accumulated profits or borrowing, if the probability is that eventually the market can be restored.

2. METHODS OF PROTECTING THE HOME MARKET

Most states follow a policy of protecting their home markets against competition of the foreigner or of the foreign state. The methods of protection are numerous

including tariffs, quotas, license systems and control of foreign exchange.

TARIFFS. A tariff is a charge levied on imports or exports entering or leaving a country. If the purpose of the charge is solely to raise revenue it is called a revenue tariff. If the purpose of the charge is to increase the cost to the consumer so that the imported product can no longer be sold in competition with goods produced within the country it is called a protective tariff. Protective tariffs have been increased since the war of 1914–1918 in almost all countries and high tariffs were laid by the new countries recognized at the close of that war. Great Britain, the traditional exponent of free trade, adopted a protective tariff in 1931. Tariff rates are usually set by the legislative body in countries which are not dictatorships. The executive is sometimes given discretion to modify these rates upward or downward, under specified circumstances. For example, the rate might be lowered on products from a country which has met the terms of a bargaining tariff law, or it might be increased to offset the advantages given by a subsidized export, or it might be increased to make the prohibitive tariff effective in case of a decline in costs abroad giving a better competitive position to the producer abroad. The tariff in itself is a hindrance to trade and the method of administering tariff laws may cause additional obstacles. Rapid and frequent alterations in the tariff rates and a complex scheme of classification of goods are examples.

QUOTA SYSTEMS. A number of countries apply a quota system to imports. The country announces the total quantity of a specified commodity which will be admitted into the country during a specified period of time. Thus, France might indicate that fruit to a certain quantity or value (quota) may be imported in the ensuing three months or six months. The quota schemes vary in details. In some, quotas are specified for each of the various countries exporting the commodity. France might, for example, specify that American importers would have the same proportion of the French apple import market as they did in some base period, say the average for the three preceding years. Quota systems are effective in closing the home market, because

an absolute bar to imports of a commodity falls when the quota is filled. Quota systems often produce friction between countries, especially when administered in a way regarded as arbitrary and inequitable. Thus, if a foreign country is granted a given fraction of the quota, it may believe the fraction is discriminatory and too small. If no fraction is set for each foreign country, the exporters run the danger of finding that their goods have arrived just in time to meet an absolutely closed market with the attainment of the quota for the period, resulting in serious economic losses. The quota system also meets opposition from countries having a commercial treaty containing the most-favored-nation clause with the country applying a quota system. Their argument is that while they give most-favored-nation treatment they do not get corresponding advantages from the country applying quotas. Quotas have been used by France and a number of Continental European states. Their wide use dates from 1926. Economic conferences of experts have condemned the quota system as undesirable and as justified only as temporary measures designed to meet emergency situations.

Control of Foreign Exchange. During the period of economic crisis and depression following 1929, countries have begun to exercise extensive control over foreign exchange. Foreign exchange is the medium by which financial transactions are carried out. Countries may adopt a policy of foreign exchange control from various motives. The chief motives are: to protect the currency, so as to prevent fluctuations in its value; to administer the available foreign exchange in such a way as to direct the channels of foreign trade and to control the nature of the imports, and directly as an instrument of foreign policy in some cases.

Nature of Foreign Exchange. It is necessary to understand the nature of foreign exchange in order to understand how its control may be employed to control foreign trade. During the nineteenth century most countries adopted the gold standard currency. This means that the monetary unit (American dollar, British pound, French franc, etc.) is defined by law as so many units of gold, and that the treasury of the government will buy or sell gold at

this rate. Consequently, there was a kind of international standard of currency, since by simple arithmetical calculation one could determine the value of one currency in relation to the other. Suppose that Mr. *A* in the United States should sell a bale of cotton to Mr. *B* in Great Britain. Mr. *B* has pounds, while Mr. *A* desires payment in dollars. If both countries are on the gold standard, it would be possible easily to calculate how many dollars were required to equal a pound. Mr. *B* could then get for his pound a sum of gold and ship it to Mr. *A*; then Mr. *A* could exchange the gold for dollars.

There would be several expenses and inconveniences if the actual gold were shipped, including loss of interest on the gold while in transit, the cost of insurance against loss, and the cost of transportation. Consequently, Mr. *A* and Mr. *B* would take advantage of a system which would eliminate the necessity of the gold shipment. Such a system has been developed in foreign exchange. There are hundreds of thousands of purchases and sales across national frontiers. While Mr. *A* is selling to Mr. *B*, another American, Mr. *C*, is buying from another Englishman, Mr. *D*. Suppose for the moment that both transactions involve exactly the same amount of dollars or pounds. It would settle the business in both cases if the American, Mr. *A*, were paid in dollars by the American, Mr. *C*; and if the Englishman, Mr. *B*, pays in pounds the Englishman, Mr. *D*.

This is what actually happens, although the fact is concealed by the mechanism of foreign exchange. Banks in each country participate in the transactions as agents. The two Americans, Mr. *A* and Mr. *C*, may not know one another and may not know that by dealing with one another they could cancel out the transactions with the Englishmen, Mr. *B* and Mr. *D*. In practice, it is not necessary that they should do so. Instead, Mr. *C* purchases from a bank in the United States with dollars the pounds (foreign exchange) needed to pay Mr. *D*; and the bank has this foreign exchange available because Mr. *A* has sold to the bank for dollars the pounds received from Mr. *B*.

Exchange Controls. During the depression which began in 1929, most states of the world departed from the

gold standard. Many of them began to exercise control over foreign exchange. To a greater or lesser degree, depending upon the country, the government gained a monopoly control over the disposal of foreign exchange, so that by withholding foreign exchange in French francs, for example, imports from France could be discouraged, or by withholding foreign exchange for payment of a certain type of import (*e.g.*, luxury products) such type of import could be discouraged. In many cases this control was employed not only to discourage certain types of imports from abroad but also to gain markets for exports abroad. The country exercising exchange control might, for example, discourage imports from a country except as that country took in return the exports from the country exercising exchange control.

3. METHODS OF SECURING FOREIGN MARKETS

Foreign markets are sought both by the exporter and by the government of the exporter. The exporter employs a sales staff abroad, drumming up trade, looking for trade opportunities, and examining the various factors which might contribute to successful business, such as packaging of the goods, credit facilities, and reporting obstacles to trade, such as protective tariffs and other regulations interfering with trade. From very early times governments have endeavored to assist the exporter by providing consular officers sent abroad with the primary object of facilitating economic transactions of citizens. Governments facilitiate the exporting endeavor of traders through permanent administrative organs at home including the foreign office, the department of commerce, and other agencies. For example, there is the Bureau of Foreign and Domestic Commerce in the Department of Commerce of the United States, and a Department of Overseas Trade, connected with the Board of Trade and the Foreign Office of Great Britain. The diplomatic representative abroad facilitates the export business of his country through the negotiation of commercial treaties and the supervision of their execution.

COMMERCIAL TREATIES. Despite the trend toward economic nationalism a large amount of international trade

continues. While international law does not specify limits on the power of a state to impose tariffs and other restrictions on foreign trade, all states have found it desirable to regularize their relations with other states in this matter by means of commercial treaties. Such treaties are usually made today for a short period of years, after which either party may terminate them on short notice. For the most part these treaties are bilateral, *i.e.*, they are between two parties. Attempts to gain more general agreements on commercial policy through multilateral treaties have been made since 1920 but without a large measure of success. Among the different types of commercial treaties there may be differentiated the following: (1) the reciprocal trade agreement, (2) the most-favored-nation clause, (3) national treatment, and (4) the open-door agreement.

Reciprocal Trade Agreements. In a reciprocal trade agreement one contracting party agrees to grant to the other party, in exchange for certain trade advantages or concessions received, similar or equivalent concessions of equal value. The concessions may include not merely tariff duties but any other phase of commercial relations. This type of agreement emphasizes the particularistic relations between two states and is made on the assumption that nations are free to make any arrangement they choose and have no obligations of a universal character toward other nations. While this is true legally, such a policy often leads to friction with third parties who find that discrimination is leveled against the interests of their traders. Usually this type of commercial agreement is made between states which are in close geographic proximity and whose economic relations are unique.

Most-favored-nation Clause. The purpose of a most-favored-nation clause in a commercial treaty is to prevent discrimination by either contracting party against its commerce in favor of some third party. In other words, the purpose is to assure a treatment equal to that granted to the most favored nation. The clause may apply to tariffs alone or to other trade advantages or concessions. Most of the commercial treaties since the eighteenth century have contained such clauses. Two types of the most-

favored-nation clause may be distinguished, (1) the conditional and (2) the unconditional. In the first type, the clause applies only to concessions made gratuitously by one party, and does not apply to concessions based on acquisition of a *quid pro quo*, *i.e.*, acquisition of a reciprocal advantage. In the second type, the clause applies immediately and automatically to all states having a most-favored-nation clause with the state granting a favor, and this irrespective of whether the favor was granted gratuitously to a state or for a reciprocal concession. When the commercial treaty specifies clearly which type is intended, no controversy is likely to arise. However, when nothing is said of the type intended, serious controversy may arise. The United States held out for the conditional most-favored-nation clause until 1923, whereas most European countries regarded the clause in their treaties with the United States as being unconditional.

THE CLAUSE CIRCUMVENTED. In the last fifteen years and especially following the depression, the most-favored-nation clause has been ineffective in preventing discrimination as between different countries. The reasons for this are as follows. (1) New obstacles to importation, not covered by the clause, have been widely applied so that they have destroyed much of the effectiveness of the clause. Thus, the placing of quotas on amounts of goods which may be imported, and the withholding of foreign exchange for payment of certain types of imports, have had as consequence the cutting off of trade, irrespective of tariffs and often in such a way as to discriminate in favor of one country and against that of others. (2) Low-tariff countries have ceased to find much value in most-favored-nation clauses in treaties with high-tariff countries, because the tariffs may be so high and may cover so many products that most-favored-nation treatment really offers no market to the traders of the low-tariff country; while, at the same time, their market is left relatively open to traders of the high-tariff country.

NATIONAL TREATMENT. States sometimes agree to make commercial treaties granting "national" treatment to traders of the other country. This means that the traders

of the one country will be treated equally with the nationals of the other country in the matters covered. It is usually restricted to harbor charges, rebates, and import and export duties on goods carried in foreign ships. Of course one country may impose higher port charges, taxes, and warehousing charges than does the other country; but at least equality of treatment of national and foreigner is accorded by "national" treatment.

THE OPEN-DOOR POLICY. The policy of the "open door" is a policy applied to some colonial territories, to certain classes of mandates, and to some weak states. Its object is to prevent discrimination against traders of any foreign country and to assure equality of opportunity for all, giving no particular advantage to traders of the country which may exercise political control over the territory. The policy of the open door was applied extensively during the period of colonial imperialism beginning in the last quarter of the nineteenth century, with the opening of Asia, the partitioning of Africa, and the acquisition of islands in the Pacific Ocean. In practice, the country having political control over the region included under an open-door policy finds ways of giving special advantage to its own countrymen, particularly through administrative action. Although Manchukuo has accepted the obligation to maintain the open door, Japan is in a favored position as protector, military occupant, and adviser to Manchukuoan officials.

BARGAINING TARIFF LAWS. A state may attempt to extend foreign trade by means of a bargaining tariff law, which does not require a treaty provision. The state provides in legislation that special favors will be granted to goods coming from other states if such states grant special favors in return. Thus, a tariff on certain goods may vary in rate depending upon the country of origin, and a lesser rate is applied on goods coming from the country which has met the provisions of the bargaining tariff law. The effects of such a commercial policy and the objections to it are similar to those in the case of reciprocal trade agreements which have already been mentioned.

METHODS OF CAPTURING FOREIGN MARKETS. Business interests and governments also adopt policies which are

meant to capture a part of the foreign market which could not be gained under a system of free trade and laissez faire. Among these methods may be mentioned dumping, government subsidies, unfair competition, purchases as a condition of loans, and development of a national merchant marine.

DUMPING. Dumping describes the practice of selling goods in the foreign market at a price below that charged for the same goods in the domestic market, and often at a price below the cost of production and shipment abroad. Various motives may actuate the business interests which practice dumping, such as a desire (1) to maintain high domestic price levels by disposing of part of the production abroad at whatever price can be gained, (2) to meet a competitor's price abroad, (3) to develop a new market by introducing goods at a low price, or (4) to wipe out competition completely with the object of establishing a monopoly. Dumping has been practiced frequently by some American manufacturers since the close of the nineteenth century. It has been employed by the Soviet Union, monopolizing Soviet trade, as a means of getting foreign exchange with which to carry out its programs of industrialization. Dumping may give temporary advantage in gaining foreign markets, but it usually creates a reaction in other countries which eventually thwarts and prevents it. Thus, if manufacturers are hurt by dumping from abroad, they are usually protected by their own governments through the imposition of increased tariff duties on the goods being dumped with the object of countervailing the competitive advantage coming from the lower price. Meanwhile, however, dumping may suddenly disorganize foreign industries and the practice is fruitful of international resentment and discord.

GOVERNMENT SUBSIDIES. Closely akin to dumping is the practice of governments of subsidizing in one way or another the exports of goods by their nationals so that the product may be sold in foreign markets below the domestic price. The United States follows a practice of applying additional tariffs to foreign subsidized exports in order to cancel the advantage given by such subsidies.

In 1939 the United States applied such levies to goods coming from Germany. On the other hand, the United States occasionally gives export subsidies, as in the case of the one on American cotton, 1½ cents per pound, granted in the summer of 1939.

UNFAIR TRADE PRACTICES. In attempting to secure foreign markets, business interests sometimes employ trade practices which would be regarded as illegal or unethical in domestic business. Among them are: misleading advertising, misrepresentation of a competitor's credit standing, commercial espionage, exposure of trade secrets, and bribery.

CONDITIONS ATTACHED TO FOREIGN LOANS. Business interests or governments may require, as a condition of making loans to a foreign government, that all or a portion of the loan should be used in the purchase of goods in its market. The policy of Great Britain in requiring Poland to purchase arms and munitions in Great Britain, as a condition of lending money to her ally in 1939, is by no means an exceptional case.

DEVELOPMENT OF NATIONAL MERCHANT MARINE. Many countries foster by subsidies a merchant marine which could not survive in free competition with the merchant marines of other countries. There is a dual motive for the policy: (1) promotion of security in time of war by providing an auxiliary to the fleet, training naval personnel, and maintaining channels of commerce for essential materials, and (2) the belief that a merchant marine gives trade advantage to the country in time of peace. On the one hand, it is argued that a merchant marine gives special advantages to national business interests of the flag state by assurance as to freight rates and by furnishing continuous and regular service for the export trade. In the prewar period trade of the United States with South America and the Orient was at a disadvantage as compared with British trade served by British merchantmen. Most large states and many smaller ones foster a merchant marine through direct or indirect subsidies. France and the United States grant outright subsidies. For a time the United States gave indirect subsidies

in the form of lucrative contracts for carrying mail and ordered a large part of outgoing mail to be shipped on American merchantmen. Under the Merchant Marine Act of 1936 subsidies are given for the building and operation of American ships. Frequently advantages are given to the national merchant marine by reserving coastwise shipping to it, by discriminatory railroad rates to ports, and by discriminatory tonnage and customs dues.

4. PRIVATE ECONOMIC INTERNATIONAL COOPERATION

Despite the increasing trend toward economic nationalism serious efforts have been made by private business interests and by governments to reduce some of the barriers to international trade. In certain fields of economic life, the various national business interests have been able to reach agreements to mitigate conflicting interests and to assist one another. These agreements and the organizations provided for their execution show a great variety. Among them may be distinguished (1) the international cartel, (2) the supernational business combinations and (3) shipping pools.

INTERNATIONAL CARTELS. A cartel is "a voluntary combination of business enterprises engaged in the same line of business and each retaining its independence, for the purpose of establishing monopolistic control of the market." The chief purpose of the regional or marketing cartel is to apportion the market to the members and prevent their competition in certain areas. Usually the home market is reserved to the home industry and other territory is allotted to each member as an exclusive market. Other cartels are formed to regulate and control production, by agreement to allocate quotas of production, to close inefficient plants, and to decrease production costs through scientific management. Price cartels are formed to maintain base prices and to regulate discounts, rebates, and credit terms. Sales cartels establish central selling agencies, fix prices, and control production. Patent cartels provide for the sharing by the associated industries of patented equipment, secret processes of manufacture, and trade-

marks. Members of cartels remain independent in all activities except those regulated by the agreement. The cartel agreement runs for a limited period of time and members usually retain the right to withdraw by giving notice. Members may be individual business enterprises, large corporations, or state-owned or controlled enterprises. Organization of the whole national industry is usually necessary before an international cartel can be formed and operated successfully.

CARTELS BEFORE 1914. International cartels originated in Europe in the period 1870 to 1880. Before 1914 they were found chiefly in Central Europe where they tended to alleviate the harmful effects upon economic interests produced by the political disunity of the area. One hundred and fourteen international cartels are known to have existed during this period, distributed as follows:

Transportation	18	Paper	7
Coal, ores, and metal	22	Stones and earths	6
Chemical	19	Electricity	5
Textile	15	Miscellaneous	10
Stoneware and porcelain	8		

CARTELS SINCE 1920. Despite the animosities created by the war, and the economic dislocations caused by the war and the new political boundaries, new international cartels were formed, totaling at least 44 in 1928, as follows:

Chemicals	12	Paper and cellulose	2
Metals and minerals	14	Electrical	1
Iron and steel	9	Leather	1
Textiles	3	Lumber	1
Glass	2	Tools and machinery	1

The number of national groups participating in postwar cartels varies considerably. Eighteen European national groups formed the Glue Syndicate in 1926 to control the sale of finished products and to permit joint purchase of raw materials. Eleven national groups, ten European and one Japanese, established the Electric Bulb Cartel in 1924. National groups of previously enemy states entered at least twenty-five of these postwar cartels.

QUESTION OF EFFECTS OF CARTELS. It is impossible to determine the extent to which these cartels have contributed to closer political relations between states. Busi-

ness leaders have entered cartels from motives of economic self-interest or because of necessity, but cartels may have developed mutual understanding. The International Economic Conference of 1927 considered cartels. There was agreement, on the one hand, that cartels could render a service to the international community of producers and consumers by providing better planned production, by reducing production costs, by checking extreme competition, and by avoiding evils resulting from extreme fluctuations of industrial activity. There was agreement, on the other hand, that cartels when gaining monopolistic control of an industry might become a menace. The conference was unwilling to advocate establishment of international control over cartels through the League of Nations, but it favored establishment of League agencies for collecting and publishing data relative to the international cartel movement. It held that individual states could exercise jurisdiction over the operation of cartels within their own territory. The point of view of business is expressed in a report of the Trade Barriers Committee of the International Chamber of Commerce, 1926, as follows:

Whereas, ententes between producers of various countries, favorable to the participating industries by the elimination of ruinous competition, are equally favorable to the community if they respect the interests of labor, of consumers and of trade; and abuses to which such ententes may lead carry with them their own remedy by giving rise to fresh competitions; and

Whereas, by establishing cooperation between the same industries carried on in different States, such ententes favor the development of satisfactory personal relations and in particular provide the participating countries with the means of reaching a sound economic basis, despite the currency troubles existing in certain countries;

Whereas, such ententes have a tendency to improve conditions of manufacture by a better utilization of machinery, a more scientific organization or production and a more rational distribution of products, and that by the decrease of overhead expenses and costs of distribution and by the specialization they entail such ententes insure the continuity of industrial output favorable to labor and the stabilization and even reduction of cost and sale prices favorable to consumers;

The Trade Barriers Committee is of opinion:

That it is therefore desirable that national laws instead of being made more stringent should be given greater elasticity and amended so as to permit the conclusion of international industrial ententes;

That such ententes should respect the right of all nations to have free use of raw materials and, in consequence, should take into account the interests of transformation industries;

That the development of international industrial ententes is strongly to be recommended;

That in addition to the advantages above enumerated such ententes may contribute to the solution of tariff problems existing between the various countries, by their progressive extension which would provide technical preparation for the conclusion of commercial agreements between the Governments concerned.

The cartels of this period related primarily to industrial production. Following the depression cartels were established also in some fields of raw materials.

SUPERNATIONAL BUSINESS COMBINATIONS. While in an international cartel the individual members retain their identity and independence except as limited by the agreement, another private organization known as the "supernational" business combination practically eliminates the component units and forms a single entity in the nature of an international trust. In these enterprises most aspects of the business are unified: management, finance, etc. They surmount and stand above the political divisions of the world and reveal the basic unity among some economic interests and a desire to break down national divisions.

SHIPPING POOLS. The shipping companies competing with one another for passengers and freight have in the past half century entered "pools" or associations to avoid destructive competition. Prior to 1914 some eighty international shipping agreements were formed which covered a wide variety of objectives. The Northern European steamship companies formed in 1892 the North Atlantic Steamship Conference to pool the profits derived from the steerage traffic of emigrants then going in large numbers to the United States. The conference reached agreements in 1894 rationing freight and in 1896 regarding first- and second-class cabin passage rates. After 1918 a strenuous effort was made to prevent passenger rate wars. In the case of the New York-Antwerp-Rotterdam pooling agreement, the participating shipping companies set a limit on the number of sailings to be made by each line and all

earnings were to be divided according to a prearranged plan of distribution, thus cutting down excessive competition in price and service.

5. PUBLIC ECONOMIC INTERNATIONAL COOPERATION

Close and extensive cooperation between the Allies in the economic field was accomplished during the period of war, 1914–1918. In the following period numerous attempts have been made to reduce the barriers to international trade. These efforts have been made through agencies of the League of Nations and conferences held under its auspices, through conferences of the American republics, and through bilateral negotiations.

PROVISIONS OF THE COVENANT. President Woodrow Wilson included in his Fourteen Points (January 8, 1918), the third point which called for "the removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance." During the drafting of the Covenant, this principle was found to be unacceptable and the much milder provision was inserted, that "Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League . . . will make provision to secure and maintain equitable treatment for the commerce of all Members of the League . . . " [Article 23 (e)].

ECONOMIC CONFERENCES: BRUSSELS. A series of conferences met in the postwar period, including (1) The International Financial Conference, Brussels, 1920, (2) The Genoa Conference, 1922, (3) The Conference on the Simplification of Customs Formalities, 1923, (4) the World Economic Conference, 1927, (5) three conferences on import and export prohibitions and restrictions in 1927, 1928, and 1929, (6) two meetings on the export of hides, skins, and bones in 1928, (7) three conferences on concerted economic action, in 1930 and 1931, and (8) the Monetary and Economic Conference of London, 1933.

The first of these adopted a resolution of its commission on international trade which contained the following points:

(1) . . . the first condition for the resumption of international trade is the restoration of real peace; (2) improvement of the financial position largely depends on the general restoration as soon as possible of good-will between the various nations, and the States which have been created or enlarged as a result of the war should at once re-establish full and friendly cooperation, and arrange for the unrestricted interchange of commodities in order that the essential unity of European economic life may not be impaired by the erection of artificial economic barriers; (3) within such limits and at such time as may appear possible, each country should aim at the progressive restoration of that freedom of commerce which prevailed before the war, including the withdrawal of artificial restrictions on, and discriminations of price against, external trade.

(4) The conviction was expressed that "the instability of the exchanges constitutes a great hindrance to the resumption of normal international trade." The conference was attended by experts appointed by governments, but they could not bind their states, and the recommendations of the conference on international trade restrictions were not followed.

GENOA CONFERENCE, 1922. The Genoa Conference of April, 1922, was called under the auspices of the Supreme Council (representing the victorious Allied Powers). The report of the conference referred to Article 23 (e) of the Covenant and condemned "instability in administrative and legislative protectionism," excessive and discriminatory export duties, and unnecessary import and export prohibitions. It advocated publication of all customs tariffs, the comparability of their nomenclature, and the resumption of the practice of long-term commercial treaties containing the most-favored-nation clause.

SIMPLIFICATION OF CUSTOMS FORMALITIES, 1923. Meanwhile, the Economic Committee of the League of Nations had begun a study of means of executing the provision of the Covenant calling for equitable treatment of the commerce of League Members. The suggestions of the Economic Committee were approved by the Assembly, whereupon the Council called a conference on customs formalities

which met on October 15, 1923. The conference resulted in a convention which came into force in 1924. At present there are thirty-three parties to this convention which contains the following provisions: (1) excessive formalities are condemned and formalities are to avoid hindrances to foreign trade except those absolutely necessary to safeguard the essential interests of the state. (2) Unjust discrimination against the commerce of any contracting state was prohibited. (3) Import and export prohibitions are to be reduced to the smallest number as soon as circumstances permit. (4) Provisions are contained relating to publication of tariffs, certificates of origin, licenses, and other matters.

World Economic Conference, 1927. After lengthy preparation through League action, a World Economic Conference assembled May 4, 1927. Those participating in the conference were not official spokesmen but independent experts and the conference was composed of "194 members, attended by 226 experts, drawn from 50 countries in all quarters of the globe, including not only countries which are Members of the League but non-Members." A large proportion of the work of the conference was devoted to international trade barriers. The conference found that "each nation's commerce is today being hampered by barriers established by other nations, resulting in a situation, especially in Europe, that is highly detrimental to the general welfare." Two major conclusions were drawn from the deliberations: (1) a unanimous desire that the conference should mark the beginning of a new era leading to a general upward movement of international commerce by successively overcoming all obstacles in its path which unduly hamper it. (2) Each protectionist measure of one state causes a similar reaction on the part of other states, so that it defeats its own end. Therefore, in order to gain a reduction of barriers, action must be by parallel or concerted action of the different nations so that a sacrifice on the part of one country will be balanced by a sacrifice on the part of others. Liberation of international trade should be sought through stabilization of exchanges, action toward the abolition of import and export prohibi-

tions and restrictions, recognition of the right of complete equality of state and private enterprises in international trade, abandonment of discriminatory practices, and simplification and stabilization of customs tariffs and formalities. The conference declared that "the time has come to put a stop to the growth of customs tariffs and to reverse the direction of the movement." As Professor Rappard points out,

> Inserted in a League of Nations recommendation, it meant an entirely new departure. In order to measure its diplomatic audacity, one should recall the solemn declaration made and constantly repeated ever since the drafting of the Covenant to the effect that commercial policy was a matter of purely national concern and that therefore the League, not being nor aspiring to be a super-State, could not without grave impropriety do or say anything which might be held to be incompatible with its fundamental subservience to the dogma of national sovereignty. [Commenting further, Professor Rappard points out that] these recommendations were made on the authority not only of a few benighted liberal professors, but of a large representative gathering, including even American business men, whom no one could denounce as visionary internationalists.[1]

The conference also made an analysis of the causes of "the super-protectionism of postwar years." These are eight in number:

> (1) Monetary instability, giving rise to an increase in tariffs both in the countries immediately affected and in those of their customers, (2) the desire to protect recent industries which sprang up during or immediately after the War and which could not subsist under normal competitive conditions, (3) the desire to protect the national labor market and to combat unemployment at the cost of the national consumer, (4) the desire for national self-sufficiency, both for economic and military reasons, (5) the desire to secure a favorable bargaining position in view of commercial negotiations and a survival of such *tarifs de combat* (fighting tariffs) even after the close of such negotiations, (6) budgetary considerations, (7) protection of industries deemed necessary for national defense, and (8) the desire to secure work for the surplus labor population which, in a more liberal world, would have emigrated beyond the seas.[2]

SUBSEQUENT NEGOTIATIONS. Following the 1927 conference, various efforts were made to eliminate the import

[1] W. E. RAPPARD, "Post-war Efforts for Freer Trade," *Geneva Studies*, Vol. IX, No. 2, p. 26, 1938.

[2] *Ibid.*, p. 29.

and export prohibitions condemned. First, an effort was directed at limited objectives, resulting in two agreements signed July 11, 1928, relative to abolition of export prohibitions and restrictions on bones and on hides and skins. This approach being unsatisfactory, a proposal for European Union was made. A prime purpose of the proposal was to reduce obstacles to international trade in Europe and to eliminate some of the problems faced in reaching world-wide agreement. Also a renewed effort was made to gain concerted action of states to agree upon tariff truces which might permit negotiation of general agreements. Finally, most states turned toward bilateral treaties as a method of dealing with the problem.

London Monetary and Economic Conference, 1933. A preparatory commission of experts was established by the Lausanne Conference, which dealt with reparations questions, to prepare the way for the Monetary and Economic Conference which met at London on June 12, 1933. The commission submitted a report on January 19, 1933, reviewing the world situation, and laid special emphasis upon freeing international trade from the restrictions which,

> . . . whether they take the form of prohibitions or of quotas or licenses, have in recent years become exceptionally widespread and are so numerous that they now constitute an almost insurmountable barrier to international exchanges. They have brought about an unprecedented reduction in international trade and threaten it with complete paralysis.

The conference was attended by diplomatic representatives and experts of sixty-seven countries. Eleven principal governments were represented by prime ministers, twenty-four by foreign secretaries, and the conference included seventy-three cabinet ministers. After more than a month of discussions in the commissions and subcommissions the conference broke up without reaching any important agreements. The immediate cause was the refusal of the United States to stabilize the value of the dollar, which prevented an agreement on currency, and thus on trade policy. Whether agreements on reduction of trade obstacles could otherwise have been reached it is impossible to say. Each year from 1933 to 1938 appropriations were made by the

League for a second session of this conference, but no conference has been called.

VAN ZEELAND REPORT, 1938. Mr. Paul Van Zeeland was requested on April 3, 1937, by France and Great Britain to inquire into "the possibility of obtaining a general reduction of quotas and of other obstacles to international trade." The Van Zeeland report was made in January, 1938, and was referred to the various governments of the world. No effect upon the policies of states seems to have been made by this report.

INTER-AMERICAN COOPERATION. A high degree of cooperation has been achieved among American states, largely through the instrumentality of the Union of American Republics originally created in 1889. The periodical Inter-American Conferences have devoted a great deal of attention to inter-American economic relations. Since 1889 nine conferences have been held. These successive conferences have explored the entire field of inter-American relations and recommended the negotiation of treaty agreements upon a number of matters affecting inter-American trade. Among the subjects on which the conferences have recommended that action be taken are the following: customs union, monetary problems, uniform rules for the preparation of commercial and civil documents, patents and trade marks, credits, common system of weights and measures, tariffs, import prohibitions, commercial arbitration, bills of exchange, and bills of lading. Pursuant to these recommendations numerous bilateral and multilateral treaties have been negotiated between American states which have promoted inter-American trade relations. The conferences have also served a useful purpose in clarifying points of friction which have arisen. As a result many trade practices and other activities which have created discord have been altered in individual states either through legislation or executive action. The Pan-American Union, located in Washington, D. C., is the central Bureau of the Union of American Republics and among other services which it renders is that of a clearinghouse for information on commercial and other matters pertaining to the American states.

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CHAPTER XII

Raw Materials

People have always required food and other materials to sustain life. In the modern world, however, there has been a very great increase in the requirement of such goods as a result of the growth in the size of population and as a result of the Industrial Revolution which has greatly multiplied production and distribution of goods, accompanied by higher standards of living. There has been a vast increase in the variety of materials required to sustain modern industrial societies. Prior to the Industrial Revolution small amounts and few kinds of raw materials were required and power was supplied largely by human hand. Especially since 1850 a need for great quantities of materials never before required has been suddenly created. The need for rubber scarcely existed before the automobile, an invention of the past generation. Today minerals are needed to produce an efficient telephone instrument which were virtually unknown a few years ago. An industry able to acquire materials needed today may quickly face a problem of acquiring them in the future as a result of rapid technological changes made possible by new inventions and engineering techniques.

1. DISTRIBUTION OF RAW MATERIALS

No state contains within its present territory all the materials in the quantities it requires to supply present needs. The states which approach most closely this position of self-sufficiency are the British Commonwealth and

Empire, the United States, and, potentially, the Soviet Union. All the Great Powers require large quantities and a wide variety of raw materials unavailable within their own borders. The value of raw material imports of two important countries illustrates this:

Year	United States	Great Britain
1850	$ 407,141	
1875	50,387,008	
1900	210,391,745	£172,000,000
1925	1,430,012,763	400,000,000

Table I shows the dependence of the Great Powers upon foreign sources of supply for some basic commodities.

No State Is Self-sufficient in Raw Materials. Unless production is to be reduced, every state in the world is dependent upon the territory of others for supply of essential materials. Even those countries richest in a wide range of raw materials are lacking in some very important one. Despite the enviable position of the United States in foodstuffs, iron, steel, coal, petroleum, copper, sulphur, cotton, zinc, and phosphates, the United States completely lacks rubber, chromite, antimony, and tin, and produces but a small percentage of some other necessary minerals. A survey of the position of Italy in essential raw materials shows why many observers regard Italy as a Great Power by bluff only. Every Great Power is dependent upon foreign sources of supply for an adequate supply of all the materials required in the present state of industry, and every other state is likewise dependent on others not only for raw materials but also for the manufactured products.

2. NATIONAL CONTROL OVER RAW MATERIALS

Under international law each state has jurisdiction over its own territory and may employ its authority to control the production, transportation, and exportation of raw materials within its territory, on the one hand, and to prohibit, regulate, or tax raw materials coming from outside

TABLE I.—PRODUCTION OF FOOD AND OTHER RAW MATERIALS, AS PERCENTAGE OF APPARENT CONSUMPTION OF SUCH MATERIALS[1]

Material	France	Great Britain	Germany	Soviet Union	Italy	United States	Japan
Foodstuffs	94	51	78	101	95	101	100
Iron and steel	111	96	104	99	37	100	58
Machinery	92	129	128	63	67	110	66
Chemicals	108	100	129	95	93	100	90
Coal	70	136	122	103	3	104	108
Iron ore	139	69	29	106	76	97	65
Petroleum and products	2	2	5	133	0	106	17
Copper	0	0	11	62	1	117	92
Lead	6	6	28	27	69	95	6
Nitrates	61	250	129	37	82	67	67
Sulphur and pyrites	13	25	19	88	150	132	101
Cotton	0	0	0	85	0	215	4
Aluminum	211	3	1	24	87	54	0
Zinc	5	0	60	54	265	110	24
Rubber	0	0	0	0	0	0	0
Manganese	0	0	0	269	14	7	43
Nickel	0	0	0	0	0	0	2
Chromite	0	0	0	131	0	0	99
Tungsten	0	2	0	0	0	23	110
Wool	7	22	9	81	26	54	0
Potash	253	0	148	99	25	28	4
Phosphates	52	30	14	86	50	136	13
Antimony	52	0	0	0	50	0	0
Tin	0	7	0	0	0	0	13
Mercury	0	0	0	86	505	39	0
Mica	0	0	0	102	0	90	100

[1] Adapted from Brooks Emeny, *The Strategy of Raw Materials*, 1934, pp. 175–184, with the permission of The Macmillan Company.

its territory, on the other hand. A state may, of course, assume international obligations by treaty to limit the exercise of these powers but very few states have assumed such obligations. As a result, the national state is in law free to adopt policies with respect to raw materials which may seriously affect people in other countries desiring them. Furthermore, even if the state refrains from adopting a policy of regulation and control, private groups within a state may, as a matter of business practice, attempt to regulate the quantity and price of a raw material needed

Roman Empire. It helped to keep alive the learning salvaged from the period of Roman grandeur; the clergy became the repository of learning and possessed the monopoly of literacy when even kings could only make their marks and could not sign their names. It supplied important services to the community at a time when private action and state organization were lacking. Among these services were the provision of charity to the sick and dependent and administration of rules of canon law which covered an extensive field of human relations including questions of birth, baptism, legitimacy, marriage, divorce, oaths, contracts, wills, and usury. This canon law was applied by ecclesiastical courts.

During the Middle Ages the Church claimed the power to invest monarchs with their crowns. The doctrine of the Church was that God handed the two swords, spiritual and temporal, to the Pope; and that the Pope then handed the temporal sword to the ruler of the state. At times the Pope was successful in compelling, by excommunication or by the interdict or by the sword of war, the acknowledgment of this power of investiture from reluctant emperors and kings. The Church played a part, too, in "international" or interfeudal relations. It used its influence to ameliorate the savagery of warfare and to give immunity to noncombatants, women, children, the aged, and the clergy. It was successful in placing some limits on the time spent in warfare. The famous Truce of God prohibited hostilities from Friday to Monday and on religious holidays. The views of some of the theologians were influential upon early writers on international law regarding such matters as the morality or immorality of warfare, the definition of the "just" war, and the obligation of good faith between princes. At times the Church assumed the position of mediator or arbitrator of disputes and in this way tended to reduce conflict and warfare.

Suggested Readings

I. *Short Treatments*

HERSHEY, A. S., *The Essentials of International Public Law and Organization*, rev. ed., Chap. III, New York, Macmillan, 1927.

abroad. Thus, for example, national business interests controlling a monopoly of some raw material may exact a high price for a product, a price higher than would be possible under a condition of free competition among private producers. This situation is possible when a national group gains monopoly control over the raw material, but such cases are relatively few. However, foreigners in such cases resent the situation and are sometimes able to cause their governments to make representations to the state in whose territory such a private monopoly exists. Recently, however, there has been a development of great private economic organizations which do business in the territory of several or many countries. These organizations, unless effectually controlled by the several national states, may also regulate quantity, price, etc., of an important raw material under monopoly conditions. There are certain portions of the world in which there are important raw materials which have not been exploited extensively, due to political disorder, or the elementary stage of industrialization, or for other reasons. States lacking needed raw materials within their own boundaries often demand the exploitation of such materials, either by the territorial state or by their own nationals through concessionary contracts. In many cases the failure to develop the resources is used as an argument to justify an imperialism by which the territory is annexed or subjected to some form of political control. Finally, there are some important economic resources whose conservation depends upon the cooperation of many or all states because national control is inadequate. Since the high seas are not subject to the jurisdiction of any state it is necessary for each state to control its own nationals and merchant vessels in order to regulate and preserve marine resources such as fish, seals, and whales.

3. RAW MATERIALS AS AN INTERNATIONAL PROBLEM

Several different approaches have been made toward the solution of international problems arising from the erratic distribution of raw materials over the earth in a world of territorial states. (1) One approach is to depend upon the

development of private business beyond national frontiers to eliminate nationalistic control of raw materials, subject to control by government so as to eliminate monopolistic abuses. To some extent this has developed in times of peace in the case of oil, certain metals, aluminum, sulphur, and tobacco. (2) Various proposals have been made for the adoption of governmental policies which would eliminate some of the causes of complaint of states lacking certain materials and unable to acquire them at an equitable price. One of these is a proposal for an "open-door" policy for raw materials in the granting of concessions for exploiting raw materials in foreign countries, in the matter of export duties on colonial raw materials, or in other respects. (3) Another international solution is the application of free trade principles to trade in raw materials. At the Conference of Versailles France and Italy proposed that

> In order to put an end, so far as possible, to international rivalries in the search for raw materials, to suppress many of the causes of the economic conflicts that endanger the world's peace, and to offset the natural inequalities arising from the geographical distribution of resources throughout the world, the Allied and Associated countries agree that henceforth the raw materials of industry shall be entirely free of both import and export duties.[1]

The proposal failed of adoption. (4) Still another international solution is the proposal to give to an international agency the power to distribute essential raw materials.

INTENSIFICATION OF THE PROBLEM IN RECENT YEARS. Increased attention has been given to the problem of raw materials in recent years. This is due to a number of things. (1) The demand of Germany for return of her former colonies relinquished in 1918, on the ground that raw materials needed by Germany could be provided in that way, led to a proposal by Great Britain that the League of Nations should examine the problem of raw materials. (2) The depression resulted in a disastrous fall in prices of many raw materials sold on the world market and led to efforts upon the part of states to control production, marketing, and prices of many commodities. In some

[1] P. T. MOON, *Syllabus on International Relations*, p. 185, New York, The Macmillan Company, 1925.

instances the control was national, in others international. In any case these regulation schemes had an effect upon those who wished to import such raw materials. (3) The dislocation of international trade reduced the purchasing power of states and their nationals and thus curtailed their ability to purchase raw materials abroad. (4) The vast armament race increased the problem of acquiring steel, oil, and many other materials, a problem already serious for needs in peaceful activity.

4. ANALYSIS OF THE PROBLEM BY THE LEAGUE OF NATIONS

On September 8, 1937, a Committee for the Study of the Problem of Raw Materials issued a report. This was a committee of experts appointed by the Council in 1937 in pursuance of an Assembly resolution of October 9, 1936. The committee found that there are two aspects of the problem: (1) complaints and difficulties experienced with regard to supply of raw materials, and (2) complaints and difficulties experienced with regard to the acquisition of, and payment for, raw materials.

DIFFICULTIES WITH SUPPLY: PROHIBITIONS AND RESTRICTIONS. The complaints and difficulties relating to supply of raw materials are dealt with under (1) prohibitions and restrictions on the export of raw materials, (2) export duties, (3) development of natural resources, (4) international regulation schemes relating to the supply of raw materials, and (5) monopolies. As for the first category, prohibitions and restrictions on export, the committee found that they were applied for different reasons: (*a*) prohibition of export of foodstuffs in case of shortage of supply due to short harvests, (*b*) prohibition or restriction of export of certain materials, such as scrap iron, in order to retain them for use of domestic industry, or to economize the natural resources, or to affect prices, or to avoid monetary difficulties; (*c*) prohibition upon export of planting materials in the case of a monopoly or quasi-monopoly, as in the case of the abaca palm used for manila hemp, by the Philippines, and as in the case of rubber and tea plants under certain international regulation schemes; (*d*) pro-

hibition of export of a raw material so as to permit the country of origin to manufacture it; (*e*) restriction of export by governments in the case of almost all international regulation schemes relating to raw materials; and (*f*) restriction on trade of materials when one state is the principal or a very important producer, as in the case of cinchona bark, Netherlands East Indies, and coffee, Brazil. The conclusion of the committee on this topic follows:

> To sum up, the Committee considers that, while certain prohibitions and restrictions can be justified, when they are of the nature of defensive measures, serious objections can be taken to prohibitions or restrictions which are designed to apply pressure to other countries, to preserve uneconomic industries or to maintain an artificial level of prices, either by creating an excessive supply in the internal market, by starving the market or by maintaining monopolies or quasi-monopolies. The Committee has not been able to find any substantial evidence of such impediments; but, in so far as they may exist, it desires that they should be removed at the earliest possible moment and therefore recommends that all nations, either by autonomous action or by an international convention, should bind themselves not to use prohibitions or restrictions on export for such purposes.

EXPORT DUTIES. Export duties on raw materials were found to be employed for a number of different reasons. (*a*) They are employed in some cases for the same purposes as those in (*b*) and (*d*) above, under prohibitions and restrictions. (*b*) Small levies are made in the colonial and in the metropolitan territory on certain products such as rubber, to be used to improve the industry and to increase demand for the product. The small levy, absorbed by the producer, had not caused complaints. (*c*) Export duties imposed in both metropolitan and colonial territories for purely revenue purposes were considered legitimate. In the colony the tax acted equitably and easily to raise money from the population and was preferable to an import tax for revenue; or the tax was justifiable in the case of mineral products as a form of royalty for the community on the mining industry. (*d*) Discriminatory export duties were disapproved in principle, whether the discrimination was in favor of the metropolitan country or whether it was discrimination as between different foreign countries.

Development of Natural Resources. The Committee considered various aspects of the problem of increasing the exploitation of raw materials in such a way as to make them available to countries lacking them in sufficient quantity. It was admitted that assurance of unrestricted supplies of raw material and market is essential for those countries with small raw material resources and large populations, because industrialization seems the only solution of their problem. Normally the material can be obtained by purchase from abroad. Where shortage of foreign exchange prevents this, the committee was dubious that the solution was for the country itself to take part in the development of sources of supply in foreign countries, because this too would require foreign exchange and years might pass before a financial return became available. The committee believed that

> It should be recognized that the Governments of countries which are important suppliers, actual or potential, of raw materials have a responsibility not unreasonably to hamper the development of their raw materials. Their legislation on this subject should not be framed in such a way as to protect their own interests only, but should also take into account the interdependence of all countries.

The possibility that one country might exploit raw material resources of another by employing its own nationals and capital was considered. Essentially this is the question of granting of concessionary contracts and of "national treatment" of aliens. In the case of "sovereign countries," *i.e.*, metropolitan or noncolonial territory, the committee found considerable differences in policies followed by states and felt that "in principle, a rigid restrictive policy is impossible to defend." It was admitted that a state might properly reserve certain forms of enterprise to nationals for political, economic, or social reasons, and that in other cases the state should reserve the right to control development of its natural resources by foreigners. It was suggested that a bilateral or multilateral agreement would be necessary in case of large-scale investment of capital or transfer of a substantial force for development of raw materials in a foreign country. In the case of colonial territories, the committee approved similar principles. It was found that

special privileges were reserved for nationals in all colonial territories except the Belgian, British, Dutch, and Portuguese; except parts of the French, as regards agricultural and forestry concessions; and except in the case of overseas territories of the United States. However, the committee found that even where special privileges were not reserved to nationals, nationals enjoyed a favored position in exploitation of raw materials in a colony due to common language, long-established commercial and financial relations, cultural affinities, and a deliberate policy of administrative officers. The committee recommended the progressive modification of this state of affairs in a more liberal direction and suggested that the principle of the open door might be extended, as regards development of natural resources, to sparsely populated territories in colonies, as had been done in the case of the Congo Basin and class *A* and *B* Mandates. The necessity of safeguarding colonial populations was stressed.

INTERNATIONAL REGULATION SCHEMES. The committee found that the regulation schemes at the time operated by governments or under government auspices related to tin, rubber, tea, and sugar. The schemes had been adopted in order to reduce the production of these materials so as to increase the price, which had during the depression fallen to very low levels. The committee favored these schemes as increasing the purchasing power of the raw-material producing countries with a consequent beneficial effect on international trade. The committee felt unable to express a decided opinion about purely private regulation schemes such as those relating to copper and other base metals because of insufficient information. It advocated representation of consumers in such schemes, adequate publicity relative to the terms of the agreements and their operation, the application of the principles of nondiscrimination and reasonableness of charges, and that governments should go as far as possible in assuming control over such schemes.

The conclusions regarding international regulation schemes are as follows:

> . . . the Committee, while it would not wish to state that all regulation schemes in the past have been well conceived or beneficial to all the

interests concerned, considers that the Governmental regulation schemes relating to raw materials now in operation have, generally speaking, been an important factor in the improvement in economic conditions experienced in producing countries during the depression, as well as in the development of international trade. But it feels that it is very important that consuming countries should be given every assurance that the schemes will be operated in a reasonable manner. With this end in view, it considers that every such scheme should make adequate provision for effective representation of consumers and for publicity, should be subject to the greatest degree of Governmental supervision which the circumstances admit, and should be so framed that the controlling body is placed in a position to take immediate and effective action in the event of an unreasonable rise of prices or other effects prejudicial to the consumers.

MONOPOLIES. The committee considered various types of monopoly control. It found that fiscal monopolies fell within the sphere of internal policy. Monopolies of the government over production or importation and sale are fiscal monopolies, the most important being tobacco and salt. Monopolies in the form of cartels were treated under the topic of international regulation schemes. Monopolies in the form of an arrangement for marketing a crop were treated as a method for orderly sale of raw materials. As for natural monopolies, they were found to be rare: helium gas in the United States, jute in India, cinchona bark in the Netherlands Indies, camphor in Japan, and certain minor minerals. Furthermore, the committee had received no complaints about them and did not anticipate difficulties, because an excessive price led to curtailment of market or use of substitutes.

DIFFICULTIES OF PAYMENT. The committee reached the conclusion that none of these difficulties was an insuperable obstacle to acquisition of raw materials. It found that the real difficulties in acquiring raw materials arose from the various difficulties in payment for raw materials. The conclusion is that:

There is no doubt that there is an inequality in the distribution of raw materials and that certain countries have particularly serious difficulties in supplying their requirements. The report mentions certain measures for alleviating these difficulties. But the only general and permanent solution of the problem of commercial access to raw materials is to be found in a restoration of international exchanges on the widest basis.

Some of the findings of the committee on this point are as follows: Different countries are affected differently in the problem of acquisition of raw materials. In general the industrialized countries, during time of economic crisis, do not have the problem of acquiring raw materials, because raw material prices fall lower than prices of industrial products. However, debtor countries find greater difficulties in gaining access to raw material because (1) creditor countries raise obstacles to exports of debtor countries, thus reducing the amount of foreign exchange available for payment of imports of raw materials by the debtor countries, and (2) sudden withdrawal of short-term capital by the creditors placed debtor countries in a worse position and made unavailable to them this means of purchasing raw material imports. An additional difficulty was created for those debtors where capital has been withdrawn, because of the resulting high price of their products which limited export opportunities, thus decreasing the foreign exchange available for import purchases. All countries have found greater difficulty in purchasing abroad needed raw materials because of the armament race. Production for export has been curtailed by diversion of production to armament, thus reducing the amount of export and foreign exchange available for needed imports. The countries having financial resources may be able to continue to purchase all needed imports of raw materials; but the debtor countries experience more difficulty. "If these countries employ their reduced supplies of foreign exchange available for raw materials primarily for purposes of armaments, they may well have difficulty in obtaining the raw materials required for normal purposes." A second group of countries which experienced difficulties in purchasing raw materials is composed of European countries which produce and export agricultural goods. These countries depended upon a favorable balance of trade as a means of purchasing foreign raw materials. This balance was pared down as a result of the fall in prices of agricultural products and as a result of restrictive policies of the importers of agricultural products. In addition, a reduction of foreign short- and long-term credits and of emigrant remittances similarly reduced their

power to purchase needed raw materials. The committee then examined other obstacles to payment of raw materials, including exchange controls, clearing agreements, high or preferential tariffs, and the interruption of capital movements as a consequence of the breakdown of the gold standard. The Economic Committee of the League formulated principles based upon the part of the report relating to supply of raw materials which were submitted to governments for their observations. It was decided that no international action could be taken at the time (1938).

5. RAW MATERIALS AND FOODSTUFFS IN TIME OF WAR

One of the leading arguments for economic self-sufficiency is that it promotes the security of the state in times of war. Despite the efforts of states to attain this self-sufficiency no state has done so and every state remains to a greater or less degree dependent upon foreign sources of supply for essential war raw materials. Belligerents during war make all possible efforts to keep open the avenues of supply from abroad to their own country, while at the same time they endeavor to cut off their enemy from his sources of supply. Under international law the belligerent has rights to interfere with the commerce of his enemy and to interfere with the commerce of neutrals with his enemy. The belligerent has the right to injure, destroy, or capture public war vessels of the enemy. He has the right to visit, search, and capture merchant ships of the enemy flag; along with the cargo on board the ship which is owned by the enemy. Normally, in such a case, the ship and its cargo will be taken to port of the captor for prize court proceedings. The ship may be taken to port either by the capturing vessel or by a prize crew put on board the vessel. In certain circumstances, however, the captor may sink the captured enemy merchant vessel, provided that passengers and crew are put in a place of safety. If the enemy merchant vessel resists visit and search or attempts to escape, it may be sunk. The belligerent has under the laws of war a right to interfere with merchant vessels of a neutral flag under certain defined circumstances. In the first place, the belligerent has the right of visit and

search of neutral merchant vessels. The belligerent may seize the vessel and all or part of the cargo under certain contingencies. Thus, if the vessel carries absolute contraband to the enemy, such goods may be seized and confiscated, along with other goods aboard owned by the same persons. Again, the vessel may be confiscated if it is engaged in one of the acts falling under the head of unneutral service. Furthermore, the belligerent may seize and confiscate vessel and cargo under neutral flag if the vessel attempts to violate a blockade of the belligerent against its enemy.

6. THE CONSERVATION OF NATURAL RESOURCES

It is impossible for states singly to conserve certain natural resources without the cooperation of other states. This is true especially in the case of migratory birds and animals on land and of animals, plants, and fish in the sea.

BIRDS, ANIMALS. Six states agreed by treaty in 1900 to adopt measures to prevent extermination of rare and useful birds and animals in a zone across Central Africa which had become an international hunting ground. Eleven states agreed by treaty in 1902 to protect certain birds useful to agriculture because of their control of harmful insects. Canada and the United States agreed by the Convention for the Protection of Migratory Birds, 1916, to enforce regulations within their territory with the object of preserving and regulating the taking of birds which migrate during the year between the two countries.

SEALS, FISH. The United States, Great Britain, Russia, and Japan agreed by treaty in 1911 to adopt measures intended to prevent extermination of seals and sea otters which migrate in the North Pacific Ocean. Pelagic sealing was prohibited. It was provided that skins should be marked so that it could be determined that the animals were legally taken. The United States and Canada made an agreement in 1930 for the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea. This agreement was revised in 1937.

WHALES. In 1937 a conference on whaling was held at London which resulted in an agreement and final act. A

communiqué issued by the conference on June 8, 1937, explains the agreement as follows:

The Agreement follows, on the whole, familiar lines. There will be a close season for what is known as pelagic whaling, that is whaling prosecuted by whale catching ships attached to floating factories, for nine months of the year, except in the first year of its operation, when the open season will be extended by one week at the end of the season.

North of 40° South Latitude as far as the Equator pelagic whaling for baleen whales is absolutely prohibited and this prohibition is extended to wide areas north of the Equator. . . . Certain species of whales—the various Right Whales and the Grey Whale—are protected absolutely as are all whale calves and female whales attended by calves.

It is also forbidden to kill whales below certain size limits, the size limits being raised above those which have been prescribed by agreement between the United Kingdom and Norway in the past. Under the Agreement it will not be lawful to take blue whales of less than 70 ft. in length, fin whales of less than 55 ft., humpback whales of less than 35 ft., and sperm whales of less than 35 ft. The extension of this form of protection to the sperm whale, which has not hitherto received any protection is one of the novelties of the Agreement.

Whaling at land stations is to be subject to a six months close season. The dates of the beginning and ending of the close season will vary according to the latitude of the station. The extended period of liberty to hunt whales from land stations is justified by the fact that their operations are limited by the fact that they can only take such whales as come into their vicinity, whereas the factory ships can follow the schools of whales wherever they may be.

The Agreement is accompanied by a final act in which the Conference discusses various matters not dealt with in the Agreement and recommends to the Governments that they should prepare to take in agreement with one another other measures for the further protection of whales in the light of further experience and knowledge. An important suggestion among others is that the Governments should take powers to regulate the methods of shooting whales with a view to preventing the loss of whales fatally wounded through the use of defective guns or harpoons or other causes and at the same time mitigating the cruelty which admittedly attends this process.

The Conference further points out that the measures they have agreed upon may prove nugatory if the ships of countries not parties to the Agreement are permitted to indulge in unregulated whaling and urges the importance of persuading all interested Governments to accede to the Agreement. It concludes with a warning that unless whaling is now strictly regulated, the stock of whales cannot fail to be reduced to a level at which whaling ceases to be remunerative.[1]

[1] The Department of State, *Treaty Information Bulletin*, No. 93, June 1937, 17–18.

The great rapidity with which whales are being destroyed, as a result of improved methods of capture, is shown by the fact that captures amounted to about 2,200 per annum in 1900 but reached 42,800 in 1931. In 1926 the value of the whale oil from 28,000 whales amounted to £5,900,000 gold.

SEA POLLUTION. A private international organization, the International Council for the Exploration of the Sea, was organized in 1902. It conducts research and formulates proposals for international legislation to protect fisheries. A report made to the Committee of Experts on the Codification of International Law, appointed by the Council of the League of Nations, discusses the problem of protection of resources of the sea. At the request of Great Britain the Transit Organization of the League has examined the subject of sea pollution by petroleum oils and a draft convention has been prepared for consideration by an international conference. Oils discharged by ships are known to destroy sea birds, fish, and marine plants on which fish live and to pollute water at bathing resorts and to cause fire hazards in ports. The state is unable to deal satisfactorily with the problem because its jurisdiction stops at the high seas.

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CHAPTER XIII

Foreign Investments

The practice of making loans and investing funds in foreign countries is several centuries old. It dates from the time when the money lenders of Venice and Lombardy and the Fuggers of Germany lent money to European rulers who found themselves in straitened circumstances.

1. HISTORY OF FOREIGN LENDING

Subsequent to the Industrial Revolution international financing was broadened. Investments in foreign productive enterprises began. An ever-increasing number of individuals invested their savings in foreign stocks and bonds so that today the doctor, lawyer, merchant, and dentist are investors. No longer do governments and a few capitalists and bankers alone have a stake in foreign investments. Although the modern individual may be an intense nationalist, as an investor he recognizes no national boundary lines and no racial distinctions. There exist for capital no limitations of nationalism or patriotism and no prejudice of class interest or rivalry. Frenchmen will make loans to Germans and capitalists will sink huge sums in Soviet Russia which has been dedicated to the annihilation of modern capitalistic society. Capital, like trade in any other commodity flows like the great international rivers freely and uninterruptedly across all international boundary lines, except when governments interfere with it. As the water in these rivers seeks its level in the sea, so capital everywhere tends to seek its highest reward in the way of returns. The individual may seek a high rate of interest or may desire a safe investment

or may try to secure control of raw materials or political advantage and control. Whatever the desired object may be, capital from the great industrial states shuttles back and forth across the political map on its diverse missions and it penetrates to all parts of the world.

CAPITAL-EXPORTING STATES ARE FEW. The number of capital-exporting states is small. In 1914 Great Britain, France, Belgium, Germany, Switzerland, and Holland were the principal capital-exporting states, and the United States was just entering the field. The approximate amount of foreign investments of the principal capital-exporting countries before the World War was 40 billion dollars. These investments were held largely by four countries: Great Britain with 20 billion dollars, France with 9 billion, Germany with 8 billion, and the United States with 2 billion. The 2 billions of the United States were invested largely in Canada, Cuba, Mexico, and other parts of Latin America and represented actual holdings of foreign productive properties such as factories, sugar plantations, railroads, and mines rather than stock shares in a foreign owned and operated enterprise. These American foreign investments were more than offset by billions of foreign investments in the United States, principally in railroads. The United States was therefore a debtor rather than a creditor state.

CREDITOR COUNTRIES AFTER 1918. Since the war of 1914–1918 this situation has been greatly altered. Great Britain, France, Holland, Switzerland, and Belgium are still capital-exporting countries. Germany became one of the largest debtor countries and the United States became one of the great creditor states. The percentage of the total wealth of these creditor states which has been invested abroad gives some indication of the material interest they have in foreign countries. The percentage of total wealth invested abroad is in the case of Great Britain 18, of France 15, of Holland 20, of Switzerland 12, of Belgium 12, and of the United States 40. The total foreign loans and investments of the United States in 1929, exclusive of government debts, amounted to approximately sixteen billion dollars. The United States was then second to Great Britain, whose

total foreign investment was approximately 20½ billion dollars.

Debtor Countries. The extent to which the total wealth of debtor countries is mortgaged to foreign countries is of interest. The figures in percentage are as follows: Germany 10, Italy 3, Canada 15, Australia 18, Argentina 12, Brazil 14, Union of South Africa 23, Chile 20, New Zealand, 21. During the decade following 1929 there has been a great decline in foreign lending. The decline has been due to the loss of confidence of investors, produced by experiences of the depression, including moratoria, repudiation, and suspension of payments of interest and principal on foreign loans; the losses sustained as a result of revaluation of currencies in the borrowing countries; and the uncertainties of the future due to economic disturbances and the increase in international friction between states with the probable result of war.

2. TYPES OF FOREIGN LOANS AND INVESTMENTS

The international movement of capital is of two main types. There is, on the one hand, the automatic or free movement which is determined by the operation of the ordinary economic laws of supply and demand, and, on the other, the directed movement in which a human agency, ordinarily government, directs and controls the flow of capital across national frontiers. In the directed movement of capital the economic factors recede more and more into the background and the political element comes into the foreground. Foreign loans and investments, grouped according to different types of borrowers and lenders, fall into the following categories: (1) private capital invested abroad in the development of private enterprises; (2) private loans made to foreign governments; (3) government loans to foreign governments; and (4) government investments in foreign private enterprises.

3. THE MOTIVES OF CAPITAL EXPORTS

Capital Export for Investment. The purposes which lead to capital exports are varied. Most of the export of

private capital is for purely investment purposes. The individual seeks the highest return on his capital which is consistent with safety. If foreign investments of equal security offer a larger return than can be secured in the domestic market, private investors are disposed to place their funds in foreign securities. These investors ordinarily look to their government for an element of security for their investments abroad. When such capital has been invested in stocks of productive enterprises it is welcomed by the receiving country during the early stages of economic development. After industry becomes established, there is a tendency in capital importing states to force out such investments in stock and replace them by foreign loans at fixed rates of interest. Thus the earnings are retained within the state and only fixed interest charges have to be paid to the foreigner.

Capital Exports as a Means of Securing Raw Materials. Private investments, especially in backward territories, have been motivated not only by the desire for large returns but also for the purpose of developing and assuring sources of raw materials for domestic industry. Thus railroads were built in Canada with foreign capital which opened the wheat area to export trade, mines in the Malay peninsula were developed by foreign capital in order that industries might secure the tin produced, and rubber plantations in Liberia were developed by the Firestone Company in order that it might have its own source of supply of this important raw material. In South and Central America, private capital of the United States with government encouragement has been poured into the development of virtually all types of raw material producing activities. Secretary of Commerce Herbert Hoover, in 1921, emphasized the necessity of extending American holdings in foreign oil fields. In its platform of 1920, the Democratic party recognized the value to the industry of the United States of American investment in, and control of, foreign sources of certain raw materials.

Capital Export for the Promotion of Foreign Trade. The export of capital for the purpose of promoting

foreign trade, accounts for a large proportion of the international capital movement in the period since 1920, especially in the case of the United States. The principle involved is simple. If a potential customer is unable to purchase goods because he lacks the money, lend him the money and enable him to buy the goods. Thus, China, Germany, the Soviet Union, many Latin-American states, and others have secured funds with which they have purchased goods from abroad. The money currency does not leave the creditor country but is placed to the credit of the borrower within the lending country. Frequently the contract for the loan requires the borrower to purchase materials and equipment from the country of the lenders. In such cases trade follows the dollar directly. Where concessions for the building of railroads, exploitation of mines, and other development projects have been purchased by foreign capital a preference is usually given to the investor's own country when making purchases of materials. Whatever its form, the export of capital leads to the sale of goods by the lending country. Difficulties may arise later when the borrower begins to pay back to the foreign investors dividends, interest, and principal. By stimulating exports through the extension of credit to foreign countries the creditor country commits itself to importing more than it exports at some future date or to using foreign services, or it is throwing away the foreign investment.

Capital Export to Build Home Industries Abroad. During recent years many manufacturing industries which have large export trade have established branch plants abroad. This is done primarily to avoid high tariff barriers of the foreign country. Thus the Ford Motor Company avoids the British tariff on imported automobiles by building a Ford factory in Great Britain. The Ford corporation owning the factory is of British nationality, but it is controlled by the American Ford interests which reap the profit from its operation. The establishment of these industries entails a sizeable amount of capital export from the country of the parent industry. The extent of the practice of establishing branch industries abroad is suggested by the follow-

ing. In 1922 there were more than 600 branch factories and subsidiaries of parent industries of the United States located in Canada alone.

POLITICAL PURPOSES SERVED BY CAPITAL EXPORTS. Governments infrequently engage directly in international financial operations but they often take an interest in the loans of their nationals abroad. In certain cases the government of the exporting state has directed capital exports along certain channels to attain political objectives. Capital exports become an instrument of diplomacy. Control of investments may be made to attain the following objects: (1) to gain or assist allies, (2) to withhold assistance from potential enemies, (3) to compel submission on some disputed point as a precondition for the loan, (4) to prepare the way for political control of a backward region under the pretext or excuse of default on foreign financial obligations.

ALLIANCES. The alliance between France and Russia (1892) was followed by the flotation in France of a large loan to Russia. French capital exports have been concentrated largely in European countries having close political ties with France. Before 1914 France had a total of 45 billion francs invested in foreign countries, over 30 billions of which was invested in European countries. Political considerations were largely responsible for this great concentration of capital exports in European countries. Export capital was employed as an instrument of policy in the game of European politics. Foreign loans were used to win Italy away from the Triple Alliance during the World War. France employed the financial weapon to disrupt the projected Austro-German customs union in 1931. Great Britain has made available to Poland, Turkey, and her other allies large loans to strengthen them in arms and war materials. France and Great Britain have also encouraged loans to states in the Balkans so as to enable the latter to retain their economic independence and to avoid complete domination of their trade by Germany.

INVESTMENTS AS AN ENTERING WEDGE FOR IMPERIALISM. Political control over weak and backward states has often followed financial penetration. The protectorate of Great Britain over Egypt and the establishment of her sphere of

influence in Persia were preceded by heavy investments in both countries. French, Italian, and British capital investments in Tunis preceded the struggle for political control in which the French were successful. In the states of the Caribbean, foreign powers, in spite of the Monroe Doctrine, contemplated resorting to intervention for the alleged purpose of protecting their investments. The government of the United States, in order to forestall such action, adopted for a time the practice of protecting foreign investors against defaults by taking over customs control in the areas concerned and supervising the payments to foreign creditors, both American and non-American. The penetration of Germany before 1914 into the Turkish Empire centered around the construction of the Bagdad railroad, and involved a heavy financial investment which was prompted largely by political motives. Certain foreign investments in China have been regarded as preparation for encroachment upon the integrity of China and also as a means of "closing the door" to other powers. Consequently the Consortium method of making loans to China was devised. Under this plan capital-exporting states cooperate so that no single state or national group can secure the sole advantage derived from such investments.

4. NATIONAL CONTROL OVER CAPITAL EXPORTS

Governments early realized the important bearing capital exports may have on the foreign relations of the state. During the seventeenth and eighteenth centuries when Holland was a leading financial center of the Western World, the Dutch government exercised a broad supervisory control over foreign loans and the operations of international bankers. Official approval of foreign loans was required and certain restrictions were placed upon the making of foreign investments. In modern times all the governments of capital-exporting states exercise some degree of supervision over foreign loans and investments.

In Great Britain government supervision over capital exports has been negligible in times of peace until recent years. The Foreign Office expects to be consulted through

the Bank of England in case a prospective loan involves or may involve British interests. The government has not hesitated to intervene in specific instances where governmental policies would be affected adversely by foreign loans. In France, government supervision and direction of foreign loans has been open and acknowledged.

POLICY OF THE DEPARTMENT OF STATE. In the United States no specific statutory basis for government supervision and control of foreign loans has existed until recent years. However, for some years before 1914 and more particularly during and since the war of 1914–1918, when the United States became one of the greatest of the capital-exporting countries, a type of extralegal administrative supervision was developed. The policy was stated in a State Department announcement of March 3, 1922, which expressed the hope that American concerns which contemplate making foreign loans will inform the State Department of their proposed action, so that they may ascertain the attitude of the department regarding projected loans. The government admitted its lack of power to require financial concerns to consult it, asserted its determination not to pass upon the advisability of a loan as a business proposition, and indicated that it desired to have an opportunity to inform underwriters whether or not there was any objection to a particular issue because of the possibility of national interests being involved. This policy was laid down in 1922 primarily for the purpose of controlling loans to the allied governments which had not entered into a postwar debt settlement agreement with the United States but it has also been used for other purposes. During the summer of 1935 the Secretary of State was successful in causing the abrogation of a concessionary contract between an American oil company and Ethiopia, under which a large loan would have been advanced to Ethiopia. Action was taken to discourage the loan in view of imminent hostilities between Ethiopia and Italy.

STATUTORY RESTRICTIONS. The Johnson Act of 1934 makes it unlawful for any but government agencies to buy or sell the obligations of any foreign country which is in default in its debts to the United States. Neutrality legisla-

tion adopted in 1936, 1937, and 1939 prohibits loans to belligerent governments in case of war while the United States is neutral. There has been considerable opposition to the exercise by the American government of supervision and restraint of foreign loans. However, the right of the government to protect American investments abroad implies the right to exercise some supervision over the making of loans which the government may subsequently be called upon to protect. The government could hardly be expected to protect investments which run counter to national policies and the counsel of wisdom would seem to support the practice of passing on the loan while it is in the stage of being negotiated. No government can be expected to view with favor or to disinterest itself in foreign loans which may interfere with its foreign policies.

5. INTERNATIONAL COOPERATION IN INVESTMENTS

There have been several instances of international cooperation in the field of foreign investments. The purpose of the cooperation may be (1) to assure equality of treatment to investors of different states in the leading to a foreign state, or in the treatment accorded investors in payment of principal and interest, (2) to protect the investors against the borrowing state by requiring of it the proper administration of its financial affairs so that payments are made when due, (3) to assist the borrowing state in raising a loan at a reasonable rate of interest by guarantees of principal and interest or a fraction thereof, or (4) to prevent a single state from employing its lending power so as to gain political advantages from the borrowing state.

INTERNATIONAL FINANCIAL CONTROL. The most important cases of international control of finances of a state during the nineteenth century concerned Tunis, Morocco, Egypt, Turkey, Greece, and China. The Khedive of Egypt established in 1876 the *Caisse de la Dette Publique* under the control of an International Debt Commission, composed of representatives of German, French, English, Austrian, and Italian bondholders nominated by their governments and removable only with their consent. In 1880 the Khedive

issued the Law of Liquidation, which assigned certain revenues for the service of the debt. From that time onward the Egyptian government could issue no new loans and change no taxes except with the consent of the commission.

In 1885 these states consented to a loan to Egypt and guaranteed it, and in 1890 they consented to the conversion of some of the more onerous debts. France prevented an increase in the revenues of Egypt because of her hostility to the British position there.

As the consent of the Commission to new loans and taxes was necessary, the British administration was greatly hampered by this type of international control. However, as a result of the Entente Cordiale of 1904, France withdrew her opposition. A decree of the Egyptian government was thereupon issued declaring that the Commission would exist until the debt was paid off, but saying that hereafter the Egyptian government would freely change taxes, make loans and dispose of reserves so long as the return did not fall below the amount necessary for the service of the debt. Upon this basis, the International Debt Commission has continued to function.[1]

The case of Egypt is typical. Usually the international control is administered through a commission on which each controlling state is represented. On the whole the results of this type of control have been salutary. The financial situation of the controlled states has been improved and no individual state has been able to exploit its position. Improvement in the finances of the borrowing state has tended to reduce the opposition aroused in the borrowing state by interference in its internal affairs.

Foreign Investments under the League of Nations. The great bulk of foreign investment continues to be conducted by private investors or individual states. However, there have been numerous cases since the establishment of the League of Nations in which states have appealed to the League for financial assistance. This financial assistance takes two principal forms: (1) arrangement of loans, and (2) the giving of expert advice to national governments on financial problems. Beginning in 1923 the League participated in work which led to loans to Austria,

[1] R. L. Buell, *International Relations*, rev. ed., p. 424, New York, Henry Holt, 1929.

Hungary, Greece, the Free City of Danzig, Bulgaria, and Esthonia.

Case of Austria. Austria had been made into a small state by the Treaty of St. Germain closing the war of 1914–1918. Her former territory had been divided among several neighboring states. The losses sustained during the war and the dislocation of economic life caused by creation of new boundaries produced a situation in which Austria approached bankruptcy. Government expenditures were three times the revenue and the currency was heavily depreciated. For a time Austria survived because of speculative loans made by foreign investors and because of gifts. France, Great Britain, and Italy lent 30 million dollars in 1922 which was rapidly used for current needs. When Austria applied for further assistance in August, 1922, it was indicated that no more could be lent and that it was desirable that arrangements be made for financial reconstruction so that the lending would be attractive to private investors. The plan eventually adopted was prepared by two bodies: a Sub-Committee of the Council of the League and the Financial Committee of the League.

General Features of the Plan. The plan adopted for Austria is of general interest, because it has served as a model for later financial assistance by the League. It contained, first, provisions whose object was to make the loan a sound business investment. Thus, it provided that the loan should be made on condition of adoption of various reforms in Austria, such as a reduction in the number of government employees and the balancing of the budget, to be supervised by a High Commissioner of the League in Vienna. Further, the investor received a double safeguard: the loan was guaranteed by receipts of the Austrian customs and of the tobacco monopoly, and if these were inadequate, by the guarantee of nine states. As a result, a loan of 876,859,400 gold francs was raised at 6 per cent interest. Second, Austria agreed not to alienate its independence or enter any negotiation calculated directly or indirectly to compromise this independence. Third, the British, French, and Czechoslovakian governments agreed to respect the political independence, territorial integrity,

and sovereignty of Austria and not to seek any special or exclusive economic or financial advantage calculated to compromise the independence. These provisions were contained in three treaties (protocols) signed by the participating states. A less rigorous control was established in September, 1924, and control was relinquished on June 30, 1926, and the League Commissioner retired. Austria applied in 1931 for further assistance, and a treaty (protocol) defining the collaboration was accepted by the Council and signed by Austria, July 15, 1932.

Under this Protocol, the Governments of the United Kingdom, France, Italy, Switzerland, Belgium, and the Netherlands gave their guarantee—each for a specified portion—to a new loan of the Austrian Government which was issued in August 1933 (179,397,960 gold francs). This loan also helped to consolidate the currency.

On September 7th, 1934, the Committee of States Guarantors of the 1923 Loan authorised its conversion, while at the same time laying it down that the Conversion Loan would enjoy the same international guarantees as the original issue. This action was taken at the request of the Austrian Government.[1]

The conversion took place in 1934–1935, involving 369,039,580 gold francs, at interest rates of 4.5 and 5 per cent.

Case of Hungary. A similar plan was followed when Hungary requested assistance in 1923. Two protocols were signed, March 14, 1924, in connection with the loan of $2,500,000 (373,147,200 gold francs) at 7.5 per cent. As assets sufficient to secure this smaller loan were available in Hungary, the loan did not have the guarantee of states as in the case of Austria. A Commissioner General supervised Hungarian finances from March, 1924, until June 30, 1926.

As a result of a request from the Hungarian Government in September 1931, the League in the following month undertook a fresh enquiry into the financial position of Hungary. Permanent collaboration with the Financial Committee has since been established through the intermediary of a representative of the Committee residing in Budapest and of an Adviser attached to the National Bank.[2]

Refugee Loans to Greece and Bulgaria. Two loans to Greece were made under the auspices of the League to assist in the settlement of some 1,500,000 Greeks who

[1] *Essential Facts about the League of Nations*, p. 178, 1936.
[2] *Ibid.*, p. 179.

returned to the country when they were expelled by Turkey in accordance with a treaty of peace of 1923. These loans were 318,729,900 gold francs at 7 per cent in 1924 and 196,938,800 at 7 per cent in 1928.

For a small country of five million inhabitants, this influx of refugees, most of them destitute, was a formidable problem. The Greek Government realized that it must have international help and appealed to the League. The Financial Committee at once drew up a plan for an international loan of £9,700,000, to be administered by an autonomous organization. It was expressly provided that the yield of the loan should not be devoted to temporary charitable purposes, but to lasting measures for the settlement of the refugees. From the yield of the loan they were to obtain agricultural implements and small sums of money, which were subsequently repaid out of their earnings.[1]

Only 4 per cent of the sums advanced to the refugees remained unpaid at the date for repayment. Under a similar arrangement with the League of Nations, Bulgaria borrowed 85,512,900 gold francs at 7 per cent in 1926 to care for some 200,000 refugees who had been returning to the country since 1913.

League Assistance with Financial Problems. Several states have relied upon League officials for advice in solving financial problems other than those involving international loans. Thus the Financial Committee of the League advised Esthonia in her banking and currency reforms of 1927; Danzig in the creation of a special currency and establishment of a Central Bank; Albania in drafting statutes for a Bank of Issue in 1923; and the Saar Territory, in connection with the change of regime to Germany in 1935.

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CHAPTER XIV

Communications and Transit

The modern world demands facilities for communications and transit which are rapid, certain, cheap, and safe. The national state can provide such facilities only within its own territorial limits. If it is necessary that a message, a passenger, or goods be delivered within the territory or cross the territory of another state, the cooperation of the latter state is essential. The extent to which states cooperate in the field of communications and transit is very great and most of the cooperation has been developed during the past half century. This cooperation is both cause and effect of the increased number of relations between persons in different states and between the states themselves. The demand for rapid, certain, cheap, and safe means of communication is simply good business. It promotes profits by reducing the cost of interest while in transit, by reducing losses, by facilitating contracts because of certainty of performance, and by making it possible to transact business with dispatch. In addition it encourages tourists to visit foreign countries and many states enjoy a lucrative business by entertaining foreign paying guests. States have been the more willing to listen to insistent demands from those interested in foreign trade and communications because the states are also interested in improvement in these fields. If a state is pursuing a policy of free trade there is every incentive to encourage imports and exports and if a state is pursuing a policy of economic nationalism the state is still desirous of promoting exports, even though it may limit or

discourage imports from abroad. Furthermore, all states are interested in communications and transit as a factor in strategy and success in time of war; for example, a merchant marine is encouraged in times of peace to train seamen and provide an auxiliary to the navy in time of war, and railways and roads are frequently constructed in the vicinity of frontiers with a view to their strategic value in transporting troops and supplies in time of war. Another respect in which the field of communications and transit is important in international relations is this: a state may, if unrestrained by treaty, adopt a policy which vitally affects other states or their nationals dependent upon these means of communication and transit. Thus it might discriminate between parties in rates and services so as to ruin the business of one of them, or it might hold this threat above the party in order to exact concessions of another kind, or, again, it might cut the avenue during a crisis, disrupting economic life or withholding essential economic or military supplies.

1. COMMUNICATION AND TRANSIT ON THE HIGH SEAS

It was possible for Magellan's expedition to sail around the world in 1519–1522. Today vessels traveling on the high seas have many aids supplied by international cooperation. Standard time zones were established for the world, and a prime meridian established at Greenwich by the International Meridian Conference held at Washington in 1884. This also established the international date line in the Pacific Ocean. An International Geodetic Association, with a bureau, was established by treaty in 1864, and has given assistance to navigation by its measurements of the earth. From very early times there have been common laws of the sea, regulating such matters as traffic rules, salvage of vessels, jettison. Several international conferences have codified or modified the law of the sea: the International Maritime Conference of 1889, attended by twenty-four states; a conference at Geneva, December 9, 1923, which resulted in a Convention on the International Regime of Maritime Ports, establishing the principle of equality of treatment of vessels in maritime ports, irrespective of flag;

a conference at Lisbon, October 23, 1930, which resulted in an Agreement on Maritime Signals, and an Agreement concerning Manned Lightships not on their stations. The Lisbon Conference adopted recommendations on lighthouse characteristics and radio beacons. Preparatory work performed by the Transit Organization paved the way for the Agreement for a Uniform System of Maritime Buoyage signed in 1936. As early as 1856 a conference was held to deal with the Cape Spartel Lighthouse (near Gibraltar). In certain areas of the high seas special international cooperation is carried on for the protection of navigation. A patrol of the North Atlantic is made to warn ships of the danger and location of icebergs. This service was instituted after the sinking of the S.S. *Titanic* in 1912 due to collision with an iceberg. Periodic warnings are given of the weather conditions in the western Pacific Ocean so as to safeguard shipping from disastrous typhoons. The ability of a vessel to communicate with other vessels and with the shore is facilitated by international cooperation in the fields of wireless telegraphy and radio.

2. TRANSIT ON INTERNATIONAL RIVERS

The use of rivers which flow through two or more states or form the boundary of two or more states presents a situation requiring international cooperation. In general it may be said that international law, during its formative period in the seventeenth century, gave exclusive rights of control to the state over a river or portion of river within its territorial boundaries. Consequently the policy of each state as regards tolls, right of navigation, care of the navigation channel, diversion of water, etc., might seriously affect or completely prevent shipping along the whole course of the river. An international control of the Rhine River was instituted in 1815, of the Danube River in 1856, and of various German rivers in 1919. Without going into detail, it may be said that the following objectives were sought: a reduction of tolls and charges, with prohibition against discrimination against foreign ships; an improvement of conditions of navigation by engineering works financed jointly by the interested states; a uniformity of

rules of navigation; and the elimination of formalities impeding speedy traffic. In each case an international commission was established with power to administer the provisions, in some cases by its own employees, in other cases by use of employees of the territorial state. Since 1910 the rivers which cross the American-Canadian frontier have been under a joint commission, composed of three persons appointed by Canada and three by the United States. The treaty establishing this control lays down general rules to be applied by the commission. It covers matters such as navigation, sanitation, and use of water for irrigation and power purposes.

In addition to the treaties establishing regimes for particular rivers, which were instituted prior to the war of 1914–1918 and at the peace conferences, there are the important treaties of Barcelona, April 20, 1921, on Navigable Waterways of International Concern, ratified by twenty-one states, and on Freedom of Transit, ratified by thirty-four states.

More recently an attempt has been made to gain greater uniformity of river laws than exists when the law is determined by each national state. Three treaties were drafted at Geneva, December 9, 1930, but none has entered into force because of an insufficient number of ratifications. The treaties are a Convention for the Unification of Certain Rules concerning Collisions in Inland Navigation, a Convention on the Registration of Inland Navigation Vessels, Rights *in rem* over such Vessels, and other Cognate Questions, and a Convention on Administrative Measures for attesting the Right of Inland Navigation Vessels to a Flag. Seventeen states have become parties to a Convention regarding the Measurement of Vessels Employed in Inland Navigation, Paris, November 27, 1925. Ten states are parties to the Convention relating to the Development of Hydraulic Power affecting more than one state, signed at Geneva, December 9, 1923.

3. TRANSIT BY RAILWAY

As early as 1878 European states were able to agree upon certain rules for transportation of merchandise by railroads.

In 1882 they agreed upon certain measures to increase the technical unity of railroads. In 1923 at Geneva a general code of the facilities needed to make railways of greater service to international traffic was drafted in the Convention on the International Regime of Railways, to which twenty-six states are parties.

The Convention represented the first attempt to define the permanent obligations of States in regard to railway transport. It also contained for the first time provisions prohibiting all unfair discrimination in railway tariffs—the important economic effects of which are well known—directed against foreign States, their nationals, or vessels under a foreign flag in which transport has in part been effected.[1]

The statute annexed to the treaty covers the following matters: (1) interchange of international traffic by rail, including obligations to facilitate connections with neighboring railway lines so as to facilitate international service, to permit frontier formalities of neighboring states at the same place and assist the officers performing their duties, to arrange timetables with the view to swifter and more comfortable passenger service. (2) Provisions are made for technical uniformity of railways so as to permit interchange of rolling stock, to lend extra cars for international service, etc. (3) There are provisions to determine the relations of railways to their users and the parties agree to facilitate arrangements so that persons may use a single contract to cover an entire journey, (4) provisions concerning non-discriminatory and reasonable rates, and (5) provisions in case a dispute should arise concerning the interpretation or application of the statute.

4. TRANSIT OF POWER

Two conventions were signed at Geneva on December 9, 1923, which facilitate transit for power, one on electric power, to which eleven states are parties, the other relating to the development of hydraulic power to which eleven states are parties.

[1] League of Nations Information Section, *Essential Facts about the League of Nations*, p. 184, 1936.

5. ROAD TRAFFIC

The increasing number of foreign tourists traveling by automobiles has caused a need for international cooperation in order to promote safety and facilitate the traffic. A Convention concerning the Unification of Road Signals, March 30, 1931, has been ratified by fifteen states. It contains an international code of road signals which enables a foreign motorist who does not know the local language to interpret correctly the signals indicating danger, instructions, and information. Recommendations are made relative to light signals in towns, signs of drivers and traffic police, use of stop signals on the rear of cars, and the heights for placing signs.

At the same date, in 1931, a Convention on the Taxation of Foreign Motor Vehicles was signed which has been ratified by twenty-two states. The parties exempt foreign drivers or owners of motor cars from taxes or dues during a period of ninety days in the case of motor cars registered in one of the contracting states. An Agreement between Customs Authorities to facilitate the Procedure in the Case of Undischarged or Lost Triptychs, March 28, 1931, has been ratified by twenty-three states. The League of Nations Communication and Transit Organization, which prepared for these conferences, is now preparing for the marking of level crossings and for simplification of frontier formalities required of foreign motorists. The general provisions of the Convention Concerning the International Circulation of Motor Vehicles, April 24, 1926, were prepared by a Special Committee of Inquiry on Road Traffic, which considered amendments to be made in the first international agreement on motor traffic of 1909.

6. AERIAL NAVIGATION

Aerial navigation had reached such a point before the war of 1914–1918 that an International Conference on Air Navigation was convened in Paris in 1910. Differences as to the legal status of the air prevented agreement. Great improvements were made in airplanes and Zeppelins during the war of 1914–1918. The peace treaties restricted the

rights of the defeated states as regards military aviation and it was in the Aeronautical Commission of the Peace Conference that the suggestion of an aerial convention was made.

Article 1 of the Convention relating to the Regulation of Aerial Navigation (Paris, October 13, 1919) provides as follows:

> The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory. For the purpose of the present Convention, the territory of a State shall be understood as including the national territory, both that of the mother country and of the colonies, and of the territorial waters adjacent thereto.

Articles 2 provides

> Each contracting State undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting States, provided that the conditions set forth in this Convention are observed. Regulations made by a contracting State as to the admission over its territory of the aircraft of the other contracting State shall be applied without distinction of nationality.

Article 3 authorizes states parties to the Convention to indicate prohibited zones in their territory over which foreign aircraft may not fly, and Article 15 gives the right to determine the routes over which air lines must pass. There are numerous other provisions in the treaty. In 1936 there were thirty parties to the Convention. Another treaty, the Pan-American Convention (Havana, 1928), reproduces some of the important principles of the 1919 Convention.

No international body administers the Pan-American Convention. Also, there are no technical annexes to this Convention, such as form so significant a part of the Paris Convention. It is important to bear in mind that the essential purpose of the Pan-American Convention was to facilitate commercial air transport between North America, the West Indies, Central and South America, this transport, in fact, being chiefly effected by one American company, as contrasted with the numerous competing companies in Europe, subsidized by states which are parties to the Paris Convention.[1]

[1] Reprinted from L. C. Tombs, *International Organization in European Air Transport*, pp. 50–51, New York, 1936, by permission of Columbia University Press.

An International Commission for Air Navigation was provided by Article 34 of the Convention of 1919.

There shall be instituted, under the name of the International Commission for Air Navigation, a permanent Commission for Air Navigation, a permanent commission placed under the direction of the League of Nations.

Each contracting State may have not more than two representatives on the Commission.

Each State represented on the Commission shall have one vote.

The International Commission for Air Navigation shall determine the rules of its own procedure and the place of its permanent seat, but it shall be free to meet in such places as it may deem convenient.

This commission's work may be summarized as follows:

A council responsible for supervising the application of the Convention and ensuring its normal evolution by proposing from time to time to the contracting States the amendments required by the development of international air navigation;

A sort of international parliament with the power at all times to adapt technical regulations to the requirements of air traffic;

A tribunal for the settlement in the first and last resort of differences which may arise between the contracting States in regard to the interpretation of the technical regulations which it is empowered to issue;

An advisory committee which gives opinions on questions that those States may submit for its examination;

An organ for the collection and dissemination of all information which is indispensable to air navigators.[1]

The commission in practice is autonomous. It maintains contacts with the Communication and Transit Organization of the League and with numerous other bodies, such as the International Air Conferences, the Mediterranean, Baltic, and Balkan Air Conferences, the International Office of Public Hygiene, the Pan-American Union, and the International Labor Organization.

7. THE UNIFICATION OF PRIVATE AIR LAW

Distinct from the questions of public law just discussed, are the problems involved in gaining uniformity of national laws with respect to various questions of private air law. Three international conferences on private air law have been

[1] *What the I.C.A.N. Is*, Commission Internationale de Navigation Aérienne, Paris, 1935, p. 11; quoted in Tombs, *op. cit.*

held: Paris (1925), Warsaw (1929), and Rome (1933). The first conference adopted a convention relating to the liability of the air carrier and recommended the establishment of a permanent advisory technical committee of experts on aerial law. The second adopted a convention for the unification of certain rules relating to international carriage by air, which applies to all international carriage by aircraft for hire of persons, baggage, and goods. It determines the scope and use of passenger tickets, baggage tickets, and bills of lading; determines the liability of the carrier; makes provisions for settling claims for damages. The third conference (Rome) made some revisions in the Berne Convention, and adopted a convention relating to the precautionary attachment of aircraft and the Convention for the unification of certain rules relating to damage caused by aircraft to third parties on the ground.

The study of technical questions and the preparation of draft conventions upon recommendations of the above conferences is made by a body known as the International Technical Committee of Experts on Aerial Law. It was established in 1926 and thirty-three states are members. This committee meets annually and considers reports made by reporters of the four commissions appointed by the committee which meet during the course of the year. The committee does not have as extensive powers in the field of private air law as does the International Commission on Aerial Navigation in the field of public air law.

8. FREEDOM OF TRANSIT

It was provided in Article 23 (*e*) of the Covenant that the Members of the League should "make provision to secure and maintain freedom of communications and transit and equitable treatment for the commerce of all the Members of the League." This provision was intended to deal with the problem of persons or goods which pass through a given state in the course of a journey beginning and terminating outside the territory of that state. The Barcelona Conference of 1921 resulted in the International Convention on Freedom of Transit, ratified by thirty-four states, which provided that all goods transported by rail or inland water-

way, whatever the country of origin or destination, should enjoy complete freedom of transit under equal conditions. Qualifications of this principle permitted were that (1) a state should be free to enforce reasonable restrictions to safeguard internal order and national security and (2) the rule might be adapted to the special conditions existing in different parts of the world. The rule of equality was adopted with respect to international river navigation in the Barcelona Convention of 1921. The importance of the principle of equality of treatment of persons and goods in transit is obvious. Without it a state might discriminate against transit coming from or directed to a particular neighboring state and in this way vitally affect its position in economic competition and in military strength.

9. FREE ACCESS TO THE SEA

States whose territory is landlocked and does not touch the sea have in the past caused international friction. The economic position of a landlocked state, as well as its position in time of war, is weakened by dependence upon transit across third states which may be withheld. Consequently the landlocked state often adopts a foreign policy directed toward acquisition of territory bordering on the sea. The number of landlocked states was increased in Europe by the treaties ending the war of 1914–1918 from two to six. Access to the sea was provided for in each case. Poland was given an outlet through the Free City of Danzig, Yugoslavia through the port of Salonika, Poland and Lithuania by use of the port of Memel, in Lithuania, which was made an autonomous city. Austria and Hungary were given access to the Adriatic Sea, and Bulgaria was assured an economic outlet to the Aegean Sea.

Bolivia, at one time possessing territory along the Pacific Ocean, lost the territory to Peru and Chile. For several decades her ambition has been to gain access to the sea. A treaty with Chile provides railway transportation to the Pacific in time of peace. One of the objectives of the Bolivian government in the Chaco War with Paraguay in 1934 was possession of territory giving access to the Atlantic Ocean.

10. THE UNIVERSAL POSTAL UNION

Created in 1874, the Universal Postal Union is one of the most famous and successful of the international organizations in the field of communications. The postage stamp celebrated its hundredth anniversary in 1937. For several decades there were considerable confusion and great expense in communicating by mail between different countries, particularly those at a great distance. Attempts were made to deal with the problem by means of bilateral treaties. Eventually, however, the advantages of a universal regulation of the question was recognized by states.

Membership in the Union is not by states, but by postal administrations. Thus colonial postal administrations, as well as the postal administration of the mother country, may be members. Some one hundred and eighty postal administrations, have become members of the Union. The Convention of Stockholm, August 28, 1924, revised the earlier Convention of Berne of 1874. It provides for the organization and jurisdiction of the Union, makes provision for decisions by arbitration of differences of interpretation of obligations contained in the convention, provides for periodical conferences and congresses of postal administrations, and establishes a bureau charged with administration of the provisions relating to postal matters.

The purposes of the Union are to form a single postal territory for the reciprocal exchange of correspondence and to assure the organization and perfection of the various international postal services. The regular mail service is governed by the provisions of the convention, while other services such as insured letters and boxes, parcel post, money orders, postal checks, collections by mail, and subscription to newspapers and periodicals, form the subject of agreements among countries of the Union. Congresses meet each five years, or in extraordinary session when two-thirds of the countries desire one. Each country has one vote on acts of the congress, which become effective for the countries which ratify them. Distinct from the congresses are conferences. After agreement with the bureau, conferences charged with examination of purely administrative

questions may be called at the request of two-thirds of the administrations of the Union. The International Bureau of the Universal Postal Union, located at Berne, Switzerland,

> . . . serves as an organ of *liaison*, information, and consultation for the countries of the Union. This Bureau is charged, principally, with assembling, coordinating, publishing and distributing information of all kinds which concerns the international postal service; with giving, at the request of the interested parties an opinion on questions in dispute; with making known requests for modification of the Acts of the Congress; with notifying the changes adopted; and, in general, with undertaking the studies and works of editing and documentation which the Convention, the Agreements, and their Regulations attribute to it, or which may be intrusted to it in the interest of the Union (Article 23).

Among the specific activities of the bureau are (1) preparation of the work of the congresses, (2) publication of a special journal and information of general interest concerning the execution of the convention and regulations, (3) publication of an alphabetical dictionary of all the post offices in the world, (4) preparation of reply coupons and identity cards, (5) action as channel of information between postal administrations, and (6) settlement of accounts between the administrations which are willing to use it for the purpose. The expense of transporting mail exceeds in some cases the postage required. Therefore each country promises to pay the cost of the first-class foreign mail leaving the country, on the assumption that for every letter sent abroad a foreign letter is received.

11. THE INTERNATIONAL TELEGRAPHIC UNION

International cooperation has likewise been adopted in the case of communication by telegraph, by submarine cable, and by radio. In 1865 an International Telegraphic Union was formed by a convention, revised in 1875 and 1908. The transit of telegrams from one country to another was guaranteed, special wires for international telegraphic service were provided, and the hours for telegraph offices were specified. In 1884 a convention was adopted by which states agreed to punish culpable and negligent breaking of undersea cables in their own courts, but foreign public vessels may report such breaking of cables by ships and this

evidence is employed in prosecutions. As in the case of the Postal Union, there are periodic conferences for revision of the telegraphic conventions and an International Bureau performs the necessary administrative services.

12. THE RADIOTELEGRAPHIC UNION

With the development of wireless telegraphy, or radio, a new problem of international regulation arose. Some delay was occasioned by an attempt of certain states to obtain a monopoly of radio communications, which, if possible, would have constituted an important advantage in time of war. "The British Marconi Company had made an exclusive contract with the British Lloyd and with the Italian government, under which the wireless stations in England and Italy would refuse to receive or send messages of any other than the Marconi system." The Berlin Conference of 1906 resulted in a convention to which twenty-seven states became parties. Italy did not ratify. The Marconi Company had made contracts for use of its equipment and sole transmission. At the Conference of London (1912) a more detailed and elaborate convention was drafted and Great Britain and Italy signed without reservation. The principles agreed upon were that (1) wireless stations on the coast and on shipboard must exchange radiograms without distinction of the system used, and (2) radiograms from one ship to another must be similarly exchanged. The administrative work under the convention was given to the existing bureau of the International Telegraphic Union. Some ninety-seven administrations finally ratified the 1912 Convention. The five Allied and Associated Powers reached a temporary agreement in 1919. The most comprehensive convention on radio was drafted at the Washington Conference in 1927. Since 1912 the International Bureau had been receiving plans for improvement of international control over radio communications. Spectacular changes had occurred during the war period in the uses of radio, including paid messages for trans-Atlantic radio messages, development of radio broadcasting, the radio compass, and aid by radio to airplanes. The Conference of 1927 was attended by seventy-eight governments and forty-one private interests were

represented, with a total delegation of around four hundred. The convention lays down certain principles regarding the relations of governments: (1) each state has the right to allocate wave lengths, so long as it does not interfere with the rights of other states, and (2) each state is obligated to legislate so that broadcasting by its nationals will not interfere with that of other countries, and in case of failure compulsory arbitration is provided. Regulations attached to the convention contain detailed rules for the procedure to be followed by radio stations. A fundamental question settled was the allocation of radio wave lengths. An International Bureau was established to publish information on all types of apparatus, call signals, and broadcasting hours. An International Technical Consulting Committee, composed of experts in radio and representatives of commercial radio interests, was provided which sends its information to the bureau, which in turn submits the information to the governments.

13. PERIODIC REVISIONS OF TRANSIT AND COMMUNICATIONS AGREEMENTS

In each of the fields of transit and communications examined above there has been a need for periodic revision of agreements and for supplementary regulations. Some of the more recent treaties in these fields are (1) exemption of fuel and lubricants from taxation in case of air traffic, London, March 1, 1939; (2) aircraft attachment, Rome, May 29, 1933; (3) convention and final act on broadcasting, Geneva, September 23, 1936; (4) the inter-American radio communications arrangement and convention, Havana, December 13, 1937; (5) radio communications regulations and protocol, Madrid, December 10, 1932, revised at Cairo, April 8, 1938; (6) letters of declared value, money orders, and parcel post, Cairo, March 20, 1934; (7) universal postal convention, Cairo, March 20, 1934, and Buenos Aires, March 23, 1939; (8) telecommunications, Madrid, December 9, 1932; (9) telephone and telegraph regulations and protocol, Cairo, April 8, 1938; and (10) Pan-American highway, Buenos Aires, December 23, 1936.

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CHAPTER XV

Imperialism

The term "imperialism," like so many other terms employed in international relations, has a variety of meanings. In its most general meaning it refers to the creation of empire. Empire is a form of political organization in which one group brings under its control alien groups. Empires were formed in ancient times, the most notable being the Babylonian, the Egyptian, the Assyrian, the empire of Alexander the Great, and the Roman Empire. During modern times, the national state in a multistate system has been the dominant type of political organization. However, most of these national states have at some time in their history adopted a policy of seeking to subjugate alien peoples to their control. In its widest sense, then, imperialism means empire building. Frequently the term is employed to describe a policy of seeking to establish empire, as British imperialism, Japanese imperialism, etc.

1. PERIODS OF IMPERIALISM

At some periods in history many states follow a policy of imperialism, while at other periods most states turn away from the policy. In modern times three great periods of imperialism are (1) 1492–1763, (2) 1870–1920, and (3) 1931–present. During the first period, the leading imperial states were the European states which had become unified under national monarchs and which were located on the European Atlantic seaboard: England, France, the Netherlands, Portugal, and Spain. The chief theater of imperialism was in North and South America, though the Netherlands,

Portugal, and Spain were interested also in the East Indies. The American acquisitions were essentially colonial empires in which emigrants from Europe traveled to the new land and established themselves permanently. The white man acquired and tilled the soil, developed natural resources, built industries, and created permanent homes. The native inhabitants of America were aborigines, and the view of European states was that the territory constituted *res nullius*, *i.e.*, territory not legally subject to any member of the family of nations, so that it might be acquired by European states by virtue of discovery and occupation. A close relation was maintained between the mother country and the colonies. The cultures of England, France, Portugal, and Spain were consequently firmly established in the conquered areas. National ideals and the political and social institutions of the parent states were transplanted to the colonies where they have continued to this day, except as modified in the course of time under a new environment. The various imperial states fought with one another for territory for several centuries. Eventually Spain lost most of her territory in North America to France or Great Britain. The Netherlands lost out in North America. By 1763 Great Britain had succeeded in seizing Canada from France.

The present colonial possessions of the Netherlands and Portugal were gained in this earlier period and the nucleus of the British and French empires was formed during the same period.

Reaction against Imperialism. For about a century following 1763, policies of imperialism were in general abandoned. Those possessing colonial empires tried to retain them but Great Britain lost her thirteen colonies on the Atlantic seaboard, and Spain and Portugal lost their colonies in Central and South America by revolution. Napoleon sold Louisiana territory to the United States, and by conquest the United States seized the remaining possessions of Spain in North America. Various reasons explain the general abandonment of the old colonial imperialism during the century. (1) In most states the controlling view was that colonial imperialism is unprofitable. As many

colonial territories had revolted and become independent states at the time when they were becoming valuable, there was general disillusionment with imperialism. (2) For almost a quarter of a century Europe was occupied with the problem of curbing the Napoleonic conquests on the

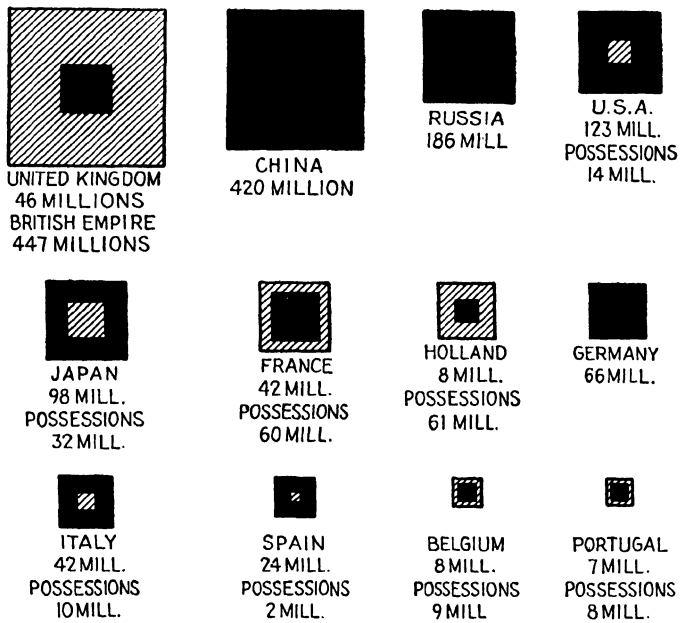


CHART IV.—Showing the relative populations of the Great Powers including those lacking colonies, and showing the relative size of metropolitan population and colonial population, 1937.

continent of Europe. (3) During the century energies were turned, in the economic field, to production and trade made possible by the Industrial Revolution, which offered more profits than the old colonialism. (4) Certain states which later took part in modern imperialism were absorbed in internal problems: Germany and Italy in steps towards unification; Japan was isolated from the world; the United

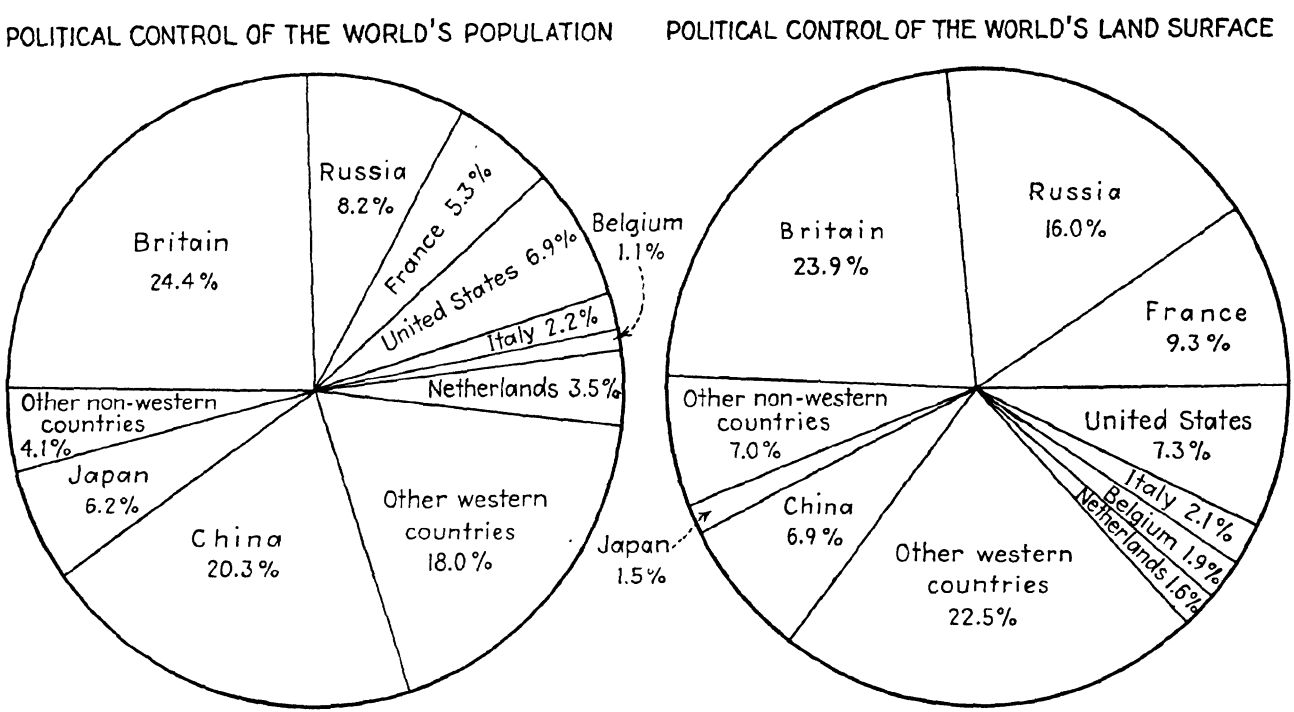


CHART V.—Showing the political control of the world's population and land surface. (*Reprinted with the permission of The Macmillan Company from Grover Clark, A Place in the Sun*, 1936, *p.* 81.)

States in developing vast untouched resources, and later in civil war and reconstruction. (5) Attempts to reestablish colonial empires in Central and South America were discouraged by the new independent states and by the policy of the United States under the Monroe Doctrine of considering further colonization an unfriendly act.

NEW IMPERIALISM. The expansion from 1880–1914 is popularly called the "new imperialism." The empires established during this period are located chiefly in the tropical and subtropical regions of Africa, Asia, and the islands of the Pacific Ocean. They are in contrast with the older imperialism in that they do not form a new homeland for European populations, as few colonists have settled in them. They are exploitation areas for industry, trade, and capital. The bulk of the population consists of the native inhabitants, many of whom are in a primitive stage of development. See Charts IV and V.

2. MOTIVES OF IMPERIALISM

What are the motives which have caused so many modern nation-states to attempt this new imperialism, to spend life and treasure in subjugating alien peoples in distant territories? Analysis shows that the motives are based upon a conception of national security, or national prosperity, or national prestige, or a combination of these.

SECURITY. Imperialism may be prompted by a desire to increase national security. The purpose may be to protect the home territory or to protect colonial possessions already acquired. The policy of the United States in the Caribbean Sea has been to establish naval and air bases which may be employed to defend the continental United States, and to defend the Panama Canal and its approaches as an essential artery of transit for the American navy between the Atlantic and Pacific Oceans. France and Great Britain, with colonial possessions in different parts of the world, have been led to further imperialism, in an effort to safeguard these possessions in the different regions where they are located. They desire to control naval bases, fueling stations, air bases, dry docks. They desire to protect essential lines of communication through the Mediterranean Sea, the Suez

Canal, the Gulf of Aden, India, and Singapore. In order to gain and hold these points it may be thought necessary to acquire also the hinterland. As a second line of protection, it may be desired to control a safe sea lane around Africa and a land route across Africa. If some of these points are in the hands of weak states, such states may be unmolested; but if another strong imperial power attempts to gain control, logic requires its seizure. Acquisition of extensive territory may be dictated, thus, to frustate a threat from some other imperialistic state. In some cases, colonies are desired because native populations may be trained as a reservoir supply for the home army. France thus increases its military strength by using native troops of Algeria, Tunis, and Morocco. Italy employed native African troops in conquering Ethiopia. Finally, when most of the Great Powers of Europe were seizing huge overseas territories, each one might regard imperialism as a necessity in order to hold its relative power position in the world. Finally, the strategic motive joins with the economic motive, if a particular area is rich in coveted resources such as coal, iron, or oil; and it may be claimed that these resources add to the defense of the imperial state. There is, of course, another side to the picture. Wars of conquest may devour men and money so as to weaken the imperial state and lay it open to attacks. Subjugation of a conquered people is usually a costly and prolonged task and these people may prove a source of weakness if they revolt while the imperial state is engaged in war elsewhere.

PROSPERITY. The desire for economic gain has always been an important factor in imperialism, old and new. Voyages of discovery and exploration, and conquest and settlement of new lands have usually been the result of a desire for material goods. During the period of the old imperialism the initiative was taken by private economic interests, though these were sometimes aided by governments. Great trading companies were formed for overseas trade, and sometimes they were delegated extensive powers ordinarily held only by governments. While they gained the profits, they also paid the costs. After the first period of imperialism, international economic relations were left

almost exclusively in the hands of individuals actuated by the profit motive. As the Industrial Revolution began first in Great Britain, and set up a situation where it was mutually profitable for Englishmen to exchange manufactured goods for raw materials and partially finished products, international trade with European countries had great advantages and the incentive for political control as an aid to business was lacking.

Economic Competition Intensified. By 1870 the situation had been radically altered. The Industrial Revolution had taken effect in Continental European countries and Japan and the United States had become industrialized. Economic protectionism closed or reduced markets previously available. Intense economic rivalry developed. The stimulation of nationalistic feelings by national unification and wars led to more governmental participation in the promotion of business interests of their nationals. Business interests sought assistance from the state in the increasingly bitter competition for raw materials, markets for commodities, and opportunities for lucrative investments. By this time, the effects of the Industrial Revolution also contributed to imperialism for prosperity. Mechanical production had made possible a vast increase in the volume of goods; steam transportation made possible cheap transportation of bulky goods over great distances; tastes had changed to a demand for increased quantities of tropical and subtropical raw materials and foods; and the increasingly large quantities of capital available for investment caused the investor to seek higher interest rates abroad than he could gain at home. Furthermore, improvements in the military and naval power of industrialized states due to new explosives and mechanized weapons gave to the Great Powers an overwhelming force as against the primitive weapons of native peoples.

The Profits of Imperialism. Does imperialism pay? Great debate has been produced by this question. The question too often neglected is, does imperialism pay the imperial nation as a whole? The answer seems to be that while certain business interests gain by imperialism, the people of the nation as a whole lose. The profits are made by

some private business interests; the costs are borne through taxation. In calculating the costs of imperialism it is necessary to add the original expenditures for the conquest, subsidies for administration of colonies which are not self-supporting, the cost of suppressing colonial revolutions, the cost of a large army or navy or both to retain control of the colony and to fight wars with competing imperialist states. On the other side, it is often claimed that imperialism is profitable because of the increased market developed for exporters to the colonial possessions. Figures show, however, that the imperial state does not gain a monopoly of the trade with its colonies, but only a share of this trade; and this share is, in most cases, only a little larger than it gained before acquiring political control. In numerous instances the exports from other states to a colony are much greater than the exports from the imperial state. Thus, while political control may have some effect, other factors such as geographic location and trade facilities seem to be more important. Furthermore, it should be remembered that for most imperial states, trade with colonies is a small percentage of total foreign trade.

FUTURE OF IMPERIALISM. The above generalizations seem warranted by facts of the past seventy years. If true, they do not indicate necessarily a trend away from imperialism in the future, for the following reasons: (1) Certain groups profit from imperialism, particularly certain powerful exporting, importing, manufacturing, and shipping interests; military and naval groups; colonial officials and their families; and missionaries. Their influence in favor of imperialism is powerful. (2) Although imperialism has been unprofitable to the nation as a whole in the past, it may become profitable in the future with the economic development of the colonies. (3) Even if governments were controlled by those who lose economically by imperialism, they might remain imperial because of a belief in imperialism as necessary for security, or because of a nationalistic feeling of glory and prestige in dominating other peoples, or in having colonies if other states have them.

SURPLUS POPULATION ARGUMENT. Another aspect of the claim that imperialism pays, is the allegation that

colonies will give relief from population pressure at home. This has not been true of the imperialism beginning in 1870. Emigration from countries has been negligible to their colonies acquired during this period. The emigration from these countries has been, not to tropical and subtropical colonies, but to North and South America and other European countries. Emigrants have not followed the flag but a standard of living and civilized living conditions. Of course, this situation may alter in the future. As barriers have been raised by the United States and other countries to further immigration, emigration to the colonies may be increased. In addition, dictatorial governments may be able to compel emigration of their nationals which would not take place if emigrants followed their own inclinations. Finally, mistreated groups such as Jews may in desperation be willing to go to places usually unattractive to emigrants. The above considerations are all in the realm of mere possibility.

CONTROL OF RAW MATERIALS. The desire of states to assure access to raw materials in time of peace and of war also is offered as an argument for imperialism. In some cases colonial possessions produce materials which are not produced in the mother country.

Britain got some tin in the Malay States, and some land where rubber could be grown. She acquired access to oil in Persia. She drew heavily on the gold and diamond deposits in British South Africa, Canada, and Australia, and on the food and wool supplies of her Pacific and American Dominions—though in this case, it was her ability to offer good prices, not political control, which gave her access to these materials. France secured tin resources in Southern Asia, but the rest of the territories which she took brought her no significant new resources either of minerals or of food. The United States, in the Philippines, Hawaii, and the Caribbean, got control of land where sugar, copra, sisal and other semi-tropical articles could be produced. Japan has been able to make Korea and Formosa produce enough sugar and rice to free her from her dependence on outside sources for these foodstuffs. She acquired control of some coal, iron, and oil in Manchuria, but so far these resources have not proved especially useful to her; she has coal at home, and she has not been able to produce the iron and oil profitably.[1]

Because of the distribution of raw materials, hardly any state can expect by imperialism to gain political control

[1] GROVER CLARK, *A Place in the Sun*, pp. 191–192, The Macmillan Company, New York, 1936.

over all the territory necessary to supply its needs for raw materials, and must remain dependent upon other parts of the world. Furthermore, it should be remembered that political control does not mean government ownership of raw materials. Access to the market in time of peace depends upon ability to offer the price demanded and not upon political control or nationality of the purchaser. In time of war political control of the country where raw materials are produced gives no advantage unless lines of communication can be maintained. Thus, even if the Nazi demand for return of prewar colonies had met with success, they would have been no assistance in supplying of raw materials in September, 1939, because of the dominance of Great Britain and France on the seas which cut the communications.

WIDER ASPECTS OF THE QUESTION OF ECONOMIC GAIN. The argument that imperialism usually costs a state more than it gains, which seems to have been true in the past, does not settle the question whether imperialism has been profitable for the world as a whole. This is a question which is usually neglected in discussions of imperialism. There seems to be no doubt that imperialism in the so-called backward regions of the world has increased world production of goods. It is obvious that modern business requires certain circumstances for its operation, including the maintenance of law and order, the security of property, and the investment of capital. It is equally obvious that these conditions were entirely lacking in many parts of Africa and Asia and that local initiative would have produced them very slowly if at all. These conditions have been produced rapidly by European imperialism. It may well be that the particular imperialistic state pays out more than it gains; but other nonimperialistic states have also gained at no expense. Consequently, the final result may be an economic profit for the world as a whole. Perhaps it is the nonimperialistic states which show a profit from imperialism of the imperial states. Without the imperialism of other states, Americans would be rolling on fewer and more expensive rubber tires.

CONFLICT OF PRIVATE INTERESTS IN IMPERIALISM. While an imperial state as a whole may lose, particular

private groups may gain great profits from imperialism. It would be a mistake, however, to assume that it is all business, or "capitalism" which makes the profit. There are the following conflicts of private interests arising under imperialism: (1) between the exporter who desires to sell goods to the natives and the industrial investor who desires cheap native labor, (2) between domestic and colonial producers of competing articles, (3) between domestic consumers desiring low prices and domestic producers who sometimes wish to maintain higher prices by sending surplus products to colonial markets, and (4) between the domestic borrower desiring low interest rates and domestic capitalists desiring higher rates from investments in the colonies.[1]

PRESTIGE AS A MOTIVE. People may support a policy of imperialism on the part of their government for various reasons. Whatever may be the motives actuating economic interests, military and naval strategists, and statesmen, the rank and file of people are apt to support imperialism on emotional grounds. One of the most potent of these emotions is nationalism desiring national greatness and prestige and honor. Flowing from this feeling comes support for protection of nationals and their property abroad, which is often the entering wedge of imperialism. Prestige, the desire for status as a Great Power, is often back of imperialism. Desire for revenge is not infrequently a motive, recently exemplified by Italy in 1935, smarting from defeat by Ethiopians at Aduwa in 1896. Another aspect of prestige is the assumption of superiority of the imperialist people. This has gained wide currency in the phrase "The White Man's Burden," written by Kipling, the great English poet apostle of English imperialism. France regards her imperialism as a civilizing mission; Germany took pride in bringing *Kultur* to the Africans; Italy takes her beneficent rule and civilizing influence to the Ethiopians previously under the heels of despots; and during the popularity of imperialism in the United States pride was taken in road building, improved sanitation, and education of benighted

[1] P. T. MOON, *Syllabus on International Relations*, p. 70, New York, The Macmillan Company, 1925.

peoples. The civilizing mission was sometimes sincere and dictated by humanitarian feeling or religious conviction. Quite as often it manifested an insolence and an arrogant sense of superiority exhilarating to national pride.

3. THE METHODS OF IMPERIAL EXPANSION

The methods which states have used to expand their imperial power have varied with time and changing circumstances. Unoccupied territory such as the Americas was claimed by right of discovery, exploration, and settlement. The missionary desiring to convert the natives, the trader seeking profit, the adventurer, and the explorer laid the foundations for most of the older type of imperial power. Wherever the missionary or the trader penetrated there the thin edge of imperialism was entered.

CONQUEST. War and the use of armed forces short of war have always played an important part in securely establishing the national flag in the remote areas of the world. French imperial expansion in Africa, for example, was carried on by means of military conquest. This expansion was accomplished in accordance with a plan which was devised and methodically pursued by the French armed forces. The same methods were used by Great Britain in securing control over Egypt and the Cape Colony. On occasion the use of armed forces in empire building has resulted in serious international crises when two or more states moved into the same area. Thus, in 1898, the French and British forces collided at Fashoda while both were pursuing, under orders, a campaign to establish effective occupation of the Nile Valley. The incident was settled by diplomacy and the French forces were withdrawn. At present Japan is resorting to the use of armed forces to extend control over the Asiatic mainland. Here there is grave danger of collision with Western European interests and particularly with the forces of the Soviet Union.

ECONOMIC PENETRATION A PRELUDE. In modern imperialism economic penetration into weak states and backward areas has frequently paved the way for subsequent political control. Economic penetration usually occurs in several forms all of which are closely interrelated. Capital

investments are made in backward areas for the purpose of developing the resources of the country. Loans may be made to the government. The projects in which capital has been invested are usually under the supervision and control of nationals of the capital-exporting country. Railway-development concessions in backward territory frequently facilitate the extension of political control and for this reason such concessions are eagerly sought by imperialist powers. Railway communication is often a prerequisite of the development of mineral and forest resources and of industries. The agency which controls the railway concessions in undeveloped territories possesses control over the entire economic development of the region and its intercourse with other regions. This was illustrated by the Japanese in Manchuria. Other concessions give foreign interests the right to exploit the resources of the country, develop industries, and carry on trade upon a preferred basis. A constant struggle goes on between the great industrial states of the world for such advantageous concessions.

How is such gradual economic penetration of a country related to imperialist expansion? The situation leads in many cases to conquest, after foreign intervention for the purpose of protecting loans, property, and safety of foreigners. For example, the government of a weak state which has borrowed heavily may repudiate its debt or default on the interest payments. The property and lives of foreigners may be endangered or destroyed as a result of revolutionary uprisings, antiforeign riots, or other forms of political disorder. The very expansion of foreign control within the territory with its attendant exploitation features may cause development of an antiforeign spirit and precipitate attacks on foreign persons and property. The next step is intervention by the state whose interests and nationals have been placed in jeopardy. Armed forces are therefore sent into the country, customs houses are taken over for the collection of moneys to be applied to foreign interest and debt payments, exactions are imposed upon the government which can hardly be met, and finally either a protectorate is established, or the territory is annexed. Private business interests whose holdings are involved favor

this extension of political control, because it makes their investments more secure and after political control is established they may acquire additional benefits through government contracts for internal improvements and other developments.

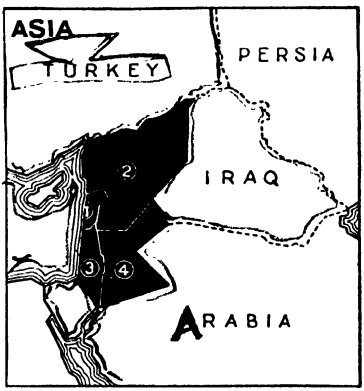
4. SOCIAL RESULTS OF IMPERIALISM

Consideration of the effects of imperial control on the lives, culture, and institutions of the inhabitants of colonial territory, is apt to be colored by subjective feelings. On the one hand it is charged that modern economic imperialism has resulted in the political subjection, ruthless exploitation, and economic slavery of native populations. "Sixty years experience of the blessings of European rule and civilization," writes Woolf, "have resulted in Europeans being hated by their subjects from Timbuktu to Peking."[1] On the other hand there are those who maintain that, considering the backward conditions of the subject population and their native capacity, foreign control and supervision have beyond doubt resulted in improvement The individual situations vary so widely, the policies of the imperial powers differ so radically, and the basis of judgment and measurement are so abstract that it is impossible to make a categorical answer. In certain instances the lot of the native has been greatly improved as in the case of the Filipinos. But on the other hand there are many instances in which the lot of the native is undoubtedly far worse than it was before he was subjected to foreign control.

5. THE FUTURE OF IMPERIALISM

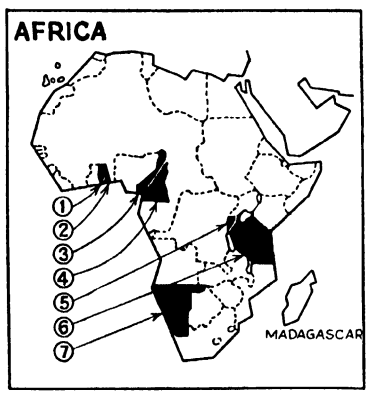
Is the trend toward imperialism likely to continue? The evidence is inconclusive. During the postwar period imperialist policies were subjected to severe attacks and such policies ran counter to the generally announced objectives of modern international relations. Policies of imperialism are incompatible with the theoretical foundations of the League of Nations, with a program of disarmament, a program of world peace, and the outlawry of war. The imperialism of Japan in Manchuria and other parts of

[1] *Economic Imperialism*, pp. 102–103.



Territories subject to an *A* mandate:

1. The Lebanon } under the mandate of
2. Syria } France.
3. Palestine } under the mandate of
4. Trans-Jordan } the United Kingdom.

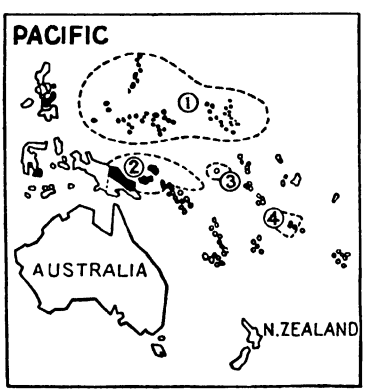


Territories subject to a *B* mandate:

1. Togoland
3. The Cameroons } under the mandate of the
6. Tanganyika } United Kingdom.
2. Togoland
4. The Cameroons } under the mandate of France.
5. Ruanda-Urundi under the mandate of Belgium.

Territory subject to a *C* mandate:

7. South West Africa under the mandate of the Union of South Africa.



Territories under a *C* mandate:

1. The Marianas, Caroline, and Marshall Islands, under the mandate of Japan.
2. New Guinea (northeastern part), New Ireland, New Britain and the Solomon Islands, under the mandate of Australia.
3. Nauru, under the mandate of the British Empire exercised through Australia.
4. Western Samoa, under the mandate of New Zealand.

MAP III.—Showing territories subject to mandates under the League of Nations. (*League of Nations, Information Section, Essential Facts about the League of Nations* 1939, *p.* 201.)

China marked the beginning of imperialism in the 1930's. The conquest of Ethiopia by Italy in 1935–1936 wiped out one of the two remaining independent states in Africa; Germany and the Soviet Union have turned to imperialism in Europe.

η MANDATES. During the same period certain notable advances have been made in the opposite direction. At the conclusion of the war of 1914–1918, a significant departure was made from the old methods of dividing up the conquered territory among the victors. Certain territory in Europe was acquired outright by the victorious powers. However, in the disposition of Germany's overseas possessions in Africa and in the Pacific Ocean and Turkey's possessions in the Near East a departure was made from the former practice of dividing up among the victors the spoils of war. The principle of trusteeship was applied. This principle was carried into effect through the establishment of the Mandates System under which the territory referred to above was placed under the tutelage of a number of different powers who were to serve as mandatories. The mandatory powers are subject to numerous obligations in the administration of the mandates and they were made accountable for their trusteeship to an impartial international body known as the Mandates Commission. The Mandates System constitutes a notable advance in the administration and control over backward areas. Although certain material advantages are enjoyed by the mandatory powers, the system is not simply a disguised form of annexation. Class *A* mandates were eventually to become independent. Iraq was admitted to the League of Nations in 1932 and plans are under way to establish Syrian independence. See Map III.

Certain steps have recently been taken which indicate an important change in the American policy of imperialism. Provision was made for the independence of the Philippine Islands in 1945 by the McDuffie-Tydings Bill signed March 24, 1934. The granting of Philippine independence was not due entirely to anti-imperialist influences in the United States but this action conforms to anti-imperialist demands and the pledge given by the United States when

the islands were acquired. Acceptance of the principle of nonintervention by the United States government at the seventh Pan-American conference, held at Montevideo in December, 1933, withdrawal of marines from Nicaragua and Haiti, and the abrogation on May 29, 1934, of the Platt Amendment in the treaty of 1903 with Cuba constitute significant departures from the former policy of supervision and intervention in the Caribbean area.

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CHAPTER XVI

Promotion of Human Welfare

There has been an increasing cooperation between states in recent years aimed at improving the welfare of the individual person. This development is due in part to a change in political philosophy which has come to regard the state as not merely a protector of persons and property and a dispenser of laws, but as an active service agency to be employed for improving the lot of the people. This development is due in part to the fact that, in an interdependent world, a single state may be unable to provide such protection and service to its own people without cooperation from other states. The policies of states, both competitive and cooperative, which have been described in preceding chapters, of course, relate to human welfare. In addition, international cooperation is found in the protection of the public health, in establishing minimum standards for the treatment of the working classes of the population, in assisting refugees and other persons subjected to calamities such as floods, earthquakes, and famine, and in stamping out immoral practices, institutions, and traffic.

1. PUBLIC HEALTH

For centuries epidemics and plagues decimated the populations of the world. Cholera and the bubonic plague periodically swept into Europe from Asia Minor and the Orient. When medical science discovered the causes of contagious diseases in the nineteenth century it became

obvious that a state could not protect its population adequately without cooperation from other states. Quarantine measures of states are of limited effectiveness, especially if disease breaks out before the quarantine is put into effect. Advance knowledge of an epidemic and preventive measures at the source are essential. Protection of public health is a field in which the common interests of states are not debatable.

CONFERENCES DURING THE NINETEENTH CENTURY. Thirteen European states attended a conference at Constantinople in 1886 to consider Asiatic cholera. Twenty-one states attended a conference at Vienna in 1874, at which an international commission was created. A conference was held in Washington in 1881 attended by several American states, Japan, and Hawaii. International health conventions were signed in 1893, 1894, 1897, 1903, 1907, and 1912. The convention of 1912 contained the following provisions: Each state agreed to notify immediately of the first case of plague, cholera, or yellow fever discovered in its territory. Contaminated persons and goods must be prevented from departing until disinfected and patients on infected ships must be landed and isolated. Persons showing symptoms of plague, cholera, or yellow fever may be detained at frontiers.

PERMANENT ADMINISTRATIVE BODIES FOR DANGER SPOTS. Special councils were established to safeguard public health at places which were particularly dangerous, Constantinople (1838), Alexandria, Egypt (1881), Tangier, Morocco, and Tehran, Persia. These councils supervised enforcement of treaties intended to prevent transmission of diseases by means of quarantines, observations, and disinfection. Special regulations for pilgrim ships were provided because annual pilgrimages to holy cities in Asia Minor encouraged the spread of epidemics. Six states having colonies in Africa held a conference in 1907 to consider the suppression of sleeping sickness carried by the tsetse fly, and Germany and Great Britain agreed in 1908 to exchange information as to sleeping sickness and to prevent passage of colonial frontiers by diseased natives.

PAN-AMERICAN SANITARY CODE AND BUREAU. Eight conferences on sanitation were held by American states

between 1902 and 1927. The first conference established a Pan-American Sanitary Bureau at Washington authorized to collect all data on the protection of health. This bureau, reorganized in 1920, is composed of seven members appointed by the sanitary conference. The sanitary convention signed in 1905 provided for notification of appearance or spread of yellow fever, cholera, or plague and for measures to be taken for protection against infected areas. A Pan-American Sanitary Code (1924) has been called "one of the most successful international health agreements negotiated."[1]

THE INTERNATIONAL OFFICE OF PUBLIC HEALTH. Provided by a convention signed in 1903, the International Office of Public Health was established at Paris in 1907. Its work is not regulative like that of the sanitary councils, but is the collection and distribution of information relative to infectious diseases. Thirty-seven states participated in the work of this office in 1920. A committee of delegates, one from each state, supervises the work. A delegate has a number of votes proportional to the amount of financial contribution of each state, varying from twenty-five to three units.

THE HEALTH ORGANIZATION OF THE LEAGUE OF NATIONS. The Assembly of the League of Nations established a permanent Health Organization in 1923. It consists of an Advisory Council, a standing Health Committee, and a Health Section of the Secretariat. The personnel is closely interlocked with the International Office of Public Health, because the Committee of the Bureau acts as the Advisory Council, and also chooses nine of the members of the Health Committee. The Health Committee reports annually to the Advisory Council. The Health Section of the Secretariat assists during conferences and cares for the information and its distribution.

SCOPE OF WORK. The objects of the Health Organization are to determine means for jointly combating disease and to discuss the best methods by which individual states may promote public health. The scope of interest of the

[1] R. L. BUELL, *International Relations*, rev. ed., p. 293, New York, Henry Holt and Company, 1929.

Health Committee is indicated by a listing of committees and subcommittees which work with it: malaria commission, joint commission of experts on public health and health insurance, subcommissions on education of the health insured, prevention of venereal disease, protection of school children, preventive medicine, prevention of tuberculosis, protection of maternity, infancy, and the child of preschool age; permanent commission on standardization of biological products; commission of experts for the coordination of sleeping-sickness research; leprosy commission: opium commission of the Health Organization; commission on ship fumigation; subcommission for the sanitary reorganization of Chinese ports; subcommission on the improvement of penal administration; group of experts for the study of physical education; subcommission for the international school of higher health studies; committee of experts on syphilis and similar questions; commission of experts for standardizing the methods of ascertaining the morphine content of opium; committee on health teaching; committee on medical education; subcommittee for the study of price of radium; subcommittee for the study of the budget and report of the Eastern Bureau.

INFORMATION ON INFECTIOUS DISEASES. Some of the most serious epidemics arise in the East and the Far East. The Eastern Bureau of the League at Singapore receives telegraphic reports on the public-health situation of 163 ports weekly and the bulletins are broadcast to the different health services and to ships sailing on the seas of the East. "No outbreak of plague, cholera, or of smallpox can now occur in any of the ports in a zone extending from the Cape to Vladivostok or from the Red Sea to the Panama Canal without the authorities concerned being duly warned by telegraph."[1] The Malaria Commission (1923) issued a report in 1932 on "The Therapeutics of Malaria." The results of research by experiment and in clinics was made available. It has been estimated that, on an average, eighteen million persons are treated for malaria each year and that vast areas are uninhabitable in tropical and sub-

[1] LEAGUE OF NATIONS INFORMATION SECTION, *Essential Facts about the League of Nations*, p. 249, 1938.

tropical regions because of the malaria-carrying mosquito. Similar studies, with the object of making available the most advanced medical knowledge of methods of treatment, have been made in the case of syphilis, tuberculosis, cancer, leprosy, sleeping sickness, rabies, trachoma, and diseases of infancy.

ASSISTANCE TO PARTICULAR STATES. As in other matters, so in health problems, states have requested assistance from the League. Albania, Bolivia, and Siam sought advice respecting malaria, Bulgaria respecting syphilis, and Greece respecting an epidemic of dengue. Bolivia, China, Czechoslovakia, and Greece requested a study of reorganization of their health services. Chile sought solution of problems relative to nutrition of her population. The Health Organization facilitates a comparison of public-health methods of different countries by organizing exchange of health officers and study tours and offers malaria courses annually.

RURAL HYGIENE. In rural regions there was no appreciable drop in mortality and morbidity rates after 1850 as there was in urban centers. A European conference on rural hygiene representing twenty-three states, held in 1931, laid down guiding principles for organization of medical attendance and health services in rural districts. Studies continue on special topics: rural housing, the anti-fly campaign, milk hygiene, and drinking water. A conference on rural hygiene for Eastern countries, requested by British India and China, was held in 1937.

BIOLOGICAL STANDARDS. Different standards were established from time to time in different countries for the same medicines, making it difficult for research workers to compare doses administered in different countries. Several conferences have been held, resulting in adoption of international standards for certain serums, biological products (tuberculin, insulin), and the principal vitamins and sex hormones. These are kept in an official laboratory and distributed to various national laboratories. This problem had been realized prior to the League. In 1906 nineteen states had signed an agreement regarding the unification of the pharmacopoeial formulas for potent drugs, but this became antiquated. For example, by 1923 one German unit

of tetanus antitoxin corresponded to sixty-seven American and 2,500 French units.

2. SOCIAL LEGISLATION

A large proportion of the total population of the world spends a large part of its time and energy in work. This has always been true. At different periods of history the state has adopted different policies with respect to those engaged in work, at some periods leaving the worker and the employer to settle their relations with one another and at other periods intervening to a considerable degree to regulate the relations by law. Today is a period of increasing preoccupation of the state with these relations. Several reasons for this may be suggested. As a result of inventions and the factory system of production there have been a phenomenal increase of urbanization and the growth of a great class of people employed in running the factories. The increase of urbanization has created a need for great governmental regulation because individuals in large cities are in fact unable to take measures themselves which would be adequate to protect their health, safety, and convenience. The growth of a large class working in factories has been in many countries a significant development because eventually this class gains a portion of political power and employs it in order to ameliorate the conditions of the factory workers. Legislation of this kind is commonly called "social legislation." It has become more and more extensive during the past seventy-five years. The highly industrialized states have usually gone beyond agricultural states in this direction. It was during a period of increasing popularity of democratic and representative government that this movement began. At the same time new knowledge became available as the result of medical research concerning the effects of working conditions upon the health and life of men, women, and children.

THE NEED FOR INTERNATIONAL COOPERATION. It might seem at first sight that these are matters of exclusively national concern. It is true that international law leaves the subject matter to be regulated by the national state. Nevertheless, there has been a growing tendency to deal

with problems back of social legislation as matters of international concern. This is so because of the increased economic interdependence of the people of the world. If, for example, it is found that a substance such as white sulphur is dangerous to the health of those manufacturing matches from the substance, the national state may prohibit its use. Yet, a great economic sacrifice to a large industry may result from this prohibition, injuring investors and workers alike, if other national states continue to permit manufacture of matches from white sulphur giving an economic advantage in capturing the markets of the world. So, in order to protect health and at the same time prevent serious economic sacrifice, it is necessary that all states agree to abolish use of white sulphur at the same time. The same principle applies to other aspects of social legislation, because the tendency of each law is to increase the price of the manufactured product, and thus place in a position of disadvantage the industry subjected to it unless similar laws are enacted also in competing countries.

The Scope of Social Legislation. Among the more important aspects of social legislation are: hours of labor, conditions in the factories affecting health and safety, such as sanitation, lighting, safeguards against dangerous machinery and chemicals, compensation for injuries sustained while at work, insurance of health, insurance against unemployment, pensions or insurance against old age, night work, special provisions prohibiting, limiting, or regulating child labor, and special provisions to protect working women.

The Influence of Private International Organizations. From the mid-nineteenth century onward there have been organizations of an international character devoted to the interests of labor. These organizations represent all or some of the working classes of most of the countries of the world. The most important of these are known as the Internationals. There have been three, the first stimulated by Karl Marx, the great expounder of communism. The first two advocated programs of socialism while the present Third International advocates communism. These organizations have differed as to the meth-

ods which should be employed to improve the position of labor. Some have advocated forceful revolution against the higher economic classes in each country, while others have advocated a gradual improvement of the position of labor by means of pressures upon the lawmaking bodies of the governments of each state. The emphasis of these movements upon the interests of wage earners and attacks upon the existing economic system, as well as the emphasis upon the universal interests of the wage earner as against a national state dominated by other classes, has had a twofold result. In the first place it has built up a powerful opposition among those groups in each country which would be affected adversely by changes in the existing system. In the second place, however, it has made it necessary to make some concessions so as to eliminate some of the worst evils of the existing system in order to reduce dissatisfaction and reduce the danger of forceful change. Attempts were in general unsuccessful during the nineteenth century in getting an official international consideration of labor problems.

PUBLIC COOPERATION BEFORE 1914. Attempts of Switzerland to call an international conference on the status of labor were unsuccessful in 1881 and 1889. When Switzerland issued an invitation for a conference in 1890, Germany requested that the conference should be held in Berlin. This conference drew up recommendations relative to mining, child labor, and Sunday employment, but no treaties were drafted. The next official conferences were held in 1905 and 1906. The conference at Berne in 1906 resulted in two treaties. One prohibited nightwork for all women in industrial employment, with certain exceptions, and the other prohibited the use of white phosphorus in manufacture of matches. These were the only general treaties relative to labor prior to 1914 but there were twenty-five bilateral treaties between European states. These were similar to the treaty of 1904 between France and Italy, which contained the following provisions: nationals of one state working in the other should enjoy reciprocal banking and insurance accommodations and the protection of national labor legislation, Italy would establish a system of

labor inspection so as to reach the standard of enforcement found in France, Italy promised to reduce the working day of women, and both parties agreed to make an annual report on the application of labor laws to women and children.

LABOR AT VERSAILLES (1919). Professor Eagleton summarizes the developments between 1914 and 1918 as follows:

> Resolutions were passed by national labor bodies demanding representation in the Peace Conference. Interallied conferences in England, in 1916 and 1918, approved Wilson's Fourteen Points and added a few concerning labor. A similar interest was taken by a conference of labor representatives from enemy and neutral countries at Berne in 1917. When the Peace Conference met, a commission was appointed to "inquire into the conditions of employment from the international aspect, and to consider the means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such inquiry and consideration in cooperation with and under the direction of the League of Nations."[1]

PROVISIONS OF THE COVENANT. The following provisions are contained in Article 23 of the Covenant:

> Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League: (*a*) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations; (*b*) undertake to secure just treatment of the native inhabitants of territories under their control; . . .

The organization referred to in paragraph (*a*) is the International Labor Organization, which is provided for in Part XIII of the Treaty of Versailles.

TREATMENT OF LABOR AS AN INTERNATIONAL PROBLEM. The philosophy on which this organization is based, and the reasons leading to the consideration of labor questions as international are apparent from the preamble to Part XIII of the treaty. It states that:

> Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based

[1] CLYDE EAGLETON, *International Government*, p. 491, New York, The Ronald Press Company, 1932.

upon social justice; And whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures; Whereas also the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries; The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following: . . .

THE INTERNATIONAL LABOR ORGANIZATION. All the Members of the League of Nations are members of the International Labor Organization and other states may become members. The organization consists of a General Conference, a Governing Body, and the International Labor Office. The General Conference meets annually and is composed of four delegates from each Member, two of them representing the government, one employers, and one labor. The Governing Body meets each three months and is composed of thirty-two members, sixteen representing governments, eight employers, and eight labor. The government representatives on the Governing Body are chosen by the eight states of chief industrial importance, and the other eight government representatives are chosen by other government delegations at the conference. The International Labor Office, under a director appointed by the Governing Body, is comparable to the Secretariat of the League of Nations. It consists of almost 400 employees. The central office is in Geneva, and there are branch offices or national correspondents in twenty-two states. On June 1, 1939, fifty-seven states were members of the Organization after the notice of intention to withdraw by Italy (1937) and Japan (1938). The United States became a member in 1934.

WORK OF THE ORGANIZATION. The work of the International Labor Organization may be classified as (1) framing of treaties and recommendations relative to labor, (2) the supervision of ratification and application of the treaties, (3) inquiries into labor conditions, (4) maintenance of relations with associations and institutions which deal with labor problems, and (5) collection of material, information, and publications on social and labor problems.[1]

LABOR CONVENTIONS. The preparation for the annual conferences is made by the Governing Body and by the International Labor Office. The Governing Body draws up the agenda, or program of business, for the conference. The International Labor Office performs the last three classes of work listed above, which becomes the basis upon which plans for future conferences may be laid. The draft treaties are framed by the annual conference, requiring a two-thirds vote of delegates. States do not become bound by the adoption of a draft treaty but may become bound by simple ratification, without necessity for exchange of ratifications usually required in the case of most treaties. They are bound, however, to bring recommendations and draft treaties before the appropriate authorities of the state within one year of the end of the session of the conference. This is important, because it has been found that in the case of many multipartite treaties there is frequently a long delay by national executives in presenting signed treaties to legislative bodies for their approval of ratification.

SUPERVISION OF THE APPLICATION OF CONVENTIONS. Provisions exist to assure supervision of ratification and application of treaties which have been ratified. Each party is bound to make an annual report to the office on the measures taken to fulfill the treaty. If it is thought that a state is failing to fulfill its obligations under a treaty, either representations or complaint may be made. Representations may be made by an industrial association of employers or workers that a state has failed to observe a treaty effectively. The Governing Body communicates this representation to the state and may publish the representation and the

[1] LEAGUE OF NATIONS INFORMATION SECTION, *Essential Facts about the League of Nations*, pp. 97–99, 1938.

reply. A complaint may be made either by a member state or by the Governing Body. The issue may be submitted to a commission of inquiry or to the Permanent Court of International Justice.

THE ACCOMPLISHMENT OF THE ORGANIZATION. During the twenty-five sessions of the International Labor Conferences between 1919 and 1939, a total of sixty-five conventions was adopted. While the conventions have been by no means universally ratified, the record is good. The total number of ratifications on June 1, 1939, was 844. In a considerable number of cases, although the conventions have not been ratified, they have been approved by the competent national authorities and in still other cases legislation has been passed embodying provisions of the conventions although ratifications have been neither made nor authorized. In some cases legislation is in preparation, in some cases a report upon action is not due, and in the case of nine states information had not been received concerning the action taken.

THE SUBJECT MATTER OF CONVENTIONS. The *International Labor Office Yearbook* contains each year a chart which shows the subjects which have been dealt with by the conventions, the date of the convention, the number of ratifications, and the present status if not ratified. Conclusions from the statistics should not be drawn hastily. In some cases states have laws which meet the standards of the conventions although the states have not ratified the conventions. Special provision was made for the case of federal states, some of which are so constitutionally organized that the central government lacks power to legislate concerning the subject matter of some or all of the labor conventions. While the goal is universal adoption of conventions, it is clear that in some cases all the workers of a given class may be protected if less than all states become parties; for example, in cases of seamen if the maritime states have adopted the conventions. Furthermore, the mere number of states is not always an indication of the degree to which principles are applied. Thus, for example, if all the leading industrial states, with large working popula-

tions in factories, adopt a convention, the large proportion of this class of labor throughout the world will benefit.

The practical scope and efficacy of these Conventions varies very considerably. There is, for example, no common measure between the 1919 Convention limiting hours of work in industrial undertakings (which was epoch-making in that it sanctioned the principle of the forty-eight-hour week) and the 1929 Convention concerning the marking of the weight on heavy packages transported by vessels. The International Labour Conference has necessarily been obliged on occasion to legislate on points affecting only a limited number of workers. In selecting subjects for conventions, it was inevitable that at least one of the required conditions should be the presumed general agreement of Governments, employers and workers on a given question, which might be of secondary importance. Actually, however, Conventions restricted as regards their field of application and objects have been quite the exception. By far the greater number of the Conventions adopted have a very wide scope as regards both their object (hours of work, fixing of minimum wages, social insurance, etc.) and their field of application—namely *all* industrial workers, or *all* agricultural workers, or *all* seamen, or *all* women, or *all* children of working age.

On carefully examining the text of these labour Conventions we find that, in point of fact, there is not one that is immaterial and that does not, when applied, lead, in some countries, if not in all, to an improvement on the conditions previously obtaining.[1]

3. REFUGEES

During the past twenty years a series of disasters has created a continuing international problem of assistance to refugees and other persons overtaken by disasters. The Council of the League of Nations, in its early years, urged assistance by various private agencies to the underfed populations in Central Europe left by the war of 1914–1918, and in 1924 appointed an administrator for famine relief in Albania who dispensed funds contributed by six states and by private organizations. In 1920 the Council appointed Dr. Nansen as high commissioner for repatriation of more than 427,000 persons belonging to twenty-seven nationalities who had been war prisoners in European and Asiatic Russia. Almost two million refugees from Russia had fled after the revolutions of 1917 into various European

[1] LEAGUE OF NATIONS SECRETARIAT, *The Aims, Methods, and Activity of the League of Nations*, pp. 178–179, Geneva, 1938.

countries and into Asia. The work of private organizations and of states was coordinated under a commissioner for Russian refugees, appointed in 1921. Many refugees fled to Constantinople while it was occupied by the Allied Powers, including 170,000 Russians, 75,000 Turks, and 166,000 Greeks and Armenians. When Turkey regained control of the city and of Asia Minor in 1922, there was an expulsion into Europe and Syria of a million and a half Greeks, 300,000 Armenians, and 30,000 Assyrians, Assyro-Chaldean and Turkish refugees. The problem of refugees has been revived as a consequence of the exodus of Jews and other persons from Germany in recent years. In 1936 a commissioner for refugees coming from Germany was created by the Assembly. In 1938, the work of this commissioner and of the existing Nansen International Office was transferred to a new high commissioner of the League to deal with refugees. The duties of the officer are as follows:

(1) to provide for the political and legal protection of refugees in accordance with the Assembly's decision of September 30, 1930;
(2) to superintend the entry into force and the application of the legal status of refugees as defined more particularly in the Conventions of October 28, 1933, and February 10, 1938;
(3) to facilitate the co-ordination of humanitarian assistance;
(4) to help Governments and private organizations in their efforts to promote emigration and permanent settlement.

An International Relief Union was created by treaty in 1927 to which thirty states are parties. It provides the machinery for coordinating the assistance which may be offered in case of floods, earthquakes, and other calamities when the local state is unable to handle the emergency.

4. INTERNATIONAL COOPERATION IN THE SUPPRESSION OF IMMORAL PRACTICES

The moral standards of the different peoples of the world, as expressed in their laws, are by no means uniform but there are certain practices which are generally or universally disapproved as immoral. Among these are the institution of slavery, traffic in slaves, the so-called white-slave traffic in women and children, the traffic in obscene publications, and the use of and traffic in opium and other dangerous drugs for nonmedical purposes. The national states have

attempted to suppress these practices by national laws, but it has been discovered that as a practical matter a state requires international cooperation to fulfill its object effectively.

THE ELIMINATION OF THE INSTITUTION OF SLAVERY. Slavery was abolished by national law in some countries before the close of the seventeenth century but continued in some countries after the middle of the nineteenth century, until 1865 in the case of the United States. In some parts of Africa slavery has continued to exist until very recent times and it is claimed to have existed on an extensive scale in Ethiopia in 1922.

SUPPRESSION OF THE SLAVE TRADE. During the period when slavery existed in some states and had been abolished in other states, traffic in slaves continued to be a profitable business. In the nineteenth century various measures were taken by states to suppress the slave trade, both on land and on the sea. European states condemned the slave trade in 1814–1815. During the next quarter century twenty-five treaties were negotiated which gave a limited right to visit vessels suspected of engaging in the slave trade off the west coast of Africa. Five Great Powers of Europe agreed in 1841 to prohibit the slave trade and recognized a reciprocal right of search of vessels flying their flags in specified areas. In 1854 the states agreed to provide a fleet of twenty-six cruisers to stamp out the traffic, but when it became necessary to use force against a slaving vessel it was necessary that commanders of two states consent. The United States agreed with Great Britain to cooperate in abolition of the slave trade. At first the United States disapproved of giving to British vessels a right to visit American slavers but finally did so in 1862 in specified zones. For eight years three mixed courts were established, two in Africa, one in New York, to try vessels suspected of slave trading.

SLAVE TRADE ON LAND. The General Act of Berlin (1885) was the first attempt to eradicate slave trade on land at its source. Fourteen states agreed to try "to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea," and agreed that "their colonies in the

Congo region should not serve as a market or a means of transit for the slave traffic." By the Brussels Act (1890) more elaborate measures were adopted to stop slave traffic in its place of origin, its destination, and in its course. Within a specified zone (Persian Gulf and Red Sea) warships of the parties might verify papers of suspicious vessels and bring the ship into port for trial. To prevent transportation, the seventeen states agreed to watch closely routes used by slave traders and an international maritime bureau was authorized at Zanzibar to collect information about the traffic in the maritime zone. States which continued to recognize slavery agreed to prohibit importation, transit, and departure of slaves. The Treaty of St. Germain (1919) condemned slavery and the slave trade in general terms and each state agreed to "secure the complete suppression of slavery in all its forms and of the slave trade by land and sea." Few states ratified this treaty. The provisions of the Covenant of the League of Nations (1919) relative to class *B* and *C* mandates requires "the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic." This provision is reenforced by provisions in the documents conferring the mandates, whereby the mandatory promises to prohibit the slave trade and to emancipate the slaves in its mandated territory. "As a safeguard against the abuses arising out of contract labor, the League insists that mandatory powers protect natives against fraud in labor contracts. Likewise, the mandates prohibit all forced labor, except for essential public works."[1]

SLAVERY AND THE LEAGUE OF NATIONS. During the early years of the League of Nations the problems of slavery and the slave traffic were examined. The Assembly placed the question of the "recrudescence of slavery" on its agenda for 1923. Governments did not give adequate replies to requests for information sent by the Secretary-General of the League, so the Assembly in 1923 requested the Council to authorize a competent body to investigate and report to the Assembly in 1924. In 1923 the admission of Ethiopia to the League was opposed by Switzerland, the

[1] R. L. BUELL, *International Relations*, rev. ed. p. 360, New York, Henry Holt and Company, 1929.

Netherlands, and the British Empire because of doubts that the former could guarantee suppression of the slave and arms traffic. Ethiopia was admitted upon a declaration adhering to the St. Germain Treaty of 1919, and a promise to furnish the Council with information and to consider recommendations made by the Council. A Temporary Committee on Slavery of eight members was established in June, 1924, which sought information from both government documents and other available private sources. Upon the basis of this information the Assembly in 1926 drafted a new Slavery Convention.

The definition of slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised," covers not only slavery itself, but also its indirect or incomplete forms, such as serfdom, peonage, certain aspects of forced labour, servitude for debt and the enslavement of children or purchase of girls, disguised as adoption or dowry. The contracting parties undertake to suppress the trade, so as "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms."[1]

As a result of this treaty Ethiopia, Sierra Leone, India, and Portuguese Africa promulgated new legislation relative to slavery, the slave trade, and forced labor. The International Labor Organization has also considered the problem of forced labor in colonies.

The Slavery Convention of September 25th, 1926, has now been ratified by forty-two States, and seems to have had good results in many territories. At the same time, the gradual introduction into the interior of Africa of motor transport on tracks or roads, in the place of native porterage, and the completion of several railways have helped to reduce the necessity for forced labour.

In 1932, the League again reviewed the position. It then appeared that occasional isolated or collective cases of the capture of free men still occurred in some inadequately governed areas, and that slave-markets existed here and there. The Assembly therefore decided to appoint a Permanent Advisory Committee to study the facts and institutions mentioned by the 1926 Convention, and to consider means of eliminating them. This Committee began its work in 1934.[2]

SUPPRESSION OF THE WHITE-SLAVE TRAFFIC. Prostitution is an ancient institution, and the procurement of

[1] LEAGUE OF NATIONS SECRETARIAT, *The Aims, Methods and Activity of the League of Nations*, p. 159, Geneva, 1938.

[2] *Ibid.*, p. 160.

women and girls for such commercialized vice is likewise ancient. While this is a matter which would appear at first sight to be a purely national one, to be regulated by national law, it requires international cooperation in the modern period to reduce or eliminate the traffic, which is popularly known as "white slavery." The organization of this traffic on an international scale was made possible by the nineteenth-century development of means of transportation, especially by sea, in a period during which extensive migrations were taking place.

THE BEGINNING OF INTERNATIONAL COOPERATION. Halting steps were taken toward international suppression of the traffic during the first years of the twentieth century. By an agreement of 1904 states undertook to establish authorities within their territories to "collect all information concerning the traffic, to watch the ports where it might be carried on, and to assist its victims." The convention provided "that any one engaging in the traffic should be punished and that the governments should exchange information in regard to it. Difficulties arising out of this treaty in regard to the age of consent and rogatory commissions were cleared up in a new convention of 1910, to which sixteen states soon became parties."[1] The work was ineffective because of the small number of states which became parties to the treaties and because no central body was created to stimulate governments to action and to collect information on the subject at hand.

THE TREATY OF 1921. Thirty-four states attended a conference at Geneva in 1921, called by the Council of the League of Nationas, to deal with the problem of traffic in women and children. The treaty which resulted provides that parties who had not ratified the 1904 and 1910 agreements should do so and makes supplementary provisions. Among these provisions are an extension of the list of punishable offenses, the raising of the age of consent from twenty to twenty-one years, provision for the licensing of employment agencies so as to protect women and children who seek work in a foreign country, and annual reports by

[1] R. L. BUELL, *International Relations*, rev. ed., p. 284, New York, Henry Holt and Company, 1929.

governments to the League on measures taken to check the traffic.[1] The Council of the League created an Advisory Committee on the Traffic in Women and Children, to advise the Council and in 1923 a special body of experts. The latter interviewed 5,000 persons connected with commercialized prostitution, and reported that "many hundreds of women and girls—some of them very young—are transported each year from one country to another for purposes of prostitution." It found that the system employed by some countries of licensing houses of prostitution, instead of prohibiting prostitution, was conducive to international traffic. Fifty states are parties to the convention of 1921.

THE TREATY OF 1933. The convention of 1921 was extended by a new convention, 1933, which entered into force in August, 1934 and to which twenty-five states are parties. Under the earlier convention only the traffic in persons under age was punishable, while the later one provides that "international traffic in women of full age, with a view to immorality in another country, even with their consent, shall be subject to penalty." The League of Nations also presented its conclusions, based upon a study of the experience of countries and towns which had abolished the regulation of prostitution and had substituted prohibition, showing that there had not been an increase of venereal disease or prejudice to public order as a result of the prohibition.

SUPPRESSION OF TRAFFIC IN OBSCENE PUBLICATIONS. A conference drafted in 1910 two agreements. One was an international administrative agreement by which the parties agreed each to appoint a central authority for supervision of traffic in obscene publications. The second was a draft convention. Seventeen states became parties to the first; none ratified the second. On the initiative of the Assembly of the League, 1922, a conference was called for 1923. Answers to a questionnaire circulated by the Secretariat were given prior to the conference by thirty-one governments. The conference adopted a treaty on the suppression of the circulation of and traffic in obscene publications which has been ratified by forty-seven states.

[1] *Ibid.*

This Convention strengthened and extended the preventive clauses and penalties of the 1910 draft, which had not been accepted. The signatories undertook to punish persons making or producing obscene publications, having possession of them for commercial purposes, whether exposed for sale or not, or publicly exhibiting them. The Convention also prohibited, under penalty, their import, export or transport, and all publicity relating to obscene matter. The Traffic in Women and Children Committee supervises the execution of this Convention, and receives yearly reports from Governments giving information of all breaches of the Convention, which now serves as a guide for national legislation on the subject.[1]

As a consequence the traffic has been reduced in volume and driven underground as a result of the penalties imposed.

Traffic in Dangerous Drugs. The use of dangerous drugs for other than medical purposes is known to be dangerous to human health and life and productive of crime. An agreement for suppression of traffic in, and production and manufacture of, drugs was signed in 1912, but it failed to enter into force because of insufficient ratifications until the signatories of the Treaty of Versailles (1919) agreed by Article 295 to ratify it. The convention provided for national, but not international, control. This was a serious omission because the raw material was produced in some countries, mostly Oriental; manufactured in a few European states; and easily transported and smuggled into distant countries. The questions which arose for the League of Nations have been summarized as follows:

> Would manufacturing countries consent to abandon such a profitable industry? Could countries which produced the poppy or the coca leaf be expected to relinquish the proceeds of their crops? Would Eastern countries which got a large revenue from their monopoly of the sale of opium surrender that source of revenue? Would addicts give up paying exorbitant prices to gratify their insidious passion? And would traffickers abandon the colossal profits they derived from the frenzied cravings of the addicts?[2]

Early Steps Taken by the League. The Assembly of 1920 authorized the creation of an Advisory Committee of Experts and directed the collection by the Secretariat of information regarding the steps taken by states to apply the

[1] League of Nations Secretariat, *The Aims, Methods and Activity of the League of Nations*, p. 164, Geneva, 1938.

[2] *Ibid.*, pp. 168–169.

1912 convention and regarding production, distribution, and consumption of narcotics in each country. The Advisory Committee collected a large amount of information regarding production and use of opium by means of questionnaires and annual reports of governments. It developed an importation-certificate system, under which no person could export dangerous drugs without a license from the importing state certifying that such drugs were required for legitimate purposes.

THE ATTEMPTS TO CONTROL PRODUCTION AND USE. The Assembly in 1923 called two conferences on opium which met in 1924–1925. One was composed of governments which had colonies in the Far East and its task was to reduce the amount of opium used for smoking in these colonies. The second was composed of all governments and was meant to limit production of raw opium and coca leaf for export to the amount needed for "medicinal and scientific purposes." This second conference was unable to limit production. China, because of unstable government, was too weak to stop production. India shipped no opium to states which did not want it. Yugoslavia, Persia, and Turkey did not wish to limit production until other crops were substituted. A protocol was signed which provided for complete suppression of opium smoking within fifteen years after the poppy-growing countries take steps to prevent smuggling on an extensive scale, and for abolition of opium farms and smoking by minors. Some progress was made. Import certificates were made compulsory and new substances were added to the list of dangerous drugs. A Permanent Central Opium Board was established (1928), which receives quarterly reports on the amounts of narcotics exported, imported, or manufactured, estimated needs for the following quarter, and with power to ask for explanations from governments as to leakages discovered. The board is composed of eight persons appointed by the Council of the League. The Geneva convention of 1925 has been ratified by fifty-five states.

CONTROL OF MANUFACTURE AND DISTRIBUTION. The most important step in suppression of the opium traffic was taken in a conference called by the Assembly which drafted

a convention for limiting the manufacture and regulating the distribution of narcotic drugs (1931). This convention is in force and has been ratified by sixty-three states. The importance of this convention has been summarized as follows:

> The main innovation is the establishment, at the seat of the League, of a Supervisory Body to keep exact accounts, in conjunction with the Permanent Board, of the world trade in narcotics and to limit manufacture by States to the quantities strictly necessary to meet medical and scientific requirements, while leaving the necessary margin for the formation of reasonable stocks. These two bodies examine the annual estimates that States undertake to supply of the narcotic drugs covered by the Convention which they will require for the following year. If a Government neglects this duty, the body itself makes the estimate, on the basis of the information in its possession.
>
> Without going into further detail, we may say that the estimates, once adopted by the Supervisory Body, are binding on Governments, that exporting countries may not send to any country a quantity of narcotics exceeding the estimates supplied by that country, that the substances covered by the Convention are more numerous than those in previous Conventions, and that Governments which do not already possess such an organization must establish a special administration to watch over the application of the Convention and to organize a campaign against addiction.
>
> It will be seen at once what a change this Convention makes in the history of international law and international relations. For the first time, a world body, recognized by the great majority of countries has succeeded in establishing supervision over a complete branch of economic activity, from the production of the raw material to the consumption of the manufactured article. States have charged the League with applying, in this particular field, an international plan of strict co-ordination between production and consumption. They have supplied it for the purpose with an international technical administration to regulate and supervise daily the relations between States as manufacturers, importers, and consumers of an important class of industrial products.[1]

A Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1936) came into force October 26, 1939, with ten states as parties.

A CONTINUING PROBLEM. The international traffic has not been entirely eliminated. Secret factories have now supplanted the licensed factories from which the traffickers formerly gained the manufactured products. More severe penalties are needed for those engaging in the illicit traffic.

[1] *Ibid*, pp. 171–172.

Some believe that the international traffic cannot be eliminated until a strict limitation of the output of raw material is established and this has not yet been done. Information presented by the United States indicates that Japan is following a policy of encouraging the growth and the use of opium in Manchukuo and in the parts of China under Japanese military occupation. The delegate of China charged in the Assembly (1938) that this was so and alleged that Japan promoted use of opium in China in order to destroy the body and soul of the Chinese people.

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CHAPTER XVII

Enforcement of National Laws

The national state has jurisdiction over the persons and things within its territory and some states claim jurisdiction also over their nationals abroad. The division of the territory of the world into numerous jurisdictions under the control of different states creates a situation in which a single state can enforce its laws satisfactorily only if other states cooperate to this end. This is so because persons move from the territory of one state to another, because persons in different states enter into relations with one another, and because persons own property in foreign states. There consequently arise the problem of extradition of fugitives from justice, and the question of recognition by one state of acts of the other state, as in the case of court judgments and arbitral awards, and the question of getting testimony of witnesses outside the territory of the state. Furthermore, a state must depend primarily upon foreign states for protection of its nationals while in foreign states and for protection of its own rights and interests abroad. The machinery of the foreign government is available for these purposes and the rights of a state and its nationals in a foreign state are protected in this manner. It is helpful in understanding the cooperation between states to examine these matters.

1. EXTRADITION

Extradition is the procedure by which one state delivers to another a person who has fled to its territory after committing an offense within the jurisdiction of a second state. Extradition is granted by some states on the basis of reciprocity, but by most states only under the provisions of an extradition treaty.

EXTRADITABLE OFFENSES. The treaty specifies the cases in which extradition will be granted and usually covers only the more serious crimes, though the modern tendency is to extend the scope. In some treaties the offenses are listed, while in others extradition is granted in all cases where the penalty is sufficiently serious to apply one year's imprisonment on conviction. Even in these cases there are usually certain exceptions. Most states will not extradite their own nationals. Most states refuse extradition in the case of political crimes; that is, crimes committed not with personal malice but in the course of a political movement, but an exception to this is an attack on the head of state, in which case extradition is granted. Examples of the offenses for which the United States will extradite are murder, arson, robbery, forgery, burglary, larceny, counterfeiting, embezzlement, piracy, obtaining money under false pretenses, breach of trust, rape, bigamy, abduction, and perjury.

THE PROCEDURE OF EXTRADITION. The procedure followed in the United States when a foreign government requests extradition under a treaty, is a requisition addressed to the Secretary of State by the diplomatic representative of the foreign government.

> If prescribed by treaty, a mandate may then be issued by the Secretary of State authorizing the examination of the alleged fugitive by a magistrate; but such examination may proceed though no mandate has been issued. . . . A complaint "on oath" is made before a magistrate, a judge of a court of record or a commissioner, by some one acting with the authority of the government seeking extradition. A warrant of arrest is issued by the magistrate before whom the complaint is made. The alleged fugitive, if apprehended, is examined by a magistrate, who determines whether the alleged offense is covered by the extradition treaty, and whether there is probable cause for holding the accused for

trial. . . . Following such determination, the magistrate certifies the fact, "together with a copy of all the testimony taken before him," to the Secretary of State, and issues a "warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made." The Secretary of State then issues a warrant of surrender, if in his discretion this seems proper.[1]

When the United States seeks extradition the procedure is as follows:

An application is addressed to the Secretary of State by the Attorney General if the offense charged is against federal law, or by the Governor of a State if the offense charged is against State law. A requisition is made by or on behalf of the Secretary of State, accompanied by the documents which be required by the treaty applicable. A warrant is issued by the President authorizing an agent of the United States to receive custody of the fugitive for his return to the United States.[2]

2. DEVELOPMENT OF UNIFORM NATIONAL LAWS

To some extent states have adopted uniform laws. Thirty-four states are parties to a treaty (Geneva, April 20, 1929) for preventing and punishing the falsification or counterfeiting of paper money and metallic currency, and a later treaty (1937) extends the principle to other documents of value. Sixteen or more states are parties to various treaties which attempt to gain greater uniformity of law and to eliminate certain conflicts of laws in the matter of bills of exchange, promissory notes, and checks, and stamp laws in connection with these instruments. Following the assassination in Marseille of the French Minister of Foreign Affairs and the king of Yugoslavia, a movement was started which resulted in a treaty for prevention and punishment of terrorism (1937), and a treaty for the creation of an international criminal court (1937). These two treaties are not in force.

3. ENFORCEMENT OF FOREIGN JUDGMENTS

To a considerable extent the courts of one state will recognize and give effect to the judgments of courts and to arbitral awards of another state. This obviates the necessity

[1] M. O. HUDSON, *Cases and Other Materials on International Law*, 2d ed., p. 948, St. Paul, West Publishing Company, 1936.

[2] *Ibid.*

of retrying the merits of disputes and the possibility of upsetting legal rights of persons when once determined. The branch of law which deals with this matter is known as private international law or conflict of laws. It is a branch of law which is familiar in the United States because a similar problem arises due to the presence of forty-eight different states. In the case of the United States a constitutional provision specifies that the public acts, records, and proceedings of one state shall be given full faith and credit in the other states of the union. A similar rule is followed by states of the international community by comity. Comity

> . . . is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws. . . .

TREATIES ON RECIPROCAL EXECUTION OF JUDGMENTS. If a plaintiff has received a judgment from the court of one state he may, therefore, in some cases receive enforcement of the judgment in another state. There are numerous treaties which provide for reciprocal execution of judgments, and sometimes in the absence of a treaty such reciprocal execution is given on the basis of reciprocity. An international treaty on recognition and execution of judicial decisions was drafted at the fifth session of the Conference of the Hague on Private International law, 1925, which provides:

> Article 1. The authority of judicial decisions rendered in a civil or commercial matter in one of the contracting states will be recognized in another state if they comply with the following conditions: (1) That the rules of international judicial competence, admitted by the state in which the decision is invoked, do not exclude the jurisdiction of the other state with reference to the matter litigated; (2) that the recognition of the decision is not contrary to the public order or to the principles of public law of the state in which the decision is invoked; (3) that by the law of the state in which the decision was rendered it had the effect of *chose jugée;* (4) that, in case of a judgment by default, the party has been declared defaulting in accordance with the law of the country in which the judgment has been rendered and with the provisions of

treaties in force between the contracting states. . . . Article 2. Judicial decisions rendered in one of the contracting states may be executed in another state after they have been declared executory. The exequatur is accorded if the decision is executory in the state in which it was rendered and if it fulfills the conditions enumerated in Article 1.

4. FOREIGN ARBITRAL AWARDS

By treaty a number of states have agreed, under specified conditions, to assist one another in the execution of arbitral awards of national tribunals when a contract between private persons has included provisions for arbitration rather than submission to the ordinary tribunals of the state. The increasing use of arbitration as a method of settling questions relative to contracts gave prominence to the question. Twenty-one states are parties to the Convention on the Execution of Foreign Arbitral Awards, Geneva, September 26, 1927.

5. JUDICIAL ASSISTANCE

The court of one state may desire, for determining a suit before it, the testimony of witnesses or documents or other evidence in the jurisdiction of a second state. There has been an increasing use of cooperation between states in these matters, regulated commonly by treaty. A request from a court that the court of another jurisdiction should take evidence from witnesses is called a "letter rogatory." Requests for judicial assistance are usually transmitted through the consular representative to the court from which assistance is requested, although some states make the request through the diplomatic channel.

6. SUITS BY FOREIGN STATES BEFORE NATIONAL COURTS

A state is immune from the jurisdiction of other states but the state may choose to submit to the jurisdiction of another state in order to protect its property and interests found within the territory of the second state. The public property of a state, such as gold, public vessels, etc., enter the jurisdiction of other states. A state will take jurisdiction of suits instituted by foreign states as plaintiffs under the general rule of comity of nations.

7. PROTECTION OF ALIENS

A state is dependent upon foreign states for protection of its nationals and their property found within the jurisdiction of the foreign states. The rights of the alien are determined by international law and by treaties between states. Local officers and courts are bound to protect the aliens in their rights. Failure to do this makes the state responsible under international law to the state of the alien.

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PART SIX

National Security

CHAPTER XVIII

The Promotion of National Security

A fundamental purpose of modern states is to protect themselves against foreign states. It has been seen that states are agreed upon the principle that members of the family of nations, having a right to exist, have the corollary right of self-preservation. During the early part of the period of modern international law beginning in 1648, it was admitted that a state has the right to protect itself by the use of force and war. The prevailing doctrine and the custom of states continues to admit a right of self-defense. The situation is different with respect to the rights of persons within the state. Here, while a right of self-defense is admitted, the state representing the community takes over the function of protecting persons and supplies the machinery for enforcement in the form of the policeman, the courts, and if necessary the armed forces of the state. Organized society prohibits individual recourse to forceful self-defense and in return accepts the duty of enforcing rights. The community of nations lacks an authority with comparable rights and power to protect rights of members. It is true that philosophers have for several centuries advocated a reform in this direction. Furthermore, certain provisions of the Covenant envisage the collective action of Members of the League in case of violations of the Covenant and of failure of a state to abide by an arbitral

award, a judicial decision, or a recommendation of the League made unanimously under Article 15. During the life of the League numerous devices have been formulated to supplement the League system with the object of granting greater security to members.

1. PROMOTION OF SECURITY BY SELF-HELP

The security of a state may be sought by reliance upon its own strength alone or by reliance upon cooperation of other states in addition. Whatever else the idea of self-defense may imply, it always contains the idea of the prevention of invasion of land territory by forces of a foreign state. Other things being equal, defense of territory is easier when the territory is compact and contiguous and it is correspondingly more difficult when the parts of the territory are separated or scattered in different parts of the world. Most of the smaller and weaker states of the world are of compact and contiguous territory. The chief colonial powers, however, are faced with the problem of defense of territory of the mother countries and of the colonies, protectorates, suzerainties, leaseholds, and servitudes which they possess in distant parts of the world.

Strategic Frontiers, Fortifications, Armed Forces. Taking first the simpler case of the compact, contiguous territory, what may the state do to protect itself without the cooperation of other states? States have always regarded strategic frontiers as important. Certain physical features which make difficult or slow an attack have often been the objectives of imperialistic statecraft, such as mountain barriers, rivers, deserts, and seacoasts. While some of these physical obstacles to invasion may be of less effectiveness today as a result of new inventions and mechanized warfare, they have been important objectives of national policy in the past and remain important today. In addition to physical obstacles created by nature, the state may seek additional safeguards by fortifications to retard the enemy or stop him at the frontier, along with armed forces on land frontiers and naval forces on sea frontiers. The provision of facilities for transportation of men, animals, machines, arms, and munitions, to connect the heart of the country

with frontiers and various parts of the frontiers with one another is, of course, necessary.

ECONOMIC NATIONALISM. In order to protect itself in case of prolonged war the state must also adopt measures giving assurance of a continued supply of materials for prosecution of war and for continuance of economic life of the country. Different states will seek different solutions of this problem. The lines of conduct followed may be one or more of the following: the accumulation during times of peace of stocks of food, minerals, and other raw materials; a stimulation of industries, through bounties or protective tariffs, which are regarded as indispensable to war and civilian life; acquisition of access to the sea, with the purpose of keeping channels of commerce with neutrals available; naval forces to protect commerce; subsidy of merchant marines as naval auxiliary and assurance of commerce with other states; and adoption of commercial policies in time of peace to prevent serious economic dependence upon a potential enemy country.

PROMOTION OF NATIONAL SOLIDARITY. The promotion of national solidarity is obviously an important asset. The insistence upon a supreme loyalty to the state over and above loyalties to religion, race, class, family, personal interest, and life itself is successful because of the herd instinct. Various national policies are to be understood in the light of need for national unity against external enemies. Thus, restrictions upon immigration may be imposed to prevent the intrusion of elements into the populations which will not become assimilated to the prevailing nationality and which may retain loyalty to another state. Most states having a multinational population have, if unrestrained, followed a policy of trying to crush out minorities and to stamp upon them the sentiments and attitudes of the majority, on the theory that such minorities constitute an element of weakness. Some states have attempted to eradicate theories of class struggle, internationalism, pacifism, and cosmopolitan religions as dangerous to supreme loyalty to the state. These elements in the defense of territory are more important today than formerly because of mass participation in arms, mass support by

noncombatants through the industrial systems, and the development of a sentiment of nationalism.

REDUCE POWER OF POTENTIAL ENEMY. A state, preparing its own defense, may attempt to secure it by reducing the power of a potential or actual enemy. Thus it may be able to secure cession of territory valuable to the other party for strategic reasons, or may compel demilitarization, nonfortification, or neutralization of a portion of the neighboring state's territory. It may attempt to weaken the enemy by fomenting class struggles, sabotage, partisan conflicts, revolts by minorities and disaffected elements of the population; in short by trying to reduce for a potential enemy those factors which the state is seeking to increase for itself.

SPECIAL PROBLEMS OF STATES WITH NONCONTIGUOUS TERRITORY. The state which has its territory divided by seas or intervening territory of other states has even more complications in securing itself against invasion. Today this is a problem facing most of the great colonial states of the world, including the British Empire, France, Italy, Japan, Belgium, Portugal, the Netherlands, and to a lesser extent the United States. The colonial state has the problems common to the state with contiguous, compact territory, but it has others in addition. The most fundamental is the safeguarding of intercourse between the different territories of the state in the event of war. This is essential from several points of view. First, the economic life is usually stimulated between parts of the empires, so that to cut communications is to disrupt seriously the ordinary channels of business. This may result in partial disruption of economic life and the withholding of raw materials and food products essential for civilian and military purposes. Second, some colonial states adopt the policy of depending upon native troops for use in wars of the metropolis so that ability to transport them is an important element in defense. Third, in those colonies restive under imperial control, it is necessary to be able to maintain forceful control, and this is particularly true because the enemy frequently aims to stir up revolution in the colonies when the empire is occupied by foreign war so as to divide the fighting strength.

EXAMPLES. States having such problems of defense, therefore, follow policies of promotion of merchant marines, creation of naval power, protection of channels of sea communication by acquisition of naval and air bases, and prevention of acquisition of strategic points by powerful potential enemies. Much of ancient and modern political history may be pinned upon this peg. It seems unnecessary to labor the point with detailed proof. The policy of Great Britain based upon protection of "the life line" to India is familiar to everyone, explaining Gibraltar, control of the Suez Canal and British policy with respect to Egypt and Palestine, and explaining the "Cape-to-Cairo" dream of a land route passing from north to south across all Africa under British control as a second line of defense. France regards as vital an assured connection with her great African colonial empire and her stake in Indochina. Similarly Italy regards as vital connection with Libya in North Africa and Italian East Africa on the Red Sea. Japan, in the region of the Pacific Ocean, has likewise the problem of connection with Taiwan (formerly known as Formosa), various other islands in the Pacific, and rights possessed or claimed on the Asiatic mainland. Since the Civil War the United States has had the problem of connection with Alaska and during the present century of connection with Panama, and the Philippines, Guam, and the Hawaiian Islands in the Pacific. To assure concentration of naval force in the Atlantic or Pacific, control of the Panama Canal with its approaches is vital, and the factor of protection of approaches to the canal is an important one in the Caribbean policy of the United States.

WEAK COLONIAL STATES DEPEND UPON A STRONG STATE. Certain colonial states which possess relatively little naval power retain extensive colonial possessions: Belgium the Congo in Africa; the Netherlands the Dutch East Indies off the Asiatic mainland; Portugal Angola in Africa; and Spain Spanish Morocco. How is this to be explained? First, it may be remarked that the Netherlands, Portugal, and Spain all had great colonial empires at one time but they were dispossessed. Second, in the period of modern imperialism there were ample opportunities left for ambitious states in

Africa and in Asia. Third, and perhaps most important, is the protection gained by these colonial states because of the mutual jealousies of imperialistic states, none of whom would readily permit the acquisition by the other of the colonial possessions of these weaker states. Thus today Great Britain's protection of the Dutch East Indies and of Portuguese Angola against other Great Powers is a safeguard.

Extension of Concept of Security. Self-defense has been limited in the preceding discussion to the idea of prevention of armed invasion. Most states include, however, a great many additional ideas under the general term of self-defense. All states adopt a policy of protection of nationals abroad in foreign countries and of public and private vessels under their flags while on the high seas or in foreign territorial waters. Furthermore, the idea of self-defense is frequently expanded to cover protection of treaty rights, rights under international law, and certain "interests" of the state. It is quickly seen, therefore, that policies of simple protection of population on home territory against invasion is only part of the problem of self-defense as conceived by most states. The state therefore may regard as an attack certain injuries to the persons or property or contractual rights of its nationals abroad in foreign territory and while on the high seas. If a state also regards preservation of a treaty right to be a matter of self-defense, the door is opened wider. What looks like a physical attack to a simple soul often is called a measure of self-defense by the state employing the attack.

2. MODES OF SELF-HELP FOR REDRESS OF GRIEVANCES

International law distinguishes several types of non-amicable modes of redress short of war. These are: (1) withdrawal of diplomatic representatives, (2) retortion or retaliation, (3) display of force, (4) use of force short of war, (5) reprisals, (6) pacific blockade, (7) embargo, and (8) non-intercourse. Finally, war in the legal sense is available, except as legally restricted by treaty agreement.

3. INTERNATIONAL COOPERATION FOR NATIONAL DEFENSE

Very few states are sufficiently powerful to depend upon their own strength and resources alone for defense in all contingencies. A number of different devices have been employed in the past by which two or more states seek greater security. Among these are the following: (1) the establishment of buffer states, (2) neutralization of states, (3) creation of neutralized zones, (4) creation of demilitarized and unfortified zones, (5) dismemberment of existing states, (6) prevention of unification of small states into a large state, and (7) alliances and treaties of guarantees. These are devices which have been employed for centuries. The Covenant of the League of Nations incorporates some of them, but with the difference that it aims at universality of membership on the theory of collective action of many states against that state which violates its Covenant obligations.

Buffer States. Buffer state is the name given to a relatively small or weak state whose territory lies between the territories of two powerful states. The term refers to the idea that such a state forms a cushion between two states which might otherwise come into collision if they had a common frontier. Neither powerful state is likely to have fears from the adjoining weak state, and the weak state may gain in security if both states regard its preservation as an element of strength; and if one state seeks to absorb it, it may expect assistance from the other neighbor. Thus Belgium and Switzerland have served as buffers between France and Germany; Switzerland and Austria (until 1938) as buffers between Germany and Italy; Poland (until 1939), Latvia, Lithuania, and Estonia acted as buffers between Germany and the Soviet Union. The same function is performed by Belgium and the Netherlands between Germany and Great Britain. In Asia, British India was surrounded by buffer states in the nineteenth century, including Baluchistan, Afghanistan, and Persia, as a means of protection from Russia. Korea served as buffer between Japan and Russia (until annexed) and Manchuria in

northern China served a similar purpose. France desired the creation of a buffer state out of German territory bordering on France at the close of the World War but was unable to attain her objective either at the Peace Conference or by promoting a separatist movement in 1923 during occupation of the Ruhr.

A buffer state may continue to exist over a long period of time: witness Switzerland and Belgium. However, a state placed in such a position obviously is severely limited in the policies which it may pursue and must depend upon a neutral policy and maintenance of good relations with both neighbors. If one of the powerful neighbors wishes to cross the territory for an attack upon the other, a dilemma is faced, because its territory is bound to be a battleground whatever decision is reached; and its independence is likely to be lost at the close of the war if it has become the ally of the defeated side, and it may be lost even if the ally is victorious.

NEUTRALIZED STATES. There are a few examples of neutralized states. A neutralized state is one which may exercise the right to go to war only in self-defense, and which cannot therefore be a party to a treaty of alliance. This status may be created by announcement on the part of the neutralized state with the acceptance of other states or it may be established by treaty. Switzerland has for a long time been a neutralized state. In practice the status dates from 1648, with the exception of the Napoleonic period, and was recognized and guaranteed in 1815. When Switzerland entered the League of Nations, reservations were made to Article 16. The Council declared that Switzerland "shall not be forced to participate in a military action or to permit the passage of foreign troops or the preparation of military enterprise upon her territory." In 1938 and 1939 Switzerland again made it clear that the neutralization status was to be retained. Belgium was recognized as neutralized in treaties of 1831 and 1839. Germany violated this neutrality in 1914. By the Treaty of Versailles this status was terminated and Belgium made an alliance with France. In 1936, after denunciation of the Locarno treaties, Belgium returned to a status of neutralization with the

consent of the chief European states. Luxembourg was neutralized in 1867 by treaty, but the status was terminated by the Treaty of Versailles in 1919. All these three states act as buffer states.

NEUTRALIZED ZONES OR TERRITORY. Certain portions of territory of a state may be neutralized; *i.e.*, war may not legally occur in that area. The purpose of such a zone is to give protection to a neighboring state, and eliminate the region as a strategic factor. Great Britain, Austria, Prussia, Russia, and France agreed by a treaty signed at Paris (November 20, 1815) to demolish the fortifications of Huninguen, and France agreed not to replace the fortifications at a distance of less than three leagues from Basel. Argentina and Chile agreed in a treaty (July 23, 1881) that "Magellan's Straits are neutralized for ever, and free navigation is guaranteed to the flags of all nations. To insure this liberty and neutrality no fortifications or military defenses shall be erected that could interfere with this object. . . . " Numerous provisions for removing the Suez Canal from hostilities are contained in the convention between Great Britain, Austria-Hungary, France, Germany, Italy, the Netherlands, Russia, Spain, and Turkey (October 29, 1888). Similar provisions appear in the treaty between Great Britain and the United States relative to the Panama Canal (November 18, 1901), including one that "the canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it."[1] When Greece annexed the Ionian Islands of Corfu and Paxos, Great Britain, France, and Russia declared them permanently neutral in 1864 and Greece agreed to maintain such status. A portion of Savoy was neutralized in 1815. Savoy belonged to Sardinia (an Italian state) and was ceded to France in 1860. France continued to fulfill the obligations imposed on these provinces until the war of 1914–1918, and the neutralized zone in Savoy was terminated by the Treaty of Versailles. The Independent State of the Congo declared itself perpetually neutral in 1885. The states parties to the Final Act of the West

[1] See LEAGUE OF NATIONS, *1938 Armaments Year-book*, Annex I, pp. 910–1006, for the text of these treaties and numerous others which were in force in 1938.

African Congress of 1884–1885 agreed "to respect the neutrality" of the region. One of the early disputes to come before the Council of the League was that between Finland and Sweden relative to the Aland Islands (located in the Gulf of Finland between the two states). It was decided that Finland owned the islands. A treaty was signed October 20, 1921, by Germany, France, Great Britain, Italy, and the Baltic states which provided for the nonfortification and neutralization of the Aland Islands. A proposal to modify the status was considered by the Council of the League of Nations in May, 1939, but action was postponed as a result of objection by the Soviet Union. Finland announced to the Secretary-General of the League the laying of mines around the islands in December, 1939, after the opening of hostilities with the Soviet Union.

Demilitarized Zones. The Treaty of Versailles provided in Articles 42–44 for demilitarization of the right and left banks of the Rhine River. All fortifications were destroyed, none were to be built, and troops were prohibited in the zone. The zone was continued in the Locarno treaties of 1925. It was terminated unilaterally and illegally by Germany in 1936. A Straits Convention of July 24, 1923, provided for demilitarized zones on both shores of the straits of the Bosporus and Dardanelles within which "no fortifications, no permanent artillery organization, no submarine engines of war other than submarine vessels, no military aerial organization, and no naval bases," should be permitted (Article 6). These restrictions upon fortifications by Turkey were abolished by the Convention of Montreux, signed July 20, 1936, and a protocol provided that "Turkey may immediately remilitarize the zone of the Straits as defined in the preamble of the . . . convention."[1] Certain islands of the Pacific Ocean in the possession of Great Britain, Japan, and the United States were to be kept in *status quo* as regards fortification and naval bases by provisions of the Washington treaties of 1922, which terminated in 1936. Following this, Japan and the United States, as well as the Philippine Islands, have increased fortifications in these areas.

[1] *American Journal of International Law*, Vol. 21 Supp., p. 16, 1937.

DISMEMBERMENT OF STATES. A state or a group of states may seek enhanced security by attempting to reduce the power of a rival by permanent dismemberment of the rival. Thus, the victors in the World War encouraged the forces leading to the breakup of the Austro-Hungarian empire and redrew the map of Central Europe with this partly in mind. Germany was required to relinquish her colonial possessions which altered her ability to act in Africa and in the Pacific Ocean. In addition, territory was given to Poland which separated Germany from East Prussia. It has already been indicated that France desired the separation of the Rhineland from Germany, and failing this, later encouraged an autonomy movement which it was hoped would lead to an independent buffer state. In 1938–1939, Germany employed a policy of dismemberment of Czechoslovakia. She first took under threat of force the Sudeten territory which contained strong Czech fortifications and most of the industrial region of the country, next encouraged a split of Slovakia from the Czech portions of the truncated country, and then took control.

PREVENTION OF UNIFICATION. States have usually opposed a union of states into a single state which would create a dangerous neighbor. The process of unification of the German states and of the Italian states was impeded by the policy of other interested states. The prohibition of unification of Germany and Austria, except with the consent of the Council of the League of Nations, was written into the Treaty of St. Germain. The internal unification of China, after subjection of rival war lords in China during the 1920's, was doubtless a factor in the Japanese policy of striking before China should be further united. By breaking off Manchuria, Jehol, and Inner Mongolia in 1931–1933, and by invasion of northern, central, and southern China in 1937, Japan has attempted to break the potential power of a united China.

TREATIES OF ALLIANCE. From early times states have sought to increase their security by allying themselves with other states. Alliances may be defensive or offensive in their objects. The provisions vary considerably depending upon the particular alliance. The parties may promise reciprocally

to help one another in certain contingencies, and may specify the form of assistance such as subsidy, loans, or military and naval arms. Such a treaty specifies the *casus foederis*, *i.e.*, the circumstances in which the obligations of assistance will become operative. The alliance may apply to attacks made by particular states, or may be made in general terms to apply to any state. Modern treaties of alliance are usually made for a specified period of time and usually provide for the continuance of the alliance unless and until a party indicates an intention to denounce it. The terms of alliances are usually kept secret, or if published often contain secret clauses, sometimes concealing a policy quite the contrary of those published. While the treaty obligations may remain legally binding, it is well understood that a state may fail to fulfill its obligations under the alliance unless at the time of crisis it believes that its interests will be promoted by fulfilling the obligations. States bound by alliance often harmonize their policies on questions of foreign policy and may be expected to support one another diplomatically. Often one party is more interested than the other in maintaining the alliance. In such cases the first party may employ various measures to bind its ally's allegiance; as by making available loans, or granting concessions in the economic field, or by lending assistance particularly in the form of expert military and naval advisers. This is the more necessary because the potential enemy state is usually actively trying to drive a wedge between the allies so as to isolate one of them and weaken its strength. It is often the case that the population of a state is divided as to the desirability of alliance with a particular state; in such a case a change of government bringing a new party into power, or a revolutionary coup supplanting a prior government, may threaten or doom the alliance.

4. ALLIANCES DURING THE PERIOD BEFORE 1914

The negotiation and preservation of alliances was a prominent feature of European international relations before 1914. The eventual result of treaties of alliance

between states, sometimes bilateral, sometimes including more than two states, was the formation of two great coalitions of the Great Powers, each drawing into its orbit also some of the weaker states of Europe.

AUSTRIA-HUNGARY AND GERMANY, (1879). The treaty of alliance between Austria-Hungary and Germany of October 7, 1879, was by its terms a defensive alliance. Its aim was primarily defense against Russian attack. Should one party be attacked by Russia the other was bound "to come to the assistance one of the other with the whole war strength of their Empires, and accordingly only to conclude peace together and upon mutual agreement." Furthermore, if one party should be attacked by another power, the other party agreed to a benevolent neutrality; but in case such other power was supported by Russia, the other party agreed to come to the assistance of its ally with its whole fighting force.

DREIKAISERBUND (1881). The treaty of June 18, 1881, between the emperors of Austria-Hungary, Germany, and Russia provided that if one party "should find itself at war with a fourth Great Power, the two others shall maintain towards it a benevolent neutrality and shall devote their efforts to the localization of the conflict." The same provisions would apply in case of war with Turkey provided a previous agreement had been reached by the three parties. Additional articles provide for recognition of certain prior treaties and for an agreed policy with respect to Turkey, certain territories in the Balkans, and the principle of closing the straits of the Bosporus. A secret treaty of June 16/28, 1881 between Austria-Hungary and Serbia contains a number of provisions. Among the provisions is a mutual promise that if one party "should be threatened by war or find herself at war with one or more other Powers," the other will observe a friendly neutrality (Article 5).

THE TRIPLE ALLIANCE (1882). Austria-Hungary, Germany, and Italy agreed on May 20, 1882, to the treaty which became famous under the name of the Triple Alliance. The parties agreed to enter into

> . . . no alliance or engagement directed against any one of their States [Article 1]. . . . In case Italy, without direct provocation on her part,

should be attacked by France for any reason whatsoever, the two other Contracting Parties shall be bound to lend help and assistance with all their forces to the Party attacked. This same obligation shall devolve upon Italy in case of any aggression without direct provocation by France against Germany [Article 2]. . . . If one, or two, of the High Contracting Parties, without direct provocation on their part, should chance to be attacked and to be engaged in a war with two or more Great Powers nonsignatory to the present Treaty, the *casus foederis* will arise simultaneously for all the High Contracting Parties [Article 3]. . . . In case a Great Power nonsignatory to the present Treaty should threaten the security of the states of one of the High Contracting Parties, and the threatened Party should find itself forced on that account to make war against it, the two others bind themselves to observe towards their Ally a benevolent neutrality. Each of them reserves to itself, in this case, the right to take part in the war, if it should see fit, to make common cause with its Ally [Article 4].

Italy declared that the treaty could not "in any case be regarded as being directed against England."

AUSTRIA-HUNGARY AND RUMANIA (1883). Rumania was drawn into the same orbit by the treaties of 1883 and 1888 with Austria-Hungary. Both parties agreed to enter into "no alliance or engagement directed against any one of their States," to follow a friendly policy, and "to lend one another mutual support within the limits of their interests" (Article 1).

If Rumania, without any provocation on her part, should be attacked, Austria-Hungary is bound to bring her in ample time help and assistance against the aggressor. If Austria-Hungary be attacked under the same circumstances in a portion of her states bordering on Rumania, the *casus foederis* will immediately arise for the latter [Article 2].

ITALY AND SPAIN (1887). By an exchange of notes dated May 4, 1887, Italy and Spain reached a secret agreement to run for four years. While it is not strictly an alliance, it tended to tie Spain to the Triple Alliance. The principal provisions are

1. Spain will not lend herself as regards France, in so far as the North African territories among others are concerned, to any treaty or political arrangement whatsoever which would be aimed directly or indirectly against Italy, Germany, and Austria, or against any one of these Powers. 2. Abstention from all unprovoked attack, as well as from all provocation. 3. In view of the interests involved in the Mediterranean, and for the principal purpose of maintaining there the present status quo, Spain and Italy will keep in communication with one another on this

subject, by conveying to each other all information of a kind to enlighten each other concerning their respective dispositions, as well as those of other Powers.

When the treaty of June 18, 1881, between Austria-Hungary, Germany, and Russia expired in 1887 (Dreikaiserbund), Russia refused to renew it.

GERMANY AND RUSSIA (1887–1890). Germany and Russia then made a treaty on June 18, 1887, known as the reinsurance treaty, which lapsed in 1890. The treaty contained agreement on general principles of policy to be followed in the Balkans, the Bosporus, and the alliance provisions are as follows:

Article I. In case one of the High Contracting Parties should find itself at war with a third great Power, the other would maintain a benevolent neutrality towards it, and would devote its efforts to the localization of the conflict. This provision would not apply to a war against Austria or France in case this war should result from an attack directed against one of these two latter Powers by one of the High Contracting Parties.

SUBSEQUENT NEGOTIATIONS (1880–1914). During the decade following 1879 there were several attempts to make an alliance between England and Germany, one in 1879, one in 1885, and one in 1889. During the period England, Austria, and Italy reached agreements in the form of exchanges of notes (February–March and November, 1887) concerning policy with respect to the Mediterranean area. Its chief occupation was to maintain the territorial *status quo*, particularly in the European territory of Turkey, and to prevent acquisition by a Great Power of territory bordering the Mediterranean Sea in case of alteration of the *status quo*. The decade beginning in 1890 showed the development of an alliance between France and Russia which remained in force until 1917 and additional unsuccessful attempts to form an Anglo-German alliance. The first years of the twentieth century brought into the French and Russian group other powerful allies as a result of the Anglo-Japanese agreement of 1902, the Anglo-French entente of 1904, and the Anglo-Russian entente of 1907. The Triple Alliance had been weakened by a Franco-Italian agreement

of 1900–1902. Various Balkan states made alliances with one another which became operative during the two Balkan wars of 1912 and 1913.

FRANCO-RUSSIAN ALLIANCE (1890). The Franco-Russian alliance was sought because of the isolated position of the two parties in 1890. The alliance was in the form of a series of exchanges of notes, accepting as binding a military convention made by the general staffs of the two states. This form was adopted to avoid the necessity of submission of a treaty to the French parliament, as secrecy regarding the terms and even the existence of the alliance was desired. Russia being left isolated and France isolated since the Franco-Prussian war of 1870–1871 were drawn together as a result of the renewal of the Triple Alliance and the belief that England might adhere to its policies. At the time serious conflicts of policy with Great Britain existed for France and Russia. The military convention, first published in 1918, provides as follows:

1. If France is attacked by Germany, or by Italy supported by Germany, Russia shall employ all her available forces to attack Germany. If Russia is attacked by Germany, or by Austria supported by Germany, France shall employ all her available forces to fight Germany. 2. In case the forces of the Triple Alliance, or of one of the Powers composing it, should mobilize, France and Russia, at the first news of the event and without the necessity of any previous concert, shall mobilize immediately and simultaneously the whole of their forces and shall move them as close as possible to their frontiers. 3. The available forces to be employed against Germany shall be, on the part of France, 1,300,000 men, on the part of Russia, 700,000 or 800,000 men. These forces shall engage to the full, with all speed, in order that Germany may have to fight at the same time on the East and on the West.

The convention also provides for cooperation of the staffs in preparing for eventualities and of conducting a war and making peace.

ENTRANCE OF GREAT BRITAIN INTO ALLIANCES: JAPAN (1902). Great Britain had followed an independent policy for some time. The attempts to gain an alliance with Germany had failed in 1879, 1885, 1889, and again in 1898. The Fashoda crisis between France and Great Britain in Africa in 1898 and the isolation experienced during the

Boer War in 1896 led Great Britain to seek friends. An Anglo-Japanese agreement of January 30, 1902, provides that

> The High Contracting Parties, having mutually recognized the independence of China and Corea, declare themselves to be entirely uninfluenced by any aggressive tendencies in either country. Having in view, however, their special interests, of which those of Great Britain relate principally to China, while Japan, in addition to the interests which she possesses in China, is interested in a peculiar degree politically as well as commercially and industrially in Corea, the High Contracting Parties recognize that it will be admissible for either of them to safeguard those interests if threatened either by the aggressive action of any other Power, or by disturbance arising in China or Corea, and necessitating the intervention of either of the High Contracting Parties for the protection of the lives or property of its subjects.
>
> If either Great Britain or Japan, in the defense of their respective interests as above described, should become involved in war with another Power, the other High Contracting Party will come to its assistance and will conduct the war in common, and make peace in mutual agreement with it.

ENTENTE CORDIALE, FRANCE AND GREAT BRITAIN, 1904. Two years later, April 8, 1904, began the Entente Cordiale between France and Great Britain. By declaration, the two parties agreed upon the settlement of a whole series of differences which had embittered their relations during years past, including Egypt and Morocco. The desire to settle these matters was prompted partly by desire to avoid being drawn into the Russo-Japanese war, France being allied with Russia and Great Britain with Japan. The entente was accompanied by consultation between the military authorities of the two states. While perhaps the agreements did not have the force of a treaty and it has been debated whether a legal obligation to become an ally existed, the effect was much the same. The status of the entente is indicated in an exchange of notes of November 22 and 23, 1912.

> From time to time in recent years the French and British naval and military experts have consulted together. It has always been understood that such consultation does not restrict the freedom of either Government to decide at any future time whether or not to assist the other by armed force. We have agreed that consultation between experts is not,

and ought not to be regarded as, an engagement that commits either Government to action in a contingency that has not arisen and may never arise. The disposition, for instance, of the French and British fleets respectively at the present moment is not based upon an engagement to co-operate in war.

You have, however, pointed out that, if either Government had grave reason to expect an unprovoked attack by a third Power, it might become essential to know whether it could in that event depend upon the armed assistance of the other.

I agree that, if either Government had grave reason to expect an unprovoked attack by a third Power, or something that threatened the general peace, it should immediately discuss with the other whether both Governments should act together to prevent aggression and to preserve peace, and, if so, what measures they would be prepared to take in common. If these measures involved action, the plans of the General Staffs would at once be taken into consideration, and the Governments would then decide what effect should be given to them.

GREAT BRITAIN AND RUSSIA (1907). The Anglo-Russian Entente of 1907 was an agreement upon policy to be followed in Persia, where spheres of influence were drawn, and Afghanistan, so as to eliminate the friction which had existed between the two parties relative to control in these regions. Following the Russo-Japanese War the former enemies made an agreement in 1907 accepting the existing regime in China, a policy to maintain the *status quo* there, and agreement upon an open-door policy, although the latter was in fact aimed to give Japan and Russia a dominant position in Manchuria as against other states.

5. OPERATION OF ALLIANCES DURING WAR OF 1914–1918

This is not the place for a detailed account of declarations of war beginning in 1914. Yet it is important to see how the existing treaties of alliance were carried out. Austria-Hungary declared war on Russia. Upon refusal of Belgium to permit passage of German forces across the territory for attack on France, and the forceful entry of Germany into Belgium, France declared war on Germany. Italy remained neutral, her official attitude being that the Triple Alliance was inapplicable, since the Central Powers had begun the attack. Rumania remained neutral, her attitude being that Austria had begun the attack on Serbia. Bulgaria and

Turkey joined the Central Powers and Japan declared war on the Central Powers joining her ally Great Britain.

During the war additional states entered the conflict. Italy was promised various spoils of war before she entered in 1915 on the side of the Allies. The United States declared war in April, 1917, as an "Associated Power," though not technically as an ally. Rumania joined the Allies after making a secret treaty (August 18, 1916) with the entente states. Efforts were made by the Allied Powers to gain the entrance on their side of Greece in 1915, but Greece did not enter the war until July, 1917.

6. CRITICISMS OF ALLIANCES AND BALANCE OF POWER

For more than two centuries statesmen and writers had espoused the principle of the balance of power which was usually effectuated through alliances. The principle of balance of power or equilibrium of power is simply the rule that states should join together to preserve themselves against any state which seeks to establish hegemony of power. Apparently the balance of power principle was employed by states long before it was developed into a theory of international politics. Basically it is a reaction against a world empire and a reassertion of the desirability of a multistate system. It states that protection against threats to the existence and independence of states, particularly in the case of weak states, is to be found only in coalitions and combinations of states similarly situated, against a state which attempts to establish hegemony over other states.

ARGUMENTS IN SUPPORT OF BALANCE OF POWER. Thus, by its supporters the principle of balance of power is regarded as (1) preserving the existence of small states, (2) providing a method of energetic and decisive action when isolated action would be dangerous and ineffective, (3) giving a method by which the community of states may compel respect for international law in the absence of a powerful international authority, and (4) preserving a multistate system whose members shall not pass a certain point in the acquisition of power threatening the system.

The principle of balance or equilibrium of power was expressly invoked to justify various treaty provisions and alliances made during the nineteenth century.

ARGUMENTS AGAINST BALANCE OF POWER. The political maxim of a balance of power was criticized during the last part of the nineteenth century and in the early years of the twentieth. Criticisms were made of the philosophy underlying the maxim and the actual practice followed in seeking a balance of power. (1) The maxim stresses physical force as the fundamental element in international relations, and ignores or minimizes ethical considerations and justice. This leads to brutal policy, increase of armaments, and a demand for compensations whenever acquisition of power by one party tends to upset the established equilibrium. (2) States seek in fact a preponderance of power and not a mere equilibrium. (3) It is impossible to secure an equilibrium for any length of time because of the dynamic nature of the world, and the constant alterations in elements of power such as population, territory, resources, armaments, and allies. (4) Alliances are short-lived and they invite rivals to undermine them, leading to friction with the allies who want them preserved, and the ally frequently deserts at the crucial moment. (5) The balance of power principle, while it may prevent some wars, merely postpones them and tends to make wars more general and destructive. (6) When the balance of power principle leads to the creation of two great coalitions of states, as in prewar Europe, disputes between states become successive crises between coalitions. Disputes are not dealt with on their merits. Impartial third parties are unavailable. The dispute becomes a question of prestige of rival coalitions, to be decided ultimately by strength behind the facade of diplomacy or in the form of war.

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CHAPTER XIX

Armaments

It has long been recognized that there is a relation between armaments and the causation of wars. The army, navy, and air force of a state is, of course, one of the most powerful instruments of national policy. The attempt to limit by treaty the upper levels of armament of states is relatively recent except in the case of a victorious state which has sought security by reducing the armed power of its defeated enemy. The first general attempt at limitation of armaments was made at the first Hague Conference, 1899. The main purpose of the conference as proposed by the Czar of Russia was to limit armaments, but no results along this line were attained in either Hague Conference, 1899 or 1907. Attempts at bilateral limitation of competition in arms were infrequent and usually unsuccessful. The attempt of Great Britain and Germany to reach an understanding on relative size of navies at the turn of the century was unsuccessful. Great Britain and the United States agreed in 1817 to limit naval armaments on the Great Lakes. A treaty of 1902 between Argentina and Chile provided for limitation of naval forces. It was not until the close of the war of 1914–1918 that serious attention was paid to the problem of disarmament. The defeated states, except Turkey, were compelled to limit their armament to a low figure. The Covenant of the League envisaged the problem of general disarmament as a central one for the new international organization. After a long period of preparation by the League a disarmament conference met in February, 1932. It held a number of sessions but no treaty establishing

limitations was agreed upon. Meanwhile, outside the League, conferences attended by the leading naval powers were successful in limiting certain categories of naval armament.

1. NAVAL LIMITATIONS

WASHINGTON CONFERENCE (1922). The Washington Conference of 1921–1922 resulted in a limitation of some of the larger naval vessels of the five leading naval powers, Great Britain, the United States, Japan, France, and Italy. The limitation was both qualitative and quantitative. Qualitative limitations were accepted limiting capital ships, the largest war vessels, to 35,000 tons, and limiting the number and caliber of their guns and the amount of their equipment for aircraft. In addition, the tonnage to be employed for aircraft carriers was limited. The quantitative limitations refer to the limits placed upon the total capital ship tonnage which any state might possess, and to the number of such ships. The quantitative limitations accepted were as follows:

State limited	Capital ships	Tons	Ratio
Navies until 1931:			
United States	18	527,850	
British Empire	20	558,950	
Japan	10	301,320	
France	10	221,170	
Italy	10	182,800	
Navies in 1942:			
United States	15	525,000	5
British Empire	15	525,000	5
Japan	9	315,000	3
France	5	175,000	1.67
Italy	5	175,000	1.67

The treaty was to remain in force until December 31, 1936, and if no state gave notice two years before that date of intention to terminate it, the treaty was to continue in force until two years after such notice was given. Japan gave notice in 1935 and the treaty terminated in 1937. The

conference set limits on capital ships and resulted in the scrapping of seventy ships, already built or planned, with a total tonnage of 1,650,000. The principle applied to the limitation was based upon a quantitative ratio giving the United States 5, Great Britain 5, Japan 3, France 1.67, and Italy 1.67. These ratios reflected roughly the naval strength of the five states at the time of the conference; in other words it sought to perpetuate the existing *status quo* of naval strength in the categories covered. One reason for the willingness of the participating states to accept the ratios was that the conference also made provisions which increased the security of the participating states. The success of the United States, supported by Canada, in gaining a termination of the Anglo-Japanese alliance of 1902 was regarded as increasing American security. While the alliance had been directed against Germany prior to and during the World War, Germany was now powerless, and if the alliance were retained it might be directed against the United States. An agreement to retain the *status quo* of fortifications in the Pacific area made the United States less fearful of a thrust from Japan and Japan less fearful of a thrust from the United States. The Nine-Power Treaty relative to China recognizing a policy of the Open Door seemed to assure a harmonious policy concerning the rights and interests in the Far East of the leading states of the world.

GENEVA CONFERENCE (1927). Agreement was unobtainable at Washington in 1922 on other categories of ships, *i.e.*, fighting surface ships smaller than capital ships and submarines. Competition in building these categories followed the Washington Conference. The United States proposed a conference in 1927 which met at Geneva. Great Britain, Japan, and the United States attended; France and Italy refused the invitation. The conference was a failure and resulted in no limitations. The differences at the conference arose between Great Britain and the United States. Great Britain stated that she needed seventy cruisers to protect her sea routes, and she desired cruisers of relatively small tonnage. If cruisers of 10,000 tons were to be permitted, and others of smaller tonnage, Great Britain wanted limitations on each category. The United States, on the

other hand, insisted on parity of global tonnage with Great Britain but indicated that under the proposal for seventy cruisers it would be necessary for the United States to build thirty new cruisers at a cost of 450 million dollars. The United States preferred a limitation on the total number of cruisers at a lower figure. The United States desired 10,000-ton cruisers, and not the smaller cruisers desired by Great Britain, so it proposed merely global limitation on total tonnage of cruisers. Great Britain naturally opposed this because the 10,000-ton cruiser would be superior in combat to the smaller cruisers she desired.

LONDON CONFERENCE (1930). The five leading naval powers attended a conference in London in 1930 which resulted in a degree of limitation of naval arms. Part I of the treaty provided that the parties should not exercise during 1931–1936 the rights under the Washington Treaty of building the replacement tonnage permitted by that treaty. Capital ships to be scrapped were: Great Britain 5, United States 3, Japan 1. Aircraft carriers were limited to 6.1-inch guns. Submarines, never before limited, were submitted to qualitative limitations for the future; maximum 2,000 tons with 5.1-inch guns. However, each party might have three submarines of 2,800 tons with 6.1 inch guns. Part III of the treaty provided for quantitative and qualitative limitations on cruisers and submarines, but only Great Britain, Japan, and the United States accepted this part. The scheme of limitation follows:

Country	No. of ships	Cruisers with 6.1-inch guns	Cruisers with less than 6.1-inch guns	Destroyers	Submarines
Great Britain	15	146,800	192,200	150,000	52,700
United States	18	180,000	143,500	150,000	52,700
Japan	12	108,400	100,450	105,000	52,700

Within narrow limits transfers of tonnage from one category to another were permitted. The treaty provided that there might be departure from the limitations in view of the

possibility of increases by France and Italy, not bound by the treaty. The treaty was to last until December 31, 1936.

London Conference (1936). Before the end of 1936 Japan notified other parties to the Washington and London treaties of a desire for revision. Preliminary conversations relative to a new treaty were begun in 1933, and preliminary negotiations between Great Britain, Japan, and the United States took place at London in June, 1934. The chief obstacle to agreement was insistence by Japan on parity with Great Britain and the United States, a suggestion which the two parties were unwilling to accept. Nevertheless, a conference was held at London in December, 1935, attended by Great Britain, France, Italy, Japan, and the United States. Japan withdrew from the conference January 15, 1936. The conference continued and resulted in a new treaty, March 25, 1936, which was signed by France, Great Britain, and the United States. Italy did not become a party. The treaty contains no limitations on quantity of naval armament but contains only qualitative limitations. These are: (1) Capital ships are limited to 35,000 tons with 14-inch guns, unless some state should depart from this limitation, in which case the parties to the treaty would be released. This occurred March 31, 1938, after Japan had refused to answer whether she was building capital ships exceeding this figure. (2) No capital ship of less than 17,500 tons was to be laid down before 1943. (3) Aircraft carriers were limited to 23,000 tons with 6.1-inch guns, light surface vessels to 8,000 tons, and submarines to 2,000 tons.

British Bilateral Naval Agreements. Germany repudiated Part V of the Treaty of Versailles and reintroduced conscription on March 16, 1935. On June 18, 1935 Great Britain and Germany agreed in an exchange of notes that Germany would be limited to 35 per cent of the British navy except in the case of submarines. The limitation of 35 per cent would apply to ships by categories. Germany would have the right to equality with the British Commonwealth as regards submarines, though Germany undertook not to exceed 45 per cent of the tonnage without giving notice to Great Britain. Subsequently Great Britain entered into negotiations with other states not parties to general

naval limitation treaties, endeavoring to tie them to a certain percentage of the British fleet. Following the London Naval Treaty, 1936, Great Britain made an agreement with Germany on July 17, 1937, by which Germany accepted most of the articles of that treaty. However, important modifications were made, and in general the ratio of 35 per cent established in the 1935 Anglo-German exchange of notes was retained. Great Britain made an agreement on July 17, 1937 with the Soviet Union, and on April 27, 1938 with Poland, whereby these contracting parties accepted the London Treaty of 1936, with certain modifications. In the case of the British-Soviet agreement, the qualitative limitations apply only to the Soviet Baltic and Black Sea fleets, and do not apply to the Soviet Far Eastern fleet.

ALTERATION OF MAXIMUM FOR CAPITAL SHIPS. The 1936 treaty provided that under certain circumstances the parties might surpass the qualitative limitations imposed. Great Britain and the United States, believing that Japan was building a capital ship exceeding the qualitative limitations, inquired whether this was the case. Japan, not a party to the treaty, refused to give the information. Thereupon Great Britain and the United States took steps in accordance with provisions of the treaty increasing the maximum size of capital ships to 45,000 tons with 16-inch guns. Notice of this decision was given March 31, 1938. Subsequently in June and July, 1938, this modification was accepted by Germany, the Soviet Union, and Poland in their bilateral agreements with Great Britain.

TERMINATION OF THE ANGLO-GERMAN AGREEMENT, 1939. Following German action in establishing protectorates in Czechoslovakia in 1939 and the termination of the British appeasement policy, Germany unilaterally repudiated the British-German agreements on naval limitation of 1935 and 1937.

SUMMARY OF LIMITATION OF NAVAL ARMAMENTS, 1918–1940. The history of limitations of naval armaments since the World War may be summarized as follows: The defeated states were eliminated as naval powers and Germany was severely restricted in the categories of ships and in total

TABLE II.—NAVIES OF THE WORLD, SHOWING NUMBER OF UNITS BY CATEGORIES OF VESSELS[1]

Year	Battleships and battle cruisers			Coast defense ships and monitors			Cruisers		
	Built	Building	Total	Built	Building	Total	Built	Building	Total
1913	242	59	301	71	3	74	358	25	383
1928	92	..	92	33	..	33	207	38	245
1929	87	1	88	32	..	32	212	41	253
1930	85	1	86	26	2	28	206	24	230
1931	81	2	83	25	..	25	194	44	238
1932	76	4	80	28	..	28	208	35	243
1933	79	3	82	27	..	27	209	46	255
1934	80	7	87	25	..	25	217	46	263
1935	83	8	91	18	..	18	205	34	239
1936	83	12	95	15	..	15	211	33	244
1937	79	15	94	15	..	15	218	39	257
1938									
1939									

Year	Aircraft carriers			Flotilla leaders, destroyers, and torpedo boats			Submarines		
	Built	Building	Total	Built	Building	Total	Built	Building	Total
1913	..	..	..	1,674	151	1,825	314	62	376
1928	15	1	16	1,041	79	1,120	430	61	491
1929	16	1	17	1,033	63	1,096	449	67	516
1930	16	1	17	1,016	57	1,073	456	94	550
1931	16	3	19	928	78	1,006	486	93	579
1932	16	3	19	950	58	1,008	463	74	537
1933	17	3	20	938	92	1,030	475	69	544
1934	18	2	20	936	116	1,052	499	55	554
1935	18	6	24	888	127	1,015	490	98	588
1936	17	9	26	908	135	1,043	524	67	591
1937	17	12	29	957	151	1,108	647	94	741
1938									
1939									

[1] LEAGUE OF NATIONS, *1938 Armaments Year-book*, p. 1058.

tonnage. The Washington Treaty of 1922 applied to capital ships and aircraft carriers from 1922 to 1936. It contained qualitative and quantitative limitations of the larger ships. The attempt to limit other categories of ships was more difficult, but was eventually successful in the field of cruisers and destroyers for the three largest naval powers, Great Britain, Japan, and the United States, 1930–1936. With the failure of the London Conference of 1936 to establish quantitative limitations there resulted only qualitative limitations. These were accepted by Great Britain, France, and the United States, and later, through bilateral treaties by Germany, Poland, and the Soviet Union. A quantitative limitation was accepted by Germany in 1935–1939, in the agreement of 1935 with Great Britain. Italy and Japan, two of the five largest naval powers, were bound by neither quantitative nor qualitative limits after 1936.

THE NAVAL RACE. With the termination of the quantitative limitations of the Washington Treaty of 1922 and the London Treaty of 1930, the Great Powers, and many of the other states entered a naval race which is reflected in Table II.

2. LIMITATION OF LAND ARMAMENTS

There has never been adopted any plan for general disarmament or limitation of land armaments. The peace treaties placed limitations upon the defeated states which were intended to reduce and limit their military strength on land and in the air as well as on the sea. These limitations applied to personnel and to materials. They limited the total number of the armed forces, prohibited conscription, and laid down a long period of service in the armed forces so that no large number of the male population might receive military training. As for armament, certain weapons were prohibited, and the caliber and total number of other weapons were restricted, as well as the munitions to be employed. In addition, certain regions were demilitarized and in certain zones fortifications were destroyed and prohibited for the future. The Covenant of the League contains several provisions looking toward a general limitation of armaments. Various boards, committees, and

commissions have been created by the League whose function has been to study the problem of disarmament and to prepare the way for a general disarmament treaty. After many years of consideration of the problem, a Conference for the Limitation of Armaments met at Geneva in 1932, but no agreement on land, air, or naval disarmament resulted. While the military forces of the world were considerably reduced following the war period of 1914–1918, they remained at a high absolute figure. During the past five years there has begun an armaments race which is still in progress. Before surveying the work of the League on disarmament, it is desirable to keep several general principles in mind.

Factors in the Problem of Disarmament. The question of disarmament or of limitation of armaments is one aspect of the problem of the security of states. As long as states feel insecure they rely upon force for protection and armament is the most obvious tangible form of force. It was discovered by the League that limitation of arms is intimately related to improvement in the pacific settlement of disputes and to development of protection through collective sanctions. The problem of disarmament is not a simple one because in the last analysis the armed power of a state depends upon the power potential of states, and there are great variations in the power potentials of different states. Suppose that all states were completely disarmed and armies disbanded. Some states would remain insecure because of the comparatively greater power potential of their possible enemies. Sheer numbers of population armed with brickbats would give the populous state an advantage over a state having a small population. Some states have within their borders, or available, the raw materials essential for war while others do not. States which are industrialized have machinery which is convertible into arms and munitions factories while agricultural states do not. Merchant vessels may be converted to war use, commercial airplanes to war planes. Disarmament is "indivisible," *i.e.*, limitation cannot go very far applied solely to navies, armies, or air forces. If all armies and navies were disbanded, this would enhance the power of states having unlimited air forces.

THE SEARCH FOR A FORMULA. It is difficult or impossible to find any principle or principles acceptable to states for determining their quota of armament in a general plan of limitation. The problem is particularly difficult in the case of armed forces and materials for land warfare. Some of the alternatives follow: (1) Accept the *status quo* of armaments and armed forces. There are always some states which would be unwilling to accept this, arguing that their present level of armaments is inadequate or that other states have developed excessive armaments. Throughout the postwar period it was possible to maintain a fair stability in the amount of armament given the inferior position of Germany and other defeated states. The defeated states would not accept this position longer than necessary so acceptance of *status quo*, except for a limited period, was impracticable. With the rearmament of Germany and other states following 1935, a movement started in other countries also to increase their armaments and the principles of *status quo* of armaments became more than ever impracticable. (2) Accept a given percentage of the *status quo*, reducing by five, ten, fifteen, or some other agreed percentage. This proposal faces all the difficulties of simple *status quo*, plus difficulty in agreeing upon the percentage of reduction. Any percentage of reduction by the more heavily armed states would reduce power relative to a limited Germany and other states dissatisfied with the peace settlement. France and her allies therefore opposed this formula.

PROBLEM OF QUOTAS. (3) For limitation or reduction, determine the quota necessary for each state. How shall this quota be determined? Following are some of the factors which might be taken into account for armies and war material: size of population, size of territory, length of frontiers of territory, strategic character of borders, fortifications along borders, access to the sea, the compactness or otherwise of the national territory. It has been found that whether one or more of these factors is chosen the majority of states are unwilling to accept the resultant quota as adequate for their defense. In some instances, it is because the Great Powers make a claim to equality of armaments with some other Great Power. Thus the United

States has claimed with success an equality with Great Britain in naval armaments; Japan has demanded equality with both, and when it was refused, has terminated limitations; Italy has demanded it with France and, France refusing, both are unrestrained as against each other. This claim to equality is sometimes based on a desire for prestige. It is sometimes merely a cloak by which a state seeks a greater armament than would be justified on a quota basis. In some instances it has been a method of avoiding any limitation at all so as to increase armaments to be used in the pursuit of national policy, especially for territorial imperialism; for example, Italy and Japan. In the case of land and air armaments, the negotiations never reached the point of determination of specific quotas.

WHAT IS ARMAMENT? Some preliminary questions which must be answered even before the idea of quotas is applied are, what are armaments, and what is limitation of armaments? Do armaments consist of those already produced or under production, or do they extend back to include the raw materials and productive capacity available to a country; in other words, to war potential? As for men, do armed forces include only those in the standing army or also those who are in the reserved forces, or persons such as police or armed political bands who might be added to the standing army? In comparing the strength of two armies of equal size, what weight is to be attributed to a longer training period in one country than in the other?

LIMITATION, NOT DISARMAMENT. Although the term "disarmament" is used, there has never been any serious likelihood of abolishing all armaments. Attempts to reduce armaments below the *status quo* at the time of agreement have had meager results even in the case of naval armaments. About all that has been attempted is a plan to limit additional future armament. However, proposals have been made to abolish completely particular types of weapons. Great Britain and the United States favored total abolition of submarines in 1922, but France and Italy wished to retain them and all states have continued to do so. Proposals have been made by some of the naval powers to abolish the capital ships, and retain only cruisers and destroyers of

smaller size, but this proposal has been opposed by the United States and other states.

"Offensive Weapons." During the Disarmament Conference of 1932 proposals for abolition of so-called offensive weapons of land armament were advanced, including large long-range artillery and tanks. None of the proposals for abolition of types of weapons has been accepted in recent years, with the exception of poison gases and bacteriological warfare, whose use is illegal under an international treaty (1925), to which forty-one states are parties. The Hague Conventions of 1899 and 1907 did, however, incorporate provisions limiting the use of certain weapons; for example, dumdum bullets. Proposals envisaging abolition or limitation of so-called offensive weapons have little prospect of acceptance for the following reasons: (1) Each state contemplates only a war of "self-defense," but as soon as the war has started military strategy may regard offense as the best defense. (2) To eliminate so-called offensive weapons in time of peace would give only a relative protection, since some states have a high war-potential strength in offensive weapons. Therefore other states would in a war of any duration need to be assured of a source of supply in order to even up the situation. This is particularly true of aviation because the states having large commercial air fleets might quickly transform them to military forces and threaten other states. (3) A state which claims that it contemplates only self-defense, but which, on the contrary, expects to make an attack requiring invasion of the territory of another state, will of course find reasons for opposing abolition or limitation of the most efficient weapons for the purpose.

Question of Supervision. Assume, however, that most states are able to agree upon the quotas to be allotted to each for a period of ten years. Two serious problems remain. (1) Fulfillment of the limitation obligations among the contracting parties must be assured. How may this be done? In practice one group of states has relied upon the good faith of all participating states to carry out the obligations. In some instances this has been coupled with the idea that the states shall keep one another informed

as to the execution of their engagements. This is the method which was employed in the limitations of naval armaments. It has proved effective partly because a long period is necessary for completion of naval vessels and partly because it is practically impossible to conceal this type of weapon from naval attachés and from secret agents or spies of other countries. Such would not be the case with land and air armaments. Many states, therefore, found good faith of the parties inadequate assurance of execution of arms-limitation agreements. They insisted upon some form of international supervision. The weaker states which must rely upon others for their military arms, munitions, and implements insisted especially upon international supervision. They did so because it would be almost impossible for them to import from other states necessary materials and go beyond their quotas without the possibility of publicity, whereas arms-producing countries might more

TABLE III.—WORLD EXPENDITURES ON ARMAMENTS[1]

Year	Total, millions of dollars	Bar Chart*
1858	434	X
1883	664	X
1913	2,450	XXXXX
1932	3,784	XXXXXXX
1934	5,031	XXXXXXXXXX
1936	12,976	XXXXXXXXXXXXXXXXXXXXX
1938	17,581	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

* Each symbol X represents $500,000,000.

[1] Adapted from VARIAN FRY, *Bricks without Mortar*, p. 93, Foreign Policy Association, 1938.

easily do so. The general reluctance of states to permit an international authority to operate within their national territories and appeals to "sovereignty," have caused some states to oppose a scheme for effective international control.

SAFEGUARD CLAUSES. (2) A second problem arises from changes which may occur during the operation of the treaty. Unless all states became and remained parties to the treaty, there would be the necessity of "safeguard" clauses permitting departures from the limitations, as in the case of the

naval treaties actually accepted, in case states not bound to limitations should increase their armaments. Furthermore,

TABLE IV.—VARIATIONS IN MILITARY EXPENDITURE, 1932–1937, FOR 58 COUNTRIES[1]

Increase or decrease in military expenditures for the year dealt with in relation to the preceding year, %	No. of countries					
	1932	1933	1934	1935	1936	1937
Increase up to:						
100 or over	1	3	2	1		
90	..	..	..	1	1	
80	..	.	.	1	2	1
70	.	..	..	1		
60	1	..	..	2	1	2
50	..	2	4	1	1	6
40	..	1	7	4	3	6
30	2	3	6	6	7	5
20	2	4	9	11	14	12
10	5	11	11	7	9	10
5	4	8	6	6	6	7
Total showing increase.....	15	32	45	41	44	49
Stationary.....	6	2	3	2	3	1
Decrease to:						
5	10	12	5	3	2	2
10	8	5	3	2	3	1
20	14	5	1	8	1	3
30	3	..	..	..	1	1
40	..	2	1	..	2	1
50	2	..	..	1		
60	..	..	..	1		
70	..	..	..	..	1	
80	..	..	..	..	1	
Total showing decrease.....	37	24	10	15	11	8
Total showing either stationary or decrease.....	43	26	13	17	14	9

[1] Table adapted from LEAGUE OF NATIONS, *1938 Armaments Year-book*, p. 1012.

developments might take place tending to upset the whole limitations scheme as a result of technological developments such as an increased cruising radius of naval vessels and aircraft, development of new instruments of war, etc.

3. ARMS COMPETITION

The increase in land and air armament has continued at an accelerating rate during recent years. Tables III, IV and V indicate some of these trends and the proportions which they have reached.

TABLE V.—EXPENDITURES OF THE GREAT POWERS FOR ARMY, NAVY, AND AIR FORCES IN MILLIONS OF NATIONAL CURRENCY[1]

Year	Great Britain	France	Germany	Italy	Japan	U.S.S.R.	U.S.A.
1913–1914	77.2	9,035.0	1,168.6	3,711.6	330.7	869.5	244.6
1931–1932	92.2	13,897.4	617.0	5,439.6	454.6	1,412.3	707.6
1932–1933	87.5	10,184.2	633.7	5,412.0	686.4	1,547.3	667.8
1933–1934	93.5	13,576.5	748.8	4,823.8	872.6	5,000.0	544.4
1934–1935	99.1	11,653.7	1,104.5	5,591.4	941.8	8,200.0	712.3
1935–1936	122.3	12,475.0	6,500.0*	16,401.2	1,033.0	14,815.5	913.3
1936–1937	172.3	14,327.1	6,500.0*	4,667.3	1,078.2	17,481.0*	950.0*
1937–1938	261.6*	19,238.7		5,952.9	1,411.2†	27,044.0*	1,009.7*
1938–1939	326.6*			6,363.4	1,246.8†		

* Estimates or provisional.

† Does not include estimates for China campaign, for 1937–1938: 2,559.9 million yen; for 1938–1939: 4,850.0 million yen.

[1] Adapted from *Foreign Policy Reports*, Vol. XII, p. 292, 1937, and LEAGUE OF NATIONS, *1938 Armaments Year-book*.

4. PRIVATE MANUFACTURE AND TRADE IN ARMS

Paragraph 5 of Article 8 of the Covenant of the League of Nations provides as follows:

> The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

In the period before 1914 arms and munitions were manufactured by private enterprise and subsequently marketed either in the home country or abroad by private enterprise. This is still substantially true today.

EVILS OF PRIVATE MANUFACTURE AND TRADE. Some of the "grave objections" to private manufacture are the following: (1) In order to increase sales, and thus profits,

there is a temptation for arms manufacturers to foster or to encourage international friction and war scares in order to create a demand for additional armaments. (2) The business methods of the arms industry have often been of low standard, employing bribery of officials to gain sales, and using unscrupulous methods to influence national policy. (3) Interlocking directorates have developed between the arms industry and other industries and banks, so that the arms industry also permeates with its influence powerful financial interests which in turn use their influence so as to affect national policy, as in the promotion of a foreign loan to be used for the purchase of arms. (4) Because of the concentration in a few private hands of control over arms production within countries, and the additional agreements between arms interests in different countries, a situation of monopoly is created which makes armament very costly to governments. Evidence of these facts is discovered with difficulty because of the practice of the arms industry of working silently and secretly, but there seems to be little doubt of the facts. The practice of some members of the industry appears clearly in official investigations. A great notoriety has been gained by those who engage in the private manufacture and trade in arms especially in recent years. The groups who regard this traffic as vicious and dangerous to peace have roused an emotional fervor among large numbers of people against the private arms trade for profit.

PROFITS AND SECURITY. Some progress has been made in the direction of solving this problem but private manufacture and trade in arms continue to dominate the situation. Why is this true? The basic reason is this. Most modern armaments, such as heavy artillery, capital ships, submarines, war planes, and gas, are produced in a relatively small number of states. These are the states which have become highly industrialized. The rest of the world must depend upon the industries of these states for the supply of modern armament. There are thus two groups of states, a small number of producing states which includes all the Great Powers and a few others, and a large number of nonproducing states. At first sight, it would therefore seem

simple to gain public control over the arms industry and traffic since this might be accomplished by action on the part of a small number of states. Why have the producing states failed to act? The failure is due in part to the power of the arms interests in the producing states in preventing the necessary legislation. It is due primarily, however, to the fact that those who control the policy of the arms-producing countries believe that private manufacture and traffic in arms contributes to national advantage, at least unless public manufacture and traffic are universally substituted. Thus, the United States is unwilling to stop private manufacture and traffic in arms by its nationals as long as the practice continues among other nationals, because the arms-producing capacity within the United States would fall behind that of other arms-producing countries. In other words, the United States regards it necessary to national defense to have a smoothly running arms industry; this industry can remain at a high point of technical efficiency and keep up with modern developments only if in constant operation, and it can keep in operation only if it is found profitable. The profits are to be derived from sale of arms to the nonproducing states. The argument is that the United States would fall behind if it prevented private industry from participating in the international arms competition, whereas private industry of other countries would merely have a greater market and could make progress in technical developments.

Private or Public Control or Public Ownership. These reasons help to explain the failure to carry out provisions of the Covenant relating to traffic in arms. They do not explain, however, why arms production and traffic have remained private rather than public. The private interests making high profits naturally oppose public ownership of their business. In addition, however, most governments apparently believe that private initiative in the field of armament will be more efficient than public initiative in producing technical progress and efficiency in destructive weapons. Finally, existing international law of war and neutrality puts obstacles in the way of public ownership and traffic in arms. Under existing law, a neutral state has the obligation

not to export arms and munitions to belligerent states, while at the same time it has no obligation to prevent persons within its territory from selling, exporting, and transporting most categories of arms and munitions. If existing law is unchanged, therefore, public ownership and traffic in arms would be permissible in times of peace; but the traffic in arms would have to cease from neutral to belligerent territory in time of war. A sudden cessation of arms traffic would cause difficulties for the arms-producing states with their economy geared to arms production. States not producing arms would be cut off from arms at the time they needed them most. If neither belligerent was arms-producing, each would have to rely upon acquiring reserve stocks in time of peace. If one belligerent was an arms-producing state and the other a nonproducing state, the latter would be at the mercy of the former.

TREATIES ON THE SUPERVISION OF THE TRAFFIC IN ARMS. A number of treaties have been made for supervision of the trade in arms and munitions of war, the most important being the Convention of Geneva, June 17, 1925. This treaty has never come into force. It was to come into force upon ratification by fourteen states. Seventeen states have become parties, but in several instances ratification has been made conditional upon acts which have not been performed. For example, the United States ratified subject to a reservation that the convention should enter into force with respect to it only when it has entered into force as regards Belgium, the British Empire, Czechoslovakia, Italy, Japan, Sweden, and the Union of Soviet Socialist Republics. The states mentioned are, of course, important arms-producing countries.

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CHAPTER XX

Collective Security

During most of history states have depended upon their own power to assure their security. However, most European states have found that this is inadequate to attain security and have employed various methods of cooperation with one or more states in order to attain it. The Great Powers and most of the lesser states have relied upon alliances. Some of the smaller states have relied upon a policy of neutrality or hope that their security will be preserved as a result of the interest of some of the Great Powers in preventing their conquest by others. Alliances between two or more Great Powers lead, sooner or later, to an opposing alliance between two or more other Great Powers and each group adds satellite states to its coalition. The development of the Triple Alliance and of the Triple Entente before the World War, and the development of the Fascist and anti-Fascist bloc in recent years illustrate this. Many persons concluded during the World War that such competing coalitions inevitably produce general wars and that a system should be devised to eliminate it. The solution was sought in a general association of states whose relations were to be regulated by the Covenant of the League of Nations.

1. PROMOTION OF PEACE AND SECURITY

The early plans for a league envisaged a league to enforce peace and security by armed force if necessary. This conception of the League finds expression in Articles 16 and 17 of the Covenant. However, the Covenant contains other

provisions which indicate that the framers believed that in order to prevent war it is necessary to deal with many different problems and to eradicate the causes of conflict. Therefore provision is made for an improved system of pacific settlement of disputes, a limitation upon armament and the arms traffic, and a revision of treaties. The promotion of peace was sought indirectly through promotion of cooperation in the fields of economic problems, social justice, the treatment of minorities, and the administration of colonial territories, and in the development of better understanding among peoples and governments. Thus, the problem of security was joined in theory as it is joined in fact to the problems of reducing basic causes of conflict between states, of improving the machinery and procedure for dealing with dispute when they have arisen, and of modifying the legal *status quo* through legislation instead of force. These aspects of the Covenant will be discussed at a later point; at present the provisions for security through collective sanctions will be examined.

2. THE HISTORY OF ARTICLE 16 OF THE COVENANT

Article 16 has been invoked only once, by Ethiopia in 1935 after her invasion by Italian troops. In the early years of the League several unsuccessful attempts were made to amend provisions of the article. Although the amendments failed of ratification by a sufficient number of League Members, they have been applied in practice. These alterations manifest a different conception of the League function and of the duties of Members of the League from the conception written into the original Article 16. Below is shown the text of the original article in the left-hand column, and the proposed amendments in the right-hand column.

Original Article 16	Proposed Amendments (September 27, 1924)
1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be	1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be

Original Article 16
(*Continued*)

deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned 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.

Proposed Amendments
(*Continued*)

deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations and *to prohibit all intercourse at least between persons resident within the territory of the covenant-breaking State, and, if they deem it expedient, also between their nationals and the nationals of the covenant-breaking State, and to prevent all financial, commercial or personal intercourse at least between persons resident within the territory of that State and persons resident within the territory of any other State, whether a Member of the League or not, and if they deem it expedient, also between the nationals of that State and the nationals of any other State whether a Member of the League or not.*

(5 ratifications, 13 signatures.)

Proposed Amendment

2. (October 4, 1921): *It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted.*

(31 ratifications, and 9 signatures.)

3. *The Council will notify to all Members of the League the date which it recommends for the application of economic pressure under this article.*

(31 ratifications, and 9 signatures).

4. *Nevertheless, the Council may, in the case of particular Members,*

Original Article 16 (*Continued*)	Proposed Amendments (*Continued*)
	postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimize the loss and inconvenience which will be caused to such Members. (30 ratifications, and 11 signatures.) (September 21, 1925): *The words "in such case" in the second paragraph of the original text of Article 16 of the Covenant shall be deleted.* (4 ratifications and 15 signatures.)

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are cooperating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Rules of Guidance of Assembly (1921). The proposed amendments were never adopted. The Assembly recommended (October 4, 1921) that the proposed amendments should be rules for guidance and outlined more fully questions which would arise in connection with paragraph 1 of Article 16. Most of these rules of guidance depart from the idea of automatic, universal, and full economic breach of relations with the Covenant-breaking state. Paragraph 3 provides that

The unilateral action of the defaulting State cannot create a state of war: it merely entitles the other Members of the League to resort to acts of war or to declare themselves in a state of war with the Covenant-

breaking State; but it is in accordance with the spirit of the Covenant that the League of Nations should attempt, at least at the outset, to avoid war, and to restore peace by economic pressure.

The act of the defaulting state does not automatically create a state of war, under this interpretation, but merely frees the other states to regard it as creating a state of war. Neither the Council nor the Assembly decides whether a breach of the Covenant has been committed. The decision is made by individual Members of the League. Paragraph 4 provides that

> It is the duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed. The fulfilment of their duties under Article 16 is required from Members of the League by the express terms of the Covenant, and they cannot neglect them without breach of their Treaty obligations.

It is only after a Member has decided that a breach has been committed that obligations arise to apply the sanctions proposed. This, of course, makes doubtful and even unlikely universal joint decision by all Members, and consequently reduces the effectiveness of the article as a deterrent to breaking the Covenant. Furthermore, while the original text of the article seems to require identical duties of all Members, paragraph 9 makes exceptions, saying:

> All States must be treated alike as regards the application of the measures of economic pressure, with the following reservations: (*a*) It may be necessary to recommend the execution of special measures by certain States. (*b*) If it is thought desirable to postpone, wholly or partially, in the case of certain States, the effective application of the economic sanctions laid down in Article 16, such postponement shall not be permitted except in so far as it is desirable for the success of the common plan of action, or reduces to a minimum the losses and embarrassments which may be entailed in the case of certain Members of the League by the application of the sanctions.

Finally, the idea of immediate severance of all relations with the Covenant-breaking state and persons who are its nationals is abandoned for an indefinite series of steps of a less severe nature to be determined in each case as it arises. Paragraph 10 provides that

> It is not possible to decide beforehand, and in detail, the various measures of an economic, commercial, and financial nature to be taken in

each case where economic pressure is to be applied. When the case arises, the Council shall recommend to the Members of the League a plan for joint action.

The complete breach of diplomatic relations need not take place, but withdrawal of the head of missions may be employed (paragraph 11), and consular relations "may possibly be maintained." Cutting off of food supplies of the civil population is to be regarded as "an extremely drastic measure which shall only be applied if the other measures available are clearly inadequate" (paragraph 14). Humanitarian relations are to continue. Correspondence and other methods of communication are to be subjected to special regulations (paragraphs 15, 16). The penalty of severance of relations with nationals is to be limited to those resident in the Covenant-breaking state (paragraph 13).

THE WEAKENING OF ARTICLE 16. Given this interpretation of Article 16 it is clear that the deterrent effects of the original text are greatly weakened, even if all states in the world were Members of the League, because (1) it is always possible that some or many Members might disagree that the Covenant has been broken with the consequence that they would refrain from applying any sanctions whatever, because (2) some states, perhaps key states, might ask for a reduction of the common duties, and because (3) the exact nature of economic penalties would be unknown, but at least in the beginning would likely be much milder than complete severance of all relations.

PROBLEM OF RELATIONS WITH NON-LEAGUE STATES. From its beginning and throughout its history the League of Nations has lacked universality of membership. Since there have always been some states outside the League, there has always been a possibility of collision between the policy of states applying sanctions under Articles 16 and 17 and the policies of non-League states. Thus a state outside the League might frustrate or nullify the economic pressure brought by Members of the League against a Covenant-breaking state by supplying credits, goods, and markets to the state in question. In case League Members employed military measures against the Covenant-breaking state, a serious situation might be created. The state outside the

League might oppose any interference with its rights under the laws of peace, and thus make military measures ineffectual unless the League Members entered a status of war. Even if this were done, a third state claiming traditional rights of a neutral might seriously interfere with the success of the Members employing military measures against the Covenant-breaking state. Consequently, the policy of the non-League states might either thwart collective sanctions by the League or in addition produce conflict between League Members applying sanctions and non-League states. In the early years the United States remained aloof and even unfriendly toward the League. In recent years the withdrawal of Japan, Germany, Italy, and a considerable number of smaller states has accentuated the problem. Some of the remaining Members of the League have clearly stated that they are unlikely to join in even the economic sanctions on future occasions. In evaluating the policy of collective sanctions under the Covenant it must always be remembered that a universal membership in the League was a basic assumption.

Relation of Economic and Military Sanctions to War. The application of economic sanctions under the Covenant does not in law necessarily entail the use of force or war. Nevertheless, there always remains a possibility that the Covenant-breaking state may react to economic sanctions with hostilities against one or more of the League Members. It is this possibility which makes it essential that Members should be prepared to join in subsequent collective military action at the time they decide to apply economic sanctions. It is this possibility which has caused a weakening of the automatic, universal, comprehensive economic sanctions originally envisaged in Article 16. If use of force and war follow, difficulties arise from the absence of powerful states from the League because if the latter insist upon traditional right of a neutral under international law either sanctions are weakened or League states must interfere with those rights and run the risk of retaliation or of claims for violation of legal rights under international law.

The Relation of Sanctions to Disarmament. There have always been two divergent views of the sanctions

provisions of the Covenant. One view is that sanctions should be completely eliminated as either impracticable or dangerous and provocative of general wars. The second view is that the community must provide sanctions to defend its members if peace is ever to be preserved and if fundamental rights of states are not to be violated with impunity. Therefore, sanctions should be strengthened and effectively applied. The first view regards sanctions universally applied as impracticable because of the assumption that states will consult their own self-interest in each case and that many states, having no direct interest in the dispute, will be unwilling to make the necessary sacrifices and run the dangers implied in a sanctions policy. The belief that sanctions will lead to general wars has some foundation. If the Covenant-breaking state chooses to retaliate with hostile measures and all other Members or many of them cooperate in opposing it, of course hostilities on a large scale may ensue. What, however, are the probabilities? As a rule a weak state is unlikely to react in this way, because of the patent hopelessness of its position unless supported by non-League states. As a rule, it is the Great Power which may take the chances of opposing League sanctions with force. Here, it must be emphasized that the original conception of the League was one of an universal association of states possessing very small armed forces. If such a League had been realized in practice there would be a concentration of force on the side of the League which the Covenant-breaking Member could not hope to oppose. It would probably not try to do so in those circumstances, and if it did economic sanctions plus hostilities on a small scale could easily be effective. The argument that sanctions lead to destructive general wars really embodies either a dislike of any use of force, even by the community of nations, to enforce law; or it envisages war in the light of the war of 1914–1918 with hostilities on a great scale between heavily armed opponents leading to tremendous destruction of life and property. With the failure of negotiations to limit national armaments and the heavy armaments programs carried into effect and planned, it does appear probable that a general war would be highly destructive.

This is the present situation. On the other hand, taking a long-range view, it appears that armaments will always remain at a high figure as long as states feel insecure, and that states will continue to feel insecure as long as they must depend upon their own arms. Logically, then, they must resort either to alliances or to community sanctions with or without limitation of armaments. It would certainly be difficult to show that national armament and alliances avoid general wars. Thus, to assert that the League sanctions lead to general wars, even if true, is no conclusive argument against them. There is no assurance that general wars can be avoided by elimination of League sanctions.

THE RELATION OF SANCTIONS TO THE STATUS QUO AND TO INTERNATIONAL LEGISLATION. The question of collective security and of League sanctions is intimately related to the problem of modifications of legal rights by international legislation. Article 10 of the Covenant provides that

> The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

Now the Covenant constitutes Part I of the various treaties terminating the World War and these treaties established new states and transferred territories belonging to the defeated states. The Members of the League therefore assumed an obligation to respect and preserve boundaries which were drawn, not by the League, nor by all League Members, but by the victorious Allied and Associated powers. Consequently, the League was regarded during its early years by the defeated states as a League of Victors to enforce an unjust peace. Some of those who negotiated the peace treaties were aware of the desirability of subsequent revision of the treaties, as is indicated by Article 19 of the Covenant. Originally its provisions were attached to the provisions of Article 10. Article 19 provides that

> 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.

The Assembly has never offered such advice. It has been decided by the Assembly in an interpretation of Article 19 that the Assembly is empowered to give advice and nothing more, and that the legal right remains with parties to the treaty to accept or reject revision. Consequently states which have become dissatisfied with treaty obligations have been left in the situation of existing international law. Unless the treaty contains provisions for revision or termination, modification or termination can legally be gained only by mutual consent of the parties. The alternative is illegal unilateral repudiation.

MODIFICATIONS OF PEACE TREATIES. Many provisions of the Treaty of Versailles and of the other peace treaties have been modified by consent of the parties. However, France and her allies for years strenuously and successfully opposed modification of territorial boundaries. Since 1919 territorial boundaries have been altered by force or as a result of threat of force in many cases: the seizure of Vilna by Poland from Lithuania, the seizure of Fiume by Italy from Yugoslavia, the seizure of Manchuria from China (1931), the annexation of Ethiopia by Italy after armed conquest (1935–1936), the annexation of Austria by Germany (1938), the annexation of the Sudeten territory of Czechoslovakia by Germany (1938), the annexation of Teschen, belonging to Czechoslovakia by Poland (1938), the annexation of Carpathian Ruthenia and of portions of Slovakia, belonging to Czechoslovakia, by Hungary (1938–1939), establishment of a protectorate by Germany over Slovakia and over Bohemia-Moravia (1939) and of a protectorate by Italy over Albania (1939), annexation of the autonomous city of Memel in Lithuania by Germany (1939), and the partitioning of Poland by Germany and the Soviet Union (1939). Germany has demanded a return of her prewar colonies and Italy has demanded transfers of territory from France. The Soviet Union gained exceptional rights in the territory of Estonia, Latvia, and Lithuania in September and October, 1939, and invaded Finland when negotiations for an exchange of territory and concession of additional territorial rights were unsuccessful in December, 1939. At the close of hostilities Finland ceded to the Soviet

Union the Karelian isthmus, including Viborg, granted a lease of Hangoe, and promised to build a railway desired by the Soviet Union (March 13, 1940).

3. FAILURE TO APPLY ARTICLE 16 IN THE MANCHURIAN DISPUTE (1931–1933)

In 1931 a Great Power, Japan, then a Member of the League, invaded the territory of China in Manchuria with military forces, assisted in the establishment there of a revolutionary government, and recognized a new state of Manchukuo. The League dealt with the dispute between China and Japan under Articles 11 and 15 of the Covenant. China did not call for the application of sanctions under Article 16 because it had become apparent that such an application would be avoided by powerful Members of the League, especially by those upon whom a heavy burden would fall if sanctions should result in hostilities with Japan; namely, France, Great Britain, and Italy. When the League limited its action to condemnation of the action of Japan as illegal and advocacy of a policy of nonrecognition of Manchukuo, in a situation which so clearly called for application of sanctions against a Covenant-breaking state, encouragement was given to all dissatisfied Great Powers to believe that Article 16 would never be applied. Japan continued a policy of invasions in North China. Italy carefully prepared an attack on Ethiopia. Germany began its policy of unilateral repudiation of all restrictive clauses of the treaty of Versailles. When sanctions were applied to Italy in 1935, Italy expressed resentment that they should be applied to her if Japan had not suffered them.

4. SANCTIONS AGAINST ITALY (1935–1936)

ACTION UNDER ARTICLES 11, 15. Ethiopia appealed to the Council of the League on January 3, 1935, under Article 11 of the Covenant. At the next session of the Council Ethiopia and Italy agreed to deal with their dispute in accordance with provisions of a treaty of amity between the two states dated August 2, 1928. Military preparations by Italy continued. Ethiopia desired to submit the dispute to conciliation and arbitration foreseen in the treaty, but

Italy maintained that this contingency was foreseen in the treaty only when ordinary diplomatic negotiations had been exhausted. Ethiopia, believing this to be merely a method for gaining time, requested the Council on March 17, 1935 to consider the dispute under Article 15 of the Covenant. Since Italy agreed to submit the dispute to conciliation and arbitration, the Council did not take up the dispute, nor did it set a time limit within which conciliation should be attempted, as desired by Ethiopia. The action of the Council was influenced greatly during this time by France and Great Britain. France had reached an agreement with Italy on January 7, 1935 which settled many points of friction between the two and France was even more anxious to retain the friendship of Italy after Germany proclaimed the reintroduction of military conscription in March of 1935. Both France and Great Britain were negotiating with Italy to form the "Stresa front" (April 10, 1935) against Germany.

ACTION UNDER TREATY OF 1928. Finally Italy agreed to create a conciliation and arbitration tribunal, but without specifying time limits for choice of arbitrators and without agreeing to the scope of questions to be submitted to the tribunal. The Council resolution of May 25 bound the Council to take action on July 25 if there was not yet agreement on the fifth arbitrator of the tribunal and decided "to meet to examine the situation if on the 25th August the settlement by means of conciliation and arbitration should not have taken place." The conciliation tribunal, consisting of four members, was unable to reach a conclusion because of disagreement relative to its jurisdiction. The Council met in special session in August. Ethiopia accepted for the most part the demands of Italy limiting the jurisdiction of the tribunal and this was recorded in a Council resolution of August 3. The Council decided to meet September 4 to undertake a general examination of Ethiopian-Italian relations. During this whole period attempts had been made by France and Great Britain to gain a compromise solution between the parties. Proposals looking toward cession of territory and other concessions were made by Great Britain to Italy in June and were

refused. After the Council session in August a conference of the representatives of France, Great Britain, and Italy was held at Paris at which France and Great Britain attempted to gain a compromise solution, which was refused by Italy. On September 3 the Arbitral Commission rendered a unanimous award that neither Ethiopia nor Italy could be held responsible for the Walwal incident, which had brought the dispute to a head.

ACTION BY LEAGUE MEMBERS IN COUNCIL AND ASSEMBLY. After invasion of Ethiopia by Italy the Council adopted the report of its Committee of Six on October 7, 1935, recording that "the Italian Government has resorted to war in disregard of its covenants under Article 12 of the Covenant of the League of Nations." Fourteen Members of the League represented on the Council agreed to this, and Italy alone voted in the negative. The Assembly met two days later and it was announced on October 11 by the president of that body that

> The minutes of the Council's meeting of the 7th October, 1935, and the report of the Council Committee concerning the events in Ethiopia, noting that there has been a resort to war in disregard of engagements under Article 12 of the Covenant—which report fourteen members of the Council approved—were communicated by the President of the Council to the President of the Assembly. They were submitted to the Assembly, which has considered them at its last three meetings. Of the fifty-four members present at the Assembly, three states expressed a contrary opinion; a fourth, this morning, has spoken against the application of sanctions, and fifty states members of the League have expressed an opinion in accordance with that of the fourteen states members of the Council, by conveying, either explicitly by their declarations or tacitly, their Government's acquiescence in the report and documents in question.

The three states which disagreed were Albania, Austria, and Hungary. The first had close relations with Italy and the other two had been bound closely to Italy since 1934 by commercial agreements. Austria, in addition, relied upon Italy for protection against Germany. Austria and Hungary gave as reasons for their action "the political ground of friendship with Italy and the economic ground of inability to make the sacrifices of trade with Italy which would be involved in the application of sanctions against

her on their part." The state which spoke against the application of sanctions was Switzerland, saying, "We do not consider ourselves bound to take part in sanctions which, by their nature and effect, would expose our neutrality to real dangers—dangers which we must judge in the full exercise of our sovereignty."

STUDY OF SANCTIONS BY ASSEMBLY COMMITTEES. Meanwhile, on October 10, the Assembly invited all Members of the League other than Ethiopia and Italy "to set up a committee, composed of one delegate, assisted by experts, for each member, to consider and facilitate the coordination of such measures" which they may severally contemplate, "and, if necessary, draw the attention of the Council or the Assembly to situations requiring to be examined by them." This recommendation was adopted by all Members represented, except for an adverse vote by Italy and abstentions by Austria and Hungary. This committee, composed of fifty-two members, was called the Coordination Committee. It, in turn, appointed a Little Coordination Committee, which consisted of eighteen members and which did the preliminary work of making suggestions for coordination of economic and financial sanctions. Within ten days five proposals for sanctions had been proposed and submitted to Member states.

THE COMMITTEE'S PROPOSALS. Proposal I was to lift any embargoes on arms and munitions which might be in effect against Ethiopia and to apply an embargo on arms and munitions to Italy, whether going directly or indirectly, and including contracts in process of execution. The list of arms and munitions to be embargoed was specified in detail and included, among other objects, arms, guns, ammunition, bombs, torpedoes and mines, implements of war, and tanks. Proposal II was to place a ban on all loans, share issues, banking credits, and advances for or on behalf of the Italian government or any person, corporation, or public authority in Italy. Proposal III was for an embargo upon imports from Italy of all goods except gold or silver coin or bullion "consigned from or grown, produced, or manufactured in Italy or Italian possessions, except goods en route." Proposal IV was to add to the embargo list

certain essential materials including rubber, bauxite, iron ore and scrap iron, chromium, manganese, nickel, and tin. Proposal V was aimed to reduce the economic injury caused to states applying sanctions by replacing Italian goods with goods from other members and by facilitating trade between states applying sanctions.

EXTENT OF COOPERATION IN ECONOMIC SANCTIONS. By the end of January, 1936, the action taken by Members of the League on the various proposals was as follows:

Proposal No.	Accepted	Entry into force	Legislative texts received
I	52	50	44
II	52	48	41
III	50	44	39
IV	51	47	41

The action of non-Members was as follows: The United States, on October 5, 1935, had laid an embargo on arms, munitions, and implements of war to both parties, and by law American vessels were prohibited to carry these to any belligerent port or to a neutral port for shipment to a belligerent port. The President issued a proclamation stating that travel of Americans on belligerent vessels would be at their own risk and that transactions of any character with either belligerent would be at the risk of American citizens. The export prohibitions accepted by Switzerland (I and IV) applied to the Principality of Liechtenstein by virtue of the customs union between the two states. Egypt agreed to the principle of the financial and economic measures and communicated texts of decrees applying I, III, and IV. Germany did not interfere with the operation of sanctions, but assumed a position of neutrality and applied an embargo on arms to both belligerents. While, on the one hand, Germany was interested in the defeat of a system of collective sanctions which might later be employed against her, on the other hand, Germany at the time did not desire to support Italy because German union with Austria might be frustrated by a successful Italy.

Germany informed the Committee of Eighteen that she would issue laws to control or stop purchases and exports from Germany of materials going to the two belligerent countries. Germany placed an embargo on export of certain raw materials including edible oils, fats, potatoes, iron and steel, nonferrous metals except copper, textile materials, and nonedible oils of all sorts. The stated motive was to protect German economic interests by preventing abnormal increase in export of raw materials. The amount of exports from Germany to Italy was also curtailed because under a German-Italian trade agreement, Italy was indebted to Germany.

SUMMARY OF ACTION BY LEAGUE MEMBERS. Mr. Litvinoff, the Soviet Foreign Minister, gave at the Assembly session on July 1, 1936, an accurate summary of the application of sanctions in this case.

> In this particular case, whether because this was the first experiment in the application of collective measures; whether because some considered that this case has particular characteristics; whether because it coincided with the preparations elsewhere for aggression on a much larger scale, to which Europe had to devote special attention; whether for these or other reasons, it is a fact that, not only was the whole terrible mechanism of Article 16 not brought into play, but from the very outset there was a manifest striving to confine the action taken to the barest minimum. Even economic sanctions were limited in their scope and their function, and even in this limited scope sanctions were not applied by all members of the League.
>
> Four members of the League, from the very beginning, refused to apply any sanctions whatsoever. One member of the League bordering on Italy refused to apply the most effective sanction—namely, the prohibition of imports from Italy; while, of those countries which raised no objections in principle to sanctions, many did not in actual fact apply several of them, pleading constitutional difficulties, the necessity of "study" etc. Thus, even the embargo on arms was not applied by seven members of the League, financial measures by eight countries, prohibition of exports to Italy by ten countries, and prohibition of imports from Italy by thirteen countries—*i.e.* 25 per cent. of the total membership of the League. It may be said that the Latin-American countries, with a few exceptions, did not apply in practice the more effective sanctions at all . . .

ECONOMIC EFFECTS ON ITALY OF SANCTIONS. The effect of economic sanctions on Italy was to curtail her exports to a serious extent, thus reducing her purchasing power

abroad, to cause a heavy loss of gold used in payment for the goods which were imported, and to reduce seriously imports of essential raw materials and of arms and munitions. At the end of April, 1936, the situation was as follows:

> Owing to the time required for legislation to be passed and the exceptions allowed under the various Proposals of the Co-ordination Committee, Proposal III did not become effective until about the New Year. In January, 1936, Italian exports fell off by nearly half and Italian imports by well over a third, as compared with January 1935. The figures so far available for February show the progressive effect of sanctions. "These figures include imports into countries which do not apply Proposal III. If these are eliminated, the exports from Italy to those countries which *do* apply that Proposal have become negligible. . . .
>
> The Governor of the Bank of Italy stated that the gold holdings of the Bank were reduced by 909 million gold lire, corresponding to 47.8 million gold dollars, between October 20th and the end of 1935. The replies to the questionnaire show that, during a somewhat shorter period—namely, during November and December 1935—gold imports from Italy amounting to 579.1 million gold lire (30.5 million gold dollars) were registered by the countries for which we have information. The gold and foreign assets reserve of the Bank of Italy on October 20th, 1935, amounted to 4,316 million gold lire (227.2 million gold dollars). What amount of gold and foreign assets the Government has been able to collect domestically since October is not known.

Stated in another way, the disposable international assets of Italy were at the end of September, 1935, some 7,870 million lire, including 370 million lire in the ordinary foreign exchange reserve of the Bank of Italy. Known losses of gold were about one-third of that total during the next six months (2,600 million lire).

WHY ITALY WAS NOT THWARTED BY ECONOMIC SANCTIONS. Now it is clear that the various economic sanctions imposed did not prevent the conquest and annexation of Ethiopia by Italy. Several reasons may be advanced for the ineffectiveness of the sanctions applied in this particular case. The plan for the conquest by Italy had been made a long time in advance and Italy had acquired large stocks of materials of all kinds; thus, any measures taken would require a considerable time to become effective. Reasons for the postponement of action by the League Council throughout the period of preparation in the first nine months of 1935 have been explained above. Additional

delay in application of sanctions was caused since this was the first time that sanctions had been applied by the League and it was necessary in most cases for individual Members to pass legislation making the proposals effective. It cannot be shown, of course, that sanctions would have been effective in other circumstances. Yet it is necessary to remember that the particular sanctions applied were envisaged in connection with the strategic situation in Ethiopia. It had been expected that difficulties of terrain, along with slowing down of military operations occasioned by the heavy rains in Ethiopia, would prevent rapid Italian military success, so that sanctions would have a relatively long period for taking effect and that this effect would be cumulative with passage of time. These underlying assumptions turned out to be unfounded. A delay in the normal heavy rainfalls favored the Italian armed forces. The effect of the illegal use of gas by Italian forces was to speed the demoralization of Ethiopian forces in the north.

THE ISSUE OF AN EMBARGO ON OIL. The original text of Article 16 would have laid upon Members an obligation to cut off all imports and exports to Italy but Members were willing to assume only a narrower series of obligations. It is clear that an embargo upon export of oil to a Covenant-breaking state would be one of the most effective methods of crippling it. This was notably true of Italy in the Ethiopian campaign because of the poverty of Italy in oil, because of the need for vast quantities of oil to supply her navy, the merchant ships which transported men and materials to Africa, and the mechanized instruments employed by Italy in her conquest. Why was an oil embargo never applied?

PROPOSAL NO. IV. The original list of raw materials, under proposal IV, was a group of materials in which an embargo by Member states would be effective, even without participation by non-Member states. It was not intended to be exhaustive or final. However, action was soon taken in the Committee of Eighteen to add oil and other essential raw materials to the list. The question was raised October 19, formally proposed November 2, and

adopted in principle November 6, 1935. It became known as proposal IV *A* and states that

> It is expedient that the measures of embargo provided in Proposal No. IV should be extended to the following articles as soon as the conditions necessary to render the extension effective have been realized:
>
> Petroleum and its derivatives, by-products and residues;
> Pig-iron; iron and steel (including alloy steels), cast, forged, rolled, drawn, stamped or pressed;
> Coal (including anthracite and lignite), coke and their agglomerates, as well as fuels derived therefrom.
>
> If the replies received by the Committee to the present proposal and the information at its disposal warrant it, the Committee of Eighteen will propose to Governments a date for bringing into force the measures mentioned above.

On November 19 the chairman of the committee proposed to convene the Committee of Eighteen on November 25 or 27 to examine whether this proposal should be put into effect.

ACTION POSTPONED BY HOARE-LAVAL PLAN. Before this could happen, Italy brought pressure upon France, and M. Laval, the French Premier, used his influence to gain postponement of the meeting of the committee. Meanwhile, consulting the British representative, he began work on what came to be known as the "Hoare-Laval Plan." This was a proposal for settlement of the dispute between Ethiopia and Italy by a compromise agreement, involving an exchange of territory and granting to Italy an extensive area of Ethiopian territory for economic exploitation. An analysis of the plan indicates that it was exclusively to the advantage of Italy. The plan was submitted to the two states by diplomatic representatives of France and Great Britain before the plan was submitted at Geneva, on December 13, to the Secretary-General for submission to the Council. By the time the plan was considered by the Council December 18 and 19, Ethiopia had refused the plan and it was not accepted by the Council.

THE POLICY OF FRANCE. M. Laval attempted by his secret diplomacy to avoid a dilemma for France. Wishing to retain the friendship of Italy against a resurgent Ger-

many, his aim was to give Italy what she desired and to thwart an oil sanction. If the League Committee of Eighteen proceeded with an oil-embargo proposal, it was the intention of France to vote against it, which would have the effect of alienating Great Britain. The motives which seem to have caused Sir Samuel Hoare, the British Foreign Secretary, to accede to the Laval proposals are as follows: M. Laval reported to him that the Italian representative to Paris had indicated that if an oil embargo were recommended Signor Mussolini would attack the British fleet in the Mediterranean. France was bound by a pledge of October 18 to go to the assistance of Great Britain in the case of such an attack, but M. Laval reported that it might require two weeks to put the French fleet in readiness after hostilities commenced and stated that the largest capital ships of the British fleet were too large for the capacity of French naval ports and dockyards in the Mediterranean. It was not necessary for M. Laval to state that if oil sanctions were imposed, France might vote against them and might regard her pledge of October 18 inoperative if hostilities with Italy resulted therefrom.

The Policy of Great Britain. Sir Samuel Hoare did not employ diplomatic weapons at his disposal. It has been suggested that he might, under the circumstances, have threatened France with the necessity of voting openly for or against sanctions at Geneva; or with the alternative either of fulfilling the obligations of October 18 or publicly notifying Italy that France would not assist Great Britain in case of an attack on the fleet. His explanation of reasons for accepting the Laval proposal, given in the House of Commons December 19, follows:

> It was in an atmosphere of threatened war that the conversations began, and it was in an atmosphere in which the majority of the member states—indeed I would say the totality of the member states—appeared to be opposed to military action. It was a moment of great urgency. Within five days the question of the oil embargo was to come up at Geneva, and I did not feel myself justified in proposing any postponement of the embargo, unless it could be shown to the League that negotiations had actually started. It was a moment when, while most member states had taken part in the economic sanctions, no member state except ourselves had taken any military precautions. Lastly, it

was a moment when it seemed to me that Anglo-French cooperation was essential if there was to be no breach at Geneva and if the sanctions when functioning were not to be destroyed.

When the Committee of Eighteen met on December 12, it was informed of the Hoare-Laval plan. By this time the Council had been summoned to meet December 17. The committee, under the circumstances, adjourned any decision on oil sanctions, so as not to interfere with success of the proposed plan and any action which might be taken by the Council.

REPORT OF THE COMMITTEE OF EXPERTS ON OIL. On January 22, 1936, the Committee of Eighteen decided to create a committee of experts "to conduct a technical examination of the conditions governing the trade in and transport of oil." This committee met February 3–12. The summary of its findings follows:

(1) The figures given above with reference to consumption, to stocks and to supplies which might be *en route* at the moment of the imposition of an embargo on the export of petroleum and petroleum products make it possible to estimate roughly the period which would have to elapse before such an embargo, were it universally applied, would become fully effective. In the conditions prevailing at the moment of its session, the committee is of opinion that this period may be taken to be about three to three and a half months.

(2) In the event of such an embargo being applied by all states members of the Co-ordination Committee, it would be effective if the United States of America was to limit its exports to Italy to the normal level of its exports prior to 1935.

(3) If such an embargo were applied by the states members of the Co-ordination Committee alone, the only effect which it could have on Italy would be to render the purchase of petroleum more difficult and expensive.

(4) In view of the possibility of substitutes being used to some extent for petrol (motor spirit), an embargo on the export of petroleum and petroleum products would be strengthened were it extended to cover industrial alcohol and benzol.

(5) The effectiveness of an embargo imposed by states members of the Co-ordination Committee on the transport of oil to Italy is subject to the same limitations as an embargo on exports. Were these states alone to prohibit the use of tankers for the transport of oil to Italy, it would be able to satisfy its needs up to about 50 per cent. from its own resources, and the rest by means of vessels of other states, but with greater difficulty and at greater expense.

(6) If an embargo on transport should be decided on, the committee is of the opinion that the most practicable form of embargo would be one which would prohibit tankers from proceeding to Italy and would also prohibit the sale of tankers to states not applying the embargo.

(7) Should it be decided to impose an embargo on petroleum, attention should be given to the necessity of taking suitable measures to prevent traffic by indirect routes, including use of free ports, which is of special importance as regards petroleum.

It seems highly probable that if the oil sanction measures had been applied in January, 1936, they would have been effective in seriously weakening Italy and in preventing conquest of Ethiopia, and even more probable if applied earlier, in October, 1935. The reaction in the United States to the Hoare-Laval plan had lessened any enthusiasm for an oil sanction because the plan was regarded as an example of old-style Machiavellian diplomacy upon the part of France and Great Britain which showed the true selfish policy of those states, and a sanctioning of conquest and imperialism of the old style. Ten Members of the League had agreed by December 12 to apply oil sanctions. Some of these produced an important portion of the world oil supply and had been selling appreciable amounts to Italy.

	% of world supply in 1935	% of Italian imports supplied, first 9 months of 1935
Argentina		
British India		
Czechoslovakia		
Iraq	1.6	2.2
The Netherlands	2.7	12.5
Finland		
New Zealand		
Rumania	3.7	46.5
Siam		
U.S.S.R.	10.7	13.1

Dilatory Tactics of France. The Committee of Eighteen met March 2 to consider this report. Again, France through her Foreign Minister (now M. Flandin),

sidetracked action on oil by proposing that the Committee of Thirteen (a committee of the Council of the League) should be asked to meet again in order to make an appeal to Ethiopia and Italy to end the war. This proposal had been accepted in advance by the British Foreign Minister (now Sir Anthony Eden). It was adopted by the Committee of Eighteen. Mr. Eden informed the committee that Great Britain was "in favor of the imposition of an oil embargo by the members of the League" and was "prepared to join in the early application of such a sanction if the other principal supplying and transporting states who are members of the League of Nations are prepared to do likewise." The policy of France was dictated again by threats from Italy and a desire to retain Italian support against Germany. M. Flandin was apparently threatened orally on the morning of March 2 that if oil sanctions were imposed, (1) Italy would withdraw from the League of Nations, (2) Italy would denounce the Franco-Italian agreement of January 7, 1935, which would imply a remanning of the Italian frontier facing France, and (3) abandonment of Italian participation in the guarantees given in the Locarno Treaty of 1925, though this last threat may not have been employed. The formula for reopening negotiations to settle the dispute between the parties was very general and placed no time limit within which results should be gained. It permitted further procrastination on the part of Italy with the object of forestalling interference with the campaign of conquest which went forward rapidly. It is impossible to say what might have happened. The action of Germany in reoccupying the Rhineland on March 7, 1936, practically shoved aside the Ethiopian question. Italy played along with France to the extent of condemning Germany's act as illegal.

Failure to Employ Military Sanctions. It has been seen that paragraph 2 of Article 16 provides for recommendation by the Council to Members of "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." Great Britain increased the concentration of her naval forces in the Mediter-

ranean Sea in September and October, 1935. In October Great Britain was successful in getting a pledge of support from several Members of the League bordering the Mediterranean in case her fleet should be attacked in those waters. The possibility of mutual support of France and Great Britain was raised at Geneva, September 10. France took the occasion to inquire whether Great Britain would give mutual support in future cases, including cases of non-Members; and referred, of course, to Germany. The British proposal was couched in general terms, and was accepted by France under conditions which would make it applicable in future cases under Article 16, whether an attack was made by sea, land, or air, and on condition of prior agreement on the measures which should be taken under Article 16. The agreement is dated October 18. Similar agreements for mutual support were made by Great Britain with Greece, Turkey, and Yugoslavia. These agreements, approved also by Czechoslovakia and Rumania as states members of the Little Entente or of the Balkan Entente, were notified January 22, 1936, to the chairman of the Coordination Committee.

No attempt was made by the British fleet to interfere with the peaceful or with the hostile operations of Italy. Italy, in response to the concentration of the British fleet in the Eastern Mediterranean, sent a large number of additional troops to Libya, concentrated on the Egyptian frontier, and attempted unsuccessfully to negotiate with Great Britain for a reduction in the size of the fleet in the Mediterranean. The threats of Italy to France of hostile measures in reply to an oil embargo, it has been seen, were sufficient to block even this economic measure.

THE TERMINATION OF LEAGUE SANCTIONS. By May 2, 1936, the emperor of Ethiopia had left his capital, which was occupied by Italian military forces on the afternoon of May 5. A decree was issued by the Italian government on May 9 annexing Ethiopia. At the meeting of the Council, May 11–13, it was decided to maintain sanctions, but before the next meeting on June 26, a number of Members had indicated their intention to abandon sanctions. The internal struggle in Great Britain over abandonment of sanctions

after the annexation, led to victory by the party desiring abandonment, and was announced on June 18. Since Great Britain had taken the lead in asking for application of sanctions, this action of abandoning sanctions influenced other states. Argentina had requested on June 2 a special session of the Assembly, which met June 30 to July 4, though technically it was a continuation of the 1935 session which had been prorogued and not terminated. By the time of the Assembly session eighteen states had indicated an intention of abandoning sanctions. The Assembly recommended, July 4, that "the Coordination Committee should make all necessary proposals to the Governments in order to bring to an end the measures taken by them in execution of Article 16 of the Covenant." This was done July 6, the sanctions to cease as from July 15. The mutual assurances between Great Britain and Greece, Turkey, and Yugoslavia on support in the Mediterranean were terminated in July.

5. THE PROSPECTS FOR COLLECTIVE SECURITY

SUMMARY. From the beginning of the League there has been a tendency among Members to amend or interpret Article 16 in such a manner as to reduce the obligations contained in it and as to leave it to each Member individually to determine the extent to which it will carry out in a specific case even those obligations assumed. Consequently, the deterrent effect of sanctions was greatly reduced. Members have been unwilling to apply military sanctions or even economic sanctions when these are likely to provoke a situation which would require application of military sanctions. It is unlikely that a small or weak state, unsupported by other states, could withstand economic sanctions and even if this state should retaliate with force or war it is almost bound to be defeated. Consequently, the small state in such circumstances is unlikely to run the risk and would prefer settlement by pacific means. A Great Power, or a small state supported by a Great Power, presents the real problem for collective security. Of the Great Powers, Italy is undoubtedly the most vulnerable both to economic

and financial measures and to military sanctions. The experience of League sanctions against Italy in 1935–1936 discredited collective sanctions through the League. This is due, in part, to the fact that the sanctions employed did not prevent conquest and annexation of Ethiopia, and in part, to the realization that particular Great Powers will thwart effective sanctions if their own immediate interests seem to require it. The part played by France, especially, caused a reaction among smaller and less powerful states that has made Article 16 a dead letter for the present. Some states then terminated their membership in the League because they were unwilling to be the tools of the Great Powers and to find that when their security is threatened they are left to the wolves. Others of these states, while remaining in the League, have made it clear that they will seek security in the future in a policy of neutrality and that they will not be used by the Great Powers in the League merely to help Great Powers with sanctions while these Great Powers fail to employ them to protect the lesser states. Still others look no longer to League sanctions, but have joined bilateral military alliances of the old traditional type. Article 16 seems to contemplate a situation in which only one state at a time requires to be brought to terms by sanctions, whereas recent events show that lawbreaking states come in clusters and cooperate in illegality. Consequently, it may be doubted whether if all states Members of the League applied to the full economic and financial sanctions against all lawbreaking states at the same time, such sanctions would defeat the purposes of those states. After Germany, Italy, and Japan withdrew from the League and repudiated its principles, and after the debacle of sanctions against Italy, the hope of collective security through the League vanished.

THE ALTERNATIVES TO COLLECTIVE SECURITY ILLUSTRATED. There is a rather tragic poetic justice in the situation of some of the Members of the League who applied sanctions against Italy either halfheartedly or not at all. Austria failed to apply them to Italy, yet less than three years later Austria was annexed by Germany without opposition from Italy. Albania failed to apply sanctions to

Italy and a little more than three years later was made a protectorate of Italy, thus finding the same emperor as Ethiopia. France, whose policy to defeat oil sanctions has been explained and whose proposal to transfer part of Ethiopia to Italy in the Hoare-Laval plan undermined sanctions, has reaped certain rewards: (1) disappearance of Austria without opposition from Italy; (2) an uncertain friend and a potential enemy in Spain on her southern frontier established with active assistance of Italy; (3) a denunciation of the Franco-Italian agreement of 1935 by Italy and a multiplication of Italian claims for territorial and other rights to be handed over by France; and (4) the disappearance of a powerful ally, Czechoslovakia.

COLLECTIVE INSECURITY. The small states of Europe which turned back toward neutrality are not secure and they are sustaining heavy losses even while they enjoy a neutral status in the war of 1939. France and Great Britain, by compromising their principles, merely postponed war. The alleged war aims of the two allies are reminiscent of certain principles of the Covenant.

During the meeting of the Assembly of the League of Nations in 1938 a discussion of Article 16 took place. As summarized in a report of the Sixth Committee, dated September 30:

> No proposal to amend the Covenant was made to the Committee, and the principles of the Covenant remain unaltered. It is clearly the general view that those principles are right and sound. It was emphasized that recourse to war against a Member of the League, whether immediately affecting any other Member of the League or not, is a matter of concern to the whole League and could not be considered as one in regard to which the Members are entitled to adopt an attitude of indifference, and that, should such a situation arise, there would be consultation between them.
>
> . . . . .
>
> There is general agreement that the military measures contemplated in Article 16 are not compulsory. As regards the economic and financial measures, many Members of the League have stated that they could not in present conditions consider themselves bound automatically to apply such measures in any conflict. Some other Members expressed the contrary view.[1]

[1] *League of Nations Publications*, VII, Political. 1938. VII. 2. C. 444. M. 287.

MORAL CONDEMNATION AND FINANCIAL ASSISTANCE. Even though sanctions of an economic and financial or of a military character are not applied by Members of the League against a state, the League of Nations has given moral support to victims of aggression and has encouraged assistance to the victims. China appealed to the League, September 12, 1937, under Articles 10, 11, and 17 of the Covenant. The Assembly adopted a resolution, September 28, condemning aerial bombardment of open towns in China by Japanese aircraft, and adopted two reports on October 6, 1937, prepared by the Far East Advisory Committee. One report outlined events in China and declared that Japan had violated the Nine Power Treaty of 1922 and the Pact of Paris of 1928. The second expressed the moral support of the Assembly for China, recommended that Members avoid action which would weaken the power of China to resist, and recommended that Members consider individually extension of assistance to China. China brought up the question at the Council in May, 1938, and again in September, 1938. Japan refused the invitation of the Council and Assembly to accept obligations of a Member of the League under Article 17. Following this the Assembly adopted a report stating that Article 16 was applicable under provisions of paragraph 3 of Article 17. Members of the League were entitled to adopt individually the measures provided in Article 16, but the necessary elements for cooperation in carrying out such measures were lacking. Essentially the same attitude was taken by the Council and Assembly in December, 1939, in the case of the appeal by Finland under Articles 10, 11, and 15 of the Covenant. A Convention on Financial Assistance, October 2, 1930, was intended to supply a method of extending help to a Member victim of aggression. Thirty states signed the treaty, but it is not in force because only three Members have ratified: Denmark, Finland, and Iran.

CONDEMNATION OF THE SOVIET UNION, 1939. The Assembly appointed a Committee of Thirteen to consider the action to be taken in the dispute between Finland and the Soviet Union. The report of this committee, December 13, 1939, became the basis for subsequent action by the Assembly and the Council. Its terms follow:

The Assembly,

1. Whereas, by the aggression that it has committed against Finland, the Union of Soviet Socialist Republics has failed to observe not only its special political agreements with Finland but also Article XI of the Covenant and the Pact of Paris,

And whereas, immediately before committing that aggression it denounced without legal justification the treaty of nonaggression that it had concluded with Finland in 1932 and that was to remain in force until the end of 1945,

SOLEMNLY CONDEMNS the action by the Union of Soviet Socialist Republics against the State of Finland,

URGENTLY APPEALS to every member of the League to provide Finland with such material and humanitarian assistance as may be within its power and to refrain from any action that might weaken Finland's power of resistance,

AUTHORIZES the Secretary to lend the aid of his technical services in the organization of the aforesaid assistance to Finland,

AND LIKEWISE AUTHORIZES the Secretary General by virtue of the Assembly resolution of the fourth of October, 1937, to consult non-member States with a view to possible cooperation.

2. Whereas, notwithstanding an invitation extended to it on two occasions, the Union of Soviet Socialist Republics has refused to be present at the examination of its dispute with Finland before the Council and the Assembly,

And whereas, by thus refusing to recognize the duty of the Council and the Assembly as regards the execution of Covenant Article XV, it has failed to observe one of the League's most essential covenants for the safeguarding of peace and the security of nations,

And whereas, it has vainly attempted to justify its refusal on the grounds that relations it has established with an alleged government that is neither de jure nor de facto the government recognized by the people of Finland in accordance with the free working of their institutions,

And whereas, the Union of Soviet Socialist Republics has not merely violated the Covenant of the League but has by its own action placed itself outside the Covenant,

And whereas, the Council is competent under Covenant Article XVI to consider what consequences should follow from this situation,

RECOMMENDS the Council to pronounce upon the question.

The following day the Council expelled the Soviet Union from the League of Nations.

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CHAPTER XXI

Alliances since the World War

The Covenant of the League of Nations incorporates the idea of a concert of power of the Members to assure the security of each of them. If all states had become Members and had loyally carried out their obligations, there would seem to have been no reason for separate alliances between two or more states, except for offensive purposes. Yet, throughout the past twenty years, some Members of the League have made defensive alliances. How is this development to be explained? (1) The treaties of alliance were claimed to be, in part, merely a reaffirmation of obligations imposed by the Covenant between Members of the League for states which had a special interest in defending one another. (2) Interpretations of Article 16 of the Covenant were given which reduced the assistance to be expected from other Members of the League in the form of economic and financial and military sanctions against the state which might be an aggressor. (3) There are certain gaps in the Covenant. When action is taken under Article 15 of the Covenant, and the Council or Assembly makes a report, there may be a division of opinion among the Members of the League which will result in the failure of many Members to give assistance to the state which regards itself as attacked. Alliances were sought to fill this gap. (4) When it became clear that the League, in practice, did

not give security, states reverted to a policy of isolation and neutrality or to a policy of alliances.

1. THE FRENCH ALLIANCES (1920–1939)

The series of interlocking bilateral alliances drafted in the immediate postwar period indicate a determination upon the part of France and certain other Continental European states to maintain the provisions of the peace treaties and to prevent alterations by the defeated states. France looked first to a guarantee by Great Britain and the United States against an attack by Germany. When the United States refused to ratify the treaty, Great Britain also refused and France sought security in a series of alliances with other states: Belgium (1920), Poland (1921), Czechoslovakia (1924), Rumania, and Yugoslavia. The last three states formed alliances with one another and the group became known as the Little Entente (1921). These alliances remained unaffected by the Locarno treaties of 1925. Later, when Greece, Rumania, Turkey, and Yugoslavia made a treaty (1934) to guarantee the security of their frontiers, this bloc of states added to the French system because Rumania and Yugoslavia were allied with France and were also members of the Little Entente. Following the rise of Hitler in Germany, France made an alliance with the Soviet Union (1935–1936), and the Soviet Union made an alliance with Czechoslovakia (1935). Finally, France was successful is consummating an alliance with Great Britain (1938) and with Turkey (1939). The provisions of these treaties, and the fate of the alliances will be examined in turn.

FRANCE-BELGIUM (1920–1936). After France had failed to get a treaty of guarantee from the United States and Great Britain, Belgium and France reached a secret military understanding, September 7, 1920. An exchange of letters, registered with the Secretariat of the League of Nations indicated that

> The object of this understanding is to reinforce the guaranties of peace and security resulting from the Covenant of the League of Nations. It is recognized as a matter of course that the two states retain undiminished their rights of sovereignty in respect of the imposition of

military burdens upon their respective countries and in regard to determining in each case whether the eventuality contemplated by the present understanding has in fact arisen.

At the time of registration both parties registered a letter stating that

. . . the French and Belgian General Staffs have drawn up plans for a series of military measures to meet the eventuality of a new German aggression against Belgium and France . . . The understanding in question is purely defensive and has reference exclusively to the case of an unprovoked aggression. Its object is to reinforce the guaranties of peace and security resulting from the Covenant of the League of Nations.

Belgium became a party to the Treaty of Mutual Guaranty between Belgium, France, Germany, Great Britain, and Italy, initialed at Locarno (October 16, 1925). After Germany reoccupied the demilitarized Rhineland (March, 1936) Belgium participated in the ensuing negotiations. By October, however, Belgium announced a policy of returning to a status of permanent neutralization. Other parties to the Locarno Treaty consented, and France consented to termination of the military understanding of 1920. France and Great Britain continued, however, to guarantee Belgium.

FRANCE-POLAND (1921–1939). France and Poland signed (February 19, 1921) an agreement which constitutes an alliance. The two governments engaged "to concert on all questions of external policy interesting the two States and relative to the regulation of international relations in the spirit of the treaties and in conformity with the Covenant of the League of Nations"; to "come to an understanding" on economic matters; and to "consult each other before concluding new agreements affecting their policy in Central and Eastern Europe." The alliance is contained in the following terms:

If, contrary to the expectations and to the sincerely pacific intentions of the two contracting States, they or one of them saw itself attacked without provocation on their part, the two Governments would act in concert with a view to the defense of their safeguarding of their legitimate interests, within the limits specified in the preamble.

In connection with the alliance there was a French loan of 400 million francs. Among the Locarno agreements was

a treaty between France and Poland (October 16, 1925) providing that

> In the event of Poland or France suffering from a failure to observe the undertakings arrived at this day between them and Germany with a view to the maintenance of general peace, France, and reciprocally Poland, acting in application of Article 16 of the Covenant of the League of Nations, undertake to lend each other immediately aid and assistance, if such a failure is accompanied by an unprovoked recourse to arms.

It provided, further, that in case unanimity of the Council under Article 15 should not be attained, and

> . . . in the event of Poland or France being attacked without provocation, France, or reciprocally Poland, acting in application of Article 15, paragraph 7, of the Covenant of the League of Nations, will immediately lend aid and assistance.

After the Nazi government came into control in Germany (1933) Poland reached an agreement with Germany in the form of a declaration (January 26, 1934) by which the parties stated their "intention to reach direct understanding on problems concerning their mutual relations" and "in no case to have recourse to force in order to settle questions under dispute" for a period of ten years. Poland regarded the alliance with France as remaining in effect and France made efforts to improve relations with Poland. There were a number of difficulties. Poland had resented the policy of France in joining a four-power pact project between France, Germany, Great Britain, and Italy, as implying that Poland was excluded from the category of Great Powers. The Franco-Soviet alliance of 1935–1936 caused additional difficulties because Poland did not desire that her territory should become the battlefield in case of conflict between Germany and the Soviet Union. Furthermore, territorial differences between Czechoslovakia and Poland existed. France was allied with both states. In 1938, at the time of the Sudeten crisis Poland joined Germany in making demands for territorial transfers by Czechoslovakia, and, of course, was unavailable to France as an instrument for helping to check Germany. By 1939, however, when Germany began to make demands upon Poland for additional rights across the Polish corridor

and for return of the Free City of Danzig to Germany, Poland jumped back into the other camp. France and Poland reaffirmed the alliance, and Poland and Great Britain formed an alliance by an exchange of notes in April, 1939, made definitive by a treaty in August, 1939. Germany denounced the German-Polish agreement of 1934 after the British-Polish alliance of April. France and Great Britain declared war on Germany (September 3, 1939) following the German invasion of Poland (September 1, 1939), and the refusal of Germany to accept terms of British and French ultimata.

FRANCE-CZECHOSLOVAKIA (1924–1938). Czechoslovakia and France signed a treaty of alliance (January 25, 1924) providing in Article 1 that they "undertake to concert their action in all matters of foreign policy which may threaten their security or which may tend to subvert the situation created by the Treaties of Peace of which both parties are signatories." By Article 2 they "shall agree together as to the measures to be adopted to safeguard their common interests in case the latter are threatened." Other articles provide for consultation in case of alienation of Austrian independence or an attempt to restore the Hapsburg or Hohenzollern dynasties in Austria, Hungary, or Germany, and provide for consultation before concluding further agreements. Among the Locarno agreements was a treaty between Czechoslovakia and France, signed October 16, 1925, identical in terms with the Franco-Polish treaty of the same date, which has already been quoted. France participated in the Munich agreement (September, 1938), accepted by Czechoslovakia, ceding the Sudeten area of Czechoslovakia to Germany.

THE LITTLE ENTENTE (1920–1938). The Little Entente is the name given to Czechoslovakia, Rumania, and Yugoslavia (formerly the Serb-Croat-Slovene kingdom). Following the World War these states became parties to treaties whose purpose was to prevent by joint action a restoration of the Hapsburg monarchy in Hungary or any attempt on the part of Hungary to regain prewar territories acquired by members of the Little Entente. In addition, Rumania and Yugoslavia wished to prevent Bulgaria

from seizing from them territory formerly Bulgarian. The formation of the Little Entente began with an alliance between Czechoslovakia and Yugoslavia (August 14, 1920). The parties agreed to assist one another in case of an unprovoked attack on the part of Hungary, agreed that military authorities of the two states should decide upon provisions necessary for execution of the treaty, and agreed that neither party should conclude an alliance with a third state without preliminary notice to the other. The treaty, made originally for a term of two years, was successively extended. A military convention was signed on August 14, 1921, to complete the alliance. The alliance between Czechoslovakia and Rumania (April 23, 1921) contains almost identical provisions. The alliance between Rumania and Yugoslavia (July 2, 1921) also contains almost identical provisions, except that it adds Bulgaria to Hungary as parties against whom the alliance is directed. In 1929, and again in 1933, the treaties between members of the Little Entente were extended indefinitely. Furthermore, the states provided for a common organization and for a coordination of policy in a pact signed February 16, 1933.

BALKAN PACT (1934–). By a Pact of Balkan Understanding (February 9, 1934) "Greece, Rumania, Turkey, and Yugoslavia guarantee mutually the security of their Balkan frontiers (Article 1)." The parties undertook "to consult with each other on the measures to be taken in the face of eventualities capable of affecting their interest as they are defined by the present Agreement," and "not to embark on any political action towards any other Balkan country nonsignatory of the present Agreement, without previous mutual discussion, nor to assume any political obligation towards any other Balkan State without the consent of the High Contracting Parties." The parties also accepted a statute establishing a common organization in the form of a permanent council, an economic consultative council, and a secretariat.[1] Since Rumania and Yugoslavia had alliances with France, and were members of the Little Entente with Czechoslovakia, the Balkan Entente was tied into the French security system of alliances.

[1] PADELFORD, pp. 186–187.

FRANCE-SOVIET UNION (1935–1939). The Locarno treaties of 1925 had provided for regional security in Western Europe by providing that Great Britain and Italy should guarantee the *status quo* between Germany, on the one hand, and France and Belgium on the other hand. This was to be regarded as a regional security system within the framework of the scheme of the Covenant of the League of Nations. It proved to be impossible to negotiate a similar Eastern Locarno which would have made similar arrangements affecting the eastern frontier of Germany. Proposals and negotiations for such a scheme were undertaken in 1933 and 1934, but proved unsuccessful. France and the Soviet Union therefore concluded an alliance on May 2, 1935, which was ratified in March, 1936. The parties agreed to consult immediately on measures to be taken for enforcement of Article 10 of the Covenant, in case either was threatened with or in danger of aggression from a European state (Article 1). They agreed to come immediately to the aid of one another in case one was the subject of unprovoked aggression on the part of a European state under circumstances specified in paragraph 7 of Article 15 of the Covenant (Article 2). They made a similar agreement for cases envisaged in Article 16 and in paragraphs 1 and 3 of Article 17 of the Covenant (Article 3). Additional provisions clarifying and explaining these provisions were inserted in a protocol of signature (May 2, 1935). The treaty was to remain in force for five years from date of ratification and thereon indefinitely unless either party gave one year's notice of denunciation. The Soviet Union did not, apparently, regard the *casus foederis* as having arisen in September, 1939, when France declared war against Germany following German invasion of Poland.

CZECHOSLOVAKIA-SOVIET UNION (1935–1938). Czechoslovakia and the Soviet Union signed (May 16, 1935) and ratified (June 9, 1935) a treaty almost identical with the one just described. However, the obligation of Czechoslovakia and of the Soviet Union to come to the assistance of one another was to come into force only when France had come to the help of the country attacked. Czechoslovakia informed the Soviet Union on October 21, 1938,

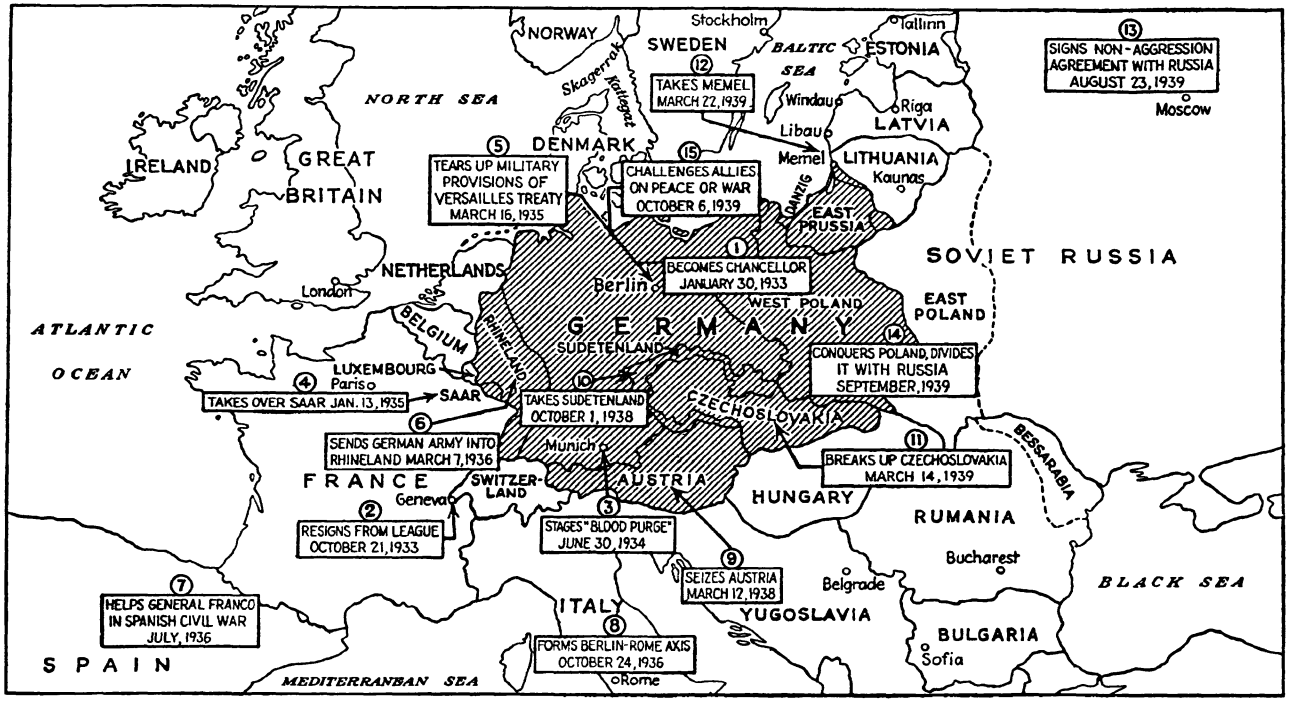
that the Czechoslavakian government was no longer interested in the alliance.

The relations between France and Italy which had been strained since 1919 became more friendly as a result of a series of agreements signed at Rome on January 7, 1935. The agreements sought to satisfy Italian aspirations in Africa by providing cession of small portions of French territory, by leaving Italy a free hand for economic exploitation of Ethiopia, and by giving Italians a share in the Addis Ababa Railway. It sought to improve relations between states on the Danube and was particularly directed at preservation of independence of Austria. The agreements contained no alliance. The underlying motive of France in making the agreements was to eliminate causes of Franco-Italian friction so as to face a rearming Germany and prevent union between Austria and Germany with Italian aid. The 1935 agreements were denounced by Italy in 1939, after France had joined in sanctions against Italy during the Ethiopian hostilities in 1935–1936, and after the formation of the Rome-Berlin axis, the annexation of Austria in 1938, and the refusal of France to grant additional African territories to Italy.

2. THE BRITISH ALLIANCES (1938–1939)

FRANCE-GREAT BRITAIN (1938–present). Great Britain in 1919 returned to a policy of nonentangling alliances on the Continent. France then built up her series of alliances with the Little Entente and with the Balkan states. After the Nazi government came to power in Germany, France followed a policy of attempting to retain the Locarno arrangement for Western Europe and of trying to facilitate the negotiation of an Easter Locarno. After a series of unilateral denunciations of the provisions of the Treaty of Versailles by Germany and withdrawal of Germany from the League, France endeavored to settle outstanding differences with Italy and negotiated the treaty of alliance with the Soviet Union.

LOCARNO OBLIGATIONS. France turned to Great Britain when Germany reoccupied the Rhineland and unilaterally repudiated the Locarno agreements (March, 1936). Great



MAP IV.—Six years of Hitler—fifteen steps in his march across Europe. To the events shown on the map should be added the invasion by Germany of Denmark and Norway on April 9, 1940, and of Belgium, Luxembourg, and The Netherlands on May 10, 1940. (*Reprinted with the permission of The New York Times from The New York Times, October* 8, 1939, *Sec.* 4, *p.* 1.)

Britain acted as a restraining influence upon France during this period and from this time onward France followed the lead of Great Britain in all major questions of foreign policy. Great Britain, after denunciation of the Locarno treaties by Germany, promised France and Belgium to come to their assistance in case of an attack by Germany. This promise was accompanied by staff conversations. However, Great Britain regarded this as a temporary obligation until a new Locarno agreement might be negotiated. Thus, Mr. Anthony Eden stated in the House of Commons on March 9, 1936:

> There is, I am thankful to say, no reason to suppose that the present German action implies a threat of hostilities. The German Government speak in their memorandum of their "unchangeable longing for real pacification of Europe" and express their willingness to conclude a non-aggression pact with France and Belgium. But in case there should be any misunderstanding about our position as a signatory of the Locarno Treaty, His Majesty's Government think it necessary to say that, should there take place, during the period which will be necessary for the consideration of the new situation which has arisen, any actual attack upon France or Belgium, which would constitute a violation of Article 2 of Locarno, His Majesty's Government in the United Kingdom, notwithstanding the German repudiation of the treaty, would regard themselves as in honour bound to come, in the manner provided in the treaty, to the assistance of the country attacked.

Negotiations among the Locarno treaty parties, other than Germany, resulted in a declaration by Belgium, France, Great Britain, and Italy on March 19, 1936 that

> . . . nothing that has happened before or since the said breach of that treaty of Locarno can be considered as having freed the signatories of that treaty from any of their obligations or guarantees and that the latter subsist in their entirety; Undertake forthwith to instruct their General Staffs to enter into contact with a view to arranging the technical conditions in which the obligations which are binding upon them should be carried out in case of unprovoked aggression.

Letters of assurance were given by Great Britain and Italy to Belgium and France. On March 26, Mr. Eden, before the House of Commons, described this British obligation as follows:

> The undertaking is strictly limited and it is clearly defined. The staff conversations are only for the purpose of obligations under the Locarno

Treaty. They are purely technical conversations. They can in no measure increase our political obligations. We shall ask, and indeed insist, that some such paragraph as this shall be the understanding upon which those conversations take place. "It is understood that this contract does not imply any political undertaking or any obligation as regards defense organization between the two parties."

Two years later, however, France and Great Britain formed an alliance.

THE ALLIANCE. At a conference in London on April 28–29, 1938, this alliance was completed. Agreement was reached on naval, military, and aerial cooperation, to be in time of war under a common French military command of armies and under a common British naval command, as soon as either party is attacked. A plan for joint purchases of supplies was made, Great Britain to provide loans, and France to accumulate war supplies by purchases from Czechoslovakia, Rumania, Hungary, and Yugoslavia.

COORDINATION OF POLICIES. In order to get this alliance it was necessary for France to meet British desires as to policy in Europe, including first, a settlement of Franco-Italian differences and a recognition by France of annexation of Ethiopia by Italy; second, cooperation in bringing to a speedy close the Spanish civil war by French action to make the closing of the French-Spanish frontier effective; and third, pressure upon Czechoslovakia to accept mediation which might solve the discontent of the Sudeten minority population in that country. This alliance was followed by official visits of the British monarchs to France in the summer of 1938 and of the president of France to Great Britain in the autumn. The alliance of April 29 was completed a few weeks after the German annexation of Austria, during the first stages of the Sudeten crisis in Czechoslovakia. It followed closely upon the British-Italian agreements of April 16, 1938, which were not to become effective until after withdrawal of Italian troops from Spain, and which came into force in May, 1939. The alliance preceded by a few days the visit of Chancellor Hitler to Italy in May, 1938, returning the visit of Premier Mussolini to Berlin in October, 1937. The British desire that France should come to an agreement with Italy, recognize Ethi-

opian annexation, and close the Spanish frontier is to be understood as a means of appeasement of Italy and with the purpose of discouraging a closer union of Germany and Italy in a military alliance. The recent annexation by Germany of Austria without prior consultation with Italy, it was then hoped, might have weakened the axis.

GREAT BRITAIN-POLAND (1939). Following the events in Czechoslovakia of March, 1939, Great Britain altered her previous policy of accepting commitments only in Western Europe. On March 31, the Prime Minister made the following statement in the House of Commons:

> As the House is aware, certain consultations are now proceeding with other governments. In order to make perfectly clear the position of His Majesty's Government, in the meantime, before those consultations are concluded, I now have to inform the House that during that period, in the event of any action which clearly threatened Polish independence and which the Polish Government accordingly considered it vital to resist with their national forces, His Majesty's Government would feel themselves bound at once to lend the Polish Government all support in their power.
>
> They have given the Polish Government an assurance to this effect.
>
> I may add that the French Government have authorized me to make it plain that they stand in the same position in this matter as do His Majesty's Government.

On April 6 it was announced that Poland had given a reciprocal pledge and that

> Like the temporary assurance the permanent agreement would not be directed against any other country but would be designed to assure Great Britain and Poland of mutual assistance in the event of any threat, direct or indirect, to the independence of either. It was recognized that certain matters, including a more precise definition of various ways in which necessity for such assistance might arise, would require further examination before a permanent agreement could be completed.

In answer to a question whether the British-Polish alliance was in the form of a treaty it was announced on April 24 that the agreement consisted of an exchange of written declarations in which each government formally promises to help the other in case of attack. The two governments considered themselves pledged as completely as if there were a treaty.

The formal treaty was signed August 25, 1939, and provides as follows:

Article 1. Should one of the contracting parties become engaged in hostilities with a European power in consequence of aggression by the latter against that contracting party, the other contracting party will at once give the contracting party engaged in hostilities all the support and assistance in its power.

Article 2. 1. The provisions of Article 1 will also apply in the event of any action by a European power which clearly threatened directly or indirectly the independence of one of the contracting parties and was of such a nature that the party in question considered it vital to resist it with its armed forces.

2. Should one of the contracting parties become engaged in hostilities with a European power in consequence of action by that power which threatened the independence or neutrality of another European State in such a way as to constitute a clear menace to the security of that contracting party, the provisions of Article 1 will apply, without prejudice, however, to the rights of the other European State concerned.

Article 3. Should a European power attempt to undermine the independence of one of the contracting parties by processes of economic penetration, or in any other way, the contracting parties will support each other in resistance to such attempts.

Should the European power concerned thereupon embark on hostilities against either of the contracting parties, the provisions of Article 1 will apply.

Article 4. The methods of applying the undertakings of mutual assistance provided for by the present agreement are established between the competent naval, military, and air authorities of the contracting parties.

Article 5. Without prejudice to the foregoing undertakings of the contracting parties to give each other mutual support and assistance immediately on the outbreak of hostilities, they will exchange complete and speedy information concerning any development that might threaten their independence, and, in particular, concerning any development that might threaten to call the said undertakings into operation.

Article 6. 1. The contracting parties will communicate to each other the terms of any undertakings of assistance against aggression which they have already given or may in future give to other States.

2. Should either of the contracting parties intend to give such an undertaking after the coming into force of the present agreement, the other contracting party shall, in order to insure the proper functioning of the agreement, be informed thereof.

3. Any new undertaking which the contracting parties may enter into in future shall neither limit their obligations under the present agreement nor indirectly create new obligations between the contracting party not participating in these undertakings and the third State concerned.

Article 7. Should the contracting parties be engaged in hostilities in consequence of the application of the present agreement, they will not conclude an armistice or treaty of peace except by mutual agreement.

The treaty was made for a term of five years and came into force upon signature.

BRITISH AND FRENCH DECLARATIONS REGARDING GREECE AND RUMANIA (1939). The occupation of Albania by Italy in the first week of April, 1939, was followed by British and French declarations that they would defend Greece and Rumania. On April 13 the Prime Minister announced in the House of Commons that

> . . . in the event of any action being taken which clearly threatens the independence of Greece and Rumania, and which the Greek or Rumanian Governments respectively consider it vital to resist with their national forces, His Majesty's government will feel themselves bound to lend at once to the Greek or Rumanian Governments, as the case might be, all the support in their power.

On the same day the French premier issued the following statement:

> The French Government has . . . given to Rumania and to Greece the particular assurance that, in the case that any action should be attempted which would clearly menace the independence of Rumania or Greece and which the Rumanian Government or the Greek Government felt it to be to its vital interests to resist with its national forces, the French Government considers itself as engaged immediately to lend all the assistance in its power.
>
> The English Government has taken the same stand.
>
> The French Government, on the other hand, has been happy over the conclusion of the reciprocal engagements of Great Britain and Poland, who had decided to give each other mutual aid to defend their independence if they are menaced directly or indirectly.
>
> The French-Polish alliance, is, furthermore, confirmed by the French Government and the Polish Government in the same spirit. France and Poland guarantee each other immediately and directly against all menace, direct or indirect, which attacks their vital interests. Today our Ambassadors are communicating this declaration to all interested governments, particularly to Turkey.

The following day (April 14) the Rumanian premier stated that

> Rumania learned with great satisfaction of the declaration in which the British Prime Minister pledged Britain's complete support of our country in case of need. With similar satisfaction Rumania received the news that France is always ready to prove her friendship. It is with satisfaction that we greet any action likely to strengthen peace, which is the aim of our policies and object of our good relations with all States.

Conversations between Poland and Rumania to strengthen the defensive alliance of 1921 were reported.

GREAT BRITAIN-TURKEY (1939). At the time of the declarations regarding Greece and Rumania, Great Britain was willing to issue a similar declaration relative to Turkey. Announcement of the Anglo-Turkish agreement was made in the House of Commons on May 12, 1939, as follows:

> It is agreed that the two countries will conclude a definite long-term agreement of reciprocal character in the interest of their national security. Pending completion of the definitive agreement His Majesty's government and the Turkish government declare that, in the event of aggression leading to war in the Mediterranean area they would be prepared to cooperate effectively and lend each other all aid and assistance in their power.

The Turkish parliament unanimously approved the agreement on the same date. Following the outbreak of war in September, 1939, negotiations continued. Signature of a treaty of alliance was delayed during a three-week period in October while the Turkish Foreign Minister was in Moscow at the request of the Soviet Union. On October 19, 1939, an alliance was formally signed between Turkey, on the one side, and Great Britain and France, on the other side. Its duration is fifteen years. The treaty provides that the three parties will assist one another if war breaks out in the eastern Mediterranean, that Turkey will assist if France and Great Britain are called upon to carry out their pledges to Greece and Rumania, and that France and Great Britain will assist Turkey in case of an attack by any European state. The treaty was apparently accompanied by the advance of a loan to Turkey of 240 million dollars to be employed in strengthening her military force.

NEGOTIATIONS FOR A BRITISH-SOVIET ALLIANCE, 1939. Negotiations between Great Britain and the Soviet Union began in April, 1939, looking toward an alliance. These negotiations continued throughout the summer. Apparently the Soviet Union wished an outright military alliance between France and Great Britain and the Soviet Union. Great Britain sought a declaration from the Soviet Union that the latter would go to the assistance of Poland,

Rumania, or the Baltic states in case they should be attacked and in case they should request Soviet assistance. In turn Great Britain would follow her pledges assumed by the British-Polish and British-Rumanian declarations. This formula was suggested, apparently, because of the reluctance of Poland and Rumania to make a treaty of alliance with the Soviet Union, in view of their fear that if the Soviet Union entered their territory to assist them the military forces might not be withdrawn in case of success. In the early weeks another factor which retarded negotiations was uncertainty among European states concerning the seriousness of British intentions of fulfilling her obligations and actually reversing the previous appeasement policy. The adoption by Great Britain of conscription which she had never before employed until after an outbreak of war, helped dispel this fear. Nevertheless, there were other obstacles. Great Britain had never been on good terms with the Soviet Union. In the Munich agreement of September 28, 1938, the Soviet Union had been shoved aside and not consulted. The Soviet Union believed that the British government had been following a policy of nonresistance to aggressions by Germany in the hope of turning Germany to adventures against Soviet territory, so as to divert Germany from colonial claims which could be paid only by France or Great Britain. Although Great Britain and the Soviet Union reached no agreement, a British and French military mission went to Moscow for staff talks. When the Soviet Union made a trade agreement, followed by a treaty of nonaggression, with Germany in August, 1939, it became clear that all chances of an alliance with the Soviet Union had disappeared. Lord Halifax, British Secretary of State for Foreign Affairs, stated in the House of Commons on December 4, 1939, that France and Great Britain had been unwilling to give the Soviet Union a free hand in the Baltic during the negotiations for an alliance.

3. THE ROME-BERLIN AXIS (1936–)

The alignment of Germany and Italy, popularly called the Rome-Berlin axis, began in 1936 and was finally

cemented into an alliance (May 22, 1939). During the Ethiopian dispute and conquest and the application of sanctions to Italy by Members of the League of Nations, Germany remained aloof. This incident, however, gave Germany an opportunity to reoccupy and to fortify the Rhineland, repudiate the Locarno Treaty, and take other steps terminating provisions of the Treaty of Versailles. The "Stresa Front" of France, Italy, and Great Britain against Germany was broken. The axis dates from October 24, 1936. After that date frequent visits were exchanged by heads of state and other high officials of the two countries. Cooperation took place first in lending of support to the revolutionary forces in Spain which contributed to the eventual success of the Franco government in 1939. The motives are variously interpreted. The opposition to communism was officially stated in the Anti-Comintern Agreement of 1936 between Germany and Japan to which Italy adhered. As the Soviet Union was supporting the Loyalist side in Spain, German and Italian intervention there was depicted as a fight against communism. From the point of view of Italy, assistance to the Franco government was a possible means of gaining extension of control in the Mediterranean, either by cession of Spanish territory or by undercover influence on the Spanish government at the western end of the Mediterranean. The civil war was also a laboratory ground for trying out modern weapons and techniques. Germany and Italy recognized the government of General Franco as early as November 18, 1936, and agents of these governments and concession hunters were able to gain export of needed raw materials in exchange for assistance to the revolutionary party.

Many observers did not take the axis seriously in the early years because they could not see that the parties possessed permanent common interests and because they believed that the parties had irreconcilable ambitions in Central and Southeastern Europe. Italy had acted in 1934 to prevent union of Austria with Germany. On July 11, 1936, Austria and Germany reached an agreement, Germany agreeing to recognize and respect Austrian independence, Austria agreeing to recognize herself as a "German"

state. This facilitated the formation of the axis, along with German recognition of Italian annexation of Ethiopia on July 25, 1936. The axis weathered several storms during 1938 and 1939.

AUSTRIA ANNEXED MARCH, 1938. Germany annexed Austria in March, 1938, apparently without prior consultation with Italy. Italy, however, retained the axis connection. This was due apparently, to a desire to continue to have assistance in promoting the Spanish revolutionary success, to a desire to have support in Mediterranean expansion, and to a recognition of the *fait accompli* which made it desirable to have a friend rather than an enemy on the northern Italian frontier. By the middle of April, however, Italy had reached an agreement with Great Britain relative to outstanding questions and had accepted the *status quo* in the Mediterranean.

CZECHOSLOVAKIA, MEMEL, ALBANIA. Italy gave diplomatic support to Germany in the dispute with Czechoslovakia over the Sudeten Germans during the summer of 1938 and at the September crisis leading to the Munich agreement. Similar support was given to Germany when the remaining portions of Czechoslovakia fell under German control in March, 1939, and when Memel was taken from Lithuania the same month. In April, 1939, Italy established a protectorate over Albania.

GERMANY-ITALY (1939). As a result of these last events Great Britain began the new policy of alliances in Eastern Europe. This was quickly followed by the negotiation of a full military alliance between Germany and Italy. It was announced at Rome following conversations on May 6 and 7, 1939, between the Foreign Ministers of the two countries that an alliance would be formed, and this was signed and came into effect on May 22, 1939.

The provisions of the treaty of May 22, 1939, are as follows:

Article 1

The contracting parties will remain in constant contact with each other in order to arrive at an understanding on all matters touching their common interests or the general European situation.

Article 2

Should the common interests of the contracting parties be endangered by international events of any sort whatsoever they will immediately enter upon consultations concerning the measures to be taken for safeguarding these interests.

Should the security or other essential interests of one of the contracting parties be threatened from the outside the other contracting partner will give the threatened party his full political and diplomatic support in order to remove this threat.

Article 3

If contrary to the wishes and hopes of the contracting parties it should happen that either of them should become involved in military entanglements with one other power or with other powers, the other contracting party will immediately rally to his side as ally and support him with all his military resources on land, at sea, and in the air.

Article 4

In order in any given case to make sure that the duties of an ally undertaken in accordance with Article 3 shall be carried out speedily, the governments of the two contracting parties will further deepen their cooperation in the realm of the military and in the realm of war economy (Kriegswirtschaft).

In a similar manner the two governments will also constantly arrive at understandings concerning other measures necessary for the practical execution of the provisions of this act.

The two governments will form standing commissions for the purposes indicated above under Articles 1 and 2. These commissions shall be under the jurisdiction of the two Foreign Ministers.

Article 5

The contracting parties obligate themselves now, in the event of war conducted jointly, to conclude an armistice and peace only in full agreement with each other.

Article 6

The two contracting parties are conscious of the importance which attaches to their common relations to powers with whom they are on terms of friendship.

They are determined in future, too, to keep up these relationships and jointly to give them a form consonant with the mutual interests that bind these powers.

Article 7

This pact becomes effective immediately from the moment of signature.

The two contracting parties are in agreement to fix the first period of its effectiveness for ten years.

They will come to an understanding in sufficient time (rechtzeitig) before expiration of this period concerning the extension of the effectiveness of the pact.

At the time of signing the treaty the Foreign Ministers of the two states gave speeches which further indicate the nature of the commitments. Italy gave Germany moral support during the invasion of Poland in September, 1939, and during the invasion of Denmark and Norway in April, 1940.

JAPAN AND THE ROME-BERLIN AXIS. This is a far-reaching alliance and goes far beyond a merely defensive alliance. The Foreign Ministers, when signing, indicated an ambition for "living room," a phrase popularized in Germany in justification of territorial expansion. Some observers regarded the treaty as sacrificing and subordinating Italian interests to those of Germany. It was presumed that Italy would support Germany in her demands on Poland. The gains foreseen for Italy were thought to be in the Balkans and in North African colonies at the expense of France. A press campaign to popularize the alliance was begun in Italy. The two states apparently expected the alliance to interfere with British negotiations for an alliance not yet completed with the Soviet Union, and to cause smaller states still on the fence to refrain from joining in the British bloc. Article 6 of the treaty was read in the light of a desire to add Japan to the Rome-Berlin axis. Apparently it had been hoped that Japan might be an original party. This hope was not fulfilled. It was known that some of the military party in Japan favored such an alliance. Other elements opposed it, however, including the navy, which would face alone the navies of the British bloc. The sudden action of the United States in April, 1939, of addressing directly the German and Italian leaders and of sending the American navy to the Pacific Ocean from the Atlantic, was interpreted as a factor dissuading the Japanese government from joining in such an alliance. The Japanese government had indicated, however, that if a British-Soviet alliance should be formed this would

affect her policy. When Germany made the treaty of nonaggression with the Soviet Union (August, 1939), Japan found it necessary to reconsider her policies. The group which had advocated an alliance with Germany in Japan was discredited and the cabinet fell.

4. COOPERATION OF GERMANY AND THE SOVIET UNION

The relations between Germany and the Soviet Union had been strained between 1933 and 1939, the whole period of office of Chancellor Hitler. The drive against communism in Germany, the negotiation of the Anti-Comintern agreement between Germany, Japan, and Italy, and the struggle in Spain had emphasized the unfriendliness between Germany and the Soviet Union. When Germany left the League of Nations, the Soviet Union entered it. Germany worked for destruction of the League, the Soviet Union was one of the most consistent supporters of collective security through the League. The Soviet Union made treaties of alliance with France and Czechoslovakia directed at Germany. Throughout this period Maxim Litvinoff was Soviet Commissar for Foreign Affairs. His sudden resignation, May 3, 1939, presaged a fundamental change in Soviet foreign policy.

While the relations between Germany and Poland were moving to a critical stage in August, Germany and the Soviet Union made a trade agreement followed on August 23 by a "non-aggression" treaty. Ratifications were exchanged on September 1, the date of German invasion of Poland. This treaty does not constitute an alliance but its importance in relation to the war of 1939 and subsequent events justifies its inclusion here. The text is as follows:

The German Reich Government and the Union of Soviet Socialist Republics, moved by a desire to strengthen the state of peace between Germany and the Union of Soviet Socialist Republics and in the spirit of the provisions of the neutrality treaty of April, 1926, between Germany and the Union of Soviet Socialist Republics, decided the following:

Article 1

The two contracting parties obligate themselves to refrain from every act of force, every aggressive action and every attack against one

another, including any single action or that taken in conjunction with other powers.

Article 2

In case one of the parties of this treaty should become the object of warlike acts by a third power, the other party will in no way support this third power.

Article 3

The governments of the two contracting parties in the future will constantly remain in consultation with one another in order to inform each other regarding questions of common interest.

Article 4

Neither of the high contracting parties will associate itself with any other grouping of powers which directly or indirectly is aimed at the other party.

Article 5

In the event of a conflict between the contracting parties concerning any question, the two parties will adjust this difference or conflict exclusively by friendly exchange of opinions or, if necessary, by an arbitration commission.

Article 6

The present treaty will extend for a period of ten years with the condition that if neither of the contracting parties announces its abrogation within one year of expiration of this period, it will continue in force automatically for another period of five years.

Article 7

The present treaty shall be ratified within the shortest possible time. The exchange of ratification documents shall take place in Berlin. The treaty becomes effective immediately upon signature.
Drawn up in two languages, German and Russian.
Moscow, 23d of August 1939.
For the German Government:
Ribbentrop.
In the name of the Government of the U.S.S.R.:
Molotoff.

It seems probable that agreement was secretly reached at this time for the partition of Poland. Whether it was necessary for Germany to consent to subsequent acts of the Soviet Union in the Baltic region as a price for the non-aggression treaty is a question that cannot be answered because of lack of evidence.

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PART SEVEN

International Disputes

CHAPTER XXII

The Pacific Settlement of International Disputes

Despite the frequency of war a relation of peace between states has come to be regarded as normal and a relation of war as abnormal. Resort to war is still legally permissible under certain circumstances, but numerous treaty obligations have been assumed by states whereby the legality of resort to war is hedged about with limitations. There are limits as to purpose; for example, war as an instrument of national policy has been renounced. There are limits as to steps which must be taken preliminary to resort to war, and with the object of avoiding it as a procedure for settling differences; for example, an obligation to submit the dispute to some pacific procedure, or to refrain from resorting to war until after the lapse of a given period of time. The attempt to substitute other procedures for recourse to war has been noteworthy during the past half century, and particularly during the past two decades.

1. DEVELOPMENT OF PACIFIC PROCEDURES

It is impossible to trace this development in minute detail. Three chief aspects of the development may be distinguished. A variety of pacific procedures has been developed on the assumption that disputes fall into different categories requiring a different type of treatment. An attempt has been made to perfect the mechanisms em-

ployed for pacific settlement of different types by providing in advance for organization and procedures. An attempt has been made to make recourse to one or more of the procedures obligatory. The trends just described may be discerned in the numerous treaties which have been made in recent years. Some of these treaties are bilateral. One state agrees with another state regarding settlement of their disputes by conciliation, inquiry and investigation, arbitration, or judicial settlement. There are literally hundreds of such treaties. Some of these treaties are multilateral. Three or more states are parties to the treaty establishing procedures for pacific settlement and each state accepts obligations toward every other state party to the treaty. Some of the more important multilateral treaties are those relative to good offices, mediation, inquiry, and arbitration of the Hague Conferences of 1899 and 1907, the Covenant of the League of Nations, Articles 11–15 and 17, the protocol and statute of the Permanent Court of International Justice, 1922, revised in 1929, various general schemes proposed as a result of study by the League of Nations, including the Geneva Protocol (1924) and the General Act (1928).

Several treaties have been adopted at successive Pan-American conferences, including among others: a Convention for the Establishment of International Commissions of Inquiry (1923), a Treaty to Avoid or Prevent Conflicts between the American States (1923), a General Convention of Inter-American Conciliation (1929), and a General Treaty of Inter-American Arbitration (1929). At the Inter-American Conference for the Maintenance of Peace, held at Buenos Aires in 1936, a number of treaties and conventions were signed which dealt with maintenance, preservation, and reestablishment of peace; the prevention of controversies; good offices and mediation; and the coordination, extension, and assurance of fulfillment of existing treaties on pacific settlement of disputes.

2. DIPLOMATIC NEGOTIATIONS

Diplomatic negotiations are employed to settle the great majority of disputes which arise between states. In fact

the diplomat spends most of his time in gaining agreements which will avoid disputes or in dealing with matters before a dispute of serious proportions shall have arisen. An agreement settling a dispute may be reached by a process of bargaining in which each disputing party makes concessions and compromises or by the victory of one party and the relinquishment by the other party of its position or demands. Numerous factors affect the negotiations. A matter regarded by one or both parties as vital causes difficulty in solution. The relative power of the disputing parties sometimes determines the victory of one side and the defeat of the other because back of the demands may stand the suggestion or the threat of more forcible measures. On the other hand, most states do not rely upon threats but upon negotiations to settle disputes. The dispute may be primarily over questions of fact, or questions of law, and in many cases the desire to follow lawful procedure determines the ultimate conduct of the state. Again, a state though having more power than another must calculate its position in view of its whole policy. It is obviously wise to recede from strict legal right or to make concessions with reference to the dispute for some larger gain, such as a desired amicable relation with the disputing party. As the number of parties to a dispute increases there are usually an increasing number of considerations to be taken into account in the negotiations. The use of force may be dangerous or expensive in view of the risks involved or in view of the solution possible of attainment without compulsion. Furthermore, a single state may be involved at the same time in several disputes with different parties and to that extent its freedom of action is limited.

3. GOOD OFFICES

A procedure to facilitate diplomatic negotiations is the tender of good offices. When diplomatic negotiations between the parties appear to have reached an impasse, or when diplomatic relations have been broken, the disputing parties occasionally avail themselves of the tender of good offices by a third state external to the dispute. A tender of good offices is the proffer by a third state of assistance to

disputing states in continuing or resuming negotiations between the parties with a view to a solution of a controversy. The proffer and the acceptance of a tender of good offices are legally entirely optional for the parties involved. The third state has no obligation to tender good offices and the disputing parties have no obligation, in the absence of treaty, to accept them and any one may withdraw at any time from this procedure. Good offices serve to patch the broken diplomatic machinery by making it possible for disputing states to resume conversations through the intermediary of a third state. The third state refrains from entering the merits of the dispute.

USEFULNESS OF THE PROCEDURE. The procedure, while very simple, has great value in the pacific settlement of some disputes. It enables states to withdraw from an untenable or dangerous position without loss of prestige or "face." States are frequently sensitive about their honor, their prestige, and their self-respect, and this is notably true when they become engaged in a dispute. Consequently, even if a state desires a resumption of negotiations, it may feel unable to take the initiative for fear that this will be interpreted as an admission of weakness or of an admission of fault in the premises of the dispute. If a third state takes the initiative, neither disputing party is put in such a position. As long as negotiations continue, pacific settlement remains a possibility and violent settlement is kept psychologically more remote. Later events may facilitate a solution by bringing new factors into the picture. If new complications arise, diplomatic procedure is available to handle them so that they may not further aggravate the dispute. Besides, the fact that the parties are not bound to accept a third-party settlement makes it easier for them to accept this procedure than to accept arbitration or judicial settlement.

LIMITATIONS. There are obvious limits to the usefulness of good offices. While a tender of good offices is recognized by the Hague conventions as a friendly act, nevertheless a third state may well hesitate to proffer good offices because rejection seems certain, or one or more parties may be suspicious of the motives of the third state, or they

may resent being placed in a situation where they must openly refuse acceptance. Then, too, good offices shift easily into mediation, a procedure in which the third party offers advice on the merits of the dispute or suggests a formula for solution of the controversy. One or more disputing parties may desire to avoid this. If a state has already taken an adamant position in the dispute and contemplates measures of compulsion to gain its ends, good offices will either be refused or accepted with the object of playing for time or of giving the appearance of desire for pacific settlement in order to render its international position more tenable.

4. MEDIATION

Mediation is a procedure in which a third state participates in the negotiations for settlement of a dispute between states. As in the case of tender of good offices, the adoption of mediation depends upon the consent of all parties to the dispute and the third party or parties chosen as mediators. Any party may take the initiative of seeking mediation. Any party may withdraw from mediation during its operation. The offer of mediation cannot be regarded as unfriendly. Mediation has the same value and the same limits of usefulness as do good offices.

DISTINCTION BETWEEN GOOD OFFICES AND MEDIATION. The chief point of distinction between the two is that in the case of good offices the third party is merely an organ of communication, whereas in the case of mediation the third party attempts to supply a solution of the dispute by making suggestions regarding the substance of the settlement. The mediator attempts to conciliate the parties and persuade them to reach agreement. Usually it is necessary for success of mediation that the disputing parties should trust the impartiality and fairness of the mediating state.

Mediation may precede a rupture of diplomatic relations, or it may follow the rupture, and it may be employed after opening of hostilities or the declaration of war. Mediation attempted during hostilities may pave the way for peace, but the function of the mediator is difficult because dis-

puting states are likely to make demands commensurate with their success at arms.

MEDIATION TO END WARS. During the war of 1914–1918 offers of mediation were made to the contending parties by the Pope and by President Woodrow Wilson but they were refused. The offer of good offices by President Theodore Roosevelt during the war between Japan and Russia in 1905 was accepted and later turned into mediation, and the United States participated in the negotiation of the Treaty of Portsmouth (1906) closing the war. During the summer of 1938, Great Britain attempted through the Runciman mission to Czechoslovakia to deal with the problem of Sudeten German-speaking minorities, and later acted with France and Italy as mediator between Czechoslovakia and Germany at Munich in September. A projected offer of mediation by Germany to China and Japan in 1938 was withheld, apparently because it was determined beforehand that mediation would be refused. Offers of mediation were not made during the first two months of the war between Germany, on the one side, and France, Great Britain, and Poland on the other side (1939). An offer by the Queen of the Netherlands and the King of Belgium was refused by France, Germany, and Great Britain.

5. INQUIRY

A specialized procedure available for dealing with disputes is inquiry. The purpose of inquiry is to ascertain and clarify the facts involved in a dispute when there is disagreement or uncertainty as to them. In the case of some disputes the mere elucidation of facts by some trustworthy person or body may facilitate solution of a controversy. The proposal to establish machinery in the form of commissions of inquiry was made at the Hague Conference of 1899. The proposal was made by the Anglo-American states and is based upon the analogy of the jury system employed for determining facts, leaving questions of law to the judge.

EXAMPLE. The successful use of a commission of inquiry in the Dogger Banks incident of 1904 showed the

utility of this procedure in facilitating the solution of a serious dispute between Great Powers. Russia was at war with Japan. Great Britain had a treaty of alliance with Japan, but at the time of the incident was neutral. A Russian squadron was sailing through the North Sea en route to the scene of conflict in Asia. During the night the Russian squadron, erroneously believing it was about to be attacked by Japanese vessels, fired at vessels in the North Sea. The vessels were not Japanese warships but British fishing vessels. Several ships were sunk and several fishermen were killed. Strong feeling arose in Great Britain where the attack was interpreted as an intentionally hostile attack upon defenseless and harmless fishing folk. Upon the suggestion of France a commission of inquiry was formed which consisted of high naval officers of five states. The commission heard testimony and made a report of the facts, recommending that compensation be paid by Russia for the acts which, though not intended as an attack, were a serious error upon the part of the naval commander. As soon as the facts were made known, the incident was explained in a completely new light. Russia paid promptly the compensation recommended by the commission and the dispute was settled amicably.

6. ARBITRATION

Arbitration is a method of settling a dispute by submission to a judge chosen by the parties in dispute. It results in an award which is binding upon the parties. Arbitration was employed occasionally in very early times, frequently by the Greek city-states, and extensively in the Middle Ages. Modern arbitration dates from 1794, date of the Jay Treaty between Great Britain and the United States, but it is particularly since 1870 that arbitration has been employed extensively. The obligation to arbitrate is contained sometimes in an arbitral clause of a treaty, sometimes in a separate arbitration treaty providing for submission of future disputes to arbitration. Nevertheless, it is usually necessary for the disputing parties to negotiate after a specific dispute arises, a *compromis* or special agreement which provides for (1) the constitution of the

arbitral tribunal, (2) the procedure to be followed in arguing the case, and (3) the rules and principles to be applied by the tribunal in determining the award.

ARBITRATORS. The arbitrator may be a state, a head of state, an individual person, or a group of individuals. During the Middle Ages and frequently during the nineteenth century disputing states employed as arbitrator the Pope or the head of state of some state, such as the senate of Hamburg or the king of Italy. The Hague Convention of 1899 provided for a tribunal to be composed of individual persons, two to be selected by each disputing party and a fifth to be chosen jointly, or failing that, by some other method to assure an uneven number on the tribunal.

HAGUE TRIBUNALS. The Hague Permanent Court of Arbitration (1899) is not a body of jurists continuously sitting as a court, but a list or a panel of names of persons nominated by governments, from whom disputing parties may select arbitrators of a dispute. States are not limited in their choice to these nominees, however. Arbitration by Hague tribunals was employed frequently during the period 1902–1914. In some of the Hague arbitral awards the chief questions were matters of treaty interpretation, while in other awards important questions of international law were raised and decided. In all disputes submitted the awards were carried out by the parties. In several cases the disputes were serious in the sense that important interests were involved and that considerable ill feeling had been aroused within the countries engaged in dispute. In the period since 1914 the Hague arbitration tribunals have been employed occasionally.

ARBITRATION AND JUDICIAL SETTLEMENT. The nature of arbitration is sometimes debated. Some emphasize that the distinctive feature of arbitration is the choice of judges by the disputing parties, whereas the distinctive feature of judicial settlement is a body of permanent judges not chosen by the disputing parties. Others find this difference: that arbitration is primarily a method of settlement of disputes, and while the award is to be made "on the basis of respect for law," the arbitrators apply the rules and principles provided in the special agreement, which may or

may not be rules of international law. Furthermore, arbitrators are not always limited strictly to determining existing legal rights but may be empowered to go further and to lay down new rules or alter the rules which shall be followed by the parties in the future. Some believe that judicial settlement is by definition the determination of legal rights under existing law and that a judicial body cannot in that capacity make compromises of conflicting interests or make new rules to be binding on the parties in the future.

ADVANTAGES OF ARBITRATION. As a procedure for pacific settlement of disputes arbitration has a number of advantages as compared with good offices, mediation, or inquiry. The parties cannot withdraw from the proceedings and are legally bound to abide by the arbitral award. This gives greater assurance of eventual pacific settlement, as contrasted with the other methods already considered in which the disputing or third parties may disrupt the proceedings at any time and are not bound to carry out suggestions or recommendations. Another is that it may be employed to combine respect for law with compromise eventuating in modification of law. Thus a state may be willing to accept a modification of its legal rights after having a third-party determination of the legal rights; while the other disputing state may be willing to have a third-party determination of its legal obligations provided that it is assured of a modification of them. The *compromis* submitting a dispute to arbitration may authorize this.

LIMITATIONS OF USEFULNESS. The limitations of arbitration as a pacific means of settling disputes have been suggested above. The persons sometimes chosen as arbitrators have had little knowledge of legal science, and if diplomats they have been distrusted as judges because their training and experience have caused them to think in terms of negotiation and compromise rather than in terms of legal rights. Arbitration normally requires negotiation of a special agreement defining the scope of arbitration, and the parties are frequently unable to agree on the terms of the agreement. The knowledge that an arbitral

award is legally binding is a deterrent to use of arbitration by states opposed to third-party judgment especially in the case of a dispute over a matter regarded as vital.

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CHAPTER XXIII

Judicial Settlement

During the last quarter of the nineteenth century there was an increasing interest in the creation of a permanent international judicial tribunal. The increasing use of arbitration by states encouraged the hope that a permanent court might be created to consist of a bench of judges always available for deciding the issues of disputes according to law. It was believed that if a permanent body of judges trained in the law was at all times available, states would be encouraged to resort to judicial settlement. The uncertainty as to the probable composition of an arbitral tribunal, chosen by disputing parties, and the feeling that diplomats sometimes chosen as arbitrators were unfitted for a judicial treatment of a dispute, led to a desire for a truly judicial body.

1. ATTEMPTS TO CREATE A COURT

The first official attempts to establish such a court failed for various reasons. An important reason was that many states lacked enthusiasm for a third-party judicial settlement and preferred to depend upon their diplomacy or *ad hoc* bodies. The close of the nineteenth century and the opening of the twentieth was a period of intense imperialistic rivalry and competition in armament, and two great opposing alliances of states. A second reason for failure resulted from the demand by most states that each one should have the power to choose one judge on the tribunal. To admit this demand would lead to creation of a bench

with some thirty, forty, or fifty judges. It was thought that such a large court could not function as a judicial body. Attempts to find a compromise, such as a system by which judges would be chosen for a term of years by states, in rotation, failed of acceptance.

2. THE PERMANENT COURT OF INTERNATIONAL JUSTICE

Some of the plans for a League of Nations included proposals for judicial settlement. Some of the leading statesmen at the Conference of Versailles (1918–1919) supported the idea, while others minimized the importance of a court and gave chief emphasis to conciliation and collective sanctions as methods of dealing with disputes. The Covenant provides in Article 14 that the Council of the League should prepare a plan for a court, and indicates the general jurisdiction of the court. At the Conference of Versailles some advocated compulsory jurisdiction for the court in specified cases, while others opposed such a provision for fear that the League itself would fail to gain members if linked with a court having compulsory jurisdiction. The second group prevailed. The jurisdiction of the court, according to the Covenant, extended only to the cases which states agreed to submit to the court. However, the Council and the Assembly were empowered to request advisory opinions of the court. An advisory opinion is not legally binding upon states, whereas a judgment or decision of the court is binding upon the states which have granted jurisdiction of the dispute to the court.

Court Created by Treaty. The Council entrusted to a committee of experts the task of drawing up preliminary plans for a court, and used the committee's report as the basis of the court. States which desired membership in the Court became parties to a treaty (protocol) which establishes the Court. Attached to the protocol is a statute which provides for the composition, organization, jurisdiction, and procedure of the Court.

Nomination and Election of Judges. The Court consists of fifteen permanent judges and is assisted in its administrative work by a registrar and a bureau. The

judges are not chosen as representatives of states. Existing international machinery is used to nominate and to elect the judges. Nominations are made by the national groups appointed by states as arbitrators for the old Hague Permanent Court of Arbitration (1907). The list of nominations made by the various national groups is presented by the Secretary-General of the League to the Council and Assembly of the League which act as electoral bodies for selecting judges of the Court. The nominees who have the largest number of votes in both Council and Assembly are elected, provided that the nominee has at least a simple majority of votes in each body. If all vacancies are not filled at the first balloting, a second ballot is taken after eliminating the names standing lowest on the first ballots. Provisions are made to assure an election of judges in case of a deadlock between the Council and Assembly, but it has never been necessary to operate under these provisions. In addition to the fifteen permanent judges, there may be as many as two additional judges chosen to sit with the Court. When a state is a party to a case before the Court, and the Court contains no judge having the nationality of such state, the state has the right to appoint a judge *ad hoc* to sit with the permanent judges in the consideration of that case.

TERM, SALARY, QUALIFICATIONS. The term of judges is nine years and all judges are normally elected at the same time. In case of a vacancy, a new judge is nominated and elected to fill the unexpired term. Judges receive a salary of approximately $20,000 per year which cannot be reduced during the term of office. The judge chosen by his colleagues to be president of the Court receives an additional allowance. Judges are required to reside at The Hague, the seat of the Court, and they may not engage in any other occupations while judges. The statute requires that judges shall be of high moral character and possess "the qualifications required in their respective countries for appointment to the highest judicial offices," or that they are "jurisconsults of recognised competence in international law." The statute also provides that the body of judges as a whole shall "represent the main forms of civilization and the

principal legal systems of the world." The judges of the Court have in practice conformed to the required standards. Four American citizens have served as judges on this Court: John Bassett Moore, Charles Evans Hughes, Frank B. Kellogg, and Manley O. Hudson.

ADVISORY OPINIONS AND JUDGMENTS. The Court is empowered to give advisory opinions and to render decisions or judgments. Only the Council and the Assembly have the power to request an advisory opinion. In practice it is only the Council which has requested advisory opinions. The Council usually shows no reluctance to request such an opinion if a Member represented on the Council asks that it should be done. There has never been a binding decision on the question of the majority required on the Council in order that an advisory opinion may be sought because in all past cases unanimity of the Council was attained. The Court renders judgments in cases submitted to it by the states which are permitted to bring questions before the Court. The Court is open to all Members of the League and to the states mentioned in the annex to the Covenant, some of whom, for example the United States, have not become Members of the League. It is also open to other states on condition that they accept the jurisdiction of the Court and promise to fulfill its decisions in good faith.

JURISDICTION OF COURT: CONTENTIOUS CASES. The jurisdiction of the Court to render judgments depends upon the granting of jurisdiction by the parties to the dispute. It was proposed, at the time of creation of the Court, that jurisdiction should be compulsory for certain categories of questions. The proposal was not adopted, for fear that to insert such a provision would discourage states from supporting the Court. The consent of states to the jurisdiction of the Court may be indicated in a number of different ways. (1) The parties to the dispute may negotiate a *compromis* or special agreement defining the issues of a particular dispute and granting the Court power of judgment. Eleven cases have been submitted to the Court by special agreement. (2) The parties to a treaty may provide by a clause in the treaty that the Court shall have jurisdiction in case of future questions relative to the

interpretation or application of that particular treaty, in which case no special agreement is required; and the parties to a treaty providing for pacific settlement of disputes may provide for ultimate reference of certain types of questions to the Court. More than 550 treaties, some of them multipartite, conferred jurisdiction on the Court on June 15, 1939. (3) States which so desire may accept in whole or in part, and with or without limitations, the "Optional Clause." If two states have accepted the Optional Clause, the Court is said to have compulsory jurisdiction over the disputes comprised under the clause, and proceedings before the Court may be instituted by one state against the opposition of another state. The provisions of the Optional Clause follow:

Art. 36 of the Statute: The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

On June 15, 1939, this clause was binding on thirty-nine states. Fifty-four states signed the Optional Clause by this date. Twenty-six signed subject to ratification and ratified, seven signed subject to ratification but did not ratify, and twenty-one signed without condition but of these three failed to ratify the Statute. In addition two states accepted compulsory jurisdiction under a resolution of the Council of May 17, 1922. Six of the acceptances expired by June 15, 1939, and Austria disappeared.

THE LAW APPLIED BY THE COURT. Article 38 of the statute provides that the Court "shall apply: 1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States; 2. International custom, as evidence of a general practice accepted as law; 3. The general principles of law recognized by civilized nations; 4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

TABLE VI.—PARTIES TO CONTENTIOUS CASES BEFORE THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1922 TO JUNE 15, 1939[1]

Name of party	Plaintiff in a case	Defendant in a case	Total number of parties to cases, as plaintiff or defendant
1. Belgium	5	1	6
2. Brazil	1		1
3. Bulgaria	1	2	3
4. China		1	1
5. Czechoslovakia	4		4
6. Denmark	3	1	4
7. Estonia	1		1
8. France	7	2	9
9. Germany	7	2	9
10. Great Britain	3	3	6
11. Greece	3	3	6
12. Hungary	1	3	4
13. Italy	4		4
14. Japan	2		2
15. Lithuania		2	2
16. Netherlands	1		1
17. Norway	1	2	3
18. Poland	1	7	8
19. Spain		1	1
20. Sweden	1	1	2
21. Switzerland	1	1	2
22. Turkey		2	2
23. Yugoslavia		3	3
Totals	47	37	

[1] This tabulation is based upon the synopsis of cases contained in *Publications of the Permanent Court of International Justice*, Series E, No. 15, pp. 34, 42–44, 1939.

WORK OF THE COURT, 1922–1939. Twenty-three different states were parties to contentious cases during the period 1922 to June 15, 1939. Some states were parties in numerous cases; for example, France and Germany nine times and Poland eight times. See Table VI. Nineteen of the states which have been parties are European, three Asiatic, and one South American. Five of the Great Powers have been parties, two of these only as plaintiffs, three as both plaintiffs and defendants. The total number of plaintiffs is greater than the total number of defendants because in several cases two or more states have jointly brought action against another state.

During this period the Court rendered thirty-one judgments and twenty-eight orders having the force of a judg-

TABLE VII.—WORK OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1922 TO JUNE 15, 1939, SHOWING CHRONOLOGICALLY THE NUMBER OF JUDGMENTS, ORDERS HAVING THE FORCE OF JUDGMENTS, AND ADVISORY OPINIONS OF THE COURT[1]

Year	Number of judgments	Number of orders	Number of advisory opinions	Total number of judgments, orders, and advisory opinions
1922			3	3
1923	1		5	6
1924	2		1	3
1925	3		3	6
1926	1		1	2
1927	4	3	1	8
1928	2	3	2	7
1929	3	5		8
1930		1	2	3
1931			4	4
1932	3	2	7	12
1933	2	9		11
1934	2			2
1935			2	2
1936	2	3		5
1937	2			2
1938	1	2		3
1939	3			3
Totals.	31	28	31	90

[1] This tabulation is based upon the synopsis of cases contained in *Publications of the Permanent Court of International Justice*, Series E, No. 15, pp. 65–82, 1939.

ment. See Table VII. Twenty-six cases came before the Court upon the request of one disputing party; of these, nine were brought under the Optional Clause, two under Article 60 of the Court statute which provides for interpretation by the Court of its previous judgments, and sixteen under various treaties, including the Treaty of Versailles, treaties relating to Memel, minorities, mandates, reparations, and bilateral treaties on pacific settlement of disputes.

NATURE OF QUESTIONS INVOLVED IN JUDGMENTS AND ORDERS. An analysis of the cases shows that several involved questions of territorial rights: (1) the conflicting claims of Denmark and Norway to eastern and to southeastern Greenland, (2) the dispute between Belgium and The Netherlands relative to use of the waters of the Meuse River, (3) a dispute involving seven states relative to the territorial jurisdiction of the International Commission of the Oder River, and (4) a dispute between France and Switzerland relative to the customs regime of France in Upper Savoy and Gex. Some of the cases arose as a result of alterations of boundaries at the close of the war of 1914–1918 and concerned the obligations of the new possessors of the territory; for example, the question of Poland's rights and duties in territories formerly belonging to Germany, and the obligation of Great Britain, as mandatory for Palestine, with respect to contracts made before the war. Several cases interpreted the obligations of states toward minorities within their boundaries. Several cases related to the interpretation of "international constitutional law." In the case of the International Labor Organization, for example, cases arose concerning membership in the organization, the competence of the conference in drafting conventions, and the method to be employed by governments in choosing delegates to the conferences. In one case it was necessary to interpret paragraph 7 of Article 15 of the Covenant; in another the statute of the autonomous city of Memel; in another the rights of Poland in the Free City of Danzig. The problem of defining the scope of powers of tribunals arose in appeals from the awards of a Czechoslovak-Hungarian Mixed Arbitral Tribunal.[1]

[1] See, for a short synopsis of the judgments and orders, the most recent vol-

ADVISORY OPINIONS. Requests for advisory opinions are made in writing, signed by the president of the Assembly or the president of the Council or by the Secretary-General under instructions of the Assembly or of the Council. No authoritative decision has been given whether a simple majority or unanimity of vote is required in the Assembly or Council to request an advisory opinion of the Court. In practice all requests have been made by the Council and by unanimity. While the opinions are advisory only, they are similar to judgments in that the Court has before it the written and oral arguments of interested states and follows essentially the same procedure in dealing with the dispute and in writing the opinion. In practice all advisory opinions have been accepted by the states affected by the opinion. In some instances the parties have settled a dispute by negotiation following clarification of their legal rights in the advisory opinion. Most of the advisory opinions involved interpretation of provisions of treaties, but some of them were of considerable importance. Furthermore, the Court has frequently made statements concerning general principles of international law in connection with interpretation of particular treaty provisions.

WORK OF THE COURT, 1922–1939: ADVISORY OPINIONS. Between 1922 and 1935 the Court gave thirty-one advisory

TABLE VIII.—WORK OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1922 TO JUNE 15, 1939, SHOWING THE STATES INTERESTED IN ADVISORY OPINIONS AND THE NUMBER OF INSTANCES

1. Albania	1	9. Germany	5	17. Poland	10
2. Austria	1	10. Great Britain	6	18. Portugal	1
3. Bulgaria	2	11. Greece	4	19. Rumania	1
4. Czechoslovakia	2	12. Haiti	1	20. Sweden	3
5. Danzig	6	13. Hungary	1	21. Turkey	3
6. Estonia	1	14. Italy	3	22. U.S.S.R.	1
7. Finland	1	15. Lithuania	1	23. Yugoslavia	1
8. France	5	16. Netherlands	1		

opinions, since which period no requests for opinions have been made. Twenty-three different states have appeared

ume of *Publications of the Permanent Court of International Justice*, Series E, published annually.

before the Court with an interest in the advisory opinions. Some states were interested in numerous opinions; for example, Poland in ten instances, Danzig and Great Britain in six instances. See Table VIII. As in the case of judgments the European states were most frequently interested in the opinions. Besides states, certain public and private international organizations were interested in the opinions; for example, the International Labor Organization.

3. THE ROLE OF THE PERMANENT COURT

THE SUPERIORITY OF THE COURT AS A TRIBUNAL. What is the place of the Permanent Court in the general scheme of pacific settlement of international disputes? (1) The Court has gained the confidence of great numbers of states as an impartial, skilled tribunal in the application of international law. The method of selection of judges, the long tenure of office, and the high caliber of the judges, along with the painstaking and impartial consideration of cases, are factors which have contributed to the prestige of the Court. As a result, the Court is more attractive to states than *ad hoc* arbitral tribunals for cases in which both parties desire a strictly legal decision. One of the difficulties of arbitration has been the uncertainty as to membership on the tribunal, when each party selects the judges, with the result that a state having a strong legal case may hesitate to submit a question to a tribunal some of whose members may be persons not particularly qualified in legal questions. The membership of judges on the Court is known in advance, and the competence of the judges is well established. Furthermore, there is a greater possibility of predicting the attitude of the Court than of an *ad hoc* tribunal toward a disputed question, since the Court has continuity and has definitely tended to follow in later cases principles laid down in earlier cases, whereas in the case of an *ad hoc* tribunal there is greater uncertainty. (2) The Court has restated, clarified, and developed certain principles of international law. The result has been to narrow the range of controversy between states as to their rights and duties, so that a judgment of the Court in one

case may facilitate settlement of later similar disputes. This development or clarification of international law may produce in the future a greater willingness on the part of states to submit to compulsory jurisdiction of the Court. States have been reluctant in the past to agree to compulsory jurisdiction when a dispute might involve application of vague or controversial rules of international law.

EXTENT TO WHICH SERIOUS CONFLICTS ARE SOLVED BY COURT. Were the issues before the Court of relatively minor importance, from the point of view of pacific settlement of disputes? It is often said by persons holding the belief that competition and conflict are inevitable in international relations, that the questions submitted to arbitration or judicial settlement are not the crucial questions which would have led to force or armed conflict. This statement is at best a half-truth and at worst an error. It is a half-truth in this sense: if states are willing to refer a question to a judicial tribunal it means that they are to that extent law-abiding and that they have reached a decision not to have recourse to political means to attain their ends in the particular matter. However, the critics of judicial settlement as a means of settling serious controversies seem to imply that the questions submitted are of relatively little vital importance to the parties. In some of the cases arising before the Court this is true. However, in a considerable number of cases the issues involved were quite important: for example, a conflicting claim to territory (Norway-Denmark and eastern Greenland), a serious restriction upon the exercise of rights over a portion of territory (France-Switzerland Free Zones case, the Allied Powers-Germany Kiel Canal case, and Netherlands-Belgium, waters of the Meuse River). Conflicts between states rarely arise out of a single issue. An accumulation of grievances on both sides, never satisfactorily settled, tends to embitter relations between states and to cause both parties to interpret acts of the other in an unfriendly and prejudiced fashion. Prompt settlement of grievances relative to minority rights, to rights of Poland in Danzig, and to rights of nationals in cases of state succession, helped to eliminate embittering factors in the relations of

states and thus tended to eliminate an ultimate armed collision. On the other hand, it is true that there are serious international disputes for which a tribunal applying existing international law and treaties is inadequate. For example, if a state wishes release from a treaty obligation which is in force, a tribunal cannot give it satisfaction for the reason that the law at present provides no rule for this release except by consent of the parties to the treaty, and the tribunal cannot compel this consent. Again, a state may desire additional rights that have no basis in either existing law or treaty and which may be acquired only by violence. International law applied by a tribunal cannot satisfy the desires of an imperialistic state which desires to annex the territory of another member of the family of nations. States may follow commercial or financial policies harmful to other states, but since international law leaves the state free in such matters to adopt the policy it prefers, a controversy arising in this field cannot be solved by an application of an existing principle or rule of law. At the present time these controversies remain unsettled or are settled by diplomatic negotiations, or by conciliation, or by arbitration, or by war. An alternative which cannot in any early foreseeable future be put into effect is, of course, the adoption of general rules of international law which would narrow the liberty of action of states for the benefit of the community as a whole.

Suggested Readings

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II. *Documents*

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CHAPTER XXIV

Pacific Settlement of Disputes by League Action

In the preceding chapter a short survey has been made of the various methods developed for the pacific settlement of international disputes, together with the machinery which is employed for this purpose. It seems desirable to treat here the scheme of pacific settlement provided in the Covenant of the League of Nations and to examine how this scheme has operated in practice. The Covenant provides its scheme of pacific settlement in Articles 11–15.

1. THE OBLIGATION TO SUBMIT DISPUTES TO PACIFIC SETTLEMENT

ARTICLE 12 OF THE COVENANT. Article 12 provides that

> The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council. In any case under this Article, the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

If this article is fulfilled there is assurance that some kind of pacific settlement will be employed. In other words an obligation to submit to some compulsory third-party decision all types of disputes is assumed by Members of

the League. This is a great advance over the situation generally obtaining in the prewar period because states bind themselves in advance to submit all disputes whatsoever to some kind of treatment by third parties when diplomacy fails. It is true that states had by bilateral treaties occasionally agreed to submit particular categories of disputes to particular procedures; for example, submission of all disputes to inquiry, or disputes of certain categories to arbitration. Article 12, however, closes the gaps which earlier existed, and in addition makes the principle applicable to relations between all Member states, whereas bilateral treaties were often limited to only certain pairs of states. The provision that Members should not in any case resort to war until three months after an award, decision, or report was also progressive, in the sense that it prolonged the period during which an attempt might be made to employ pacific means, and that resort to some pacific procedure was made a condition precedent to legal resort to war. Prior to this, no such obligation of delay in resorting to war was made applicable to all disputes by the bilateral treaties which existed. The idea of a cooling-off period had been incorporated in the Bryan treaties in connection with conciliation procedure, but it had not gained wide acceptance and was applicable in only a limited number of types of disputes.

2. ARBITRATION AND JUDICIAL SETTLEMENT

ARTICLE 13 OF THE COVENANT. Which of the three procedures is to be employed in a specific case, and who shall decide this question? These questions are answered by paragraph 1 of Article 13 which provides that

> . . . The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration or judicial settlement.

It is thus for the parties to the dispute to decide whether they will employ one or the other of these two methods. Parties are not bound by the Covenant to submit any particular category of disputes for settlement by a particu-

lar method, but are merely advised by paragraph 2 of Article 13 that

> 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 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.

While Members of the League are not bound to submit disputes of this nature to arbitration or judicial settlement, it should be noted that a considerable number of them have done so under a separate agreement, the Optional Clause. It has been seen that submission to arbitration or judicial settlement entails under international law an obligation to accept the award or decision and this is reaffirmed by the provision of paragraph 4 that "The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, . . . " It goes beyond existing law when it continues "and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto." The Council is left discretion in determining the proposals which it may make.

Choice of a Tribunal Left to Parties. Even if the parties agree to submit the dispute to one of these two procedures, the Covenant does not restrict them to a particular tribunal. Paragraph 3 of Article 13 provides that

> For the consideration of any such dispute the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

3. INQUIRY BY THE COUNCIL OR THE ASSEMBLY

Submission to Council or Assembly. If a dispute likely to lead to a rupture is not submitted to one of the two procedures above, the disputing parties must submit

it to the Council. The Council, or one of the disputing parties, may cause the dispute to be submitted to the Assembly (paragraphs 1 and 9, Article 15). The Covenant outlines the procedure to be followed by the parties in such a case as follows: Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof (paragraph 1). "For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof" (paragraph 2). The action which should or may be taken by the Council are outlined in general terms; first, in case of success in settlement of the dispute, second in case of failure. By paragraph 3, "The Council shall endeavor to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate." In case of failure to secure settlement of a dispute, several possible contingencies arise, and additional provisions indicate what should be done in each contingency. In any such case, by paragraph 4, "If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto." In case the Council is unanimous, except for one or more disputing parties, Members of the League will not go to war with the party complying with the recommendations of the report; while with less unanimity in the Council, Members of the League "reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice." The only instance in which the Council is directed not to make recommendations under Article 15, is by paragraph 8, when "the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by

international law is solely within the domestic jurisdiction of that party. . . . "

SUBMISSION TO ASSEMBLY. While disputes under Article 15 go first to the Council, they may be transferred to the Assembly. Paragraph 9 provides that "The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council." The Assembly has the same powers as the Council under Articles 12 and 15. However, if all members of the Council excepting disputing parties agree, and if a majority of the Assembly agree on a report, Members will not go to war with a party to the dispute which complies with the recommendation (paragraph 10).

SCOPE OF ARTICLE 11. Articles 12–15 apply to a dispute "likely to lead to a rupture," and Members agree to resort to arbitration, judicial settlement, or inquiry by the Council. On the other hand, Article 11 makes war or threat of war a matter of concern to the League, and "the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council." Any Member, and not merely a disputing party, may thus bring a matter before the Council. Furthermore, by paragraph 2, "It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." Thus Article 11 comprehends almost any conceivable type of dispute or difference, while Articles 12–15 are somewhat more narrow in scope because applying to a dispute likely to lead to a rupture.

INVOCATION OF ARTICLES FOR PACIFIC SETTLEMENT. Of the disputes brought before the Council, the vast majority have been brought, at least in the early stage, under Article 11. The Council is not bound by the Covenant to any

rigid line of action, but is left discretion to take "any action that may be deemed wise and effectual to safeguard the peace of nations." The success of the Council in gaining a cessation of hostilities and of persuading the disputing parties to reach a settlement during the first decade of the League was impressive. In the view of many trained observers the techniques employed by the Council were being developed to such a point that successful conciliation of disputes was regarded as normal, if not indeed, as inevitable. Consequently, it was thought that cases arising under Article 15 would be rare, that cases in which the Council could not conciliate the parties under Article 15 would be even more rare, and that the real effectiveness of Article 16 was due to the improbability that there would ever be occasion to bring it into operation. This view is now untenable, of course, in view of events since 1931.

4. REASONS FOR EARLY SUCCESS OF THE COUNCIL

A number of reasons explain the early success of the Council. (1) The various treaties of peace had placed the victors in a position of both legal and practical dominance over the defeated states. Many questions left unsettled at the peace conferences were by the treaties entrusted to the decision of bodies completely independent of the League, such as the Conference of Ambassadors, the Reparations Commission, or various mixed arbitral tribunals. Consequently, the defeated states did not even attempt to bring before the League Council matters over which they felt grievances. Germany did not become a Member of the League until 1926, and meanwhile regarded the League as merely a hypocritical scheme for enforcement of the Treaty of Versailles. Consequently, many disputes and grievances were not brought before the Council. (2) Most of the disputes brought before the Council during this period involved small or weak states. They were subject to the influence of Great Powers and to the neutral opinion of smaller states on the Council which were discouraging to recalcitrant conduct. Thus they were more amenable to conciliation and compromise. Furthermore, small states

usually can expect to gain more by peaceful means than by force and war when they are taking isolated action, unsupported by Great Powers. (3) In the case of disputes involving a Great Power and a smaller state, the Great Powers frequently welcomed pacific settlement, because they felt that they had a strong legal position in the controversy, or because they preferred pacific settlement to force or war, even at the cost of some compromise. (4) Finally, the methods employed by the Council were intelligent and efficient in preventing or stopping hostilities, in reducing tension, in soothing exacerbated feelings, and in proposing statesmanlike solutions of the controversies. The Secretary-General and the Council perfected procedure so that a dispute could be brought before the Council with great rapidity so that measures might be taken to prevent adding oil to the flames. States were in a position where automatic submission of disputes to conciliation took place as soon as diplomatic negotiations had failed, because either a disputing party or a third party on the Council might bring it to the attention of the Council under Article 11 and did so. This fact made the position of governments of disputing parties more comfortable. Instead of regarding the dispute as a question of prestige and nobody else's business, which might be the attitude of nationalistic sentiment at home, the government could take the position that it was merely carrying out in good faith its obligations under the Covenant by submitting the dispute to conciliation by third parties. Furthermore, the representative of a disputing state might have acted in the past or might act in the future as a neutral third-party conciliator of disputes between other Members of the League.

Cooperation of Council and Assembly under Article 15. In a number of instances, efforts under Article 11 being unsuccessful, a disputing party has invoked Article 15. In some of these instances appeal has been made first to the Council, and the dispute has been subsequently referred to the Assembly. The instances are the Sino-Japanese conflicts (Manchuria and North China), the dispute and war between Bolivia and Paraguay (El Chaco), the Italo-Ethiopian dispute, and the hostilities between

Finland and the Soviet Union. An instance in which the Council has acted under Article 15 without subsequent reference of the dispute to the Assembly is the one between Colombia and Peru (Leticia).

PROCEDURE AND METHODS EMPLOYED BY COUNCIL. The Council may employ various methods when dealing with disputes which arise under Article 11. A report was approved by the Council and Assembly in 1927 which outlines the possible measures which may be taken by the Council. This report was based upon the practice of the Council in dealing with previous disputes under Article 11. It distinguishes between the two different types of disputes covered in paragraphs 1 and 2 of Article 11. The recommendations for the cases in which there is no threat of war or the dispute is not acute follow:

(*a*) The Council will consider the question at a meeting, to be called specially if necessary, to which the contending parties could be summoned.

(*b*) The Council can request an organization, or even a private individual, appointed by it to exercise conciliatory action on the parties.

(*c*) The Council may also suggest that the dispute be referred to arbitration or judicial settlement, in accordance with the provisions of Article XIII of the Covenant.

(*d*) If there is a doubt as to the facts of the dispute, a League Commission may be sent to the *locus in quo* to ascertain what has actually happened or is likely to happen. It is understood that such a Commission cannot go to the territory of either party without the consent of the State to which that territory belongs.

(*e*) If for the accomplishment of its task, the Council deems it necessary, it can, in certain appropriate cases, ask for an advisory opinion from the Permanent Court, or else, in certain special circumstances, from a Committee of Jurists appointed by it.

The recommendations for the cases in which there is an imminent threat of war are as follows:

(*a*) Everything shall be done to ensure that the Council meets with the greatest promptitude. In this connexion the Committee refers to the recommendations which it made in its previous report on these questions.

(*b*) Even before the Council meets it is desirable that the Acting President should send telegraphic appeals to the parties to the dispute to refrain forthwith from any hostile acts. The nature of this appeal will necessarily vary with the circumstances of each case.

If, owing to exceptional circumstances, the Secretary-General considered that the Acting President was not in a position to act, he might request the ex-President most recently in the office who is available to take this step in the name of the Council.

(*c*) As soon as the Council meets, it will no doubt verbally urge on the representatives of the nations in dispute the great importance of avoiding a breach of the peace.

(*d*) Further, the Council may take such steps to see that the *status quo ante* is not disturbed in such manner as to aggravate or extend the dispute and thus to compromise the pacific settlement thereof. For this purpose it may indicate to the parties any movements of troops, mobilization operations, and other similar measures from which it recommends them to abstain. Similar measures of an industrial, economic, or financial nature may also be recommended. The Council may request the parties to notify their agreement on these points within the shortest possible space of time, the length of which will, if necessary, be fixed by the Council.

The details of these measures, and even their nature, obviously depend upon the whole of the circumstances of the dispute. It should be mentioned that, in certain cases with which it has had to deal, the Council fixed a neutral zone on either side, from which the parties to the dispute were called upon to withdraw their troops.

(*e*) In order to satisfy itself on the way in which these measures have been carried out and to keep itself informed of the course of events, the Council may think it desirable to send representatives to the locality of the dispute. The Secretary-General, duly authorized by the Council, would keep lists of experts—political, economic, military, etc.—on the basis of lists supplied by States Members of the League and of applications for employment submitted direct to him. These lists, classified according to categories, would be held by the Secretary-General at the disposal of the Council, which in case of crisis would thus have names of suitable experts before it. The Council may also have recourse in this connexion to diplomatic personages stationed in the neighborhood who belong to States not parties to the dispute.

(*f*) Should any of the parties to the dispute disregard the advice or recommendations of the Council, the Council will consider the measures to be taken. It may manifest its formal disapproval. It may also recommend to its members to withdraw all their diplomatic representatives accredited to the State in question, or certain categories of them. It may also recommend other measures of a more serious character.

(*g*) If the State in default still persists in its hostile preparations or action, further warning measures may be taken such as a naval demonstration. Naval demonstrations have been employed for such a purpose in the past. It is possible that air demonstrations might within reasonable limits be employed. Other measures may be found suitable according to the circumstances of the case.

Most disputes have arisen first under Article 11, and the Council has been successful in the majority of them in

obtaining a settlement. In some, however, one of the disputing parties has requested action under Article 15 as soon as efforts under Article 11 fail of success.

5. SUMMARY OF DISPUTES

Some forty disputes have been brought before the Council during the twenty years of its existence. It is impossible to deal with all of these in detail.[1] The history of the activity of the League in this field is valuable chiefly for the light which it throws upon the problem in the future. At present a few generalizations about the disputes should suffice. Summarizing these, it is seen that (1) in questions which do not involve armed clashes, the parties occasionally withdraw the dispute from the Council and settle it in an agreement by diplomatic negotiations. In some disputes of this type the Council has facilitated the attainment of agreement.

(2) The Council frequently avails itself of specialized agencies for facilitating settlement of a controversy. If the dispute involves a legal question it may be referred to a commission of jurists or to the Permanent Court of International Justice for an advisory opinion. After decision on the legal points, the parties are usually able to terminate the dispute by diplomatic negotiations, but the Council remains available to conciliate in settlement of the dispute. The Council has employed commissions of inquiry in a number of disputes, especially those where there has been a frontier clash, an invasion, or use of armed force, in order to elucidate the facts in a complicated situation when the parties disagree concerning the facts. The Council has encouraged the use of special agencies for attempting to conciliate the differences if these exist and the parties are willing to employ them. Examples are the use of a subcommittee of American states in the case of the Chaco War and of a conciliation and arbitration commission in the Ethiopian dispute with Italy.

(3) In the great majority of instances disputes have been brought before the Council or Assembly first under paragraph 4 of Article 4 or under Article 11, and most of the

[1] See Chart VI.

CHART VI.—SYNOPSIS OF DISPUTES BROUGHT BEFORE THE LEAGUE OF NATIONS, 1920–1939[1]

Subject of dispute	Parties involved	Party submitting dispute, and the articles of the Covenant invoked	Means employed in attempting settlement
1. Soviet bombardment of Persian (Iranian) port, 1920	Persia	Persia 10–11 May 19, 1920	Direct method; cessation of hostilities
2. Status of the Aland Islands	Soviet Union Finland Sweden	Great Britain 11, par. 2 June 19, 1920	Commission of jurists, commission of inquiry
3. Seizure of Vilna	Poland Lithuania	Poland 11 Sept. 5, 1920	Peace commission; cessation of hostilities
4. Frontier clash	Panama Costa Rica	Panama Mar. 3, 1921	Direct method; cessation of hostilities
5. Invasion of the Albanian frontier	Albania Yugoslavia	Albania 11 June 15, 1921 Great Britain 11 Nov. 7, 1921	Commission of inquiry, direct method; cessation of hostilities
6. Partitioning of Upper Silesia	Germany Poland	Supreme Council of the Allies 11, par. 2 Aug. 3, 1921	Committee of the Council
7. Soviet violation of autonomy in Eastern Carelia	Finland Soviet Union	Finland, Latvia, Esthonia, Poland and Lithuania 11, par. 2; and 17 Jan. 13, 1922	Advisory opinion of the Permanent Court of International Justice
8. Frontier delimitation	Austria Hungary	Conference of ambassadors requests award June 2, 1922	Direct method
9. Frontier incursions	Rumania, Greece, Yugoslavia *v.* Bulgaria	Bulgaria 11, par. 2 June 17, 1922	Direct method
10. Nationality decrees in Tunis and Morocco	France Great Britain	Great Britain 15, par. 1 Aug. 2, 1922	Advisory opinion of the Permanent Court
11. Property of Hungarian optants	Hungary Rumania	Hungary 11, par. 2 Mar. 15, 1923	Direct method
12. Frontier at Jaworzina	Poland Czechoslovakia	Conference of ambassadors 11, par. 2	Advisory opinion of the Permanent Court
13. Murder of frontier commissioner and bombardment of Corfu	Greece Italy	Greece 12, 15 Sept. 1, 1923	Direct method
14. Administration of Memel	Allied Powers and Lithuania	Conference of ambassadors 11 Sept. 25, 1923	Commission of inquiry
15. Frontier delimitation for Irak	Great Britain Turkey	Great Britain 11, par. 2 Oct. 27, 1924	Commission of inquiry, advisory opinion, peace commission

CHART VI.—SYNOPSIS OF DISPUTES BROUGHT BEFORE THE LEAGUE OF NATIONS, 1920–1939.[1]—(*Continued*)

Subject of dispute	Parties involved	Party submitting dispute, and the articles of the Covenant invoked	Means employed in attempting settlement
16. Frontier delimitation (St. Naoum)	Albania Yugoslavia	Conference of ambassadors June 5, 1924	Advisory opinion of the Permanent Court
17. Exchange of nationals	Greece Turkey	Greece 11 Oct., 1924	Advisory opinion of the Permanent Court
18. Expulsion of the Oecumenical Patriarch	Greece Turkey	Greece 11, par. 2 Feb. 2, 1925	Bilateral negotiations
19. Invasion of frontiers	Greece Bulgaria	Bulgaria 10, 11 Oct. 22, 1925	Direct intervention; cessation of hostilities; Commission of inquiry
20. Frontier (Maritza)	Greece Turkey	Greece 11, 14 Nov. 24, 1926	Committee of jurists
21. Agreement between Great Britain and Italy concerning waters of Ethiopia	Ethiopia *v.* Great Britain, Italy	Ethiopia 10 June 19, 1926	Correspondence with the Secretary-General
22. Frontier	Poland Lithuania	Lithuania 11 Oct. 15, 1927	Military commission
23. Property of Hungarian optants	Hungary Rumania	Rumania 11, par. 2 March, 1927	Direct method
24. Albanian minorities	Albania Greece	Albania 11 June, 1928	Direct method
25. Frontier (Chaco)	Bolivia Paraguay	Council 4, par. 4 December, 1928	Direct intervention; cessation of hostilities
26. Finnish vessels employed by Great Britain during war	Finland Great Britain	Council 4, par. 4 July 30, 1931	Dropped
27. Japanese occupation of Manchuria	China Japan	China 11 Sept. 21, 1931 10, 15 Jan. 29, 1932	Commission of inquiry (Lytton), Report of Assembly under 15, par. 4
28. Rights of the Anglo-Persian Oil Company	Great Britain Iran	Great Britain 4, par. 4 Dec. 14, 1932	Direct negotiations
29. Frontier invasion (Leticia)	Colombia Peru	Colombia 15 Feb. 17, 1933	Report of Council under 15, administrative commission
30. Frontier incidents	Hungary Yugoslavia	Hungary 4, par. 4 May 12, 1934	Direct negotiations
31. Assassination of the king of Yugoslavia at Marseille	Yugoslavia Czechoslovakia, Rumania, Hungary	Yugoslavia 11, par. 2 Nov. 22, 1934	Inquiry by Hungary

CHART VI.—SYNOPSIS OF DISPUTES BROUGHT BEFORE THE LEAGUE OF NATIONS, 1920–1939.[1]—(*Concluded*)

Subject of dispute	Parties involved	Party submitting dispute, and the articles of the Covenant invoked	Means employed in attempting settlement
32. War of the Chaco Boreal	Bolivia, Paraguay	4, par. 4 Council committee, March 8, 1933 11 Bolivia 15 May 31, 1934	Commission of inquiry; armistice Assembly advisory committee of twenty-two; Subcommittee of American states; Assembly Report under 15, par. 4 Dec., 1934; embargo on arms to Paraguay; settlement by American states
33. Rearmament of Germany	France, Germany	France 11, par. 2 Mar. 20, 1935	Council resolution that Germany had violated obligations, dropped
34. Invasion of Ethiopia	Italy, Ethiopia	Ethiopia 11, par. 2 Jan. 15, 1935 Ethiopia 15 Mar. 17, 1935	Conciliation and arbitration award, Sept. 3, 1935; Council committee of five, Council committee of thirteen, Council committee of six Council and Assembly find Italy violated Art. 16, sanctions imposed
35. Frontier delimitation	Iran, Iraq	Iraq 11, par. 2 Dec. 5, 1934	Direct negotiations
36. Frontier delimitation (Burma)	Great Britain, India, China	4, par. 4 June 8, 1935	Appointment of president of mixed commission
37. Breach of diplomatic relations	Soviet Union Paraguay	Soviet Union 11, par. 2	Dropped
38. Occupation by Germany of the Rhineland	France Belgium Germany	France Belgium March 8, 1936	Council resolution that Germany had violated treaty of Versailles and treaty of Locarno
39. Intervention of Germany and Italy in the internal affairs of Spain		Spain 11 Nov. 27, 1936	Consideration by Council and Assembly; commission on volunteers
40. Japanese hostilities in China	China Japan	China 10, 11, 17 Sept. 12, 1937	Far East Advisory Committee of Assembly: report condemns aerial bombardment of open towns; declares Japan has violated Nine-Power Treaty and Pact of Paris; recommends support of China by Members of League
41. Events in Czechoslovakia 1939	Letter from Edouard Benes, former president of Czechoslovakia, May 13, 1939, to Secretary-General	"Fundamental Articles of the Covenant"	Council referred letter to Assembly
42. Events in Albania 1939	Letter from Zog I, king of Albania, Apr. 9, 1939, to Secretary-General	Protest against Italian violence and disappearance of Albanian independence	Council referred letter to Assembly
43. Soviet invasion of Finland	Finland Soviet Union	Finland 10, 11, 15 Dec. 2, 1939 16	Council and Assembly, resolutions condemning Soviet violations of Covenant; expulsion of Soviet Union from membership, Dec. 14, 1939

[1] The synopsis is based upon T. P. Conwell-Evans, *The League Council in Action*, Oxford, Clarendon Press, 1929, pp. 278–281, for the years 1920–1928, and for following years on various publications of the League of Nations. A brief summary of the more recent disputes is given in *Essential Facts About the League of Nations*, published annually.

disputes successfully settled have been handled under these articles.

(4) Seven disputes have been dealt with under Article 15.[1] In the case of the dispute between France and Great Britain relative to nationality decrees in Tunis and Morocco, it was unnecessary to make a report under the article. An advisory opinion was followed by negotiations between the two parties. In the Corfu incident, the Council practically resigned its functions to other parties. In the Manchurian dispute a report was made under paragraph 4, which was not accepted by Japan. In the Leticia dispute both parties, Colombia and Peru, accepted the report and the League facilitated settlement by sending an administrative commission to the area in dispute. In the instance of the Chaco War between Bolivia and Paraguay, the report under Article 15 was not accepted by Paraguay, an embargo on arms and munitions was applied to Paraguay, and eventually peace was restored by a non-League body. The report under Article 15 in the case of the dispute between Ethiopia and Italy was followed by application of sanctions to Italy under Article 16. The report under Article 15 in the case of the Soviet invasion of Finland was followed by expulsion of the Soviet Union from the League and a resolution calling for support of Finland by League Members. In each instance the dispute has been submitted to the Council first; subsequently to the Assembly.

(5) In two cases Article 17, relating to a dispute between a Member and a non-Member of the League, has been invoked. In the early instance of alleged violation of the autonomy of Eastern Carelia by the Soviet Union the Council sought an advisory opinion of the Permanent Court. The Court did not give the opinion because it lacked jurisdiction due to refusal of the Soviet Union to consent. In the later instance of the invasion of China by Japan in 1937. Japan refused to accept obligations under the Covenant. The report of the Council and Assembly stated that Japan had violated various international treaties and urged assistance by League Members to China.[2]

[1] *See* Chart VI, Nos. 10, 13, 27, 29, 32, 34, and 43.

[2] *See* Chart VI, Nos. 7 and 40.

6. SERIOUS DISPUTES NOT SUBMITTED TO THE LEAGUE

In recent years some of the most important disputes have not been referred to the League. Thus, Austria took no action to bring before the League the demands made upon her by Germany; and the events leading to annexation transpired without even a formal communication to the Secretary-General. Austria relied upon attempts to gain, directly through diplomatic negotiations, assistance from those states most likely to assist her and did not turn to the League. Czechoslovakia did not bring before the League the situation produced by the Sudeten crisis, but depended upon her alliances and upon the mediation of Great Britain and France. Similarly, in the Czechoslovakian crisis of February, 1939, Czechoslovakia made no appeal to the League and dealt directly with Germany. The same is true of Albania, when Italy made unacceptable demands, whose refusal led to invasion and establishment of a protectorate. Poland had agreed with Germany in 1934 to negotiate directly in settlement of disputes and, when Germany made demands in March of 1939 for annexation of Danzig and for rights to build a road across Poland, Poland dealt directly with her ally, France, and made an alliance with Great Britain. There has been no attempt to deal with the matter through the League. In these instances, a Great Power which is a non-Member of the League has made threats and has taken action against small or weak Members of the League which have violated the independence or have even terminated the existence of Members, yet the state attacked has not relied upon the League. The exceptions are the appeals of China against Japan in 1937 and following, and of Finland against the Soviet Union in 1939.

WHY SERIOUS DISPUTES HAVE NOT BEEN SUBMITTED TO THE LEAGUE. Among the reasons which explain this are the following: (1) The failure to stop Italy by sanctions and the weakening of the League produced by this failure caused small states in the League to lose faith in the ability of the League to protect their rights. (2) Knowing that

their safety depends upon assistance from the Great Powers remaining in the League, they deal directly with France, Great Britain, or the Soviet Union. The policy of France has been dictated in recent years by Great Britain, and the policy of Great Britain during this period was to reach agreement with Germany and Italy through negotiations intended to "appease" those states and to avoid war at almost any cost. With the beginning of the Spanish Civil War and the establishment of the Non-Intervention Committee, the most crucial disputes have been taken out of the hands of the League and have been handled either through *ad hoc* bodies or through bilateral diplomatic negotiations. (3) The Great Powers which have left the League are Germany, Italy, Japan, and the Soviet Union. Their opposition to the League and to League methods of dealing with disputes has been made clear. Consequently, when a weak state finds itself in a dispute with them, it refrains from bringing the question before the League until an attack has been made, because invocation of the League Covenant would be regarded as a provocation by these Great Powers and would merely hinder any possible diplomatic settlement. When Japan was requested, under Article 17, to submit her dispute with China to the League, she refused and chose to indicate her displeasure by terminating her technical cooperation with League organs which had been continued after her withdrawal from the League in 1933.

CONTINUED FUNCTION OF THE LEAGUE IN SETTLING DISPUTES BETWEEN MEMBERS. Nevertheless, the League continues to serve a useful purpose in handling disputes between Members. It must be remembered, when measuring the value of an organization in settling disputes, that each case of settlement is an accomplishment. It is true that other organs than the League may be employed with success; but it is also true that the League is potentially more successful than other methods because (1) the Members are bound in advance to employ it, (2) the speed of action of the Council permits consideration of a dispute before it has reached serious proportions, and if the parties actually desire avoidance of force and war the Council has available

procedures for calming the situation, protecting the interests of the state after an armed clash, and determining disputed facts, and (3) a disputing party is assured an impartiality of action which is less certain in *ad hoc* bodies, The experience gained in the settlement of disputes by League action in the past two decades will probably form the basis for any new schemes for pacific settlement by an association of states at the close of the present war in Europe.

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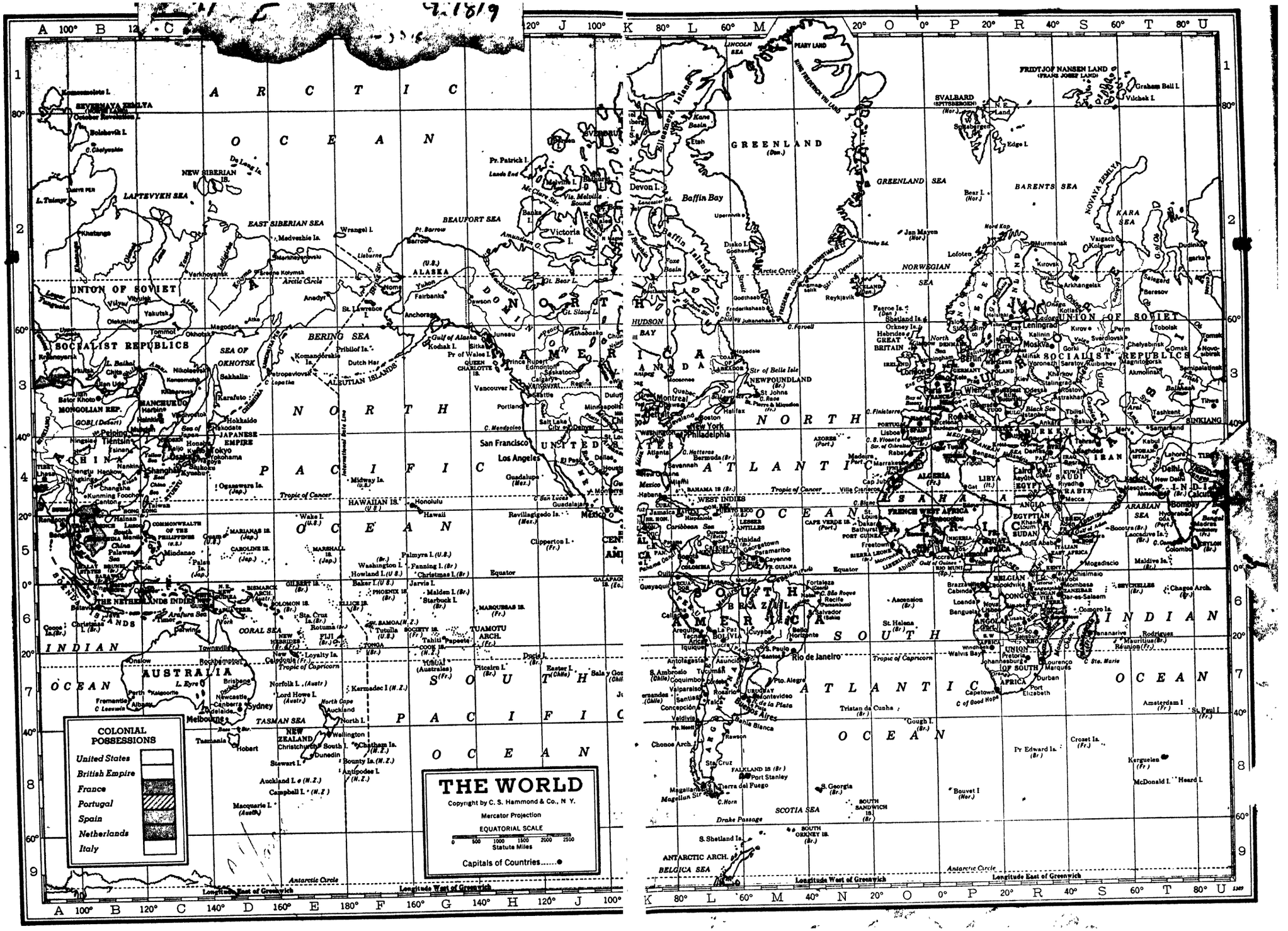
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Mercator Projection
EQUATORIAL SCALE
0 500 1000 1500 2000 2500
Statute Miles
Capitals of Countries.....
ARCTIC OCEAN
PACIFIC OCEAN
ATLANTIC OCEAN
INDIAN OCEAN
SOUTHERN OCEAN
UNION OF SOVIET SOCIALIST REPUBLICS
CHINA
INDIA
AUSTRALIA
SOUTH AMERICA
NORTH AMERICA
AFRICA
GREENLAND
ANTARCTIC ARCH.
Longitude West of Greenwich
Longitude East of Greenwich
Antarctic Circle
Arctic Circle
Tropic of Cancer
Tropic of Capricorn
Equator