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A GUIDE TO DIPLOMATIC PRACTICE

How should you govern
any kingdom
That know not how to use
ambassadors?

SHAKESPEARE, *King Henry*
the Sixth, Part 3, Act IV,
Scene III.

A Guide to
DIPLOMATIC PRACTICE

By the late
Rt. Hon. SIR ERNEST SATOW
G.C.M.G., LL.D., D.C.L.
FORMERLY ENVOY EXTRAORDINARY
AND MINISTER PLENIPOTENTIARY

Fourth Edition

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HEAD OF THE TREATY DEPARTMENT OF
THE FOREIGN OFFICE, 1935–1938; MINISTER
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OF THE NETHERLANDS
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PREFACE TO FOURTH EDITION

THE last edition of this work was published in 1932, a year which might well be described as the end of a chapter, if not of a whole volume. It could also be called, perhaps more relevantly, the end of the pre-Hitler era, for with the advent of Hitler the usually accepted " practice of diplomacy " received some rude blows from which, in some respects, it has never recovered. The present editor is not qualified to assess the extent to which the parentage of some of the habits observable today should rightly be attributed to the diplomatic brutalities of the Hitler regime, but undoubtedly there has been a growing tendency, since 1933, to supersede the professional diplomat by the creature of the local ideology and to substitute for the discreet exchange of notes tendentious press conferences and abuse over the air. Whatever the disadvantages of so-called secret diplomacy may have been, can it be claimed that the airing of national dislikes and prejudices in uncontrolled language, whether at the United Nations or over the radio, is less likely to lead to international friction? I will put another question : can those practices rightly be called " diplomacy "? To these there can surely be only one answer. At any rate, for the purposes of this volume, I am assuming that it is negative : those who are contemplating, or have already embarked upon, a diplomatic career can see all too clearly from the daily press with what, in those respects, they will have to contend, and in any case " guidance " as to the methods of dealing with this type of non-diplomacy, if I may coin a word, cannot be prescribed : the response can only be framed in the light of the circumstances and the authority dealing with them.

One of my principal aims in preparing this new edition of " Satow " has been to remain entirely objective, and, being here on the fringe of abandoning it, it is advisable that I should change the subject and turn to a short explanation of the scheme to which I have endeavoured to work. A major question has been what to retain and what to omit. I have had to remember that this work has a great historical interest and therefore that students in general who come new to the book would lose much of real

value if the original author's excerpts from history were omitted, while those who, like myself, have turned to " Satow " as a source of entertainment as well as instruction, would be disappointed if they failed to find in the new edition some of their old friends. Therefore I have decided to leave uncut a quantity of material which some might consider irrelevant today to the " practice of diplomacy ". On the other hand, to retain the chapters on the League of Nations and add to them the essential information about the United Nations Organisation and its offshoots would have resulted in an expansion of the book beyond all reasonable limits. The chapters on the League of Nations have therefore been replaced by what I hope may prove both useful and instructive sections on the United Nations Organisation, its Specialised Agencies, etc.

The chapters on the British Commonwealth and on International meetings and Transactions have been entirely rewritten. The regulations for entry into Her Majesty's Foreign Service have been brought up to date and an outline is given of the organisation of its various classes. Amongst other important revisions are the passages concerning the privileges and immunities of diplomats in Great Britain and in certain foreign countries. Every endeavour has been made to ensure that all this information (appertaining to the present day) is accurate, but, with the world in its present state of flux, it is impossible to guarantee that no changes will take place between writing and publication.

Indeed, a " Guide to Diplomatic Practice " today, so quickly do new diplomatic situations develop, could really only be kept up to date if it were possible to bring out a monthly, if not a weekly, supplement. What are left of the old canons of diplomacy are continuously subject to change, both deliberate and unconscious. Increasing questioning and criticism in parliament and press ; a growing tendency for Ministers dealing with foreign affairs to travel about the world and take into their own hands consultations which a few decades back could, and would, have been conducted by the heads of the diplomatic missions concerned ; the vastly increased speed and facility of communication between the Foreign Office and Her Majesty's Missions abroad ; the growing habit of parliamentary and other groups of paying visits to foreign countries—all these tend to undermine the confidence and independence of members of the Foreign Service and in some cases to usurp, in favour of the activities of an amateur hotel and travel agency, time and money formerly, and more usefully, devoted by

members of Her Majesty's Embassies, Legations and Consulates to the cultivation of local contacts.

In spite of this, perhaps over-gloomy, appreciation, much remains to which the old rules apply, and, at the risk of repeating here what appears in the main body of this work, I would say that the member of a foreign service who possesses a ready wit and a sense of proportion, tact, and honesty of behaviour ; who is loyal to his country, to his chiefs and, equally important, to his subordinates ; who is careful of his written work and of his outward appearance ; can still perform valuable service for his country in one of the most interesting and rewarding professions in the world.

NEVILE BLAND

London, 1956

PREFACE TO THIRD EDITION

THE late Sir Ernest Satow, who died on August 26, 1929, published his *Guide to Diplomatic Practice* in 1917. To its preparation he brought legal qualifications of a high order, an extensive knowledge of the writings of earlier authorities, and the experience of a long and distinguished career in His Majesty's Diplomatic Service. In an editorial introduction to the first edition the late Professor Oppenheim said that the intention was to produce a work that would be of service alike to the international lawyer, the diplomatist and the student of history, and remarked that it was unique with regard to its method of treatment of the subject, as well as the selection of the topics discussed and in the amount of original research which it embodied. The work deservedly attained a high reputation, and its widespread circulation led to the issue of a further edition in 1922.

Since the date of the original publication many changes and developments have occurred. Some matters of former importance have receded into the background ; others have arisen demanding inclusion in a work of this kind. In preparing a third edition considerable revision has been found necessary. The long lists of congresses and conferences, dating from 1648, which were set out in the former edition have been replaced by a chapter descriptive in general of such assemblies, supplemented by outstanding instances of the numerous conferences held within recent years. Similarly, events of an earlier epoch which were narrated in the chapters on good offices and mediation have been omitted, these subjects being included with others in a series of chapters on the League of Nations. The chapters on diplomatic immunities have been largely extended, prominence being given to the views of modern writers and the decisions of courts of law in various countries. The chapters on treaties and other international compacts have also undergone revision, former instances being replaced by others more recent ; while a chapter has been added on the British Commonwealth of Nations. But in essential respects the historical outline and substance of the original work are preserved, though often summarised, and sometimes amplified

by the inclusion of new matter. It has been possible thus to bring the present edition within the compass of a single volume of convenient size for reference, and it is hoped that in this revised form (which has necessitated the renumbering of the paragraphs) it will continue to serve the useful purposes which the late Sir Ernest Satow had in mind at the time of his original publication.

The editor desires to express his grateful acknowledgment of the help given by Mr. Stephen Gaselee, Librarian and Keeper of the Papers at the Foreign Office, at whose request the work was undertaken, and by former colleagues and friends who have contributed to the revision with suggestions and information. Whilst access has been permitted to official records, it must be understood that the work is entirely unofficial, and that the views expressed in the course of it are not necessarily those of the British Government.

LONDON,
April 1929

ACKNOWLEDGEMENTS

So much of the new material in this edition has been contributed by so many people that to attempt to mention them all by name would extend this preface to undue length ; but special thanks must be offered to Sir Gerald Fitzmaurice, K.C.M.G., Legal Adviser of the Foreign Office and his staff for their work on Books III and IV, not least to Mr. David Johnson, who has also undertaken some of the proof-reading ; likewise to Mr. H. Ward, O.B.E., Treaty and Nationality Department of the Foreign Office ; to Sir Charles Dixon, K.C.M.G., O.B.E., formerly Assistant Under Secretary of State, Dominions Office, who revised the chapter on " The British Commonwealth of Nations " ; to Sir Edgar Light, K.C.V.O., C.M.G., O.B.E., of the Protocol Department of the Foreign Office (who must, however, bear some of the responsibility for the selection of myself as editor of the edition) for much valuable help and encouragement in matters on which he is an expert, as well as to other members of that Department ; to Mr. E. J. Passant, C.M.G., lately Librarian, and to Mr. C. H. Fone, M.B.E., Deputy Librarian of the Foreign Office ; and to those other former colleagues, at home and abroad, who have generously responded to my calls for help, but who will, I hope, forgive me if I do not mention them individually. So many changes have taken place since the 1932 edition that this revision would have been impossible without the expert assistance of members of the Foreign Service and I tender to them and all others who have contributed to it my most grateful acknowledgements.

Amongst the " all others " I cannot omit the names of His Excellency Dr. Carl Schurmann, Ambassador in the Netherlands Foreign Service, Major-General Sir Julian Gascoigne, K.C.V.O., C.B., D.S.O., lately G.O.C. London District, and Sir John Heaton-Armstrong, M.V.O., Chester Herald.

Finally I must repeat my predecessor's warning that this work is not official and Her Majesty's Government are in no way responsible for any of its contents.

N. B.

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BOOK I

DIPLOMACY IN GENERAL

CHAPTER I

DIPLOMACY

§ 1. DIPLOMACY is the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with vassal states; or, more briefly still, the conduct of business between states by peaceful means.

Other definitions are:

"La diplomatie est l'expression par laquelle on désigne, depuis un certain nombre d'années, la science des rapports extérieurs laquelle a pour base les *diplômes* ou actes écrits émanés des souverains" (Flassan). "La science des relations extérieures ou affaires étrangères des États, et, dans un sens plus déterminé, la science ou l'art des négociations" (Ch. de Martens). "La science des rapports et des intérêts respectifs des États ou l'art de concilier les intérêts des peuples entre eux; et dans un sens plus déterminé, la science ou l'art des négociations; elle a pour étymologie le mot grec δίπλωμα, duplicata, double ou copie d'un acte émané du prince, et dont la minute est restée" (Garden).

"Elle embrasse le système entier des intérêts qui naissent des rapports établis entre les nations: elle a pour objet leur sûreté, leur tranquillité, leur dignité respectives; et son but direct, immédiat, est, ou doit être au moins, le maintien de la paix et de la bonne harmonie entre les puissances" (same author).

"L'ensemble des connaissances et des principes qui sont nécessaires pour bien conduire les affaires publiques entre les États" (de Cussy, *Dictionnaire du Diplomate et du Consul*).

"La science des relations qui existent entre les divers États, telles qu'elles résultent de leurs intérêts réciproques, des principes du droit international et des stipulations des traités" (Calvo).

"L'art des négociations. Klüber développe assez bien cette définition en disant que c'est 'l'ensemble des connaissances et principes nécessaires pour bien conduire les affaires publiques entre les États.'

La diplomatie éveille en effet l'idée de gestion des affaires internationales, de maniement des rapports extérieurs, d'administration des intérêts nationaux des peuples et de leurs gouvernements, dans leur contact mutuel, soit paisible soit hostile. On pourrait presque dire que c'est ' le droit des gens appliqué ' " (Pradier-Fodéré).

" Die Kenntnis der zur äusseren Leitung der öffentlichen Angelegenheiten und Geschäfte der Völker oder Souveraine, und der zu mündlichen oder schriftlichen Verhandelungen mit fremden Staaten gehörigen Grundsätze, Maximen, Fertigkeiten und Formen " (Schmelzing, *Systematischer Grundriss des Völkerrechts*).

According to Rivier, the use of " diplomacy " is three-fold :

1st. " La science et l'art de la représentation des États et des négociations.

2nd. " On emploie le même mot . . . pour exprimer une notion complexe, comprenant soit l'ensemble de la représentation d'un État, y compris le ministère des affaires étrangères, soit l'ensemble des agents politiques. C'est dans ce sens que l'on parle du mérite de la diplomatie française à certaines époques, de la diplomatie russe, autrichienne.

3rd. " Enfin on entend encore par diplomatie la carrière ou profession de diplomate. On se voue à la diplomatie, comme on se voue à la magistrature, au barreau, à l'enseignement, aux armes " (*Principes du droit des gens*).

§ 2. The diplomat, says Littré, is so called, because diplomas are official documents (*actes*) emanating from princes, and the word diploma comes from the Greek δίπλωμα (διπλόω, I double) from the way in which they were folded. A diploma is understood to be a document by which a privilege is conferred : a state paper, official document, a charter. The earliest English instance of the use of this word is of the year 1645.

Leibnitz, in 1693, published his *Codex Juris Gentium Diplomaticus*, Dumont in 1726 the *Corps universel Diplomatique du Droit des Gens*. Both were collections of treaties and other official documents. In these titles *diplomaticus*, *diplomatique*, are applied to a body or collection of original state-papers, but as the subject-matter of these particular collections was *international* relations, " corps diplomatique " appears to have been treated as equivalent to " corps du droit des gens," and " diplomatique " as " having to do with international relations." Hence the application also to the officials connected with such matters. *Diplomatic body* [1] now came to signify the body of ambassadors, envoys and officials

[1] This use of the expression first arose in Vienna about the middle of the eighteenth century (Ranke, cited by Holtzendorff, iii. 617).

attached to the foreign missions residing at any seat of government, and *diplomatic service* that branch of the public service which supplies the *personnel* of the permanent missions in foreign countries The earliest example of this use in England appears to be in the *Annual Register* for 1787. Burke, in 1796, speaks of the "diplomatic body," and also uses "diplomacy" to mean skill or address in the conduct of international intercourse and negotiations. The terms *diplomat*, *diplomate*, *diplomatist* were adopted to designate a member of this body.[1] In the eighteenth century they were scarcely known. Disraeli is quoted as using "diplomatic" in 1826 as "displaying address" in negotiations or intercourse of any kind (*New English Dictionary*). *La diplomatique* is used in French for the art of deciphering ancient documents, such as charters and so forth.

§ 3. The words, then, are comparatively modern, but diplomatists existed long before the words were employed to denote the class. Machiavelli (1469–1527) is perhaps the most celebrated of men who discharged diplomatic functions in early days. D'Ossat (1536–1604), Kaunitz (1710–1794), Metternich (1773–1859), Pozzo di Borgo (1764–1842), the first Lord Malmesbury (1764–1820), Talleyrand (1754–1838), Lord Stratford de Redcliffe (1786–1880) are among the most eminent of the profession in more recent times. If men who combined fame as statesmen with diplomatic reputation are to be included, Count Cavour (1810–1861) and Prince Bismarck (1815-1898) enjoyed a world-wide celebrity.

§ 4. "Diplomatist" ought, however, to be understood as including all the public servants employed in diplomatic affairs, whether serving at home in the department of foreign affairs, or abroad at embassies or other diplomatic agencies. Strictly speaking, the head of the foreign department is also a diplomatist, as regards his function of responsible statesman conducting the relations of his country with other states. This he does by discussion with their official representatives or by issuing instructions to his agents in foreign countries. Sometimes he is a diplomatist by training and profession; at others he may be a political personage, often possessed of special knowledge fitting him for the post. In the Netherlands it is not unusual for a member of the Foreign Service to be appointed Minister for Foreign Affairs and, after serving his term, to return to the Service.

[1] Callières, whose book was published in 1716, never uses the word *diplomate*. He always speaks of "un bon" or "un habile négociateur."

§ 5. When we speak of the " diplomacy " of a country as skilful or blundering, we do not mean the management of its international affairs by its agents residing abroad, but their direction by the statesman at the head of the department. Many writers and speakers are disposed to put the blame for a weak or unintelligent diplomacy on the agent, but this mistake arises from their ignorance of the organisation of public business. The real responsibility necessarily rests with the government concerned, though this must not be taken as absolving the agent from all responsibility whatsoever : if his reports, or his advice, are misleading, and his government falls into error as a result, the blame must lie largely on him

CHAPTER II

IMMUNITIES OF THE HEAD OF A FOREIGN STATE

§ 6. A SOVEREIGN within the territory of a foreign state, so long as he is there in his capacity of sovereign, is entitled to all ceremonial honours befitting his position and dignity. He is exempt from the civil and criminal jurisdiction of the local tribunals, from all taxation, police regulations; his place of residence may not be entered by the state authorities without his permission.[1] The movables he carries with him are ordinarily exempt from customs duties and visitation by customs officers; this privilege is also extended by general comity to goods destined for delivery to a foreign sovereign or his family in their transit through foreign countries.[2] The members of his suite enjoy the same immunities as himself. If he commits acts against public order or security, he can only be expelled, the necessary precautions being taken to prevent a repetition of such acts. On the other hand, he cannot exercise jurisdiction over persons belonging to his suite; if one of them should commit an offence, he must be sent home in order that the case may be dealt with by the tribunals of his own country, and similarly with respect to civil matters. The foreign sovereign cannot protect a delinquent, not a member of his suite, who takes refuge with him, but must surrender him on demand. He must not ignore administrative regulations made for the preservation of the public peace and public health. He must, of course, take care that they are equally observed by the persons in his suite.

§ 7. If, however, a sovereign travels incognito in the territories of a foreign state, he can only claim to be treated as a private individual; but if he declares his identity, then he becomes entitled to all the immunities pertaining to his rank as sovereign. The same rule would hold good if he entered the service of another sovereign; he could recover his rights only by resigning the service in which he was engaged.

§ 8. The case of the Duke of Cumberland, who was a peer of the realm in Great Britain, and King of Hanover, was peculiar.[3]

[1] Hall, 220; Ullmann, 158.
[2] Phillimore, ii. 139.
[3] See *Duke of Brunswick* v. *King of Hanover* (1844), 6 Beav. 1; 2 H.L.C. 1.

It is conceived that if he had come to England as Duke, he could only have become entitled to be treated as a sovereign in England by returning to Hanover and coming again in his capacity of King.

§ 9. A regent governing in place of a sovereign during the infancy or incapacity of the sovereign is, as the incumbent, entitled to all the privileges due to the latter, even if not a member of the reigning family.[1]

§ 10. Writers differ as to the position of the president of a republic when in the territory of another state. While some see no reason for drawing any distinction between a sovereign and a president who is the elected head of a state, others hold an opposite view :

" L'exterritorialité ne s'applique pas au président d'une république. De prime abord il est clair que lorsqu'un souverain, aussi bien qu'un président, séjournent á l'étranger pour y exercer des fonctions diplomatiques, les privilèges de l'exterritorialité prennent existence en vertu de leur caractère diplomatique. Le droit des gens accorde cependant, en dehors de cela, au souverain, l'exterritorialité en vertu de la position qu'il occupe, comme chef suprême de l'État. Pareille position ne peut être attribuée á un président ; il n'est pas souverain, mais seulement chef du pouvoir exécutif et simple fonctionnaire, employé de l'État qu'il préside. Dans ce cas l'exterritorialité n'a aucune justification et n'a pas à être appliquée."[2]

§ 11. But, however this may be, it cannot be doubted that no head of a republic would expose himself to any risk of being refused the immunities accorded to a sovereign, and that on the rare occasion when a president visits a foreign state he would expect to receive, or has been assured beforehand, treatment in all respect the same as that of a sovereign. All such ceremonious honours as those accorded to a sovereign appear to have been accorded on the occasion of the visit of the President of the French Republic to Russia ~~in 1914~~, on the visit of the President of the United States to England ~~in 1918~~, and on the visits of the President of the French Republic to England ~~in~~ 1927 and 1950.

§ 12. If a sovereign privately owns real property in a foreign state, it is subject to the jurisdiction of the local tribunals. Hall holds,[3] with justice in our opinion, that this applies also to personalty, not coming within the categories previously mentioned, owned in a foreign state. This seems also to be Ullmann's [4] view. Execution of a judgment in respect of contract or tort might in

[1] Oppenheim, i. § 352 — Feb. P. 202
[2] Heyking, *L'Exterritorialité*, Cours de La Haye (1925), ii. 283.
[3] Hall, 222.
[4] Ullmann, 159 and footnote.

practice encounter difficulties. The practice of the English courts, both of equity and common law, has been in favour of the privileged exemption of sovereigns in all matters of contract. And the French courts have upheld the same principle.[1]

§ 13. If he appeals in a civil matter to the courts of a foreign state, he must submit to cross-proceedings being taken against him[2] as the condition on which his action is entertained by the court. In England he must comply with the rules of the court, for a sovereign bringing an action in the courts of a foreign country brings with him no privilege which can vary the practice or displace the law applying to other suitors in those courts.[3]

§ 14. A sovereign who has been deposed by his people, or who has abdicated, and whose deposition or abdication has been recognised by other states, and a president of a republic whose term of office has expired, or who has been overthrown by a revolution, enjoy no immunities. Any privileges accorded to such personages during their residence in other countries must depend on the course which the authorities of those countries deem it expedient to adopt.[4]

§ 15. In 1940 a state of affairs without precedent arose. Beginning with the Royal Family and government of the Netherlands, a series of dispossessed sovereigns, with their governments, established themselves in Great Britain. They were accorded all the privileges normally due to visiting Heads of States and to diplomatic representatives, respectively. The British Heads of Missions accredited to them continued to function but enjoyed no privileges, except to some small extent, and then only by courtesy, in the matter of minor traffic offences. The governments set up their own departments in offices which were regarded as extra-territorial, and they were even authorised by the Allied Powers (Maritime Courts) Act of 1941[5] "to establish and maintain in the United Kingdom courts of justice to be called 'Maritime Courts'," and having jurisdiction "to try persons not being British subjects" for certain specified offences.

§ 16. *Ceremonial of the State Visit of the President of the French Republic accompanied by Madame Vincent Auriol, March*, 1950.

On Tuesday, the 7th March, the President of the French Republic, accompanied by Madame Auriol, and attended by the Suite, left Calais in the T.S. *Arromanches* at 11.25 A.M. The vessel was met half-way across the Channel and escorted into Dover, where she arrived at

[1] Phillimore, ii. 144. [2] See on this point § 346. [3] Phillimore, ii. 151.
[4] *Ibid.*, ii. 149. [5] 4 and 5 Geo. vi, c. 21.

~~12.55 P.M.~~, by a Naval Escort of British Destroyers and an Escort of Aircraft of the Royal Air Force. H.M.S. *Vanguard*, lying off Dover, fired a Salute, and as the vessel approached Dover Harbour a Salute was fired by the Shore Batteries. Three Squadrons of the Royal Air Force flew past as the *Arromanches* entered Dover Harbour.

On the arrival of the *Arromanches* His Royal Highness the Duke of Gloucester went on board to welcome the President of the French Republic and Madame Auriol on behalf of The King and Queen. His Royal Highness was accompanied by the French Ambassador, and presented the British Suite specially attached to the President for the period of the State Visit :—The Viscount Allendale (Lord in Waiting to The King) ; Marshal of the Royal Air Force the Viscount Portal of Hungerford ; Lieutenant-Commander George Marten, R.N. (Equerry to The King) ; Major-General A. G. Salisbury-Jones.

The following were the names of the French Suite in attendance upon the President :—His Excellency Monsieur Robert Schuman, Ministre des Affaires Etrangères ; Monsieur Jean Forgeot, Sécrétaire Général Civil de la Présidence de la République ; Monsieur Jacques Dumaine, Ministre Plénipotentiare, Chef du Protocole ; Monsieur le Général Grossin, Sécrétaire Général Militaire de la Présidence de la République ; Monsieur Jacques Koscziusko-Morizet, Directeur du Cabinet du Président de la République ; Monsieur de Bourbon-Busset, Directeur du Cabinet du Ministre des Affaires Etrangères ; Monsieur le Capitaine de Vaisseau Blouet ; Monsieur le Colonel Pouyade.

~~At 1 P.M.~~ the President and Madame Auriol were conducted on shore by the Duke of Gloucester, and were received by the Lord Warden of the Cinque Ports ; the Lord Harris, Vice-Lieutenant for the County of Kent ; Admiral Sir Henry Moore, Commander-in-Chief, The Nore ; Lieutenant-General Sir Gerald Templer, General Officer Commanding-in-Chief, Eastern Command ; and Air Marshal C. R. Steele, Air Officer Commanding-in-Chief, Coastal Command.

Guards of Honour of the Royal Navy and of the First Battalion, the Queen's Own Royal West Kent Regiment, with Band of the Royal Navy, were mounted on the Quay.

An Address was presented to the President of the French Republic by the Mayor and Corporation of Dover at the Railway Station, and a Bouquet was presented to Madame Auriol by the Mayoress of Dover.

The Special Train conveying the President and Madame Auriol, accompanied by the Duke of Gloucester, to London, left Dover at 1.20 P.M., and arrived at Victoria Railway Station at 3 P.M. Luncheon was served in the train.

The President and Madame Auriol were met at Victoria Railway Station by The King and Queen and by Their Royal Highnesses The Princess Elizabeth, Duchess of Edinburgh, The Princess Margaret, and The Duchess of Gloucester.

There were also present at the Railway Station Field Marshal the Earl Wavell, His Majesty's Lieutenant for the County of London ; the Prime Minister ; The Secretary of State for Foreign Affairs ; the Secretary of State for the Home Department ; Sir Oliver Harvey, His Majesty's Ambassador at Paris ; the Right Honourable the Lord Mayor and the Sheriffs of the City of London ; Admiral of the Fleet the Lord Fraser of North Cape, First Sea Lord of the Admiralty and Chief of the Naval Staff ; Field Marshal Sir William Slim, Chief of the Imperial General Staff ; Air Chief Marshal Sir John Slessor, Chief of the Air Staff ; Major-General Julian Gascoigne, General Officer Commanding London District ; Sir Harold Scott, Commissioner of Police of the Metropolis ; the Right Honourable the Chairman of the London County Council ; and the Mayor of the City of Westminster.

Service Dress (with Sword and Star of Order), or Morning Dress (with French buttonhole Decoration), and Civic Robes, were worn.

A Guard of Honour of the Third Battalion, Grenadier Guards, with the King's Company Colour and Band of the Regiment, and the Drums of the Battalion, were mounted at Victoria Railway Station. The King invited the President to inspect the Guard of Honour.

The President of the French Republic and Madame Auriol were conducted to their carriages by the Duke of Beaufort, Master of the Horse, and then proceeded in carriage procession, accompanied by The King and Queen with The Princess Elizabeth, Duchess of Edinburgh, and The Princess Margaret, and escorted by a Sovereign's Escort of the Household Cavalry, with Two Standards, via Wilton Road, Victoria Street, Parliament Square (West and North sides), Parliament Street, Whitehall, Admiralty Arch and The Mall to Buckingham Palace. The Procession left Victoria Railway Station at 3.10 P.M., arriving at Buckingham Palace at 3.30 P.M.

First Carriage.

The President of the French Republic.
The King.
H.R.H. The Duke of Gloucester.

Second Carriage.

Madame Auriol.
The Queen.
H.R.H. The Princess Elizabeth, Duchess of Edinburgh.
H.R.H. The Princess Margaret.

Third Carriage.

Madame Massigli.
The Countess Spencer.
The Master of the Horse.
His Excellency Monsieur Robert Schuman.

Fourth Carriage.

His Excellency The French Ambassador.
Monsieur Jean Forgeot.
Monsieur Jacques Dumaine.
The Viscount Allendale.

First Motor Car.

Le Général Grossin.
Marshal of the Royal Air Force the Viscount Portal of Hungerford.
Monsieur Jacques Koscziusko-Morizet.
Monsieur de Bourbon-Busset.

Second Motor Car.

Le Capitaine de Vaisseau Blouet.
Le Colonel Pouyade.
Lieutenant-Commander George Marten, R.N.
Major-General A. G. Salisbury-Jones.

Third Motor Car.

Captain Sir Harold Campbell, R.N.
Equerry to The Princess Elizabeth, Duchess of Edinburgh.
Equerry to The Duke of Gloucester.

The Route was lined by the three Services.

The King's Guard, found by the First Battalion, Irish Guards, completed to 100 rank and file, with the King's Colour and Band of the Regiment, and the Pipes of the Battalion, was mounted in the Quadrangle of Buckingham Palace.

The Lord Chamberlain, the Lord Steward, the Captain of His Majesty's Body Guard of the Honourable Corps of Gentlemen-at-Arms, the Captain of The King's Bodyguard of the Yeomen of the Guard, the Private Secretary to The King, the Keeper of the Privy Purse, the Master of the Household, the Comptroller of the Lord Chamberlain's Office, the Crown Equerry, the Marshal of the Diplomatic Corps and the Gentlemen of the Household-in-Waiting, were in attendance in the Grand Hall.

The Mistress of the Robes, the Woman of the Bedchamber, the Lord Chamberlain to The Queen, the Treasurer to The Queen and the Private Secretary to The Queen were in attendance in the Bow Room.

The Suite of the President of the French Republic were presented to The King and Queen in the Bow Room.

Guards of His Majesty's Body Guard of the Honourable Corps of Gentlemen-at-Arms and of The King's Bodyguard of the Yeomen of the Guard were on duty in the Grand Hall.

Service Dress (with Sword and Star of Order), or Morning Dress (with French buttonhole Decoration), was worn. The Gentlemen-at-Arms and the Yeomen of the Guard wore Full Dress.

The President and Madame Auriol were conducted to the Apartments in Buckingham Palace which had been prepared for their occupation.

At 4.45 P.M. the President and Madame Auriol left Buckingham Palace in motor-cars and drove to Westminster Abbey to place a Wreath on the Grave of the Unknown Warrior, at 4.50 P.M.

At 5.10 P.M. the President of the French Republic arrived at St. James's Palace to receive Addresses from the Chairman and Members of the London County Council and the Mayor and Corporation of the City of Westminster.

Morning Dress and Civic Robes were worn.

At 5.40 P.M. the President left St. James's Palace to attend a Reception at the French Embassy, Kensington Palace Gardens.

At 8.10 P.M. The King and Queen gave a State Banquet at Buckingham Palace in Honour of the President of the French Republic and Madame Auriol.

A Guard of the King's Bodyguard of the Yeomen of the Guard were on duty.

Evening Dress with Decorations was worn.

On Wednesday, the 8th March, at 10.45 A.M. the President of the French Republic received the High Commissioners of the Commonwealth Countries and the High Commissioner of the Republic of Ireland ~~in the 1844 Room~~ at Buckingham Palace.

At 11.15 A.M. the President of the French Republic received the Chefs de Mission of the Corps Diplomatique in the Bow Room at Buckingham Palace.

Morning Dress was worn.

At 12 noon the President of the French Republic, and Madame Auriol, attended by the Master of the Horse and the Members of the Suite, left Buckingham Palace on a visit to Guildhall, arriving at 12.25 P.M., where an Address was presented by the Lord Mayor and Corporation of the City of London at 12.30 P.M.

The Duke and Duchess of Gloucester met the President and Madame Auriol at Guildhall.

The Lord Mayor and Corporation of the City of London subsequently entertained the President of the French Republic and Madame Auriol at Luncheon.

The King's Guard, found by the First Battalion, Irish Guards, completed to 100 rank and file, with the King's Colour and Band of the Regiment, and the Pipes of the Battalion, was mounted at Buckingham Palace, and a Sovereign's Escort of the Household Cavalry, with Standard, escorted the President to Guildhall.

A Guard of Honour of the Honourable Artillery Company, with the King's Colour of the Company, and the Band of the Grenadier Guards, was mounted at Guildhall. The President was invited to inspect the Guard of Honour.

Morning Dress, or Service Dress, was worn.

At 2.50 P.M. the President of the French Republic left Guildhall, drove to County Hall to visit the site of the Festival of Britain Exhibition in 1951, also inspected Model, plans and photographs of the Exhibition in County Hall, and returned to Buckingham Palace, arriving at 3.50 P.M.

At 5.15 P.M. the President visited the French Consulate General, Bedford Square, returning to Buckingham Palace.

At 5.45 P.M. the President and Madame Auriol attended a Reception given by the Franco-British Society at the Royal Academy of Arts, Burlington House.

Morning Dress was worn.

At 8.30 P.M. the President of the French Republic and Madame Auriol entertained The King and Queen at Dinner at the French Embassy.

Evening Dress with Decorations was worn.

On Thursday, the 9th March, the President and Madame Auriol visited the French Hospital, Shaftesbury Avenue, and subsequently attended a Reception given by the Houses of Parliament in the Royal Gallery, House of Lords, at which the President was welcomed by the Lord Chancellor and The Speaker.

By Command of The King The King's Bodyguard of the Yeoman of the Guard was on duty in the Royal Gallery, House of Lords.

Morning Dress was worn.

At 12.45 P.M. the President and Madame Auriol left the Speaker's Courtyard and drove in motor cars to the Royal Naval College, Greenwich, where, with The King and Queen, they were entertained at Luncheon by the Secretary of State for Foreign Affairs in the Painted Hall of the Royal Naval College, Greenwich.

Morning Dress, or Service Dress, was worn.

A Royal Marine Guard with Band was mounted at the Royal Naval College and the Approach was lined by Naval Ratings.

On the return journey to Buckingham Palace the President and Madame Auriol visited bomb-damaged sites in the district and met some of the local residents.

At 5.30 P.M. the President and Madame Auriol attended the French Colony Reception in l'Institut Français in Queensberry Place, returning to Buckingham Palace at 6.30 P.M.

At 7.45 P.M. the President of the French Republic and Madame Auriol dined with The King and Queen at Buckingham Palace, and were subsequently entertained by Their Majesties at a Gala Performance at the Royal Opera House, Covent Garden.

A Guard of The King's Bodyguard of the Yeomen of the Guard was on duty.

Evening Dress with Decorations was worn.

On Friday, the 10th March, in the morning, the State Visit of the

President of the French Republic concluded. The arrangements for saluting and escort on their departure from Dover were the same as those on their arrival, in reverse order.

§ 17. A similar ceremonial was observed for the visit of the Queen of the Netherlands and the Prince of the Netherlands in November, 1950.

§ 18. *Ceremonial of the Vatican on the reception of a Sovereign, as observed on the visit of the King and Queen of the Belgians, the Duke and Duchess of Brabant, the Count of Flanders, and Princess Marie José, January 7, 1930.*

General Dispositions.—The Ceremony is directed by the Monsignor Secretary of Ceremonial. The Italian Government undertakes to keep the Piazza of St. Peter's and the Colonnade entirely clear of the public from at least two hours before the arrival of the Royal Procession until Their Majesties shall have left the City of the Vatican. The police service along the route within the Vatican City, including the Piazza of St. Peter's, is entrusted to the Commandant of the Pontifical Gendarmerie, who will be careful to see that all windows and doors opening on the line of route are kept closed. The Museums, Galleries and Offices of the Vatican City and the Basilica of St. Peter's are all closed. All Military Guards are posted two hours before the arrival of the Royal Procession and are withdrawn only when Their Majesties have left the Vatican City. Admission to, and circulation within, the line of route are prohibited to all strangers. Those who, for official reasons, have need to enter the Vatican City are furnished with a special card issued by the Governor of the Vatican City. The Military are under the orders of the Governor of the Vatican City and of Monsignor the Master of the Household. All persons on duty in the Ante-Chamber do not leave the Pontifical Apartments until they receive orders from the Master of the Household. The Privy Chamberlains of Sword and Cape on duty are increased in accordance with the exigencies of the service. The Dignitaries of the Pontifical Court on duty wear full dress.

The Commandant of the Noble Guard is warned for duty in the Secret Ante-Chamber, and at the appropriate moment, in company with the Master of the Household proceeds to the Porch of the Papal Stairs, accompanied by an officer of his Staff to await the arrival of the Sovereigns. At the same time another officer of the Noble Guard proceeds with the Privy Almoner to the Sala Clementina. Two Cadets and eighteen Guards are on duty in the usual apartment. Sixteen Guards are formed up in a double rank and the remaining two on sentry duty, one at the threshold of their apartment, the other at the door of the Secret Ante-Chamber. Twenty Guards are paraded in the Sala Ducale, on the window side. Full dress uniform.

A double Picket of Swiss Guards posted at the edge of the Piazza of St. Peter's renders due honours to the Sovereigns while the Band of

the Corps plays the Belgian National Anthem. Pickets are posted on the line of route and at the Porch of the Papal Stairs. An escort is in waiting consisting of one Sergeant, one Corporal, and seven Guardsmen. A detachment is paraded in the Sala Clementina, under the command of an officer, to render the usual honours. Two officers are in the Sala degli Arazzi, the Lieutenant-Colonel in the Throne Room and the Colonel Commandant in the Secret Ante-Chamber. The latter, at the appropriate moment, accompanies the Master of the Household and the Commandant of the Noble Guard to the Porch of the Papal Stairs to await the arrival of the Sovereigns. Guards are posted in the Chapel of the Blessed Sacrament and along the Altar of the Confession. Full dress uniform.

A Company of the Palatine Guard is paraded on the edge of the Piazza of St. Peter's, under the command of a Captain, and detachments are posted along the line of route. The Band of the Corps and the Guard of Honour are in the Cortile di S. Damaso. Ten officers line the route between the entrance to the Cortile of the Holy Office and the Papal Stairs. (On the arrival of the Sovereigns in the Cortile di S. Damaso, the Band plays the Belgian National Anthem, while the Guard of Honour renders the customary salute.) Various detachments are posted in the Papal Apartments, the Colonel Commandant in the Throne Room. There is also a guard in the Portico of the Basilica of St. Peter's and the Guard of Honour with the Band subsequently proceeds to the steps outside the Basilica to render honours on the departure of the Sovereigns. Full dress uniform.

(A platoon of the Pontifical Gendarmerie is posted at the entrance to the Vatican City and Guards line the route on police service.) In the Cortile Borgia two Trumpeters announce the arrival of the Sovereigns. In the Cortile di S. Damaso there is a Guard of Honour with the Band. Two Guards with drawn swords are posted at all the entries into the Cortile di S. Damaso. In the Papal Apartments a Picket is posted to render the due honours to the Sovereigns. The Major Commandant of the Corps is in the Throne Room and two Gendarmes are on duty in the Apartments of the Secretary of State. Full dress uniform.

The Visit to His Holiness.—The Royal Procession enters the Piazza of St. Peter's from the Piazza Rusticucci and halts on coming to the border. Awaiting them are the Governor of the Vatican City with his Staff, the Counsellor General of the Vatican City and the Postmaster-General. The Guards of Honour of the Swiss Guard and of the Palatine Guard give a Royal Salute and the Band of the Swiss Guard plays the Belgian National Anthem. The Governor approaches the Royal Carriage and presents to Their Majesties the Counsellor General and the Postmaster-General, who in their own carriages join the Procession, which proceeds to the Cortile di San Damaso where the Band of the Palatine Guard plays the National Anthem and the Royal Salute is given. On the first landing of the Papal Stairs the Master of

the Household, the Grand Master of the Sacred Hospice, the Secretary of Ceremonial, the Quarter-Master of the Sacred Apostolic Palace, the Master of the Horse, the Commandants of the Noble Guard and of the Swiss Guard and four Privy Chamberlains await Their Majesties. Six Parafrenieri, the Picket of the Swiss Guard, and six Ushers are in readiness to form the Procession. The Grand Master of the Sacred Hospice descends into the Cortile and opens the door of the carriage for Their Majesties to alight. The Secretary of the Ceremonial presents to the Sovereigns the Grand Master of the Sacred Hospice, who in his turn presents the Master of the Household. The Secretary of the Ceremonial receives the other Royalties and presents the Master of the Household. In the meantime the Suite alight from their carriages and take up position in the Procession which ascends the Papal Stairs in the following order :

A Sergeant of the Swiss Guard ; six Parafrenieri followed by the Dean of the Papal Apartments ; six Ushers ; Their Majesties, with the Master of the Household on their right, and on their left the Grand Master of the Sacred Hospice, who offers his arm to her Majesty the Queen ; the Princes and the Princesses and the Royal Suite accompanied by Pontifical Dignitaries ; the Escort of the Swiss Guard flanks and closes the procession.

In the Sala Clementina Their Majesties are awaited by the Almoner to His Holiness, the Sacrist, two Monsignori Chamberlains Partecipanti, a Pontifical Master of the Ceremonies, a Monsignor Privy Chamberlain Supernumerary, an Officer of the Staff of the Noble Guard and two Consistorial Advocates. The Master of the Household presents to the Sovereigns and to Their Royal Highnesses the Privy Almoner. The Procession crosses the Sala Clementina, and the Swiss Guards fall out and line the entrance to the Sala dei Parafrenieri awaiting the return of the Royal Procession. Similarly in the next room the Parafrenieri fall out. Likewise the Suite of the Grand Master of the Sacred Hospice, and also in the Sala degli Arazzi the six Ushers. The Procession then enters the Throne Room, where the Commandant of the Palatine Guard, the Lieutenant-Colonel of the Swiss Guard and the Commandant of the Pontifical Gendarmerie, one clerical and one lay Privy Chamberlain with three others are waiting. At the entrance to the Throne Room the Privy Chamberlains and the Consistorial Advocates fall out from the Procession to await the return of the Sovereigns. Their Majesties then enter the Hall of St. John, where the Grand Master of the Sacred Hospice, the Privy Almoner and the Secretary of Ceremonial together with the Royal Suite fall out, while the Master of the Household introduces the Sovereigns and Their Royal Highnesses to the Holy Father in the Little Throne Room.

His Holiness, in rochet and mozzetta, on notification from the Chamberlain on duty, proceeds to meet Their Majesties and Their Royal Highnesses in the doorway of the Little Throne Room. The

Holy Father seats himself on the Chair under the Canopy and invites his guests to be seated. The Master of the Household, after offering chairs to Their Majesties and to Their Royal Highnesses, withdraws. The visit over, Their Majesties present to His Holiness their Suite, who are introduced by the Master of the Household. Then His Holiness accompanies them to the door of the Little Throne Room and takes his leave. The Sovereigns and Their Royal Highnesses, accompanied by the Master of the Household, pass into the Secret Ante-Chamber, where its members are presented in order of precedence. The Procession is then re-formed in the same order as before. During the passage through the various Apartments the Master of the Household presents the various Dignitaries on duty. At the exit from the Sala Clementina the Privy Almoner, the Sacrist, the two Clerical Privy Chamberlains, the Master of the Ceremonies, the Staff Officer of the Noble Guard, and the two Consistorial Advocates take leave of Their Majesties.

Visit to the Cardinal Secretary of State.—The Procession descends to the first floor, to the Apartments of the Cardinal Secretary of State. In the Hall of the Congregations there are awaiting them the three Prelates, Heads of Departments in the Secretariat of State, *i.e.* the Under-Secretary and Assistant Under-Secretary of State and the Chancellor of Apostolic Briefs. In the entrance Hall, two Prelates, a Pontifical Master of the Ceremonies, the Cardinal's Gentleman-in-Waiting, his Master of the Household, and Train Bearer, await Their Majesties. The Cardinal Secretary of State moves to meet Their Majesties halfway along the Corner Room. The Master of the Household of His Holiness presents His Eminence to the Sovereigns and to Their Royal Highnesses. The Cardinal accompanies Their Majesties and Their Royal Highnesses into the Throne Room, where he invites them to be seated. The Master of the Ceremonies, after offering them chairs, retires and the remainder of the Party wait in the Hall of the Congregations. The conversation over, the Cardinal accompanies the Sovereigns into the Hall of the Congregations, where reciprocal presentations are made. Then the Cardinal accompanies Their Majesties to the Corner Room and takes his leave. During the visit the participants in the Procession, other than those in the Hall of the Congregations, are posted in the various Rooms of the Cardinal's Apartments and, on the return of the Sovereigns, resume their proper places in the Procession, which then by the Sala Giula, the Sala Ducale and the Sala Regia, descends the Scala Regia to the Statue of Constantine and enters the Basilica of St. Peter by the Main Door.

Visit to the Basilica of St. Peter.—To the right of the main entrance, the Cardinal Arch-Priest, in cappa magna, accompanied by his Court, the Econome of St. Peter's and a Commission of six Canons in Choir Dress await Their Majesties. In front of His Eminence are also placed the Clerics of the Vatican in Choir Dress. The Master of the Household presents the Cardinal Arch-Priest to the Sovereigns and to Their

Royal Highnesses, who in turn presents to Their Majesties the Econome of the Basilica, the six Canons, the Chapter and the Clergy of the Basilica "en masse." The Cardinal Arch-Priest then offers to Their Majesties and to Their Royal Highnesses the Holy Water, with which they make the Sign of the Cross. Their Majesties, accompanied by the Cardinal Arch-Priest and by the Master of the Household of His Holiness and followed by Their Royal Highnesses, the Econome, the Commission of Canons, and the Dignitaries forming part of the Procession, proceed by the Central Nave to the Chapel of the Blessed Sacrament. There they say a prayer on the prie-dieu placed at their disposal while the Suite and the Pontifical Dignitaries kneel at special places prepared for them. Then Their Majesties proceed to the Altar of the Confession to pray at the Tomb of St. Peter. The visit over, the Royal Procession proceeding down the Central Nave leaves by the Main Door, where the Cardinal Arch-Priest, the Econome and the Commission of Canons take their leave.

During the visit of Their Majesties and Their Royal Highnesses the rest of the Vatican Clergy remain in their places to render honour to the Sovereigns on their departure from the Basilica. The Sovereigns and Their Royal Highnesses depart by the Piazza of St. Peter's. At the foot of the steps the Master of the Household, the Grand Master of the Sacred Hospice, the Secretary of the Ceremonial and the other Dignitaries of the Pontifical Court take their leave. Their Majesties enter their carriage, the Grand Master of the Sacred Hospice closing the door. Their Royal Highnesses and the Suite then enter their carriages and the Procession departs in the original order. The Guard of Honour of the Palatine Guard drawn up on the steps presents arms, while the Band plays the Pontifical Hymn.

Return Visit.—As soon as Their Majesties have returned to their Apartments in the Quirinal Palace, the Cardinal Secretary of State together with his Noble Court proceeds thither to return the visit.

Non-Catholic Sovereigns, Heads of States and Other Royal Personages.—The ceremonial for the reception of non-Catholic Sovereigns, Heads of States and Royal Personages of lesser grades, is arranged generally on the above lines, with the modifications adapted to meet each individual case.

CHAPTER III

THE MINISTER FOR FOREIGN AFFAIRS

§ 19. THE minister for foreign affairs is the regular intermediary between the state and foreign countries. His functions are regulated by domestic legislation and traditions, and his powers vary according to the political organisations of different states.

Foreign governments address themselves to the minister for foreign affairs either through their own diplomatic agent abroad, or through the diplomatic agent who represents his sovereign or government at their own capital. As a general rule notes and other communications concerning relations with other countries are signed by him, or on his behalf. Under his orders are drawn up documents connected with foreign relations, drafts of treaties and conventions, statements of fact and law, manifestos and declarations. The negotiation of treaties rests with him and he watches over their execution. Ratifications of treaties are exchanged by him or his agents. He proposes to the head of the state the nomination of diplomatic agents, he draws up their credentials and full powers for signature by the head of the state, and gives them their instructions. He advises the head of the state as to the acceptance of persons who have been proposed to be accredited to him, and also as regards the issue of exequaturs to foreign consular officers. The consular service receives its orders from him. Foreign representatives address themselves to him in order to obtain an audience of the head of the state.

§ 20. On taking office the minister for foreign affairs informs the diplomatic representatives of foreign states, and customarily receives them as soon as possible thereafter at his official residence to exchange greetings with them. He also informs the diplomatic agents of his own country accredited abroad.

§ 21. In the United Kingdom it is usual for the retiring Secretary of State for Foreign Affairs to address to the foreign diplomatic representatives an announcement in some such terms as

I have the honour to inform you that the Queen has been graciously pleased to accept my resignation of the office of Her Majesty's Principal

Secretary of State for Foreign Affairs, and to confide the seals of this Department to ——.

His successor, on assuming office, addresses a notification to the foreign diplomatic representatives in such terms as

I have the honour to acquaint you that the Queen has been graciously pleased to accept the Right Honourable ——'s resignation of the office of Her Majesty's Principal Secretary of State for Foreign Affairs, and to confide to me the seals of this Department.

(Arrangements are then made for the reception by the incoming Secretary of State of the heads of missions in the order of their precedence in the diplomatic list.)

§ 22. In all communications with the government of the state to which they are accredited, diplomatic agents should address themselves to the minister for foreign affairs, whether in seeking information as to the views or practice of that government in regard to various matters that may arise, or in furnishing information as to the views or practice of their own government.

(The Pan-American Convention respecting diplomatic officers, signed at Havana on February 20, 1928, lays down for the signatory States the following rules :

" Article 13. Diplomatic officers shall, in their official communications, address themselves to the Minister of Foreign Relations or Secretary of State of the country to which they are accredited. Communications to other authorities shall also be made through the said Minister or Secretary.")

§ 23. Of this high office, Baron de Martens said :

" A l'égard des relations extérieures . . . il faut demander, solliciter, négocier ; le moindre mot inconsidéré peut blesser toute une nation ; une fausse démarche, un faux calcul, une combinaison fausse ou hasardée, une simple indiscrétion, peuvent compromettre et la dignité du gouvernement et l'intérêt national. La politique extérieure d'un État présente des rapports si variés, si compliqués, si sujets à changer, et à la fois environnés de tant d'écueils et de difficultés, qu'on concevra facilement combien doivent être difficiles et délicates les fonctions de celui qui est appelé à la direction d'une telle administration. . . . On est tellement habitué à juger d'après le caractère, les principes et les qualités personnelles du ministre des relations extérieures, le système de sa politique, que sa nomination ou son renvoi sont toujours considérés comme des événements politiques. . . .

" Il doit avoir une connaissance exacte des intérêts commerciaux qui rapprochent les États, des ressources matérielles de tout genre qui font leur force, des traités et conventions qui les lient, des principes et

des vues qui gouvernent leur politique, des hommes d'État qui la dirigent, des entourages de cour qui l'altèrent, des alliances entre les familles souveraines qui l'influencent, des rivalités de puissances qui en compliquent l'action ; dépositaire en quelque sorte de l'honneur et des intérêts généraux de son pays, dans ses rapports extérieurs, il doit s'appliquer à bien connaître les hommes, afin de ne faire que des choix convenables dans le personnel de ses agents au dehors, et de ne remettre qu'à des mains capables et dignes la sauvegarde de ces intérêts si graves et de cet honneur si ombrageux. L'expérience acquise, les services antérieurement rendus, la notoriété du talent, la considération personnelle, sont des éléments essentiels de sa confiance."[1]

At the present day the duties and responsibilities of the minister who is entrusted with the conduct of the foreign relations of his country range over a yet wider field than when the above was written. The birth of new states, the advancement of others, constitutional changes which may occur in their methods of government, the growth of organisations designed to foster a better understanding between the nations of the world, the ever-increasing complexity of international relationships, and the many questions to which all these give rise, have largely extended the area within which diplomacy finds its proper scope, and call for close and unremitting attention.

§ 24. In every country the Foreign Minister is assisted by a trained staff who, under his guidance, constitute the Foreign Office or Ministry for Foreign Affairs. In the United Kingdom the permanent staff of the Foreign Office has at its head the Permanent Under-Secretary of State, who has the rank of ambassador, three Deputy Under-Secretaries of State and eight Assistant Under-Secretaries of State. The Foreign Minister is also assisted by two Ministers of State and two Parliamentary Under-Secretaries of State, who hold office as members of the government in power for the time being.

§ 25. In most countries the title of the minister who directs foreign relations is Minister for Foreign Affairs, in the language of the country concerned, or Minister of Foreign Relations. In the United Kingdom it is Secretary of State for Foreign Affairs ; in the United States it is Secretary of State, though the authority of the President predominates in foreign affairs as in all other matters. In the Union of Soviet Socialist Republics foreign relations are controlled by the People's Commissary for Foreign Affairs.

Occasionally the holder of the office combines this with other

[1] de Martens-Geffcken, i. 25.

functions. In the United Kingdom within modern times the Secretary of State for Foreign Affairs has on two occasions also been Prime Minister. In France he is often President of the Council. In Germany, he might be also Chancellor ; in Austria, also State Chancellor.

§ 26. In England the King's Secretary is first heard of in 1253, in the reign of Henry III. The office was at first a part of the royal household. Its holder might be a man of character and capacity, fit to be a member of the King's Council, or to be sent as an envoy to foreign powers. Such were the Secretaries of Henry III and Edward I. Or he might be an inferior officer of the household, and such seems to have been the position of the Secretary of Edward III. In 1433 (reign of Henry VI) two Secretaries were appointed, one by the delivery of the King's Signet, the other by patent. In 1476 (reign of Edward IV) a newly appointed Secretary is described as Principal Secretary. In the reign of Henry VIII the position of Principal Secretary was advanced. They were still members of the household, but ranked next to the greater household officers, and in Parliament and Council they had their place assigned by statute. In 1539 a warrant issued to Thomas Wriothesley and Ralph Sadler gave them " the name and office of the King's Majesty's Principal Secretaries during his Highness' pleasure." After Henry's reign the Secretary ceased to be a member of the household.

During the greater part of Elizabeth I's reign there was but one Secretary, but at the close of it Sir Robert Cecil shared the duties with another, he being called " Our Principal Secretary of Estate," and the other " one of our Secretaries of Estate." From this time, until the year 1794, it was the rule that there should be two Secretaries of State ; the exceptions occurred in 1616, when there were three—from 1707 until 1746, when there was usually a third Secretary for Scottish business—and from 1768 until 1782, when there was a third Secretary for Colonial business.

Down to 1782 the duties of the two Secretaries, as regards foreign affairs, were divided geographically into Northern and Southern Departments, and until that year they were described in official documents relating to the staff common to both as " His Majesty's Principal Secretaries of State for Foreign Affairs." The Northern Secretary used to announce himself to resident heads of foreign missions thus ; " Le Roi m'ayant fait l'honneur de me nommer aujourd'hui son Secrétaire d'État pour le département du Nord," but on March 27, 1782, Fox announced to them that " le

Roi m'ayant fait l'honneur de me nommer son Secrétaire d'État pour le Département des affaires étrangères, etc." Since 1782, therefore, the Secretaryship of State for Foreign Affairs has always been entrusted to a single person. Sir William Anson says : " I cannot ascertain that any Order in Council or departmental minute authorises or records this important administrative change." [1]

§ 27. The mode of appointment of Her Majesty's Secretary of State for Foreign Affairs is by the delivery to him by the sovereign of the seals of office. There are three seals, viz. a greater and a lesser signet and a small seal called the *cachet;* all these are engraved with the Royal Arms. The two former now differ only in point of size. In the Foreign Office, diplomatic and consular commissions signed by the sovereign pass under the greater signet ; the lesser is used in the case of royal exequaturs granted to foreign consular officers, and for royal warrants (such as instruments authorising the affixing of the Great Seal to full powers and to ratifications of treaties) ; the *cachet* is used to seal the envelopes of letters containing communications of a personal character made by the Queen to foreign sovereigns.

Patents were issued from the fifteenth century onwards till 1852. From that time the practice was intermittent till 1868, but since the latter date patents have not been issued, nor in any case would they affect the powers of the Secretary of State, for these follow the seals.[2]

The Secretary of State for Foreign Affairs holds a general full power from the Queen, authorising him to negotiate and conclude, subject if necessary to Her Majesty's ratification, any treaty in respect of Great Britain and Northern Ireland.

§ 28. It was in the fifteenth and sixteenth centuries that most of the European monarchies established a special branch of the administration for foreign affairs. In the reign of Francis I of France there was a secret committee to which was committed the discussion of questions of foreign policy. In 1547, at the beginning of the reign of Henry II, the department of Secretaries of State was founded. There were four such secretaries who shared home and foreign affairs among them. In the reign of Charles IX the Foreign Office was divided into four departments : (1) Italy and Piedmont, (2) Denmark, Sweden and Poland, (3) the Emperor, Spain, Portugal, the Low Countries, England and Scotland,

[1] Anson, *Law and Custom of the Constitution* (3rd ed.), ii. pt. 1, 166.
[2] *Ibid.*, 168.

(4) Germany and Switzerland. In 1589 a single ministry for foreign affairs was formed, and all foreign correspondence was committed to a single Secretary of State. But previously to 1787 he shared the direction of home affairs with the departments of War, Marine and the Household. Thus, he had charge of Upper and Lower Guyenne, Normandy, Champagne and part of La Brie, the principality of Dombes and Berry. But on Montmorin succeeding to Vergennes as Secretary of State in that year, his functions were confined to foreign affairs.[1]

Charles V of Spain had a secret council of state which furnished advice to the Emperor through the minister charged with the foreign branch of the administration, while in Spain a somewhat complicated system was established.

Under the Tsar Ivan III of Russia a "chamber of embassies" was employed about international relations.

§ 29. In most countries special care has been devoted to the preservation of public documents. In England, from the fourteenth century, papers were deposited at the Tower of London. Queen Elizabeth I, in 1578, created the State Paper Office for the documents belonging to the Secretary of State, which has developed into the existing Public Record Office.

During the seventeenth and eighteenth centuries the foreign, domestic, colonial and military records, generally described as State Papers, were preserved in a common repository, at first in Whitehall, and after 1833 in the new State Paper Office built in St. James's Park. During this period they were under the immediate charge of a Keeper of the State Papers and a separate staff; but in 1854 the establishment of the State Paper Office was amalgamated with that of the Public Record Office, and in 1862 the building was pulled down and its contents transferred to the Record Office.

The older Foreign Office records, that is those before 1760, were transferred to the Public Record Office in 1862, with the rest of the contents of the State Paper Office. Frequent transfers of the more modern papers have taken place since 1868, but at irregular intervals. The Foreign Office records now in the Public Record Office extend, with certain exceptions, up to 1924, and public access may be had up to 1902. Correspondence of later date than 1924 is retained by the Foreign Office, which also keeps the indexes and registers of correspondence received from about 1810. There is, however, at the Public Record Office a differently

[1] Masson, *Le Département des Affaires Étrangères pendant la Révolution*, 56.

compiled, but no less exhaustive, collection of registers covering correspondence up to about 1889.

§ 30. In many other countries public documents are similarly centralised, and access thereto permitted up to certain dates, concerning which particulars can be obtained, where desired, by application to the proper department of the government concerned.

CHAPTER IV

PRECEDENCE AMONG STATES AND SIMILAR MATTERS

§ 31. The Pope in early times claimed the right of fixing the order of precedence among the heads of states. The precedence of the Pope above all other potentates was assumed as a matter of course. Next in order came the Emperor;[1] then the King of the Romans, who was the heir-apparent of the latter (by election).

§ 32. The list of sovereigns frequently attributed to Pope Julius II in 1504 was never promulgated by him. But in that year Paris de Grassis of Bologna became one of the two masters of ceremony of the papal chapel. At the beginning of a diary kept by him occurs the list, which with some variations has been regarded as a regulation intended to settle disputed questions of precedence. It formed part of a passage relating the reception on May 12, 1504, of the *ambassade d'obédience* from the King of England, and is as follows:

Ordo Regum Christianorum.

Imperator Cæsar,
Rex Romanorum,
Rex Franciæ,
Rex Hispaniæ,
Rex Aragoniæ,
Rex Portugalliæ,
Rex Angliæ, cum tribus discors prædictis,
Rex Siciliæ, discors cum rege Portugalliæ,
Rex Scotiæ et Rex Ungariæ inter se discordes,
Rex Navarræ,
Rex Cipri,

[1] "Emperor of Germany," though often found in historical works applied to the head of the Holy Roman Empire, and even "German Emperor," were probably only convenient corruptions of the proper title (Bryce, *Holy Roman Empire*, lib. edit., 1889, p. 305). From the eleventh to the sixteenth century, that was, until his coronation, *Romanorum rex semper Augustus*, and after the ceremony, *Romanorum Imperator semper Augustus*. In 1508 Maximilian obtained a bull from Julius II permitting him to call himself *Imperator electus*. This became till 1806 the strict legal designation, though the word "elect" was often omitted (*ibid.*, p. 432).

Rex Bohemiæ,
Rex Poloniæ,
Rex Daniæ,

Ordo Ducum.

Dux Britanniæ,
Dux Burgundiæ,
Dux Bavariæ, comes Palatinus,
Dux Saxoniæ,
Marchio Brandenburgensis,
Dux Austriæ,
Dux Sabaudiæ,
Dux Mediolani,
Dux Venetiarum,
Duces Bavariæ,
Duces Franciæ et Lotharingiæ,
Dux Borboniæ,
Dux Aurelianensis, Isti quatuor non præstant obedientiam Sedi Apostolicæ quia subditi imperatoris sunt,
Dux Januæ,
Dux Ferrariæ.[1]

§ 33. A bull of Leo X dated March, 1516, uses the following language :

" Christianissimus in Christo filius noster, Maximilianus, in imperatorem electus, Julii II prædecessoris nostri, nostro vero tempore, clarissimæ memoriæ, Ludovicus Francorum et ceteri reges Christiani.... Laterensi concilio adhæserunt," [2] which shows that the king of France enjoyed precedence over all other kings.

§ 34. The first place being conceded to the Pope, and the second, with universal assent, to the Emperor, up to the fall of the Holy Roman Empire in 1806, the question was as to the others. Gustavus Adolphus of Sweden asserted the equality of all crowned heads, Queen Christina maintained it at the Congress of Westphalia, and in 1718 it was claimed for Great Britain on the occasion of the Quadruple Alliance.

§ 35. A comparison of the antiquity of royal titles shows the following order :

France (accession of Clovis, A.D. 481, besides the rank derived from the character of " eldest son of the Church " attributed to the King of France).

[1] Paris de Grassis Brit. Mus., *Diarium, MSS.* 8440, 8444, quoted by Nys, *Revue de Droit International et Législation comparée*, xxv. 515.
[2] de Maulde-la-Clavière, 2nd part, i. 65.

Spain (kingdom of the Asturias in 718).
England (Egbert, 827).
Austria (Hungary a kingdom since 1000).
Denmark (Canute, 1015).
Two Sicilies (Norman kingdom, 1130).
Sweden (1132, reunion of the kingdoms of the Swedes and Goths).
Portugal (Affonso I, in 1139).
Prussia (kingdom, January 11, 1701).
Italy (kingdom of Sardinia, 1720).
Russia (assumption of the title of Emperor, October 22, 1721).
Bavaria (December 26, 1805).
Saxony (December 11, 1806).
Württemberg (December 26, 1806).
Hanover (October 12, 1814).
Holland (May 16, 1816).
Belgium (July 2, 1831).
Greece (May 7, 1832).
Turkey (" admitted to share in the advantages of European public law and concert " by the Treaty of Paris, March 30, 1856).[1]

§ 36. But until the matter was finally settled at the Congress of Vienna in 1815 constant disputes arose.

In 1564 Pius IV declared that France was entitled to precedence over Spain in a question respecting the relative rank of the ambassadors of the two Powers at Rome.[2] In 1633,[3] Christian IV of Denmark having proposed to celebrate the wedding of his son, the Crown prince, a dispute arose between the French and Spanish ambassadors, the Comte d'Avaux and the Marques de la Fuente. The Danish ministers proposed to d'Avaux various solutions of the difficulty, and among these that he should sit next to the King, or next to the Imperial ambassador. To this he replied : " I will give the Spanish ambassador the choice of the place which he regards as the most honourable, and when he shall have taken it, I will turn him out and take it myself." To avoid further dispute, de la Fuente, on a plea of urgent business elsewhere, absented himself from the ceremony. In 1657, a contest

[1] García de la Vega, 525.
[2] Flassan, ii. 66 ; Prescott, *Philip II* (ed. 1855), 233, says it was Pius V.
[3] Flassan, iii. 13.

of the same kind occurred at The Hague, between de Thou, special ambassador, and the Spanish ambassador Gamarra.[1]

§ 37. A more serious affair happened in London on September 30, 1661, on the occasion of the state entry of the Swedish ambassador. It was the custom at such "functions" for the resident ambassadors to send their coaches to swell the cortège. The Spanish ambassador de Watteville sent his coach down to the Tower wharf, whence the procession was to set out, with his chaplain and gentlemen, and a train of about forty armed servants. The coach of the French ambassador, Comte d'Estrades, with a royal coach for the accommodation of the Swedish ambassador, were also on the spot. In the French coach were the son of d'Estrades with some of his gentlemen, escorted by 150 men, of whom forty carried firearms. After the Swedish ambassador had landed and taken his place in the royal coach, the French coach tried to go next, and on the Spaniards offering resistance, the Frenchmen fell upon them with drawn swords and poured in shot upon them. The Spaniards defended themselves, hamstrung two of the Frenchman's horses, mortally wounded a postilion and dragged the coachman from his box, after which they triumphantly took the place which no one was any longer able to dispute with them.[2] Louis XIV, on learning of this incident, ordered the Spanish ambassador to quit the kingdom, and sent instructions to his own representative at Madrid to demand redress, consisting of the punishment of de Watteville and an undertaking that Spanish ambassadors should in future yield the *pas* to those of France at all foreign courts. In case of a refusal a declaration of war was to be notified. The King of Spain, anxious to avoid a rupture, recalled de Watteville from London, and despatched the Marques de la Fuente to Paris, as ambassador extraordinary, to disavow the conduct of de Watteville and to announce that he had prohibited all his ambassadors from engaging in rivalry in the matter of precedence with those of the Most Christian King.[3] The question was finally disposed of by the "Pacte de Famille" of August 15, 1761, in which it was agreed that at Naples and Parma, where the sovereigns belonged to the Bourbon family, the French ambassador was always to have precedence, but at other courts the relative rank

[1] Lefevre-Pontalis, *Jean de Witt*, i. 245; Chappuzeau, *L'Europe Vivante*, cited by D. J. Hill, *History of European Diplomacy*, iii. 26.

[2] *Diary of John Evelyn* (Wheatley's edition), ii. 486; *Pepys' Diary* (*under date of Sept.* 30, 1661).

[3] Dumont, *Corps universel diplomatique*, vi. pt. ii. 403.

was to be determined by the date of arrival. If both arrived on the same day, then the French ambassador was to have precedence.[1]

§ 38. Similar rivalry manifested itself between the Russian and French ambassadors. The latter had instructions to maintain their rank in the diplomatic circle by all possible means, and to yield the *pas* to the papal and imperial ministers alone. On the other hand, Russia had not ordered hers to claim precedence over the French ambassador, but simply not to concede it to him. At a court ball in London, in the winter of 1768, the Russian ambassador, arriving first, took his place immediately next to the ambassador of the Emperor, who was on the first of two benches arranged in the diplomatic box. The French ambassador came in late, and climbing on to the second bench managed to slip down between his two colleagues. A lively interchange of words followed, and in the duel which arose out of the incident the Russian was wounded.[2]

§ 39. Pombal, Prime Minister of Portugal, in 1760, on the occasion of the marriage of the Princess of Brazil, caused a circular to be addressed to the foreign representatives, announcing the ceremony, and acquainting them that ambassadors at the court of Lisbon, with the exception of the papal nuncio and the imperial ambassador, would thenceforth rank, when paying visits or having audiences granted to them, according to the date of their credentials. Choiseul, the French minister for foreign affairs, when the matter was referred to him, maintained that "the King would not give up the recognised rank due to his crown, and his Majesty did not think that the date of credentials could in any case or under any pretext weaken the rights attaching to the dignity of France." He added that though kings were doubtless masters in their own dominions, their power did not extend to assigning relative rank to other crowned heads without the sanction of the latter. "In fact," said he, "no sovereign in a matter of this kind recognises powers of legislation in the person of other sovereigns. All Powers are bound to each other to do nothing contrary to usages which they have no power to change. . . . Pre-eminence is derived from the relative antiquity of monarchies, and it is not permitted to princes to touch a right so precious. . . . The King will never, on any pretext, consent to an innovation which violates the dignity of his throne." Nor did Spain accord a more favourable reception to this new rule of etiquette, while the court of Vienna, though

[1] Flassan, vi. 314. [2] *Ibid.*, vii. 376.

the imperial rights had been respected, replied to Paris that such an absurdity only deserved contempt, and suggested consulting with the court of Spain in order to destroy the ridiculous pretension of the Portuguese minister.[1]

§ 40. Pombal's proposal consequently did not succeed, and matters remained in this state until the beginning of last century. At the Congress of Vienna the plenipotentiaries appointed a committee which after two months' deliberation presented a scheme dividing the Powers into three classes, according to which the position of their diplomatic agents would be regulated. But as it did not find unanimous approval, especially with the rank assigned to the greater republics, they fell back upon the simple plan of disregarding precedence among sovereigns altogether, and of making the relative position of diplomatic representatives depend, in each class, on seniority, *i.e.* on the date of the official notification of their arrival. And in order to do away with the last relic of the old opinions that some crowned heads ranked higher than others, they also decided that: "Dans les actes ou traités entre plusieurs puissances qui admettent l'alternat, le sort décidera, entre les ministres, de l'ordre qui devra être suivi dans les signatures."[2,3]

§ 41. The *alternat* consisted in this, that in the copy of the document or treaty which was destined to each separate Power, the names of the head of that state and his plenipotentiaries were given precedence over the others, and his plenipotentiaries' signatures also were attached before those of the other signatories. Thus each Power occupied the place of honour in turn.

§ 42. England and France established the *alternat* between themselves in 1546,[4] though it was not consistently followed thereafter. In the treaty of January 13, 1631, between Gustavus Adolphus and Louis XIII, the name of the latter having been placed first in both originals, the Swedish King protested, and the matter was arranged in accordance with his wishes. France did not claim it in treaties with the Emperor, but refused it to the courts of Berlin, Lisbon and Turin up to the end of the reign of

[1] *Ibid.*, vi. 193.

[2] But though the *règlement* states that the order of signature shall be decided by lot, the signatures appended to that document followed the alphabetical order of the French language, and the same procedure was adopted for the signature of the *acte final* of the Congress of Vienna.

[3] d'Angeberg, *Le Congrès de Vienne*, prem. part. 501, 503, 504, 612, 660, 735; deux. part. 932, 939.

[4] de Martens-Geffcken, ii. 134 *n.*

Louis XVI.[1] In 1779, at the Treaty of Teschen, it was observed between the French and Russian courts.[2]

§ 43. When the accession of Philip V to the Quadruple Alliance of 1718 was recorded at The Hague, twelve copies of the Protocol were signed, six for the Emperor and two each for France, Spain and England. The Emperor's plenipotentiary signed first in all, according to the following table :

By Spain	Emperor, Spain, England, France.
,, ,,	Emperor, Spain, France, England.
By France	Emperor, France, England, Spain.
,, ,,	Emperor, France, Spain, England.
By England ..	Emperor, England, Spain, France.
,, ,,	Emperor, England, France, Spain.
For Spain	Emperor, Spain, England, France.
,, ,, ...	Emperor, Spain, France, England.
For France ..	Emperor, France, England, Spain.
,, ,,	Emperor, France, Spain, England.
For England ..	Emperor, England, Spain, France.
,, ,, ..	Emperor, England, France, Spain.

So that, the primacy of the Emperor being recognised, the other three Powers admitted the *alternat* among themselves.

§ 44. It was doubtless to avoid disputes about the *alternat* that on some occasions the practice was substituted of the plenipotentiaries signing only the copy intended for the other party, as in the case of the Treaty of Westminster of January 16, 1756, between George II and Frederick the Great, and other instances. Klüber says that at the Congresses of Utrecht (1713) and Aix-la-Chapelle (1748) each of the High Contracting Parties delivered to each of the others an instrument signed by himself alone.[3]

§ 45. The Holy Roman Empire came to an end in July 1806, in consequence of the establishment of the Confederation of the Rhine, and the precedence over other sovereigns formerly enjoyed by the German Emperor disappeared and could not be claimed by the Emperor of Austria, whose title in 1815 was only eleven years old. Nor was France at that time in a position to reassert her claims to rank before the rest of the Powers. From this date the equality in point of rank of all independent sovereign states, whether empires, kingdoms or republics, has been universally admitted, and it is improbable that any instances of the refusal of

[1] García de la Vega, 253. [2] de Martens-Geffcken, ii. 133 *n.*
[3] Klüber, *Acten des Wiener Congresses*, vi. 207.

the *alternat* in connection with treaties are now likely to occur, though in the case of multilateral treaties the more convenient method of signing a single instrument in the alphabetical order of the participating countries has in modern times supplanted former methods of signing several originals according precedence to each in turn.

§ 46. While, however, the events recorded relate to an era when questions of precedence between states were jealously regarded as matters affecting the personal dignity of their sovereigns, it hardly appears that changes to more democratic forms of government lessen the importance attached by states to the maintenance of their position *vis-à-vis* other states. As Vattel said :

" si la forme du gouvernement vient à changer chez une nation, elle n'en conservera pas moins le rang et les honneurs dont elle est en possession. Lorsque l'Angleterre eut chassé ses rois, Cromwell ne souffrit pas que l'on rebattît rien les honneurs que l'on rendait à la couronne ou à la nation, et il sut maintenir partout les ambassadeurs anglais dans le rang qu'ils avaient toujours occupé." [1]

The same might be said of France on successive changes from monarchical to republican forms of government.

§ 47. In the Soviet Union diplomatic representatives have the title of " représentants plénipotentiaires " alone, but this title is qualified by ascribing to each in his credential letter the rank of ambassador, minister, etc., so preserving his relative precedence (see § 216). The Soviet representative accredited to China thus became *doyen* of the diplomatic corps.

§ 48. In the Treaty of Versailles and other peace treaties resulting from the Peace Conference of Paris, 1919, the five principal Allied and Associated Powers took precedence of all other states ranged against the Central Powers.

§ 49. Dr. J. B. Scott [2] narrates that at the First Peace Conference at The Hague in 1899 the United States representatives took their place at the table under the letter E (États-Unis), but at the Second Peace Conference of 1907 under the letter A (Amérique), it having in the meantime been remembered that United States of America was the official title; and he observes that this happy philological discovery enabled the United States delegates at the latter conference to claim the benefit of the first letter of the alphabet, and to take precedence over other American states.

[1] *Droit des Gens*, ii, c. 3, § 39.

[2] *Le Français, langue diplomatique*, 19 ; cited by Genet, *Traité de Diplomatie, etc.*, i. 325 *n.*

CHAPTER V

TITLES AND PRECEDENCE AMONG SOVEREIGNS

Titles

§ 50. Originally the title of "Majesty" belonged to the Emperor alone, who in speaking of himself said: "Ma Majesté." Kings were styled "Highness," or "Serenity." In very early charters the titles *Altitudo*, *Illuster* (for *illustris*) and *Nobilissimus* occur in mentioning the Emperor, and the last of these was given to the King of France until the twelfth century. Sons of emperors were styled *Nobilissimus* or *Purpuratus*.[1] Since the end of the fifteenth century other crowned heads assumed it, the kings of France setting the example. Then it was adopted by King John of Denmark (1481–1513); in Spain by Charles I (V, as Emperor); in England under Henry VIII; by Portugal in 1578.[2] England and Denmark mutually applied it in 1520; Sweden and Denmark in 1685. France first accorded it to the King of Denmark at the beginning of the eighteenth century, and in 1713 to the King in Prussia, whose kingly title dated only from 1701. The Emperor gave it to the King of France at the Peace of Westphalia in 1648, and soon afterwards to other kings. The Emperor Charles VII accorded it to all kings without distinction.

§ 51. The Pope's title of courtesy is Most Holy Father, *Très-Saint Père*, also *Vénérable* or *Très-Vénérable Père*, Holiness, *Sainteté*, or *Béatitude*, and a Catholic sovereign, in addressing him by letter, will sign *dévoué*, or *très-dévoué, fils*. He in turn writes to them as *Carissime in Christo Fili*, or *Dilectissime in Christo Fili*, in Italian *Dilettissimo*, *Carissimo Figlio*. To emperors *Sire* and *Majesté Impériale* are used. Kings are addressed as *Sire* and *Majesté*. For other sovereign princes entitled to royal honours *Monseigneur* and *Altesse Royale*, for those who do not enjoy them *Monseigneur* and *Altesse Sérénissime*. For the heir-presumptive of an imperial or royal crown, *Monseigneur* and *Altesse Impériale*, or *Royale*, as the case may be.

[1] de Maulde-la-Clavière, 289.
[2] de Martens-Geffcken, ii. 25; Pradier-Fodéré, i. 67.

§ 52. The same titles of courtesy are given to empresses, queens and princesses, according to the birth or rank of their husbands, with *Madame* instead of *Sire*. When a princess entitled by birth to be called *Altesse Impériale* or *Royale* marries a prince who has not that title she continues to be addressed by it; but with this exception, princesses bear the same titles as their husbands, unless a different rule has been established by convention.

§ 53. The German Emperor was *Majesté Impériale et Royale*. The title of the Emperor of Austria was *Empereur d'Autriche, Roi Apostolique de Hongrie*. The Emperor of Russia was *Empereur et Autocrate de toutes les Russies*. The Russian title *Tsar* was not to be used in speaking of him officially. The Emperor of Japan is styled *Tennô* in the Japanese language; the title *Mikado* is antiquated, and its use is not desired.

§ 54. In accordance with a proclamation made by King George V at Buckingham Palace on May 13, 1927, His Majesty's title was: In Latin, "Georgius V, Dei Gratiâ Magnae Britanniae, Hiberniae et terrarum transmarinarum quae in ditione sunt Britannica Rex, Fidei Defensor, Indiae Imperator"; and in English, "George V, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India." The French rendering was "Georges V, par la Grâce de Dieu, Roi de Grande Bretagne, d'Irlande et des Territoires britanniques au delà des Mers, Défenseur de la Foi, Empereur des Indes."

On the Accession of Queen Elizabeth II her title was "Elizabeth the Second, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas Queen, Defender of the Faith." Changes in this took place as a result of discussions in London in 1952: these will be found in full in § 695.

§ 55. Emperors and kings who ceased to reign in consequence of their abdication or for other reasons continue sometimes to receive the title of "Majesty" from friendly sovereigns. The Treaty of Paris of April 11, 1814, provided that their Majesties the Emperor Napoleon and the Empress Marie-Louise should preserve these titles and qualities.

§ 56. The title of *Altesse* (Highness), which at the outset was given principally to Italian sovereign princes, and in Germany to the Electors, as well as to reigning Dukes and Princes, was borne later by princes on whom the German Emperor [1] had conferred it. Although the German title *Hoheit* corresponds literally to *Altesse*,

[1] See footnote, p. 25.

it became a title intermediary between *Altesse Royale* and *Altesse Sérénissime* ; but *Hoheit*, when applied to a prince of an imperial or royal family, was always accompanied by *kaiserliche* or *königliche*. By itself *Hoheit*, which implied a sort of superiority to *Durchlaucht*, was adopted in 1844 by reigning princes of the ancient ducal families of Germany, such as those of Saxony, Anhalt, Nassau and Brunswick, in distinction to *Durchlaucht* (likewise signifying *Altesse*), which was borne by sovereign princes (not of ancient descent) of Germany, as well as by high civil or military functionaries on whom, being already princes, it was conferred. The qualification of *Erlaucht* was granted to the ancient families of the German counts mediatised after the dissolution of the empire in 1806.[1] A list of such families may be found in Part II of the *Almanach de Gotha*.

§ 57. The title *Sa Hautesse* (His Highness) was formerly ascribed to the Sultan of Turkey: in the treaties concluded with Turkey in 1854 and 1856 he was styled *Sa Majesté Impériale*, and the latter title became that habitually used. Formerly the Khedive of Egypt was styled *Son Altesse* ; the King of Egypt was *Sa Majesté*.

§ 58. The title Grand Duke was originally the prerogative of the reigning princes of Tuscany, after Pope Pius V had conferred it on Cosmo 1er de Médicis.[2] Until after the War of 1914–18 it was borne by six reigning princes in Germany, viz. : those of Baden, Hesse, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg and Saxe-Weimar-Eisenach. The Grand Duchess of Luxemburg bears this title and is styled Royal Highness. In Russia the heir presumptive to the throne was *Tsarevitch* ; all the other members of the Imperial Family bore the titles of Grand Duke and Grand Duchess.[3]

§ 59. In Austria, with the exception of the eldest son of the Emperor, who was Prince Imperial, the other members of the Imperial Family were styled Archduke or Archduchess [4] (Latin, *archidux*, German, *Erzherzog*).

§ 60. The titles formerly accorded to certain republics have become obsolete. The States-General of the United Provinces of the Netherlands were addressed as " Their High Mightinesses " (*Hautes Puissances*), and in the letters written to them by sovereigns they were addressed as *Très-chers amis*, or *Chers et bons amis et alliés*. The Presidents of the United States of America and of the French Republic are addressed by other heads of states as " Good Friend " or " Great and Good Friend."

[1] de Martens-Geffcken, ii. 27 *n*.
[2] Genet, *Traité de Diplomatie etc.*, i. 352.
[3] de Martens-Geffcken, ii. 24.
[4] *Ibid.*, ii. 23.

§ 61. In former times the King of France was designated Roi Très-chrétien," and the King of Portugal " le Roi Très-fidèle since 1748. The King of Spain became " le Roi Catholique "; in 1496, the sovereign of Austria-Hungary was " His Imperial and Royal Apostolic Majesty " since 1758. These titles were conferred by various Popes. Leo X bestowed that of " Fidei Defensor " (Defender of the Faith) on Henry VIII in 1521, and his successors have continued to bear this title. The other titles mentioned were never employed by the sovereigns themselves; it was only in addressing or speaking of them that they were used.

§ 62. In early times the Russian sovereigns bore the title of Autocrator, Magnus Dominus, Grand-Prince or Czar (Tsar), the last being the Russian word for Emperor.

"The surname Monomachus, or Monomakh, was assumed in the twelfth century by Vladimir II, according to some writers because at the siege of Theodosia (Kaffa) he had vanquished in single combat the general of the Genoese,[1] but according to others, by derivation from the title of his maternal grandfather the Greek Emperor Constantine Monomachus."[2]

In the seventeenth century the Russian sovereigns began to make use of the word *Imperator* in the Latin translations of official documents addressed to other Powers, and it was Peter the Great who in 1721, after his victories over Charles XII, formally took the title of Emperor of Russia. Notification was made of this fact to all the ambassadors of foreign courts, which did not, however, at once decide to recognise the new title. Queen Anne was the first to do this in 1710, when she instructed Lord Whitworth to present an apology to Peter the Great for the insult committed against his ambassador Mathveof (Matveev) in 1708.[3]

§ 63. The elector of Brandenburg assumed the title of King of Prussia in 1701. It was first recognised by the Holy Roman Emperor, then by most of the other sovereigns of Europe at the conclusion of the Congress of Utrecht. The Pope withheld recognition until 1786.[4]

§ 64. After the creation of the Confederation of the Rhine by Napoleon I, the Electors of Bavaria, Saxony and Württemberg took the title of King, the Margrave of Baden and the Landgrave of Hesse-Darmstadt that of Grand Duke, and the Prince of Nassau

[1] Raabe and Duncan, *History of Russia*, 62 *n.*
[2] Kluchevsky, *History of Russia*, ii. 22.
[3] Ch. de Martens, *Causes célèbres, etc.*, i. 47.
[4] Pradier-Fodéré, i. 51.

that of Duke. These titles were not at first recognised by all the Powers, but they were tacitly acquiesced in by those which were parties to the Treaty of Paris of May 30, 1814, and by the *acte final* of the Congress of Vienna to which all European sovereigns acceded.

§ 65. On the latter occasion the Emperor of Russia took the additional title of Tsar and King of Poland; the King of England —Elector of Hanover, that of King of Hanover; the King of Sardinia the additional title of Duke of Genoa; the Dutch branch of Nassau those of King of the Netherlands and Grand Duke of Luxemburg; the King of Prussia that of Grand Duke of Posnania and of the Lower Rhine; the Dukes of Mecklenburg-Schwerin, Mecklenburg-Strelitz and Saxe-Weimar that of Grand Duke; and the Landgrave of Hesse-Cassel that of Elector.

§ 66. Since the Popes and the Emperors of the Holy Roman Empire ceased to grant the title of King to other potentates, European Powers adopted the principle that the title taken by the head of a state could not of itself give rise to any sort of precedence over other crowned heads, and that the latter could either recognise the new title, or refuse to do so, or recognise it on conditions.[1]

§ 67. In 1818 the Elector of Hesse-Cassel notified to the diplomatic assembly at Aix-la-Chapelle that he intended to take the title of King, having previously written to the sovereigns of the Five Powers letters in which he asked for their consent. At the sitting of October 11, the plenipotentiaries agreed that the title borne by a sovereign is not a simple matter of etiquette, but a fact involving important political questions, and that they could not collectively give a decision on the request put forward. However, the Protocol stated that the cabinets, taken separately, declared the Elector's request not justifiable on any satisfactory ground, and that there was no inducement to them to accede to it. The cabinets at the same time took an engagement not to recognise for the future any change, either in the titles of sovereigns, or in those of the princes of their families, without coming to a previous agreement. They maintained all that had hitherto been decided in this respect by formal documents (*actes*). The five cabinets explicitly applied this reserve to the title of Royal Highness, which they would henceforth only admit for the heads of grand-ducal houses, including the Elector of Hesse, and their heirs-apparent.[2]

[1] Ch. de Martens, *op. cit.*, ii. 89.
[2] Pradier Fodéré i. 53 *n.*

§ 68. A vote of parliament at Turin on March 17, 1861, conferred on Victor Emmanuel, King of Sardinia, the title of King of Italy, recognised by the United Kingdom, March 30. It was not at first admitted by Prussia and Austria.

Prince Ferdinand of Bulgaria took the title of King on October 5, 1908, and was recognised as such by the Great Powers of Europe between April 20 and 29, 1909, n.s.

Prince Charles of Roumania was unanimously elected King by the national representatives, March 14, 1881.

Prince Milan of Serbia took the title of King, March 6, 1881.

King Haakon became King of Norway, November 18, 1905.

King Zog was proclaimed King of Albania, September 1, 1928.

More recent cases than that of King Zog are those of the Amir Abdullah of Jordan who assumed the title of King on May 25, 1946, and the Amir of Cyrenaica, Mohammed Idris el Senussi, who became King of the United Kingdom of Libya on December 24, 1951.

§ 69. Certain sovereigns use three sorts of title : the *grand titre*, the *titre moyen* and the *petit titre*.

The first of these includes the names of the fictitious as well as of the real dominions. For instance, the King of Spain's *grand titre* included the two Sicilies, Jerusalem, Corsica, Gibraltar, Austria, Burgundy, Brabant and Milan, Habsburg, Flanders, Tyrol, all of which were fictitious, one of them, Jerusalem, being also claimed in the *grand titre* of Austria. Those of the King of Prussia and the Emperor of Russia also were very long. The latter is shown in §§ 62 & 125.

The *titre moyen* is confined to real facts, and the *petit titre*, the most generally used, is the highest of all—namely, that by which the sovereign is habitually designated.

§ 70. Sovereigns in addressing each other officially begin *Monsieur Mon Frère* (*Sir My Brother*), adding the name of any blood relationship that may exist between them. To an empress or queen it is *Madame Ma Sœur* (*Madam My Sister*) ; to a reigning Grand Duchess, *Madam My Sister and Cousin.*

§ 71. Letters from the Pope to the British court may begin " Serenissimo Augustoque Principi " . . . " Serenissime Rex, Salutem et felicitatem " ; or " Augusto Principi . . ." " Auguste Rex et Imperator salutem et felicitatem." The reply begins, " Your Holiness."

§ 72. A Foreign Office memorandum says that other forms of

writing Royal letters are: 1st, commencing with "Sir My Brother and dear Cousin", and ending thus:

"Sir My Brother and dear Cousin,
Your Majesty's
Good Sister."

2nd, commencing with the Queen's titles. In these letters the plural "We" and "Our" are employed instead of "I" and "My," and the letters terminate thus: "Your Good Friend." This form is used for Royal letters to Presidents of Republics.

§ 73. Titles of heirs-apparent, when not styled Prince Imperial or Prince Royal:

Belgium: Duc de Brabant.
Great Britain: Prince of Wales (by patent).
Sweden: Duke of Scania.

As long as the Holy Roman Empire continued to exist, the heir-apparent was designated King of the Romans (by election). Napoleon I copied this when he conferred on his infant son the title of King of Rome.

The heir-apparent of the German Emperor was Kronprinz, so also the heir of the Emperor of Austria; of Italy, Prince of Piedmont; and of Roumania, Grand Voivode of Alba Julia.

Precedence among Sovereigns

§ 74. As no rule has been devised for regulating precedence among sovereigns or among the members of their respective families, the question of the relative place to be taken by them on the occasion of a gathering of more than two must naturally present difficulties. The meeting of the emperors Napoleon I and Alexander I at Erfurt, in September 1808, was attended by a number of kings, grand dukes and princes belonging to the Confederation of the Rhine. Among them were the Kings of Saxony, Württemberg, Westphalia, Bavaria, the Dukes of Oldenburg, Saxe-Weimar, Saxe-Coburg-Gotha, Mecklenburg-Schwerin and Mecklenburg-Strelitz, and the Prince of Thurn and Taxis. At a great dinner at Weimar on October 6, the order among these kings seems to have been Westphalia, Bavaria, Württemberg, Saxony.[1]

§ 75. At the Congress of Vienna in 1814–15 there was an assemblage of crowned heads. Francis I of Austria was the host,

[1] Vandal, *Napoléon et Alexandre 1er*, i. 414, 444.

and among the guests Alexander I of Russia naturally ranked first. Next to him was the King of Prussia. Among the lesser sovereigns Christian VI doubtless had the first place. Then in order came Maximilian Joseph I of Bavaria and Frederick I of Württemberg, the Elector of Hesse and the Grand Duke of Baden.[1]

§ 76. During the meeting of the three emperors (Austria, Germany, Russia) at Berlin in 1872, these sovereigns took precedence over each other alternately in each succeeding ceremony, and the national hymns of each country were also played accordingly.

§ 77. On the occasion of the Vienna Exhibition of 1873, the sovereigns representing the Great Powers, including the King of Italy and the Sultan, enjoyed precedence over one another in alphabetical order according to the French language. A similar rule was observed as regarded the hereditary princes.

§ 78. It is not usual for Heads of States to attend at each other's coronations, marriages and on other similar occasions, but crowned heads are often represented by members of their families. The order in which these are placed must be determined by the court officials, or in the last resort by the sovereign who is host. At the inauguration of King Leopold of Belgium in December 1865, when one crowned head, the King of Portugal, was present, he naturally had the place of honour. Next to him came the Comte de Flandre (Belgium), the Prince of Wales (United Kingdom), Prince Arthur of England, the Crown Prince of Prussia, the Duke of Cambridge, the Archduke Joseph of Austria, Prince George of Saxony, Prince William of Baden, Prince Nicholas of Nassau, Prince Louis of Hesse, Prince Augustus of Saxe-Coburg-Gotha, and Prince Leopold of Hohenzollern-Sigmaringen.[2]

§ 79. At King George V's coronation at London in 1911, which, in accordance with custom, was not attended by crowned heads, the order of precedence followed appears to have been: Crown Princes of Great Powers, followed by other princely representatives of such Powers; the Prince of Wales; Crown Princes of lesser Powers; German Grand Dukes; representatives of the United States and France; the Duke of Connaught and Princesses of the British Royal Family; the special envoy of the Vatican; princely, grand ducal and ducal members of the German, Netherlands and Greek Royal houses; Princes of lesser Oriental states; followed by special envoys accredited by foreign states to take part in the ceremonies.

[1] *Cambridge Modern History*, ix. 580 *et infra*. [2] García de la Vega, 561.

For the coronation of King George VI in 1937 the order of precedence was laid down as follows :

1. Princes representing countries represented in London by Ambassadors, such Princes being brothers of their Sovereigns.
2. Brothers, sisters, sisters-in-law and brothers-in-law of the King.
3. Heirs to Kingdoms.
4. Great-uncles and great-aunts of the King.
5. Non-royal representatives of countries ordinarily represented in London by Ambassadors, in the order of precedence of the latter.

   The representative of the Holy See.
6. Princes (not being heirs) representing Kingdoms.
7. Cousins of the King who are Royal Highnesses.
8. Cousins of the King who are not Royal Highnesses.
9. Non-royal representatives of foreign countries not already included, in the order of the precedence of their ministers in London.
10. Remaining members of the Royal Family.

In 1937 the German Ambassador, Herr von Ribbentrop, and his Counsellor, having informed the Secretary of State that the German Representative at King George VI's Coronation would be Field Marshal von Blomberg, then enquired what precedence the German delegation would enjoy on the occasion. They were told that it would accord, as between foreign delegations, with the date when the Ambassador presented his credentials. The German Embassy protested that this would place the German delegation in an humiliating position for a great power and threatened that the Field Marshal would not be sent unless some improvement were made. After voluminous explanations, both in London and Berlin, the British standpoint prevailed, though the Germans still held to their view as to the impropriety of their delegation coming so low on the list. It was stated, incidentally, in Berlin that the German Ambassador had made his protest entirely on his own initiative.

In this connection it is worth noting that, under the same rule of precedence, the U.S. special representative at King George VI's funeral had to take an even lower place on the list ; the reason for this was explained to him and he accepted the situation without murmur.

The order of precedence at the Coronation of Queen Elizabeth II in 1953 was the following—

1. Representatives of Heads of States related to Her Majesty.
2. Sister of Her Majesty.
3. Representatives of three Great Powers (France, Soviet Union, United States).
4. Uncle and Aunts, Great-uncle and Great-aunt of Her Majesty.
5. Representatives of other Monarchical States.
6. Representatives of monarchical States, not being themselves Royal Personages.
7. Representative of Grand Duchy (Luxembourg).
8. Representative of the Holy See.
9. Representatives of non-monarchical States, in the order of precedence of their resident diplomatic representatives in London (States represented by Ambassadors).
10. (*a*) Cousins of Her Majesty, being Royal Highnesses.
    (*b*) Sisters of the Duke of Edinburgh.
    (*c*) Cousins of Her Majesty, not being Royal Highnesses.
11. Representative of the German Federal Republic.
12. Representatives of Principalities.
13. Representatives of non-monarchical States having resident Ministers in London.
14. Remaining Members of the Royal Family.
15. Representatives of non-monarchical States having no resident diplomatic representatives in London.

§ 80. Funerals of Sovereigns are an exception to the rule mentioned in § 78. The funeral of King George VI, for example, was attended by the Kings of Norway, the Hellenes, Denmark, Sweden and Iraq, the Queen of the Netherlands and the Grand Duchess of Luxemburg, and the Presidents of France, Turkey and Yugoslavia. Amongst the Crowned Heads precedence was determined by the date of their respective accessions.

§ 81. The frequent intermarriages between members of Christian reigning families created bonds of actual relationship among the crowned heads, which rendered it natural and usual for them to communicate to each other news of events, such as accession to the throne, births, marriages and deaths, etc. This practice, which grew to include brother sovereigns not connected by family ties, has largely fallen into desuetude through the reduction of the number of monarchies in consequence of two World Wars. On

important occasions communications may also be addressed by the sovereign to presidents of republics, as for example letters of congratulation in reply to formal announcements of their election and assumption of office. Such notifications are in the form of letters from the sovereign and are transmitted through his diplomatic agents, with instructions to present them through the appropriate channel, and this is done by forwarding them to the minister for foreign affairs, with the request that they may be communicated to their high destination. Sometimes a special mission is sent, particularly on such occasions as accession to the throne, or a coronation, or the celebration of a national event of exceptional importance. If the distance is great, the local diplomatic agent may be accredited as special ambassador or envoy for the occasion.

§ 82. Questions of precedence have sometimes arisen as between the diplomatic agents, permanently accredited, and those accredited for the purpose of such ceremonial missions. According to Article 3 of the Regulations adopted at the Congress of Vienna (§ 277) those engaged on an extraordinary mission have not on this ground any claim to precedence. But in practice some variation exists. M. Genet recalls that on the accession of Pedro V of Portugal the special envoys of the United Kingdom, Austria, Belgium and Saxony took precedence over the ministers accredited to Lisbon, and ceded it only to the nuncio; while at the coronation of the Emperor Alexander II of Russia the permanent diplomatic agents maintained precedence over those specially accredited for the occasion and having equivalent rank. At the accession of Leopold II of Belgium the specially accredited agents took precedence over the permanent envoys.

"D'une manière générale la personne chargée de mission spéciale n'a pas de rang diplomatique proprement dit, à raison de la mission spéciale, tout en ayant cependant le caractère diplomatique.

"Tout agent accrédité a donc en principe le pas sur elle; en pratique pourtant et comme par une faveur insigne, le pas leur est généralement cédé et on témoigne des égards tout particuliers aux envoyés de cette catégorie. 'Ils ne prennent pas la préséance, ils la reçoivent.' *Inter se*, ils se classent suivant le grade réel; à grade égal, c'est l'ordre de la remise des lettres de créances qui leur donne le rang." [1]

At the coronation of King George VI, § 79 appears to show that the special representatives attending the ceremony enjoyed precedence.

[1] Genet, *op. cit.*, i. 86.

§ 83. Friendly sovereigns sometimes exchange high orders of chivalry, which are occasionally also conferred on members of reigning families. On the outbreak of war, in August 1914, the Emperor of Austria, the German Emperor, the King of Württemberg, the Duke of Saxe-Coburg, the Duke of Cumberland, the Grand Duke of Hesse, Prince Henry of Prussia, the German Crown Prince and the Grand Duke of Mecklenburg-Strelitz having become enemies, ceased to be members of the Most Noble Order of the Garter, and their banners were removed from St. George's Chapel at Windsor. When one sovereign confers a decoration on another, the intention to confer is expressed by letter. Occasionally the Garter has been conferred on a foreign sovereign on the occasion of his visiting England ; sometimes it has been conveyed to him by a complimentary special mission.[1]

§ 84. An official notification made by the Vatican in December 1931 to diplomatic representatives accredited to the Holy See says that cardinals are regarded as equal in rank to princes of the blood, and, in accordance with canon law, claim precedence over everyone except sovereigns and crown princes (*principi ereditari*).

[1] For an account of what takes place in connection with the investiture see Redesdale, *Garter Mission to Japan* (1906).

CHAPTER VI

MARITIME HONOURS

§ 85. At the so-called Congress of Aix-la-Chapelle, in 1818, a protocol was signed on November 21 which contained the following paragraph :

" Des doutes s'étant élevés sur les principes à observer relativement au salut de mer, il est convenu que chacune des Cours signataires de ce protocole fera remettre à la Conférence ministérielle à Londres les règlements qu'elle fait observer jusqu'ici à cet égard, et que l'on invitera ensuite les autres Puissances à communiquer les mêmes notions de leur côté, afin que l'on puisse s'occuper de quelque règlement général sur cet objet."

This protocol bears the signatures of Metternich, Wellington, Nesselrode, Richelieu, Hardenberg, Capo d'Istria, Castlereagh and Bernstorff.

Nothing seems to have been done at the time to carry this agreement into effect. Certain arrangements have, however, since been entered into between the maritime Powers ; in particular those referred to in Articles 72 and 90 of the Queen's Regulations and Admiralty Instructions, extracts from which are appended to this Chapter.

§ 86. The British rules governing the number of guns forming a salute to each class of diplomatic officers, the places and occasions, are set forth in Article 66 of the Queen's Regulations and Admiralty Instructions. It is to be observed, however, that not all of Her Majesty's ships are "saluting ships"; the point is mainly governed by the size of the ship and the number of guns that can be fired for saluting purposes. The number of guns accorded in British practice may occasionally differ from the number accorded in the practice of other countries.

§ 87. When a British diplomatic agent pays an official visit in a foreign port to the officer commanding the naval forces of his (the agent's) own country, he is received on board with much ceremony. A salute is fired, in conformity with the table shown in Article 66, at the moment when he leaves the ship to return on

shore. He acknowledges the compliment by removing his hat until the last gun is fired. If he desires it, the commanding officer of the ship he visits will send a boat to bring him and his suite, if any, on board, and back again ashore. In going on board the person of highest rank ascends the ship's side first. When he leaves her to take his place in the boat, he is the last to leave the ship's deck and enter the boat. (As regards uniform to be worn on such occasions see § 465.)

§ 88. When men-of-war happen to be lying in a foreign port on the occasion of a national ceremony it is customary for British warships to adopt the same ceremonial as regards salutes, dressing ship and half-masting flags, as the ships of the foreign nation concerned, provided, of course, the occasion is one which can be properly recognised by Her Majesty's Government. A royal salute is one of twenty-one guns.

§ 89. These are, however, matters with which the diplomatic agent is not, as a rule, concerned, except in countries where the capital happens to be situated at a port where ships can lie, and the conduct of the ceremonies to be observed in such cases concerns the naval officers ; the diplomatic official does not intervene, but he will do well, if resident at such a place, to inform himself of the rules that are observed in this respect by the navy of his own country.

§ 90. In many countries there exists a regulation prohibiting more than a certain number of war-ships of any foreign country from lying at the same time in a port of the country. When an official friendly visit is to be paid by a larger number, the diplomatic agent will probably be the channel through whom the arrangements have to be made, and he may perhaps be afforded an opportunity of presenting some of the principal officers of the squadron to the sovereign or president at a private audience granted for the purpose.

§ 91. The regulations with regard to salutes by Her Majesty's ships to foreign sovereigns or other distinguished personages, dressing of ship, visits and other matters of etiquette, are laid down in the Queen's Regulations and Admiralty Instructions, the following Articles of which contain all such information as is likely to be of interest to British diplomatic officers :

ROYAL SALUTES AND FLAGS

Article 40. *Salutes to (British) Royal Family.*—Whenever any members of the Royal Family shall arrive at, or quit, any place where there is a fort or

battery from which salutes are usually fired, they shall receive a Royal salute on their first arrival and final departure, from such fort or battery, and from all Her Majesty's ships present. Any ship arriving at or leaving that place during the stay of a member of the Royal Family, shall also fire a Royal salute on arrival or departure.

2. Whenever any member of the Royal Family shall go on board any of Her Majesty's ships, the Standard of His or Her Royal Highness shall be hoisted at the main on board such ship, and a Royal salute shall be fired from her, on such member of the Royal Family going on board, and again upon leaving her.

3. Whenever any member of the Royal Family shall be embarked in any ship or vessel, and the Standard of His or Her Royal Highness shall be hoisted in her, every one of Her Majesty's ships meeting, passing or being passed by her shall fire a Royal salute.

:43. *Foreign Sovereigns or Chiefs of States.*—Whenever any foreign Crowned Heads or Sovereign Princes, or the consorts of any foreign Crowned Heads or Sovereign Princes, or the President of a Republic, shall arrive at or quit any place in the countries of the Commonwealth they shall receive a Royal salute on their first arrival and again on their final departure from any ships present and from any fort or battery at such place, from which salutes are usually fired ; and from any ship on her arrival or departure, which may arrive at and again leave that place during the stay of such foreign personage. A similar salute is also to be fired upon their going on board and again on leaving any of Her Majesty's ships. On such occasions all ships shall be dressed, either overall or with mast-head flags as may be ordered, in accordance with Article 93.

4. The following procedure is to be observed in the case of a foreign warship which is wearing a Royal or Imperial Standard or President's flag visiting a British port :

(*a*) The visiting warship will salute the flag of the country.
(*b*) National salute is returned by the shore battery.
(*c*) British warships present and shore battery salute Royal, Imperial or Distinguished personages.

:44. *Foreign Royal or Imperial Family.*—Whenever any Prince or Princess, being a member of a foreign Royal or Imperial Family, shall arrive at or quit any British port, or visit any of Her Majesty's ships, the same salutes shall be fired and compliments paid to him or her as are directed by Article 40 to be paid to the members of the British Royal Family, the flag of the nation of such foreign Prince or Princess being displayed at the main.

2. *In Foreign Ports.*—Whenever such visits to Her Majesty's ships shall take place in a foreign port, corresponding salutes shall be fired,

and the flag of the nation of the Royal or Imperial visitors hoisted, as already explained.

Standards of Royal or Imperial Personages at Foreign Ports.—Whenever any of Her Majesty's ships arrive at a foreign port in which salutes are returned (see Article 72) and where the Standard of any Royal or Imperial personage, British or foreign, or the flag of the President of a Republic, is hoisted, the customary salute to the flag of the nation to which the port belongs is in all cases to be fired first, the Standards or President's flag present being subsequently saluted in the order directed in Article 45.

2. *Salute to National Flag.*—In case the Standard of any member of the Royal or Imperial Family or the flag of the President of the Republic of the nation to which the port belongs is hoisted in the port, the salute to the national flag is to be considered as personal to that Standard or flag as representing the nation, and in this case the salute will not be returned.

In the event of this salute being returned, a further salute of 21 guns is to be fired.

50. *Commonwealth and Foreign Festivities.*—On the occasions of

(i) important anniversaries and festivals in other countries of the Commonwealth;

(ii) the birthday of the Sovereign or Consort of the Sovereign of a foreign nation;

(iii) important foreign national festivities and ceremonies:

H.M. ships, in company with ships of other Commonwealth countries or ships of a foreign nation, or in Commonwealth or foreign ports, may fire such salutes, not exceeding 21 guns, as are fired by the ships or batteries of the country concerned. The flag of the country is to be displayed at the main during the salute only, or ships dressed overall in accordance with Article 93, in conformity with the action taken by the ships of the Commonwealth or foreign country.

50A. *Death of Foreign Sovereign or Chief of State.*—Orders concerning the ceremony to be observed will be issued by the Admiralty on each occasion. The usual procedure to be followed will be for flags to be half-masted on the day of the funeral only, with the ensign (if available) or the national flag of the bereaved nation at the dip on the mainmast. No gun salutes are to be fired unless specially ordered.

2. In the event of Her Majesty's ships being in company with a ship or in a port of the bereaved nation, Her Majesty's ships are to act in unison with the procedure adopted by the Commanding Officer of the foreign ship or with the observances in the port.

In the event of a ship of the bereaved nation being in a British port, Her Majesty's ships should act in unison with the procedure adopted by the foreign ship.

Salutes to British Authorities

66. British authorities shall be saluted when in their official capacities as laid down in the following table (extract) :

Ambassador Extraordinary and Plenipotentiary .	19 guns	At all places, whenever he embarks, and if he goes to sea in a ship, on finally landing, by such ship. No limitation of occasion.[1]
Envoy Extraordinary and Minister Plenipotentiary, and others accredited to sovereigns (with the exception of such as are accredited in the specific character of Minister Resident) . . .	17 guns	Within the precincts of the nation to which he is accredited. By the ship from which he may land, and also that in which he may finally embark. When visiting a ship, upon going on board or on quitting her. As the occasion arises. Only once within twelve months and by one ship only on the same day.
Minister Resident, Diplomatic authorities below the rank of Envoy Extraordinary and Minister Plenipotentiary, and above that of Chargé d'Affaires . . .	15 guns	
Chargé d'Affaires, or a subordinate diplomatic agent left in charge of a mission	13 guns	
Consul-General . . .	13 guns	Within the foreign port to which he belongs. When visiting a ship, upon going on board or on quitting her. Only once within twelve months, and by one ship only on the same day.
Consul	7 guns	

[1] When in May, 1945, H.M. Ambassador returned to Holland in one of H.M. destroyers, with destroyer escort, this ceremonial was omitted, no doubt owing to war-time exigencies, but he was seen off from Chatham by the Commander-in-Chief, The Nore, his flag was flown in the ship, and he was received at Rotterdam with a guard of honour of Royal Marines.

NATIONAL SALUTES, ETC.

72. The Captain of a ship, or the Senior Officer of more than one ship, visiting a foreign port where there is a fort or saluting battery, or where a ship of the nation may be lying, shall salute the national flag with 21 guns, on being satisfied that the salute will be returned. A salute is not to be fired when passing through territorial waters with no intention of anchoring, or making fast in any way, in them, even if a saluting station is passed, unless unusual circumstances make it desirable.

The salute shall be fired on each occasion that a ship visits a foreign port, except that of a ship leaving port temporarily, when, by agreement with the local authorities, the salute on her return may be dispensed with. This rule has been concurred in by the maritime Powers generally.

2. When a ship visits a foreign port where there is no saluting battery and no ship of the nation is lying on arrival and a ship of the nation arrives during the visit, a salute to the national flag shall only be fired after mutual agreement between the Senior Officers of the ships concerned.

3. If a ship of a senior British Officer is already present in the port, the junior will not fire a salute.

73. *Recognised Governments.*—Salutes to foreign Imperial and Royal personages and other foreign authorities and flags are only authorised in the case of a government formally recognised by Her Majesty.

74. *Salutes to Foreign Functionaries.*—Salutes in conformity with the table of salutes given in Article 66 shall be fired in compliment to foreign officials, from either ships or forts, in the same manner and in circumstances similar to those in which salutes to a British official would be fired.

78. *Salutes to Foreigners visiting Her Majesty's Ships.*—If a foreigner of high distinction, or a foreign General Officer or Air Officer, should visit any one of Her Majesty's ships, he may be saluted on his going on board, or on leaving the ship, with the number of guns with which he, from his rank, would be received on visiting a ship of war of his own nation; or with such number of guns not exceeding 19 as may be deemed proper; should the number of guns to which he is entitled from ships of his own nation be less than is given to officers of his rank under Article 66, he is to be saluted with the greater number.

SALUTES WHICH ARE TO BE RETURNED OR NOT RETURNED

90. *To Foreign Royal and Imperial Personages and Authorities.*—In the case of salutes from Her Majesty's ships, forts and batteries to foreign Royal or Imperial personages and other functionaries, the following arrangement entered into with the maritime Powers is to be observed:

1. *Salutes not returned.*—Salutes from ships of war which will not be returned :

(*a*) to Royal or Imperial personages, Presidents of Republics, Chiefs of States or members of Royal or Imperial Families, whether on arrival at, or departure from, a port, or upon visiting ships of war ;

(*b*) to Diplomatic, Military or Consular authorities, or to Governors or Officers administering a Government, whether on arrival at, or departure from, a port, or when visiting ships of war ;

(*c*) to foreigners on visiting ships of war ;

(*d*) upon occasions of national festivities or anniversaries.

Note.—By this clause (taken in conjunction with clause 3) Her Majesty's ships will not return a personal salute to a British officer fired by foreign vessels ; nor will such return salute be expected by the officers of a Power which adheres strictly to the international arrangement. If, however, on any occasion where personal salutes are exchanged, a personal salute, fired by one of Her Majesty's ships or by the ship of some third nation to a foreign officer, is returned, it is an excess of courtesy which it would be impossible not to reciprocate by returning any personal salute to a British officer fired immediately afterwards under like conditions. Her Majesty's ships may even take the initiative in returning personal salutes, if such is known to be the custom of the nation whose ship has saluted, and if it is expected that a personal salute to an officer of that nation will presently have to be fired and will be returned.

2. *Salutes returned.*—Salutes from ships of war which will be returned gun for gun :

(*a*) to the national flag on anchoring at a foreign port, except in the circumstances detailed in Article 46 (2).

3. *Reciprocity with Foreign Ships.*—When foreign ships of war salute the British flag or British Royal or other personages, or any of Her Majesty's functionaries in similar circumstances, the same rules are to be reciprocally observed by Her Majesty's ships present, as to returning or not returning the salutes.

Dressing Ship and Flags, etc.

93. *Dressing Ship.* . . .

Her Majesty's Ships are to be dressed by order of the Senior Officer present when in the presence of a Royal Standard, or the standard or Flag of the Head of a Foreign State, on occasions of visits of Royal personages or Heads of Foreign States, and on certain Commonwealth or foreign ceremonial occasions when in the presence of ships, or in the waters, of the countries concerned. The manner of dressing and time

during which ships are to be dressed are to be stated on each of these occasions according to circumstances (See also Article 59).

94. *Flags hoisted during Salutes.*—When salutes are interchanged with foreign ships of war or forts and batteries, or when salutes to Flag Officers and personal salutes are fired in honour of foreigners, the following rules as to the flags that shall be displayed are to be observed by Her Majesty's ships :

(*a*) *Royal or Imperial Personages, etc.*—In the case of a foreign Royal or Imperial personage, President of a Republic or Chief of State, the ensign of the nation of such Royal or Imperial personage, &c., is to be hoisted at the main, if necessary alongside any Standard, flag or broad pendant which may already be hoisted in that position.

(*b*) *National Flag.*—On arrival at a foreign port, the ensign of the foreign nation which is being saluted is to be hoisted at the main during the salute, if necessary alongside any Standard, ensign or broad pendant which may already be hoisted in that position.

(*c*) . . .

(*d*) *Visits of Foreign Authorities.*—On the occasion of visits from Governors-General, Governors or Officers administering a government, Diplomatic, Naval, Military, Air or Consular authorities, or of persons of high distinction entitled to salutes, the ensign of the foreign nation to which the person saluted belongs is to be hoisted at the fore during the personal salute, if necessary alongside any flag or broad pendant which may already be hoisted in that position.

Note.—When there is no recognised ensign, the national flag is to be used.

2. *To British Authorities.*—The distinguishing flags particularised in Article 112 are to be hoisted respectively at the fore whenever any of Her Majesty's Military, Air, Diplomatic, Commonwealth, Colonial or Consular authorities are receiving salutes to which they may be entitled ; should, however, the proper distinguishing flag not be on board the ship saluting, the blue ensign is to be hoisted when saluting Consular officers, and the red ensign when paying the same honours to any of the other authorities. Should the ship have neither a red nor blue ensign, a white ensign may be hoisted at the fore when saluting any of the British authorities referred to.

Visits of Ceremony

95. *Visits to Foreign Ports.*—The preliminary arrangements for visits of Her Majesty's ships to foreign ports will always be made by the Foreign Office with the foreign government concerned, except

(*a*) on certain foreign stations, where the Commander-in-Chief is authorised to communicate direct with Her Majesty's representative in the country which it is proposed to visit ; and

(*b*) in the circumstances specified in clause 3.

2. When the preliminary arrangements have been made, the Senior Officer of the visiting fleet or squadron, or the Commanding Officer of a single ship, should notify the British Consul direct of the date and time of the intended arrival of the fleet, squadron or ship at the foreign port and the probable duration of the visit. Ceremonial visits are to be exchanged in accordance with Articles 95*a*, 97 and 98.

The customary visit to the Governor or chief authority at a foreign port should always be made unless there is some special reason for not doing so. Communication should always be established with the Consular Officer on arrival.

3. In the event of a visit of Her Majesty's ship to a foreign port being of very short duration and purely informal as distinct from a ceremonial nature, *e.g.* for the purpose of shipping or landing persons or stores, the British Consul is to be notified of the proposed visit direct by the Commanding Officer of the ship, with a request that the local authorities may be informed. The British representative at the seat of government of the country visited is to be notified at the same time that the visit will be made, and requested to inform the government of the informal character of the proposed visit.

Communication should be established with the Consular Officer on arrival, and the Commanding Officer should consult with him as to the practicability of exchanging any ceremonial visits. When a call is made at a naval port, visits should always be paid to the naval authority.

95*a*. *To Foreign Authorities.*—The Governor of a province, territory or colonial possession, if residing in or near the port, is to receive the first visit from the Senior Officer in command of Her Majesty's ship or squadron visiting a foreign port.

The visit will be returned in person to all Flag Officers and Commodores, and by an Aide-de-Camp, or other officer, to officers of lower rank.

To Foreign Civic Authority.—The chief civilian authority of the port should, as a general rule, receive the first visit from the Senior Officer in command of Her Majesty's ship or squadron visiting a foreign port.

97. *British Diplomatic Functionaries.*—Every Flag or other officer in command will, on arrival, pay the first visit to Her Majesty's diplomatic functionaries in charge of embassies or legations, of or above the rank of Chargé d'Affaires, but they will receive the first visit from diplomatic functionaries below that rank. Diplomatic functionaries of the Commonwealth are included in the provisions of this Article.

2. In case of doubt as to the status of a diplomatic functionary in charge of an embassy or legation, an officer should be sent on shore to ascertain it previous to the interchange of visits.

98. *Consular Authorities, including Commonwealth nsular Officers.*—On the arrival of a fleet, squadron or ship at a foreign port, the first visit will be made by the naval or consular officer who is subordinate in rank to the other, according to the following scale :

(*a*) Consuls-General . . .	To rank with, but after Rear-Admirals.
(*b*) Consuls	To rank with, but after Captains of the Royal Navy.
(*c*) Vice-Consuls	To rank with, but after Lieutenant-Commanders.
(*d*) Consular Agents . . .	To rank with, but after Lieutenants.

2. The officer in charge of a consular post during the absence of the titular incumbent will take for the time being the rank of that incumbent.

100. *Boats for Visits.*—The Senior Officer present will arrange, when necessary, to provide a suitable boat to enable the diplomatic, Commonwealth, Colonial or Consular officer to pay any official visits afloat, and to take him ashore, on the officer notifying his wishes to that effect.

110. *Flags and Pendants displaced.*

2. *By Admiralty Flag.*—An Admiral's flag, a Commodore's broad pendant, or the ship's pendant is to be struck when the Admiralty flag is hoisted in that ship.

3. The flags of other functionaries ordered to be hoisted in ships of war by Articles 112 to 114 . . . are not to displace at the masthead the flag of an Admiral of any grade, nor the broad pendant of a Commodore of either class. When therefore a flag or broad pendant is hoisted, the distinguishing flag of the civil or military functionary is, if possible, to be hoisted at another masthead ; but if not possible, then it is to be hoisted side by side with the other, subject to the discretion conferred on the Senior Naval Officer in Article 114.

Distinguishing Flags, etc.

112. *Particulars of Flags.*—The flags authorised by Her Majesty to be displayed afloat are :

(*a*) . . .

(*b*) By Her Majesty's diplomatic servants, the Union flag, with the Royal Arms in the centre thereof on a white ground encircled by a garland.

(*c*) . . .

(*f*) By Consuls-General, Consuls and Consular Agents, the blue ensign, with the Royal Arms in the centre of the fly thereof, that is, in the centre of that part between the Union and the end of the flag.

113. *When to be Hoisted.*—Whenever any of the functionaries particularised in Articles 99 and 112 are embarked :

(*a*) In one of Her Majesty's Ships on the occasion of an official visit—the proper distinguishing flag is to be hoisted at the fore . . . whenever the functionary is receiving a salute to which he is entitled.

(*b*) In one of Her Majesty's Ships for passage the proper distinguishing flag, with the approval of the Senior Naval Officer, may similarly be hoisted and be kept flying within the limits of the respective Government, Mission or Command, provided the functionary be proceeding on the public service.

The distinguishing flag of consular authorities is to be hoisted in boats only and not in ships except when they are being saluted.

(*c*) In a boat for the purpose of paying visits of ceremony or on other official occasions—the proper distinguishing flag within the respective limits prescribed in sub-clause (*b*) may be hoisted at the bow, but when the boat belongs to one of Her Majesty's Ships, she is to have her white ensign flying.

(*d*) In British ships and boats, other than those of Her Majesty, these functionaries, except consular officers as to ships, are, with the sanction of the owners or masters, authorised to fly their proper distinguishing flags on the same occasions, and within the same limits, and these regulations shall be a sufficient warrant to the master under the Merchant Shipping Act for so doing, but the permission to hoist such masthead flags indicative of the presence on board of any of these functionaries in no way affects or alters the character or status of the merchant ship in time of peace or in time of war, whether Her Majesty is belligerent or neutral.

114. *Approval of Senior Officer.*—With regard to the previous proval of the Senior Officer, whenever a requisition is received for the embarkation or conveyance of any of the functionaries particularised in Articles 99 and 112, the Senior Officer present, in the absence of special orders from superior authority, will issue the necessary directions, provided that, after consultation with, and on requisition from, the official to be embarked, he considers it for the benefit of the service about to be performed that such flag should be hoisted within the authorised limits. Should the officer who has to determine the question consider it, in the circumstances, undesirable that the distinguish-

ing flag should be hoisted, he is to inform the functionary of his reasons, and at once report the same for the information of the Admiralty.

2. *When Ambassador, etc., is embarked.*—In the event of an Ambassador being embarked, or a Governor-General, Governor, High Commissioner, etc., of a Commonwealth country or Colony being detached on a foreign mission in his official capacity as Governor-General, Governor or High Commissioner, special instructions will be issued in each case as to the flag which should be hoisted in a man-of-war in which he may be embarked ; in the absence of instructions from the superior authority, the Senior Officer present is to exercise his discretion in consultation with the official about to embark.

CHAPTER VII

THE LANGUAGE OF DIPLOMATIC INTERCOURSE, AND FORMS OF DOCUMENTS

§ 92. FORMERLY the language in universal use was Latin, which may be said to have been at first the only language in which men knew how to write, at least in central and western Europe. When French, Spanish, Italian and English took on a literary form, the instructions to diplomatic representatives came to be framed in the language of the envoy's own country. German was the latest of all to be written. Latin was also used in conversation between diplomatists, where the parties were unable to speak each other's language. French came next in frequency of use after Latin. At the end of the fifteenth century it had become the court language of Savoy and the Low Countries, and also of the Emperor's court. When the League of Cambrai was formed, in 1508, the full powers of both Imperial and French negotiators were drawn up in French, but the ratifications were in Latin. Henry VI of England wrote to Charles VII of France in French, and that language was usually employed both in writing and speaking between the two countries. At the end of the sixteenth century the King of France no longer writes Latin except to the King of Poland, to such an extent had the use of French gained ground.[1]

§ 93. At the beginning of the sixteenth century all agreements drawn up in English, German or Italian have a domestic or quasi-domestic character. English served for Anglo-Scottish relations, German for those of German princes and of Germany with Bohemia, Hungary and Switzerland. Italian was sometimes employed between the smaller Italian states. In the Low Countries, Lorraine, and at Metz, French was naturally the native language. Only two languages, however, were admitted for drawing up international compacts: Latin for the apostolic notaries and the whole school attached to the Roman Chancery, and French. England and Germany constantly used the latter, above all for treaties with France and the Low Countries. At the

[1] de Maulde-la-Clavière, i. 80, 389.

end of the fifteenth century England reverted to Latin for its treaties with France.[1]

§ 94. The treaties of Westphalia (1648) were in Latin. The Treaty of January 30, 1648, between Spain and the United Provinces, by which the independence of the latter was recognised, was in French and Dutch, but Latin was used for all communications between France and the Empire up to the time of the French Revolution.[2] The Anglo-Danish Treaty of July 11, 1670, was in Latin; also the Anglo-Dutch Treaty of 1674; but the Treaty of Alliance of 1677–8 in French. The Treaty of the Grand Alliance of September 7, 1701, was in Latin, and likewise that of May 16, 1703, between Great Britain, the Emperor and the States-General, members of the Grand Alliance, and Portugal. In 1711 Queen Anne wrote to her allies in Latin, and the full powers given to her plenipotentiaries for the Congress of Utrecht were in the same language. But at the first conference, in 1712, the English demands were presented in French, as were also those of Prussia, Savoy and the States-General. The Commercial treaty between England and France of April 11, 1713, was in Latin, certain forms appended were in Latin and French, and the Queen's ratification was in Latin. But the Certificate of the exchange of ratifications was drawn up in French. The treaties signed on the same day by France with Portugal, Prussia, the Duke of Savoy and the States-General were in French. Sweden and Holland exchanged correspondence about the same period in Latin, but Peter the Great used French. On July 13, 1713, Spain and Savoy signed a treaty of peace in Spanish and French, while the treaty of peace of September 7, 1714, signed by the Emperor and the Empire with France, was in Latin. Russia used German in her early treaties with Brandenburg; with Austria, German, Latin and French on different occasions, but from about the middle of the eighteenth century always French; with England always French from 1715 onwards.[3]

§ 95. At Aix-la-Chapelle, in 1748, a separate article was annexed to the treaty of peace signed by Great Britain, Holland and France, to the effect that the use of the French language in the treaty of peace was not to be taken as prejudicing the right of the contracting parties to have copies signed in other languages.

§ 96. A similar article was attached to the Treaty of Paris of 1763, between Great Britain, France and Spain, and to the Treaty

[1] *Ibid*, 209. [2] Garden, *Histoire des Traités de Paix*, v. 155 *n*.
[3] F. de Martens, *Recueil des Traités, etc.*, v. and ix. (x.).

of Versailles of 1783, between Great Britain and France.[1] Article 120 of the Final Act of the Congress of Vienna declared that :

" La langue française ayant été exclusivement employée dans toutes les copies du présent traité, il est reconnu par les Puissances qui ont concouru à cet acte que l'emploi de cette langue ne tirera point à conséquence pour l'avenir ; de sorte que chaque Puissance se réserve d'adopter, dans les négociations et conventions futures, la langue dont elle s'est servie jusqu'ici dans ses relations diplomatiques, sans que le traité actuel puisse être cité comme exemple contraire aux usages établis." [2]

§ 97. In March 1753, on the occasion of the settlement of prize claims under the declaration of July 8, 1748, between Great Britain, France and the States-General, the French commissioners proposed to return to the British a memorandum presented by them, on the ground of its being drawn up in the English language, and claimed a prescriptive right to have all transactions carried on in French. The British Government sent instructions to Paris, stating that out of complaisance they had at first usually accompanied the English *memoranda* (or memorials) with a French translation, but the French commissioners having found fault with its wording, the commissioners had been ordered to confine themselves in future to the English language ; the French commissioners having now, however, demanded the use of French as a right, to comply would be to establish a precedent ; and it was added :

" All nations whatsoever have a right to treat with each other in a neutral language. As such, the French is made use of in transactions with the princes of the Empire and other foreign Powers, and if the Court of Versailles thinks fit to treat with His Majesty in Latin, the King will readily agree to it. . . . It is the King's express command that you should not for the future accept any paper from the French commissaries in their own language, unless they shall engage to receive the answer . . . returned to it in English."

§ 98. In 1800 Lord Grenville introduced the practice of conducting his relations with foreign diplomatists accredited to the Court of St. James in English instead of French, the language previously employed. Lord Castlereagh, when at the headquarters of the allied Powers in 1814–15, wrote in English to the foreign sovereigns and ministers. Canning, in 1823, discovered that the British representative at Lisbon was in the habit of writing in French to the minister for foreign affairs, although the latter

[1] Jenkinson, iii. 342. [2] d'Angeberg, *Le Congrès de Vienne*, 1864.

addressed him in Portuguese ; he therefore instructed him to use English in future. In 1826 a controversy arose with the Prussian Government in consequence of Count Bernstorff's refusal to receive an English note from the British representative,[1] on the ground that it was the official rule to receive such communications only when written in French or German. The question remained in abeyance until 1831, when the British minister was instructed to use English in future. In 1851, the President of the German Diet having set up the pretension to receive translations of notes addressed to that body, Lord Palmerston instructed the British representative that in the opinion of Her Majesty's Government every government was entitled to use its own language in official communications, on the ground that it is more certain of expressing its meaning in its own language. He regarded as objectionable the practice of furnishing a translation, because it led to the translation being treated as an original in place of the English version.

Since that time the right of British diplomatic agents to use their own language for communications to the government to which they are accredited does not seem to have been further contested, the right claimed by Great Britain being recognised by her as appertaining to every other state.

§ 99. Sometimes, however, the use of one's own language may cause inconvenience, as is shown in an anecdote related to Dr. Busch by Count Bismarck :[2]

> By the way, Keudell, he said suddenly, it just occurs to me that I must get a full power from the King to-morrow—in German of course. The German Emperor may only write in German, the Minister may be guided by circumstances. Official correspondence should be conducted in the language of the country and not in that of the foreign one. Bernstorff tried to carry out that idea here, but he went too far. He used to write to all diplomats in German, and they all replied—by arrangement of course—in their mother tongue, Russian, Spanish, Swedish, and what not, so that he had to keep a whole staff of translators at the Ministry. That was how I found things when I took office. Budberg sent me a note in Russian. That wouldn't do. If they wanted their revenge, Gortschakoff would have to write Russian to our Minister at Petersburg. That would be the correct course. It might be permissible to require foreign representatives to know and use the language of the country to which they are accredited. But to reply in Russian to me in Berlin to a note in German was unreasonable. So I laid it down that

[1] Stapleton, *Political Life of the Rt. Hon. George Canning*, iii. 265.
[2] Moritz Busch, *Graf Bismarck*, 4th ed. (1878), ii. 289.

anything received which was not in German, French, English or Italian should be left untouched and put away in the archives. Budberg then wrote complaint after complaint—always in Russian. No reply! The notes were put away in the presses. Finally he came himself and asked why I didn't reply. 'Reply?' I said in astonishment—'what to? I have seen nothing from you.' Now, he had written weeks before, and had sent several reminders. I told him, if I remember right, that a pile of documents in Russian were lying downstairs, and that his notes were probably among them; but that downstairs no one understood Russian, and anything in an undecipherable language was pigeon-holed. It was then agreed, if my memory serves, that Budberg would write in French, and the Foreign Ministry also occasionally. (*Translation.*)

§ 100. As regards treaties, conventions, etc., these, when concluded between two countries, are now ordinarily signed in two texts, *i.e.* in the respective languages of the two countries, though exceptions occur. In the case of treaties of a general nature—multilateral treaties—concluded between many states, the usual practice was to use French, but now French and English. Those concluded under the auspices of the United Nations normally have Chinese, English, French, Russian and Spanish texts, all equally authoritative.

§ 101. When a government addresses a formal communication to another, it generally does so through its diplomatic agent accredited to the other state, and the correspondence in the matter thereafter continues as a rule through the same channel.

Forms of Official Communications

§ 102. Written official communications between a diplomatic agent and the minister for foreign affairs of the state to which he is accredited take as a rule one or other of three principal forms, of which examples are given below.

§ 103. *Note.*—This may be in the first or third person. The former is much the more usual; the latter is apt to be somewhat stiff in tone.

On the occasion of the annexation of Bosnia and Herzegovina by Austria-Hungary in 1908, that government informed the other governments who were parties to the Treaty of Berlin, 1878, of the signature of a Protocol with the Turkish Government, and requested their assent to the abrogation of Article 25 of that treaty. The Powers, one after another, notified their consent. The note of the German ambassador was in the third person:

(*Translation.*)

The Imperial and Royal Austro-Hungarian Government having informed the Imperial German Government of the signature of the Protocol relating to Bosnia and Herzegovina, which has been concluded with the Sublime Porte, and having further requested assent to the abrogation of Article 25 of the Treaty of Berlin, the undersigned Imperial German ambassador, under instructions from his Government, has the honour to make known to His Excellency Baron von Aehrenthal, the Imperial and Royal Minister of the Imperial and Royal House and of Foreign Affairs, that the Imperial Government formally and without reserve gives its assent to the abrogation of Article 25 of the Treaty of Berlin.

The Undersigned, etc.
VON TSCHIRSCHKY.

Vienna, April 7, 1909.
HIS EXCELLENCY BARON VON AEHRENTHAL,
etc., etc., etc.

The reply of the British ambassador was in the first person :

Vienna,
April 17, 1909.

MONSIEUR LE MINISTRE D'ÉTAT,

In reply to the communication which the Austro-Hungarian Ambassador in London made to Sir Edward Grey on the 3rd inst., I have the honour to inform Your Excellency that His Britannic Majesty's Government give their consent to the suppression of Article 25 of the Treaty of Berlin.

I avail, etc.,
FAIRFAX L. CARTWRIGHT.

It appears to have been the practice of the German and Austro-Hungarian Foreign Offices to address notes in the third person to foreign representatives.

§ 104. *Note Verbale.*—This is in the third person and is neither addressed nor signed ; it should, however, terminate with a formula of courtesy. It is often used for the record of a conversation or in order to put a question.[1] Pasquier defined it thus :

" C'est une expression usitée dans le langage diplomatique. Elle veut dire une pièce dont le contenu doit être pris en sérieuse considération, très importante, mais qui n'est pas destinée à être rendue publique. C'est comme on disait une importante déclaration faite de vive voix, puis recueillie sur le papier pour n'être pas oubliée."

The mandates for Togoland accepted by the United Kingdom and France provided for the delimitation by a mixed commission

[1] García de la Vega, 209 ; de Martens-Geffcken, iii. 3.

of the respective zones, as recorded in the agreement between the two governments of July 10, 1919. This having been completed, the French Ambassador at London addressed a *note verbale* to His Majesty's Secretary of State for Foreign Affairs :

Comme le sait son Excellence le Principal Secrétaire d'État de Sa Majesté Britannique aux Affaires étrangères, des conversations ont eu lieu entre l'Ambassade de Sa Majesté Britannique à Paris, les Ministères des Affaires étrangères et des Colonies, en vue de procéder à la délimitation des zones française et anglaise du mandat sur le Togo.

Une mission franco-anglaise ayant préparé un abornement définitif, dont le projet a été arrêté à Lomé par les Commissaires franco-anglais, un rapport commun fut établi ainsi que ses annexes (description de la frontière et jeu de cartes) en trois originaux dans chacune des langues française et anglaise et le tout signé à Lomé le 21 octobre 1929.

Deux de ces originaux ont dû être addressés à son Excellence le Principal Secrétaire d'État pour les Affaires étrangères, l'un pour être examiné par le Gouvernement de Sa Majesté Britannique et gardé dans ses archives, l'autre, afin d'être transmis au Conseil de la Société des Nations, lorsque les Gouvernements britannique et française se seront notifié leur accord respectif à la frontière proposée.

L'Ambassadeur de France a été prié par son Gouvernement de faire savoir à son Excellence le Principal Secrétaire d'État de Sa Majesté Britannique aux Affaires étrangères que M. Briand a reçu l'exemplaire qui lui était destiné, qu'il l'a soumis au Gouvernement de la République et que le projet de frontière ainsi tracée a obtenu son agrément.

L'abornement définitif sur les lieux ne devant être effectué que lorsque les deux Gouvernements se seront notifié leur mutuel accord, M. de Fleuriau serait très reconnaissant à Mr. Henderson de bien vouloir lui faire connaître le plus tôt possible l'adhésion du Gouvernement britannique. Il saisit, etc.

Ambassade de France, Londres,
le 30 janvier 1930.

The reply of the British Minister for Foreign Affairs was in the first person, and as the correspondence [1] furnishes an example of a joint note addressed by the French and British representatives to the Secretary General of the League of Nations, this also is given below :

Foreign Office,
August 19, 1930.

YOUR EXCELLENCY,

On the 30th January last you were good enough to address to me a note stating that the French Government had given their approval to

[1] *Treaty Series* No. 45 (1930).

the boundary line defined in the report of the British and French Commissioners appointed to define the frontier between the British and French mandated territories in Togoland.

2. I am now in a position to inform your Excellency that His Majesty's Government in the United Kingdom have approved this report, and I have the honour to suggest that, if the French Government concur, steps should be taken to communicate to the Secretary-General of the League of Nations the third copy of the report, with the maps attached thereto, which was forwarded to London by the Governor of the Gold Coast. I beg leave accordingly to transmit herewith, for the consideration of the French Government, the draft of the note which I would propose to address to the Secretary-General and to request that I may be informed whether the French Government would agree to address a similar note to Sir Eric Drummond.

I have, etc.

Genève,
le 23 Septembre 1930.

M. LE SECRÉTAIRE GÉNÉRAL,

Conformément aux instructions que nous avons reçues des Ministres des Affaires étrangères de nos Gouvernements respectifs, nous avons l'honneur de porter à votre connaissance que le Gouvernement français et le Gouvernement de Sa Majesté Britannique dans le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord ont approuvé par échange de notes le Rapport final en trois exemplaires, daté de Lomé, le 21 octobre 1929, présenté par la Commission mixte de Délimitation des Territoires du Togo placés sous le mandat des deux Hautes Parties Contractantes respectivement, en vertue de l'article 1er des mandats conférés par la Société des Nations à la date du 20 juillet 1922.

Le dépôt aux archives de la Société des Nations du troisième exemplaire original dudit Rapport final et des cartes y annexées s'effectue en même temps que celui de la présente note. Ces documents donnent la description exacte de la frontière telle qu'elle a été déterminée sur le terrain et portent les signatures des chefs de la mission.

Agréez, etc.

R. MASSIGLI. ALEXANDER CADOGAN.

§ 105. *Memorandum* (*mémoire*, *pro-memoriâ*).—This is often a detailed statement of facts, and of arguments based thereon, not differing essentially from a note, except that it does not begin and end with a formula of courtesy, need not be signed, but it may be convenient to deliver it by means of a short covering note. In earlier times these were often termed *déduction* or *exposé de motifs*.

An important example is the memorandum communicated by the German Government to the French Government on Feb-

ruary 9, 1925, initiating the correspondence which led to the Locarno Conference of that year.[1]

(*Translation.*)

(Strictly Confidential.)

In considering the various forms which a pact of security might at present take, one could proceed from an idea cognate to that from which the proposal made in December 1922 by Dr. Cuno sprang. Germany could, for example, declare her acceptance of a pact by virtue of which the Powers interested in the Rhine—above all, England, France, Italy and Germany—entered into a solemn obligation for a lengthy period (to be eventually defined more specifically) *vis-à-vis* the Government of the United States of America as trustee not to wage war against a contracting State. A comprehensive arbitration treaty, such as has been concluded in recent years between different European countries, could be amalgamated with such a pact. Germany is also prepared to conclude analogous arbitration treaties providing for the peaceful settlement of juridical and political conflicts with all other States as well.

Furthermore, a pact expressly guaranteeing the present territorial status (" gegenwärtiger Besitzstand ") on the Rhine would also be acceptable to Germany. The purport of such a pact could be, for instance, that the interested States bound themselves reciprocally to observe the inviolability of the present territorial status on the Rhine ; that they furthermore, both jointly and individually (" conjointement et séparément "), guaranteed the fulfilment of this obligation ; and, finally, that they would regard any action running counter to the said obligation as affecting them jointly and individually. In the same sense, the treaty States could guarantee in this pact the fulfilment of the obligation to demilitarise the Rhineland which Germany has undertaken in articles 42 and 43 of the Treaty of Versailles. Again, arbitration agreements of the kind defined above between Germany and all those States which were ready on their side to accept such agreements could be combined with such a pact.

To the examples set out above still other possibilities of solution could be linked. Furthermore, the ideas on which these examples are based could be combined in different ways. Again, it would be worth considering whether it would not be advisable so to draft the security pact that it would prepare the way for a world convention to include all States along the lines of the " Protocole pour le Règlement pacifique de Différends internationaux " drawn up by the League of Nations, and that, in case such a world convention was achieved, it could be absorbed by it or worked into it.

The memorandum of the French Government in reply was as follows :

[1] *Parliamentary Paper, Misc.*, No. 7 (1925).

(*Translation.*)

The memorandum communicated to the French Government on the 9th February by His Excellency the German Ambassador has been examined by them with interest and with a determination not to neglect anything which may contribute to European and world peace. The German Government will understand that the examination of these suggestions cannot be continued until France has submitted them to her Allies and has come to an agreement with them for the establishment of a system of security within the framework of the Treaty of Versailles.

Paris,
February 20, 1925.

§ 106. Other and less usual forms are the following :

A method occasionally employed in some matter of weighty import is for the minister for foreign affairs to address a despatch to his representative at the other capital, setting forth the views of his government, with an instruction to read it to the Foreign Minister and to leave him a copy.

On the passage of the Panama Canal Act by the United States Congress in 1912 the following despatch was addressed by the British Government to His Majesty's Ambassador at Washington [1] :

Foreign Office,
London,
November 14, 1912.

SIR,

Your Excellency will remember that on the 8th July, 1912, Mr. Mitchell Innes communicated to the Secretary of State the objections which His Majesty's Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress, and that on the 27th August, after the passing of the Panama Canal Act and the issue of the President's memorandum on signing it, he informed Dr. Knox that when His Majesty's Government had had time to consider fully the Act and the memorandum a further communication would be made to him.

. . . . . .

Knowing as I do full well the interest which this great undertaking has aroused in the New World, and the emotion with which its opening is looked forward to by United States citizens, I wish to add before closing this despatch that it is only with great reluctance that His Majesty's Government have felt bound to raise objection on the ground of treaty rights to the provisions of the Act. Animated by an earnest desire to avoid points which might in any way prove embarrassing to the United States, His Majesty's Government have confined their

[1] *Br. and For. State Papers*, cv. 366.

objections within the narrowest possible limits, and have recognised in the fullest manner the rights of the United States to control the Canal. They feel convinced that they may look with confidence to the Government of the United States to ensure that, in promoting the interests of United States shipping, nothing will be done to impair the safeguards guaranteed to British shipping by treaty.

Your Excellency will read this despatch to the Secretary of State and will leave with him a copy.

I am, etc.,
E. GREY.

§ 107. Formerly when this method of communicating the views of one government to another was resorted to, the copy of the despatch was sometimes withheld, a course which might be held to justify a refusal to listen to the reading of the despatch.

Canning, in January 1825, having recognised the independence of Buenos Aires, Colombia and Mexico, the Russian and Austrian ambassadors called upon him on successive days, and said they were instructed to read to him the despatches from their respective courts on the subject, but were absolutely prohibited from giving or allowing him to take copies. Canning asked them to give whatever they had to say to him the form of a *note verbale*, explaining the difficulty in which he would be placed when, after listening to the reading of a long despatch, it became his duty to lay before the King and to convey to his colleagues a faithful impression of its contents, with no other voucher than his own individual recollection of it. He therefore felt bound not to listen to the reading of the despatch without being allowed to take a copy of it, but was perfectly willing to receive any communication in a written form. However, after they had left, he noted down his understanding and impression of what they had said, and sent copies to them for their approval or correction. These were returned to him—that from the Russian ambassador considerably enlarged, and that from the Austrian ambassador with an alteration.

§ 108. *Collective Note.* This is one addressed by the representatives of several states to a government in regard to some matter in which they have been instructed to make a joint representation. It involves close relations between the Powers whose representatives sign it.

The following notes addressed by the Italian, British and French representatives at Budapest to the Hungarian Government in 1921, concerning the deprivation of royal rights of all members of the House of Habsburg, are instances [1] :

[1] *Br. and For. Papers*, cxvi. 513–17.

(1)

Budapest,
le 4 novembre, 1921.

M. LE MINISTRE,

D'ordre de la Conférence des Ambassadeurs, nous avons l'honneur de transmettre au Gouvernement hongrois la déclaration suivante datée du 2 novembre :

" La Conférence des Ambassadeurs a pris acte de la déclaration faite aux Commissaires alliés par le Gouvernement hongrois suivant laquelle il se remet entre les mains des Grandes Puissances alliées. Cette décision, en facilitant l'action que les Puissances alliées ne cessent d'éxercer pour ramener l'apaisement dans l'Europe centrale, est de nature à écarter les dangers qui menacent la Hongrie.

" Convaincue que l'exécution de ses décisions constitue la seule sauvegarde de la paix, la Conférence a, de même, pris acte de la déclaration suivant laquelle le Gouvernement hongrois proclame la déchéance de tous les membres de la maison des Habsbourg, déclaration dont elle attend que la confirmation soit remise par écrit et sans délai aux Commissaires alliés. Elle compte fermement que l'Assemblée nationale hongroise, comme le Gouvernement hongrois en a pris l'engagement, sanctionnera cette proclamation de déchéance avant le 8 novembre.

" La Conférence charge les Commissaires alliés de veiller à la stricte exécution de cet engagement et décline toute responsabilité des événements qui pourraient survenir s'il n'était pas tenu dans le délai maximum susdit."

Veuillez agréer, etc.,
CASTAGNETO. HOHLER. FOUCHET.

(2)

Budapest,
le 5 novembre, 1921.

M. LE MINISTRE,

D'ordre de la Conférence des Ambassadeurs, nous avons l'honneur de signaler à votre Excellence que le texte du projet de loi gouvernementale, concernant la déchéance de la dynastie des Habsbourg, apparaît aux Grandes Puissances comme donnant prise à une équivoque qui ne leur permettra certainement pas d'obtenir la démobilisation de la Petite Entente. En effet, le projet de loi, tout en proclamant la déchéance de Charles IV, et l'abolition de la Pragmatique Sanction, réserve à la Hongrie le droit d'élire son roi, sans préciser que les Habsbourg, quels qu'ils soient, seront exclus de cette élection.

Il est indispensable que le vote de l'Assemblée nationale soit de plus grande netteté et, à cet egard, ne permette pas de supposer que la Hongrie se dérobe à la volonté très nettement marquée par les Puissances dans les déclarations de la Conférence des Ambassadeurs des

4 février, 1920, et 2 avril, 1921, en ce qui concerne l'exclusion du trône de tous les Habsbourg.

En portant sans délai ce qui précede à la connaissance de votre Excellence, nous croyons devoir appeler très vivement à ce sujet toute l'attention du Gouvernement hongrois.

Veuillez agréer, etc.,
CASTAGNETO. HOHLER. FOUCHET.

(3)

Budapest,
le 12 novembre, 1921.

M. LE MINISTRE,

De la part de la Conférence des Ambassadeurs, nous avons l'honneur de transmettre à votre Excellence la communication suivante qui vient d'être adressée au Haut Commissaire de France :

" La Conférence se déclare satisfaite du texte de la déclaration complémentaire de la loi de déchéance qui vous a été remis par le Gouvernement hongrois, et que vous m'avez communiqué par votre télégramme du 6 novembre 1921.

" Elle est en effet d'accord avec vos propositions et elle estime que les assurances ainsi données par un acte international fournissent des garanties plus sérieuses qu'une loi qui pourrait être sujette à revision.

" Je vous prie en conséquence de vous concerter avec vos collègues britannique et italien, et, par une démarche conjointe, de faire savoir au Gouvernement hongrois que les Principales Puissances alliées prennent acte avec satisfaction de la déclaration visée ci-dessus qu'elles considèrent comme un engagement international."

En portant ce qui précède à la connaissance de votre Excellence, nous vous prions, M. le Ministre, d'agréer, etc.,

CASTAGNETO. HOHLER. FOUCHET.

§ 109. *Identic Notes.* These are not always exactly similar. It is, however, desirable that they should be worded as closely as possible and be identical *quant au fond.* They should be presented, as far as possible, simultaneously.

On February 4, 1897, a Greek force landed in Crete and proclaimed the occupation of the island in the name of the King of the Hellenes. The Powers intervened, and in concert drew up the terms of an identic note to be presented to the Greek Government by the representatives of the United Kingdom, Austria-Hungary, France, Germany, Italy and Russia. This was in the following terms [1] :

[1] *Br. and For. State Papers*, xci. 175.

Athènes,
le 2 mars, 1897.

M. LE MINISTRE,

J'ai reçu de mon Gouvernement l'ordre de porter à la connaissance de votre Excellence que les Grandes Puissances se sont entendues pour arrêter une ligne de conduite commune destinée à mettre fin à une situation qu'il n'a pas dépendu d'elles de prévenir, mais dont la prolongation serait de nature à compromettre gravement la paix de l'Europe.

A cet effet les gouvernements d'Allemagne, d'Autriche-Hongrie, de France, de la Grande-Bretagne, d'Italie et de Russie sont tombés d'accord sur les deux points suivants :

1. La Crète ne pourra en aucun cas, dans les conjonctions actuelles, être annexée à la Grèce ;

2. Vu les retards apportés par la Turquie dans l'application des réformes arrêtées de concert avec elles et qui n'en permettent plus l'adaptation à un état de choses transformé, les Puissances sont résolues, tout en maintenant l'intégrité de l'Empire Ottoman, à doter la Crète d'un régime autonome absolument effectif et destiné à lui assurer un gouvernement séparé sous la haute suzeraineté du Sultan.

La réalisation de ces vues ne saurait, dans la conviction des Cabinets, s'obtenir que par le retrait des navires et des troupes helléniques qui sont actuellement dans les eaux ou sur le territoire de l'île occupée par les Puissances. Aussi attendons-nous avec confiance cette détermination de la sagesse du Gouvernement de Sa Majesté, qui ne voudra pas persister dans une voie contraire à la résolution des Puissances, décidées à poursuivre un prompt apaisement aussi indispensable à la Crète qu'au maintien de la paix générale.

Je ne dissimulerai pas toutefois à votre Excellence que mes instructions me prescrivent de vous prévenir qu'en cas de refus du Gouvernement Royal les Grandes Puissances sont irrevocablement déterminées à ne reculer devant aucun moyen de contrainte si, à l'expiration d'un délai de six jours, le rappel des navires et des troupes helléniques de Crète n'était pas effectué.

PARTS OF A NOTE

§ 110. The formal parts of a note are—to give them their customary French designations—(1) *l'appel* or *inscription ;* (2) *le traitement ;* (3) *la courtoisie ;* (4) *la souscription ;* (5) *la date ;* (6) *la réclame ;* (7) *la suscription.*

(1) is the title of the person addressed, as *Sire* (to a sovereign), *Monseigneur*, *Monsieur le Ministre*, *Monsieur le Comte*, or simply *Monsieur* (Sir) if he is a commoner, bearing no title.

It is placed *en vedette*, *i.e.* apart from the body of the letter ; *en ligne*, *i.e.* at the beginning of the first line ; or *dans la ligne*, *i.e.*

after some words at the beginning of the letter. *En vedette* is used in ordinary correspondence. When the head of a state writes to another head of a state, the *appel* or *inscription* is usually *en ligne* ; if he is addressing a non-sovereign prince, or other important personage, the *appel* is often *dans la ligne.*

(2) *Traitement* is mentioning the person addressed by his title of courtesy, such as *Sainteté* (Holiness) to the Pope, *Majesté* (Majesty) to kings and emperors ; *altesse impériale* (Imperial Highness) ; *altesse royale* (Royal Highness) ; *altesse sérénissime* (Serene Highness) ; *altesse* (Highness) ; *excellence* (Excellency) ; *seigneurie excellentissime, seigneurie illustrissime, grandeur, éminence* (Eminence).[1]

(3) The *courtoisie* is the complimentary phrase which concludes the letter. It may express an assurance of respect, consideration, attachment, gratitude, etc.

(4) The *souscription* is the signature. When preceded by " votre obéissant serviteur " it is said to be written *en dépêche* ; if by " veuillez agréer les assurances de ma haute considération," or by some similar form of words, it is said to be written *en billet.* The former is used in circumstances of ceremony, the latter in ordinary correspondence.

(5) The *date* (Latin *data, i.e.* given) gives the time and place of writing.

(6) The *réclame* consists of the name and official designation of the person addressed. It is placed at the bottom of the first page on the left.

Suscription is the address, and is a reproduction on the envelope of the *réclame.*

§ 111. *French usage since* 1920.

To foreign Ambassadors :

Appel (en vedette) : " Monsieur l'Ambassadeur."
Traitement : " Votre Excellence."
Courtoisie : " Veuillez agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération."
Date : " A Paris, le....., 19.."
Réclame : " Son Excellence Monsieur.....*ou* Monsieur le.....(titre nobiliaire, s'il y a lieu), Ambassadeur de....."

[1] *Éminence* is said to have been invented by Cardinal Richelieu for himself. It was afterwards adopted by the other cardinals, and became generally recognised.

To foreign Envoys Extraordinary and Ministers Plenipotentiary.

Date : " Paris, le....., 19.."

Appel (en vedette) : " Monsieur le Ministre, *ou* Monsieur le..... (titre nobiliaire s'il y a lieu)."

Traitement : " Vous."[1]

Courtoisie : " Agréez, Monsieur le Ministre, *ou* Monsieur le.....(titre nobiliaire s'il y a lieu), les assurances de ma haute considération."

Réclame : " Monsieur.....*ou* Monsieur le..... .....(titre nobiliaire, s'il y a lieu) et Ministre de....."

To foreign Ministers Resident :

The same as the foregoing, except that the *appel* is written *en ligne.*

To foreign Chargés d'Affaires :

Date : " Paris, le....., 19.."

Appel (en ligne) : " Monsieur le Chargé d'Affaires..... vous....."

Traitement : " Vous."

Courtoisie : " Agréez, Monsieur le Chargé d'Affaires .....les assurances de ma considération la plus distinguée."

Réclame : " Monsieur.....*ou* Monsieur le..... (titre nobiliaire s'il y a lieu), Chargé d'Affaires de ....."

§ 112. Other rules of the French Foreign Office are :

Letters addressed by the Minister for Foreign Affairs to the representatives of foreign Powers accredited to the French Republic are written on large paper with printed heading.

The Agents of the Ministry for Foreign Affairs, in their correspondence with the authorities of the foreign country where they exercise their functions, must follow the forms and the rules laid down by the head of the mission, in accordance with local usages.

Notes verbales destined for foreign representatives accredited at Paris are written on large paper with printed heading, and *réclame*, but without *appel* ; the date is written at the end.

Notes pro-memoriâ, destined for foreign representatives accredited at Paris, are written on square paper, with printed heading.

[1] Although this may still be technically correct the normal practice today is to address Ministers as " Votre Excellence ".

These have neither *appel* nor *réclame*, and, as they are to be delivered from one person to another, they do not require a *courtoisie*. The date is written at the end.

Abbreviations such as " S.M." for " Sa Majesté," " S.A." for " Son Altesse," " S.A.S." for " Son Altesse Sérénissime," " S. Exc." for " Son Excellence," " S.E." for " Son Éminence," " Mgr." for " Monseigneur," " M." for " Monsieur," " Mme." for " Madame," etc., are only allowable if the name or title of the person follows immediately, and if the document is not destined for that person. Where both these conditions are present the use of the abbreviation is imperative. Thus " Dans votre entretien avec S. Exc. l'Ambassadeur de.....vous.....," *but* " Veuillez faire observer à Son Excellence que.....," *or* " Le Ministre des Affaires Etrangères presente ses compliments à Son Excellence l'Ambassadeur de.....et a l'honneur de Lui rappeler que. . . . ."

The expressions " Votre Majesté," " Votre Altesse," " Votre Altesse Sérénissime," " Votre Excellence," " Prince," " Princesse," " Madame," " Mademoiselle," heraldic titles, and the words " Gouvernement," " Département," " Administration," etc., may never be abbreviated.

Forms used in addressing Sovereigns and Heads of Foreign States :

Appel (en vedette) : " Sire " *ou* " Madame," *ou* " Monsieur le Président."

Traitement : " Votre Majesté " *ou* " Votre Excellence."

Courtoisie : " Je prie Votre Majesté, *ou* Votre Excellence, d'agréer les assurances [1] de mon profond respect."

Date : " A Paris, le....., 19.."

To Princes and Princesses of Sovereign Families and reigning Princes and Princesses :

Appel (en vedette) : " Monseigneur " *ou* " Madame."

Traitement : " Votre Altesse (Impériale, Royale, Sérénissime)."

Courtoisie : " Je prie Votre Altesse (Impériale, Royale, Sérénissime) d'agréer les assurances [2] de ma respectueuse considération."

Date : " A Paris le....., 19.."

Réclame : " Son Altesse (Impériale, Royale, Sérénissime) Monseigneur le Prince X..... *ou* Madame la Princesse X..... "

[1] For a sovereign, " l'hommage." [2] For a princess, " l'hommage de mon respect."

To Foreign Cabinet Ministers :

Appel (en vedette) : " Monsieur le Ministre *ou* Monsieur le .....(titre nobiliaire s'il y a lieu)."

Traitement : " Votre Excellence."

Courtoisie : " Veuillez agréer, Monsieur le Ministre *ou* Monsieur le.....(titre nobiliaire s'il y a lieu), les assurances de ma très haute (*ou* haute) considération."

Date : " A Paris, le....., 19.."

Réclame : " A Son Excellence Monsieur le Ministre *ou* Monsieur le.....(titre nobiliaire s'il y a lieu), Ministre de....."

The French Chancery may be safely taken by other chanceries as a model in matters of etiquette, and for that reason we have not hesitated to give these details.

§ 113. *British usage.*

In all official communications, foreign ambassadors and ministers accredited in London are addressed as " Your Excellency " ; other correspondents as " My Lord," " Sir," " Madam " or " Gentlemen," as the case may be.

The following terminations of notes, despatches and letters are prescribed :

To Ministers for Foreign Affairs :

I have the honour to be, with the highest consideration,
Monsieur le Ministre,
Your Excellency's obedient servant.

To foreign Ambassadors and Ministers in London :

I have the honour to be, with the highest consideration,
Your Excellency's obedient servant.

To foreign Chargés d'affaires :

I have the honour to be, with high consideration,
Sir,
Your obedient Servant.

To Her Majesty's Ambassadors abroad :

I am, with great truth and respect,
Sir (or, My Lord),
Your Excellency's obedient Servant.

To Her Majesty's Ministers abroad :

I am, with great truth and regard,
Sir (or, My Lord),
Your obedient Servant.

To Her Majesty's Chargés d'affaires abroad :
I am, with great truth,
Sir,
Your obedient Servant.

To the Law Officers of the Crown :
I have the honour to be,
Gentlemen,
Your obedient Servant.

To other correspondents :
I am,
Sir (My Lord, Gentlemen, Madam),
Your obedient Servant.

Correspondence between Sovereigns and Heads of States

§ 114. How sovereigns address each other in correspondence has been explained in § 70. The ceremonial observed is less strict than in the case of communications addressed to others ; between equals the style is more familiar and less formal ; for this reason the form designated in French *Lettres de Cabinet* is that used by preference for communications between sovereigns.

Such letters (written usually on quarto paper) begin, Monsieur Mon Frère (et cher Beau-Frère), Sir My Brother (and dear Brother-in-Law) ; Madame Ma Sœur (et chère Nièce), Madame My Sister (and dear Niece) ; Monsieur Mon Cousin (Sir My Cousin) ; etc.

In the body of the letter the sovereign speaks of himself in the singular, and gives to his equals the title of *Majesté*, *Altesse Royale*, etc. Princes of lesser rank speak of crowned heads as *Sire*, both in the body of the letter and its signature.

Some friendly expressions, which vary according to the relations or degree of relationship between the two sovereigns, close the letter, such as " Je saisis cette occasion pour Vous offrir les assurances de la haute considération et de l'invariable attachement avec lesquelles Je suis, Monsieur Mon Frère, de Votre Majesté le bon Frère, N."

The signature of the sovereign to such letters is in some countries countersigned by a minister of state. Letters in this form are customarily employed for credentials of ambassadors or ministers accredited between sovereigns, or letters announcing

their recall, and recredentials, or expressions of congratulation or condolence conveyed to other sovereigns.

§ 115. Letters addressed by sovereigns to presidents of republics are in the more formal and ceremonious style of *Lettres de Chancellerie* (on large paper) beginning with the name and title of the sovereign, followed by the title of the head of the state to whom the letter is addressed: "To the President of the Republic of .....Our Good Friend" (or some equivalent). These are ordinarily credentials of ambassadors or ministers, letters of recall, recredentials, announcements of the death of the late sovereign or of accession to the throne, congratulations on election, etc., and may end by an expression of the value attached by the sovereign to the maintenance of the friendly relations happily subsisting between the two countries. They are usually countersigned by a minister of state.

§ 116. Letters addressed by the sovereign to other sovereigns are sometimes in similar formal style to *Lettres de Chancellerie*, with the designation of the sovereign to whom they are addressed following the name and title of the sender.

§117. Letters addressed by presidents of republics to sovereigns usually begin: "A.B. President of the Republic of..... To His Majesty the King of.....Great and Good Friend (or some equivalent)." These may be credentials of ambassadors or ministers, letters of recall, recredentials, announcement of election to the presidency, etc. In the case of many republics such announcements of assumption of the office of president are customary.

§ 118. In 1913 the Austro-Hungarian Chancery still used Latin for Imperial and Royal letters:

Serenissime et potentissime Princeps, Consanguinee et Frater carissime. . . .

Maiestatis Vestrae Bonus Frater
Franciscus Josephus.

Dabantur Viennae, die . . . mensis. . . .

"Rejection" of Diplomatic Communications

§ 119. Under the heading "The Language of Diplomatic Intercourse" it has become desirable to utter a warning against the growing tendency to misuse the word "rejection" in connection with diplomatic correspondence. It is commonly employed today to mean a refusal to agree with the contentions put

forward in a communication from a foreign power, with, or without, the production of counter-arguments.

Its proper interpretation is the literal one—the " casting back," in other words the return to the sender of the actual document itself. This occurs but rarely and the reason for the " rejection " is usually either the objectionable language of the document in question, or that it is a gross interference with the internal affairs of the addressee country, or both. A classic example of this was the protest addressed to the British Government by the Soviet representative in London in connection with the notorious " Zinoviev letter." This was " rejected " on the ground that, demanding the punishment of persons allegedly in the employment or under the control of the British Government, it was an interference in the internal affairs of the country. Shortly afterwards Mr. (later Sir Austen) Chamberlain, having succeeded Mr. Ramsay Macdonald as Secretary of State for Foreign Affairs, caused M. Rakowski to be informed that no trace of the offending note could be found in the archives left behind by Mr. Macdonald, but that he, Mr. Chamberlain, was acquainted with all the circumstances and had no intention of departing from the decision that the British Government could not consent to receive it.

In 1943 Mr. Stalin sent a telegram to Mr. Churchill about the Arctic Convoy, of which the form and substance were such that the Prime Minister refused to receive it and, sending for the Soviet Ambassador in London, handed it back to him in an envelope. Monsieur Gousev recognised the document and said that he had been instructed to deliver it. The Prime Minister replied " I am not prepared to receive it " and indicated " in a friendly manner " that the interview was at an end.[1]

[1] Churchill, *The Second World War*, v.

CHAPTER VIII

CREDENTIALS AND FULL POWERS

Letters of Credence or Credentials

§ 120. The form of credentials used in the United Kingdom in the case of foreign sovereigns is that of a *Lettre de Cabinet*, in such terms as the following :

Sir My Brother,

Being desirous to maintain without interruption the relations of friendship and good understanding which happily subsist between the two Crowns, I have selected My Trusty and Well-beloved X.Y. to proceed to the Court of Your Majesty in the character of My Ambassador Extraordinary and Plenipotentiary
Envoy Extraordinary and Minister Plenipotentiary

Having already had ample experience of X.Y.'s talents and zeal for My service, I doubt not that he will fulfil the important duties of his Mission in such a manner as to merit Your approbation and esteem, and to prove himself worthy of this new mark of My confidence.

I request that You will give entire credence to all that X.Y. shall have occasion to communicate to You in My name, more epsecially when he shall express to Your Majesty My cordial wishes for Your Happiness, and shall assure You of the invariable attachment and highest esteem with which I am,

Manu Regiâ. Sir My Brother
Your Majesty's
Good Sister
Elizabeth R.

Our Court of St. James,
195 .

To My Good Brother the King of - - . .)

§ 121. Or, in the case of a republic, a *Lettre de Chancellerie*, in such terms as these :

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, &c., &c., &c.

To the President of the Republic of Z. Sendeth Greeting!

Our Good Friend ! Being desirous to maintain, without interruption, the relations of friendship and good understanding which happily subsist between Our Realm and the Republic of Z., We have made choice of Our Trusty and Well-beloved X.Y. to reside with You in the character of Our Ambassador Extraordinary and Plenipotentiary. / Envoy Extraordinary and Minister Plenipotentiary.

The experience which We have had of X.Y.'s talents and zeal for Our service assures Us that the selection We have made will be perfectly agreeable to You ; and that he will discharge the important duties of his Mission in such a manner as to merit Your approbation and esteem, and to prove himself worthy of this new mark of Our confidence.

We therefore request that You will give entire credence to all that X.Y. shall communicate to You in Our name, more especially when he shall renew to You the assurances of the lively interest which We take in everything that affects the welfare and prosperity of the Republic of Z.

And so We commend You to the protection of the Almighty.

Given at Our Court of St. James, the.....day of....., One thousand Nine hundred and....., in the..... Year of Our Reign.

Your Good Friend,
(Signed) ELIZABETH R.

§ 122. The language of such documents is a matter of " common form." The highly ornate phraseology of the past has in modern times given way to a more simple style of address, and while this may differ from reign to reign, and between one country and another, the final phrase asking that credit may be given to all that the agent may say in the name of his sovereign or government is of universal application, as being what constitutes the essential part of a letter of credence.

LETTERS OF RECALL .

§ 123. Letters of Recall may take the form of a *Lettre de Cabinet*, as follows :

SIR MY BROTHER

Having occasion elsewhere for the services of My Trusty and Well-beloved X.Y., who has lately resided at Your Majesty's Court in the character of My Ambassador Extraordinary and Plenipotentiary / Envoy Extraordinary and Minister Plenipotentiary' I cannot omit to inform You of his recall.

(*Or,*)

My Trusty and Well-beloved X.Y., who has lately resided at Your Majesty's Court in the character of My Ambassador Extraordinary / Envoy Extraordinary and Minister Plenipotentiary / Envoy Extraordinary and Plenipotentiary, being now on the point of retiring from My Foreign Service, I cannot omit to inform You of the termination of his Mission in that capacity.

Having Myself had ample reason to be satisfied with the zeal, ability, and fidelity with which X.Y. has executed My orders on all occasions during his Mission, I trust that Your Majesty will also have found his conduct deserving of Your approbation and esteem, and in this pleasing confidence I avail myself of the present opportunity to renew to You the assurances of the invariable friendship and cordial esteem with which I am,

Sir My Brother,
Your Majesty's
Good Sister
ELIZABETH R.

Our Court of St. James,
195 .

To My Good Brother The King of

§ 124. Or of a *Lettre de Chancellerie*, as follows:

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, &c., &c., &c.

To the President of the Republic of Z. Sendeth Greeting!

Our Good Friend! [Having need elsewhere for the services of] Our Trusty and Well-beloved X.Y. who has for some time resided with You in the character of Our Ambassador Extraordinary and Plenipotentiary, / Envoy Extraordinary and Minister Plenipotentiary, [being now on the point of retiring from Our Foreign Service We have thought fit to notify to You the termination of his Mission in that capacity.] We have thought fit to notify to You his Recall.

We are Ourselves so satisfied with the zeal, ability, and fidelity with which X.Y. has executed Our orders on all occasions during his Mission that We trust his conduct will also have merited Your approbation, and in this pleasing confidence We avail Ourselves of the opportunity to renew to You the assurances of Our constant friendship, and of Our earnest wishes for the welfare and prosperity of the Republic of Z.

And so We commend You to the protection of the Almighty.

Given at Our Court of St. James, the.....day of....., One thousand Nine hundred and.....in the..... Year of Our Reign.

Your Good Friend,
(Signed) ELIZABETH R.

§ 125. I have omitted a number of concrete examples of credentials etc., appearing in earlier editions of this work. Their value as guidance to present day practice has expired and they took up a lot of space. This is also true of the following *lettre de chancellerie* but it would be a pity for such a jewel to be lost sight of. I have therefore retained it :

Par la Grâce de Dieu,

Nous Alexandre III, Empereur et Autocrate de Toutes les Russies, de Moscou, Kiow, Wladimir, Novgorod, Tsar de Casan, Tsar d'Astrakhan, Tsar de Pologne, Tsar de Sibérie, Tsar de la Chersonese Taurique, Tsar de la Géorgie, Seigneur de Plescow et Grand Duc de Smolensk, de Lithuanie, Volhynie, Podolie et de la Finlande ; Duc d'Estonie, de Livonie, de Courlande et Semigalle, de Samogitie, Bialostock, Carelie, Twer, Jugotie, Perm, Viatka, Bolgarie et d'autres ; Seigneur et Grand Duc de Novgorod-inférieur, de Czarnigow, Riasan, Polotzk, Rostow, Jaroslaw, Beloosersk, Oudor, Obdor-Condie, Witepsk, Mstislaw ; Dominateur de toute la contrée du Nord ; Seigneur d'Ibérie, de la Cartalinie, de la Cabardie et de la province d'Arménie ; Prince Héréditaire et Souverain des Princes de Circassie et d'autres Princes montagnards ; Seigneur de Turkestan ; Successeur de Norvège, Duc de Schleswig-Holstein, de Stormarn, de Dithmarsen et d'Oldenbourg, etc., etc., etc.

A la Très-Haute et Très-Puissante Princesse Victoire Ière, par la Grâce de Dieu, Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, etc. Salut !

Très-Haute et Très-Puissante Reine, très-chère Sœur et très-aimée parente ! Nous avons jugé à propos de rappeler Notre Conseiller Privé et Chevalier Baron Arthur Mohrenheim du poste de Notre Ambassadeur Extraordinaire et Plénipotentiaire qu'il a occupé jusqu'ici près Votre Majesté. En informant Votre Majesté de cette détermination, Nous La prions de vouloir bien congédier gracieusement Notre susdit Ambassadeur, étant persuadé, qu'en se conformant dans l'exercice des ses fonctions aux instructions que Nous lui avons données, il aura déployé tout son zèle pour entretenir les liens d'amitié qui subsistent entre Nos deux Cours, et aura su mériter la bienveillance de Votre Majesté. Sur ce, Nous prions Dieu qu'Il ait Votre Majesté en Sa sainte et digne garde.

Donné à Pétersbourg, le 8 fevrier, 1884, de Notre Règne la troisième année.

De Votre Majesté l'affectionné Frère et Cousin,

ALEXANDRE.

(Countersigned) N. GIERS.

A Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes.

§ 126. Subject, as occasion requires, to certain minor alterations, recredentials today are in the following form :

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, &c., &c., &c.

To the President of the Republic of Z. Sendeth Greeting !

Our Good Friend! We have received from the hands of A.B. the Letter which You addressed to Us on ....., and in which You acquaint Us of the termination of the Mission of X.Y. as Ambassador Extraordinary and Plenipotentiary / Envoy Extraordinary and Minister Plenipotentiary at Our Court.

We think it due to X.Y. to assure You that his language and conduct during his residence at Our Court have been such as to merit Our approbation and esteem, and have been uniformly and zealously directed to the maintenance and improvement of the relations of friendship which happily subsist between Our United Kingdom of Great Britain and Northern Ireland and the Republic of Z.

And so We commend You to the protection of the Almighty.

Given at Our Court of Saint James, the.....day of....., One thousand Nine hundred and ....., in the..... year of our Reign.

Your Good Friend,

(Signed) ELIZABETH R.

§ 127. Recredentials addressed to Sovereigns, in the form of *Lettres de Cabinet*, are in much the same terms.

FULL POWERS

§ 128. These are in the form of letters patent.

A diplomatic agent to whom a particular negotiation is entrusted for the conclusion of a treaty or convention, or an agent who is deputed to take part in a congress or conference for a similar purpose, requires as a general rule a special authorisation, called a full power, from the head of the state whom he represents ;

or, it may be, from its government, if the proposed treaty arrangement is to be between governments.

§ 129. Before the signature of a treaty or convention, etc., it is the rule that the full powers of the plenipotentiaries must be exhibited for verification. In the case of a bilateral treaty this usually takes place at the ministry for foreign affairs prior to the signature of the treaty; in the case of a multilateral treaty, the duty automatically devolves upon the headquarters government, viz. that of the state wherein the treaty is signed or the international organisation under whose auspices the treaty is concluded; in the case of a conference a small sub-committee is often appointed at the outset to receive and examine the full powers of the representatives of the various states taking part.

§ 130. It is not, ~~however~~, necessary that an actual exchange or transference of the original documents should take place. An inspection will suffice, and the most that could be required would be the retention of certified copies. That this was the custom in former times is shown from the practice that prevailed of publishing the text of the full powers conferred by the high contracting parties along with the treaty negotiated in pursuance of them.[1] But sometimes full powers, where given *ad hoc*, having served the purpose for which they were intended, are left with the government of the state, or with the international organisation, wherein signature of the treaty takes place, and in this event they are preserved with the signed treaty in the archives of the state or organisation concerned.

§ 131. Formerly, when a congress was held under the superintendence of one or more mediators, the full powers of the plenipotentiaries were handed to them for verification. At the conferences of Constantinople (1876–7) and Berlin (1884) the plenipotentiaries appointed *ad hoc* alone produced full powers, which were held to be unnecessary in the case of the resident diplomatic agents who represented their governments on those occasions.

§ 132. In the eighteenth century the King of England and the Emperor conferred full powers in the Latin language; France and Russia used French, Spain Spanish, and the United States English. For the definitive Treaty of Peace with the United States of September 3, 1783, the King's full power was also in English. Latin was used for this purpose as late at least as 1806, for the full powers given first to Lord Yarmouth, and afterwards

[1] See Jenkinson, iii. 347

to Lord Lauderdale in conjunction with him, for the abortive peace negotiations at Lille.

§ 133. Full power, dated April 23, 1783, to the Duke of Manchester for negotiating a treaty of peace with France :

(*Signature*) Georgius R.

Georgius Tertius, Dei Gratiâ, Magnæ Britanniæ, Franciæ, et Hiberniæ, Rex, Fidei Defensor, Dux Brunsvicensis et Luneburgensis, Sacri Romani Imperii Archi-Thesaurarius, et Princeps Elector, etc. Omnibus et singulis ad quos præsentes hæ literæ pervenerint, salutem ! Cùm ad pacem perficiendam inter nos et bonum fratrem nostrum Regem Christianissimum, quæ jàm signatis apud Versalios, die vicesimo mensis Januarii proximè præteriti, articulis preliminariis felicitèr inchoata est, eamque ad finem exoptatum perducendam, virum aliquem idoneum, ex nostrâ parte, plenâ auctoritate munire nobis è re visum sit ; cùmque perdilectus nobis et perquàm fidelis consanguineus et consiliarius noster, Georgius Dux et Comes de Manchester, Vicecomes de Mandeville, Baron de Kimbolton, Comitatûs de Huntingdon Locum-Tenens et Custos Rotulorum, nobilitate generis, egregiis animi dotibus, summo rerum usu, et spectatâ fide, se nobis commendaverit, quem idcirco titulo Legati Nostri Extraordinarii et Plenipotentiarii apud prædictum bonum fratrem nostrum Regem Christianissimum decoravimus, persuasumque nobis sit amplissimè ornaturum fore provinciam quam ei mandare decrevimus : Sciatis igitur quòd nos prædictum Georgium Ducem de Manchester fecimus, constituimus et ordinavimus, et, per præsentes, eum facimus, constituimus et ordinamus, nostrum verum certum ac indubitatum plenipotentiarium, commissarium, et procuratorem ; dantes et concedentes eidem plenam et omnimodam potestatem, atque auctoritatem, paritèr ac mandatum generale ac speciale, cum prædicto Rege Christianissimo, ipsiusque ministris, commissariis vel procuratoribus, sufficienti auctoritate instructis, cumque legatis, commissariis, deputatis et plenipotentiariis aliorum principum et statuum, quorum interesse poterit, sufficienti itidem auctoritate instructis tam singulatim ac divisim, quam aggregatim ac conjunctim, congrediendi et colloquendi, atque cum ipsis de pace firmâ ac stabili, sincerâque amicitiâ et concordiâ quantocius restituendis, conveniendi, tractandi, consulendi et concludendi ; eaque omnia, quæ ità conventa et conclusa fuerint, pro nobis et nostro nomine, subsignandi, superque conclusis tractatum, tractatusve, vel alia instrumenta quotquot et qualia necessaria fuerint, conficiendi, mutuoque tradendi, recipiendique ; omniaque alia quæ ad opus supradictum felicitèr exequendum pertinent, transigendi, tam amplis modo et formâ, ac vi effectuque pari, ac nos, si interessemus, facere et præstare possemus : Spondentes, et in verbo regio promittentes, nos omnia et singula quæcunque a dicto nostro Plenipotentiario transigi et concludi contigerint, grata, rata et accepta, omni meliori modo,

habituros, neque passuros unquam ut in toto, vel in parte, à quopiam violentur, aut ut iis in contrarium eatur. In quorum omnium majorem fidem et robur præsentibus, manu nostrâ regiâ signatis, magnum nostrum Magnæ Britanniæ sigillum appendi fecimus. Quæ dabantur in palatio nostro Divi Jacobis die vicesimo tertio mensis Aprilis, anno domini millesimo, septingesimo octogesimo tertio, regnique nostri vicesimo tertio.[1]

§ 134. The full powers given in 1806 to Lord Yarmouth in the first instance, and afterwards to Lord Lauderdale and Lord Yarmouth conjointly, were worded in the same manner.) Napoleon's full power to General Clarke on the same occasion ran as follows :

Napoléon par la grâce de Dieu, et les constitutions, Empereur des Français, Roi d'Italie, prenant entière confiance dans la fidélité pour Notre personne, et le zèle pour Notre service de Monsieur le Général de division Clarke, Notre conseiller intime du cabinet, et grand officier de la Légion d'honneur, Nous lui avons donné, et lui donnons par les présentes, plein et absolu pouvoir, commission, et mandement spécial, pour en notre nom, et avec tel ministre de Sa Majesté Britannique dûment autorisé à cet effet, convenir, arrêter, conclure, et signer, tels traités, articles, conventions, déclarations, et autres actes qu'il avisera bien être ; promettons d'avoir pour agréable et tenir ferme et stable, accomplir et exécuter ponctuellement tout ce que le dit plénipotentiaire aura promis et signé en vertu des présents pleins-pourvoirs, comme aussi d'en faire expédier les lettres de ratification en bonne forme, et de les faire délivrer pour être échangées dans le tems dont il sera convenu.

En foi de quoi Nous avons donné les présentes signées de notre main, contresignées et munies de Notre sceau Impérial.

A St. Cloud, le vingt-un juillet an mil huit cent six, de Notre règne le second.

NAPOLÉON.

Par l'Empereur, le Ministre Secrétaire d'État,
HUGUES MARET.

Le Ministre des Relations Extérieures,
CH. MAU. TALLEYRAND,
Prince de Benevent.[2]

§ 135. At the present day the full powers issued to representatives for such purposes as the negotiation and signature of a treaty, or the settlement in a similar manner at a congress or conference of some question of international concern, vary greatly in form,

[1] Jenkinson, iii. 347.
[2] *Papers Relative to the Negotiations with France*, 75.

according to the particular constitution or the settled practice of the country which issues them. In the case of the United Kingdom the form used for the signature of a treaty or convention between heads of states is shown in § 136, and the wording, it will be seen, follows in general that of the past (§ 133), though the use of Latin for such purposes has long been discontinued. Many countries adopt a similar formal style ; in the case of others it may be simpler, and the phraseology employed may vary considerably. Differences may exist also according to the degree of importance ascribed to the treaty, or whether it is to be concluded between heads of states or, on the other hand, between governments. The essential feature of all such documents is that they should show by their terms that the representative to whom they are issued is invested with all necessary authority on the part of the state concerned to take part in the negotiations pending, and to conclude and sign, subject if necessary to ratification, the treaty instrument which may result from these negotiations.

§ 136. The form of special full power issued by the Court of St. James for the purpose of a treaty or convention between heads of states is as follows :

(*Signature*) Elizabeth R.

Elizabeth the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, etc., etc., etc.

To all and singular to whom these Presents shall come, Greeting !

Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion, between Us, in respect of Our United Kingdom of Great Britain and Northern Ireland, and.....concerning ..... We have judged it expedient to invest a fit person with Full Power to conduct the said discussion on Our part in respect of Our United Kingdom of Great Britain and Northern Ireland ; Know Ye, therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence and Circumspection of Our.....have named, made, constituted and appointed, as We do by these presents name, make, constitute and appoint him Our undoubted Commissioner, Procurator and Plenipotentiary, in respect of Our United Kingdom of Great Britain and Northern Ireland, for the purpose aforesaid. Giving to him all manner of Power and Authority to treat, adjust and conclude with such minister or ministers, Plenipotentiary or Plenipotentiaries, as may be vested with similar Power and Authority on the part of.....

.....any Treaty, Convention, Agreement, Protocol or other Instrument that may tend to the attainment of the above-mentioned end, and to sign for Us, and in Our Name, in respect of Our United Kingdom of Great Britain and Northern Ireland, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if personally present ; Engaging and Promising, upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator and Plenipotentiary, in respect of Our United Kingdom of Great Britain and Northern Ireland, shall, subject if necessary to Our ratification, be agreed to, acknowledged and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof, We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the.....day of....., in the Year of Our Lord one thousand nine hundred and.....and in the.....year of Our Reign.

§ 137. The form of general full power is as follows :

(*Signature*) Elizabeth R.

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, &c., &c., &c. To all and singular to whom these Presents shall come, Greeting !

Whereas, for the better treating of and arranging any matters which are now in discussion, or which may come into discussion, between Us, in respect of Our United Kingdom of Great Britain and Northern Ireland and any other Powers or States, We have judged it expedient to invest a fit person with Full Power to conduct negotiations on Our part in respect of Our United Kingdom of Great Britain and Northern Ireland : Know ye, therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection of Our.....have named, made, constituted and appointed, as We do by these Presents name, make, constitute and appoint him Our undoubted Commissioner, Procurator and Plenipotentiary in respect of Our United Kingdom of Great Britain and Northern Ireland ; Giving to him all manner of Power and Authority to treat, adjust and conclude with such Ministers, Commissioners or Plenipotentiaries as may be vested with similar Power and Authority, on the part of any other Powers or States, any Treaty, Convention, Agreement, Protocol or other Instrument between Us and such

Powers or States, and to sign for Us, and in Our name, in respect of Our United Kingdom of Great Britain and Northern Ireland, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if personally present : Engaging and Promising, upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator and Plenipotentiary, in respect of Our United Kingdom of Great Britain and Northern Ireland, shall, subject if necessary to Our Ratification, be agreed to, acknowledged and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the.....day of.....
.....in the Year of Our Lord, One Thousand Nine hundred and.....
.....and in the..... Year of Our Reign.

§ 138. In the case of an agreement between governments, the form of full power issued by Her Majesty's Secretary of State for Foreign Affairs is as follows :

Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of..... relative to.....it is expedient that a fit person should be invested with Full Power to conduct the said discussion on the part of the Government of the United Kingdom of Great Britain and Northern Ireland ; I, ..., Her Majesty's Principal Secretary of State for Foreign Affairs, do hereby certify that.....is by these Presents named, constituted and appointed as Plenipotentiary and Representative having Full Power and Authority to agree and conclude, with such Plenipotentiary or Representative as may be vested with similar Power and Authority on the part of the Government of....., any Convention or Agreement that may tend to the attainment of the above-mentioned end, and to sign for the Government of the United Kingdom of Great Britain and Northern Ireland everything so agreed upon and concluded. Further I do hereby certify that whatever things shall be so transacted and concluded by the said Plenipotentiary and Representative, shall, subject if necessary to ratification by the Government of the United Kingdom of Great Britain and Northern Ireland, be agreed to, acknowledged and accepted by the said Government of the United Kingdom of Great Britain and Northern Ireland in the fullest manner.

In witness whereof I have signed these Presents, and affixed hereto my seal.

Signed and sealed at the Foreign Office, London, the.....day of ....., in the Year of our Lord 19....

(*Seal*) (*Signature of Secretary of State.*)

§ 139. A French example :

Vincent Auriol, Président de la République Française,

A tous ceux qui ces présentes Lettres verront, Salut ;

Un Accord complémentaire à la Convention générale franco-britannique du 28 janvier 1950, relative aux régimes de sécurité sociale applicables en France et en Irlande du Nord, devant être prochainement signé à Paris, A Ces Causes, Nous confiant entièrement en la capacité, zèle et dévouement de Monsieur Pierre Garet, Ministre du Travail et de la Sécurité Sociale, et de Monsieur Jean-Charles Serres, Ministre Plénipotentiaire, Directeur des Affaires Administratives et Sociales au Ministère des Affaires Etrangères, Nous les avons nommés et constitués Nos Plénipotentiaires à l'effet de négocier, conclure et signer avec le ou les Plénipotentiaires également munis de Pleins Pouvoirs de la part de leur Gouvernement, tels Convention, Déclaration ou Acte quelconque qui seront jugés nécessaires dans l'intérêt de ces Pays.

Promettons d'accomplir et d'exécuter tout ce que Nos dits Plénipotentiaires auront stipulé et signé au nom du Gouvernement de la République Française sans permettre qu'il y soit contrevenu directement ou indirectement ou de quelque manière que ce soit.

En Foi de Quoi, Nous avons fait apposer à ces présentes le Sceau de la République Française.

Fait à Paris, le 12 mai 1952.

(*Signed*) V. AURIOL.

(*Seal*) Par le Président de la République
Le Ministre des Affaires Etrangères
(*Signed*) SCHUMAN.

Le Président du Conseil
des Ministres,
(*Signed*) ANT. PINAY.

§ 140. A United States example :

Harry S. Truman, President of the United States of America,

To all to whom these Presents shall come, Greeting :

Know Ye That, reposing special trust and confidence in the integrity, prudence, and ability of Walter S. Gifford, Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Kingdom of Great Britain and Northern Ireland, I have invested him with full and all manner of power and authority for and in the name of the United States of America to meet and confer with

any person or persons duly authorized by the Government of the United Kingdom of Great Britain and Northern Ireland, being invested with like power and authority, and with such person or persons to negotiate, conclude, and sign an agreement between the Government of the United States of America and the United Kingdom of Great Britain and Northern Ireland to facilitate the interchange of patent rights and technical information for defense purposes, together with a related note.

In testimony whereof, I have caused the Seal of the United States of America to be hereunto affixed.

Done at the city of Washington this fifth day of December in the year of our Lord one thousand nine hundred and fifty-two and of the Independence of the United States of America the one hundred seventy-seventh.

(*Seal*) (*Signed*) HARRY S. TRUMAN.

By the President :

(*Signed*) DEAN ACHESON.

Secretary of State.

CHAPTER IX

ADVICE TO DIPLOMATISTS

§ 141. Of the qualities necessary for the profession of a diplomatist, Callières treats in his famous work *De la manière de négocier avec les souverains*,[1] and his observations, though made two centuries ago, have still much to commend them to notice. In modern days methods of diplomacy are doubtless less subtle and tortuous than were those of the past; while the rapidity of telegraphic communication now enables a negotiator to remain in constant touch with his government throughout. But national character and human nature have not changed to any appreciable extent. Callières' counsels are not here reproduced for the use of experienced diplomatists, but rather as hints that may prove serviceable to younger members of the profession. The following passages,[2] taken from his work, on the qualities of the good negotiator, may therefore fitly form an introduction to the present chapter.

§ 142. Ces qualités sont un esprit attentif et appliqué, qui ne se laisse point distraire par les plaisirs, & par les amusemens frivoles, un sens droit qui conçoive nettement les choses comme elles sont, & qui aille au but par les voyes les plus courtes & les plus naturelles, sans s'égarer à force de rafinement & de vaines subtilitez qui rebuttent d'ordinaire ceux avec qui on traite, de la penetration pour découvrir ce qui se passe dans le cœur des hommes & pour sçavoir profiter des moindres mouvemens de leurs visages & des autres effets de leurs passions, qui échapent aux plus dissimulez; un esprit fecond en expediens, pour aplanir les difficultez qui se rencontrent à ajuster les interêts dont on est chargé; de la presence d'esprit pour répondre bien à propos sur les choses imprevûës, & pour se tirer par des réponses judicieuses d'un pas glissant; une humeur égale, & un naturel tranquile & patient, toûjours disposè à écouter sans distraction ceux avec qui il traite; un abord toûjours ouvert, doux, civil, agreable, des manières aisées & insinuantes qui contribuent beaucoup à acquerir les inclinations de ceux avec qui on traite, au lieu qu'un air grave & froid, & une mine sombre & rude, rebute & cause d'ordinaire de l'aversion.

[1] Paris, 1716.
[2] The orthography and accentuation of the original are preserved.

Il faut surtout qu'un bon Négociateur[1] ait assez de pouvoir sur lui-même pour resister à la démangeaison de parler avant que de s'être bien consulté sur ce qu'il a à dire, qu'il ne se pique pas de répondre sur le champ & sans prémeditation sur les propositions qu'on lui fait, & qu'il prenne garde de tomber dans le deffaut d'un fameux Ambassadeur étranger de nôtre tems, qui étoit si vif dans la dispute, que lorsqu'on l'échauffoit en le contredisant, il reveloit souvent des secrets d'importance pour soutenir son opinion.

Il ne faut pas aussi qu'il donne dans le deffaut opposé de certains esprits mysterieux, qui font des secrets de rien, & qui érigent en affaires d'importance de pures bagatelles ; c'est une marque de petitesse d'esprit de ne sçavoir pas discerner les choses de consequence d'avec celles qui ne le sont pas, & c'est s'ôter les moyens de découvrir ce qui se passe, & d'acquerir aucune part à la confiance de ceux avec qui on est en commerce, lorsqu'on a avec eux une continuelle reserve.

Un habile Négociateur ne laisse pas penetrer son secret avant le temps propre ; mais il faut qu'il sçache cacher cette retenüe à ceux avec qui il traite ; qu'il leur temoigne de l'ouverture & de la confiance, & qu'il leur en donne des marques effectives dans les choses qui ne sont point contraires à ses desseins ; ce qui les engage insensiblement à y répondre par d'autres marques de confiance en des choses souvent plus importantes ; il y a entre les Négociateurs un commerce d'avis réciproques, il faut en donner, si on veut en recevoir, & le plus habile est celui qui tire le plus d'utilité de ce commerce, parce qu'il a des vûës plus étendües, pour profiter des conjonctures qui se presentent.

Il ne suffit pas pour former un bon Négociateur, qu'il ait toutes les lumieres, toute la dexterité & les autres belles qualitez de l'esprit ; il faut qu'il ait celles qui dépendent des sentimens du cœur ; il n'y a point d'employ qui demande plus d'élevation & plus de noblesse dans les manieres d'agir.

Tout homme qui entre dans ces sortes d'employs avec un esprit d'avarice, & un desir d'y chercher d'autres interêts que ceux qui sont attachez à la gloire de réüssir & de s'attirer par là l'estime & les récompenses de son Maître, n'y sera jamais qu'un homme trés-médiocre.

Pour soûtenir la dignité attachée à ces employs, il faut que celui qui en est revêtu, soit liberal & magnifique, mais avec choix & avec dessein, que sa magnificence paroisse dans son train, dans sa livrée & dans le reste de son equipage ; que la propreté, l'abondance, & même la délicatesse, regne sur sa table : qu'il donne souvent des fêtes et des divertissemens aux principales personnes de la Cour où il se trouve, & au Prince même, s'il est d'humeur à y prendre part, qu'il tâche d'entrer dans ses parties de divertissemens, mais d'une maniere agreable & sans le contraindre, & qu'il y apporte toûjours un air ouvert, complaisant, honnête et un desir continuel de lui plaire.

[1] Observe that the word *diplomate* did not exist when Callières wrote.

S'il est dans un Etat populaire, il faut qu'il assiste à toutes ses Diettes ou Assemblées, qu'il y tienne grande table pour y attirer les Députez, et qu'il s'y acquiere par ses honnestetez & par ses presens, les plus accreditez & les plus capables de détourner les résolutions préjudiciables aux interêts de son Maître, & de favoriser ses desseins.

Une bonne table facilite les moyens de scavoir ce qui se passe, lorsque les gens du pays ont la liberté d'aller manger chez l'Ambassadeur, & la dépense qu'il y fait est non seulement honorable, mais encore trés-utile à son Maître lorsque le Négociateur la sçait bien mettre en œuvre. C'est le propre de la bonne chere de concilier les esprits, de faire naître de la familiarité et de l'ouverture de cœur entre les convives.

On appelle un Ambassadeur un honorable Espion ; parce que l'une des ses principales occupations est de découvrir les secrets des Cours où il se trouve, & il s'acquitte mal de son employ s'il ne sçait pas faire les dépenses necessaires pour gagner ceux qui sont propres à l'en instruire.

La fermeté est encore qualité trés-necessaire à un Négociateur . . . un homme né timide n'est pas capable de bien conduire de grands desseins ; il se laisse ébranler facilement dans les accidens imprévûs, la peur peut faire découvrir son secret par les impressions qu'elle fait sur son visage, & par le trouble qu'elle cause dans ses discours ; elle peut même lui faire prendre des mesures préjudiciables aux affaires dont il est chargé, & lorsque l'honneur de son Maître est attaqué, elle l'empêche de le soûtenir avec la vigueur & la fermeté si necessaires en ces occasions, & de repousser l'injure qu'on luy fait, avec cette noble fierté & cette audace qui accompagnent un homme de courage. . . . Mais l'irresolution est trés-prejudiciable dans la conduite des grandes affaires ; il y faut un esprit décisif, qui aprés avoit balancé les divers inconveniens, sçache prendre son parti & le suivre avec fermeté.

Un bon Négociateur ne doit jamais fonder le succés de ses negociations sur de fausses promesses & sur des manquemens de foy ; c'est une erreur de croire, suivant l'opinion vulgaire, qu'il faut qu'un habile Ministre soit un grand maître en l'art de fourber ; la fourberie est un effet de la petitesse de l'esprit de celui qui le met en usage & c'est une marque qu'il n'a pas assez d'étenduë pour trouver les moyens de parvenir à ses fins, par les voyes justes & raisonnables.

Un homme qui se possede & qui est toûjours de sang froid a un grand avantage à traiter avec un homme vif & plein de feu ; & on peut dire qu'ils ne combattent pas avec armes égales. Pour rèüssir en ces sortes d'employs, il y faut beaucoup moins parler qu'écouter ; il faut du flegme de la retenuë, beaucoup de discretion & une patience à toute épreuve.

Un homme engagé dans les employs publics, doit considerer qu'il est destiné pour agir & non pas pour demeurer trop longtemps

enfermé dans son cabinet, que sa principale étude doit être de s'instruire de ce qui se passe parmi les vivans, préferablement à tout ce qui s'est passé chez les morts.

Un sage & habile Négociateur doit non seulement être bon Chrêtien ; mais paroître toûjours tel dans ses discours & dans sa maniere de vivre.

Il doit être juste & modeste dans toutes ses actions, respectueux avec les Princes, complaisant avec ses égaux, carressant avec ses inférieurs, doux, civil & honneste avec tout le monde.

Il faut qu'il s'accommode aux mœurs & aux Coûtumes du Pays où il se trouve, sans y témoigner de la repugnance & sans les mépriser, comme font plusieurs Négociateurs qui loüent sans cesse les manieres de vivre de leurs pays pour trouver à redire à celles des autres.

Un Négociateur doit se persuader une fois pour toutes qu'il n'est pas assez autorisé pour réduire tout un pays à sa façon de vivre, & qu'il est bien plus raisonnable qu'il s'accommode à celle du Pays où il est pour le peu de temps qu'il y doit rester.

Il ne doit jamais blâmer la forme du gouvernement & moins encore la conduite du Prince avec qui il négocie, il faut au contraire qu'il loüe tout ce qu'il y trouve de loüable sans affectation et sans basse flaterie. Il n'y a point de Nations & d'Etats qui n'ayent plusieurs bonnes loix parmy quelques mauvaises, il doit loüer les bonnes & ne point parler de celles qui ne le sont pas.

Il est bon qu'il sache ou qu'il étudie l'histoire du Pays où il se trouve, afin qu'il ait occasion d'entretenir le Prince ou les principaux de sa Cour des grandes actions de leurs Ancêtres & de celles qu'ils ont faites eux-mêmes ce qui lui est fort capable de lui acquerir leur inclination, qu'il les mette souvent sur ces matières, & qu'il se les fasse raconter par eux, parce qu'il est sûr qu'il leur fera plaisir de les écouter, et qu'il doit rechercher à leur en faire.

Un Négociateur doit toûjours faire des relations avantageuses, des affaires de son Maître dans le pays où il se trouve, mais avec discretion & en se conservant de la creance pour les avis qu'il donne ; il faut pour cela qu'il évite de débiter des mensonges, comme font souvent certains Ministres de nos voisins qui ne font aucun scrupule de publier des avantages imaginaires en faveur de ceux de leur party. Outre que le mensonge est indigne d'un Ministre public, il fait plus de tort que de profit aux affaires de son Maître, parce qu'on n'ajoûte plus de foy aux avis qui viennent de sa part ; il est vray qu'il est difficile de ne pas recevoir quelquefois de faux avis, mais il faut les donner tels qu'on les a reçûs, sans s'en rendre garand ; & un habile Négociateur doit établir si bien la reputation de sa bonne-foy dans l'esprit du Prince & des Ministres avec qui il négocie, qu'ils ne doutent point de la verité de ses avis lorsqu'il les leur a donnez pour sûrs non plus que de la verité de ses promesses.

Un Ambassadeur doit éviter de recevoir au nombre de ses principaux domestiques des gens du Pays où il se trouve, ce sont d'ordinaire des espions qu'il introduit dans sa maison.

Quelques élevez que soient les Princes, ils sont hommes comme nous, c'est-à-dire sujets aux mêmes passions, mais outre celles qui leur sont communes avec les autres hommes, l'opinion qu'ils ont de leur grandeur, & le pouvoir effectif qui est attaché à leur rang leur donnent des idées differentes de celles du commun des hommes, & il faut qu'un bon Négociateur agisse avec eux par rapport à leurs idées, s'il veut ne pas se tromper.

Il est plus avantageux à un habile Négociateur de negocier de vive voix, parce qu'il a plus d'occasions de découvrir par ce moyen les sentimens & les desseins de ceux avec qui il traite, & d'employer sa dexterité à leur en inspirer de conformes à ses vûës par ses insinuations & par la force de ses raisons.

La plûpart des hommes qui parlent d'affaires ont plus d'attention à ce qu'ils veulent dire qu'à ce qu'on leur dit, ils sont si pleins de leurs idées qu'ils ne songent qu'à se faire écouter, & ne peuvent presque obtenir sur eux-mêmes d'écouter à leur tour. . . . L'une des qualitez le plus necessaire à un bon Négociateur est de sçavoir écouter avec attention & avec réflexion tout ce qu'on luy veut dire, & de répondre juste & bien à propos aux choses qu'on luy represente, bien-loin de s'empresser à declarer tout ce qu'il sçait & tout ce qu'il desire. Il n'expose d'abord le sujet de sa negociation que jusqu'au point qu'il faut pour sonder le terrain, il regle ses discours & sa conduite sur ce qu'il découvre tant par les réponses qu'on lui fait, que par les mouvemens du visage, par le ton & l'air dont on lui parle ; & par toutes les autres circonstances qui peuvent contribuer à luy faire penetrer les pensées & les desseins de ceux avec qui il traite, & aprés avoir connu la situation & la portée de leurs esprits, l'état de leurs affaires, leurs passions & leurs interests, il se sert de toutes ses connoissances pour les conduire par dégrez au but qu'il s'est proposé.

C'est un des plus grands secrets de l'art de négocier que de sçavoir, pour ainsi dire, distiler goûte à goûte dans l'esprit de ceux avec qui on négocie les choses qu'on a interest de leur persuader. . . .

Comme les affaires sont ordinairement épineuses par les difficultez qu'il y a d'ajuster des interests souvent opposez entre des Princes & des Etats qui ne reconnoissent point de Juges de leurs pretentions, il faut que celuy qui en est chargé employe son adresse à diminuer & à aplanir ces difficultez, non seulement par les expediens que ses lumieres luy doivent suggerer, mais encore par un esprit liant & souple qui sçache se plier & s'accommoder aux passions & même aux caprices & aux préventions de ceux avec qui il traite. Un homme difficultueux & d'un esprit dur & contrariant augmente les difficultez attachées aux affaires par la rudesse de son humeur, qui aigrit & aliene les esprits, & il érige souvent en affaires d'importance des bagatelles & des préten-

tions mal fondées, dont il se fait des especes d'entraves qui l'arrêtent à tous momens dans le cours de sa negociation.

Il ne se trouve presque point d'hommes qui veüillent avoüer qu'ils ont tort, ou qu'ils se trompent, & qui se dépoüillent entierement de leurs sentimens en faveur de ceux d'autruy, quand on ne fait que les contredire par des raisons opposées quelques bonnes qu'elles puissent être, mais il y en a plusieurs qui sont capables de se relâcher de quelques-unes de leurs opinions, quand on leur en accorde d'autres, ce qui se fait moyennant certains menagemens propres à les faire revenir de leurs préventions ; il faut pour cela avoir l'art de leur alleguer des raisons capables de justifier ce qu'ils ont fait ou ce qu'ils ont crû par le passé, afin de flater leur amour propre, & leur faire connoître ensuite des raisons plus fortes appuyées sur leurs interêts, pour les faire changer de sentiment et de conduite . . . il faut éviter les contestations aigres & obstinées avec les Prince & avec leurs Ministres & leur representer la raison sans trop de chaleur, & sans vouloir avoir toûjours le dernier mot.

§ 143. Letter of the first Earl of Malmesbury to Lord Camden, written at his request, on his nephew, Mr. James, being destined for the foreign service :

Park Place, April 11, 1813.

My Dear Lord,

It is not an easy matter in times like these, to write anything on the subject of a Foreign Minister's conduct that might not be rendered inapplicable to the purpose by daily events. Mr. James' best school will be the advantage he will derive from the abilities of his Principal, and from his own observations.

The first and best advice I can give a young man on entering this career, is *to listen, not to talk*—at least, not more than is necessary to induce others to talk. I have in the course of my life, by endeavouring to follow this method, drawn from my opponents much information, and concealed from them my own views, much more than by the employment of spies or money.

To be very cautious in *any* country, or at *any* court, of such as, on your first arrival, appear the most eager to make your acquaintance and communicate their ideas to you. I have ever found their professions insincere, and their intelligence false. They have been the first I have wished to shake off, whenever I have been so imprudent as to give them credit for sincerity. They are either persons who are not considered or respected in their own country, or are put about you to entrap and circumvent you as newly arrived.

Englishmen should be most particularly on their guard against such men, for we have none such on our side the water, and are ourselves so little *coming* towards foreigners, that we are astonished and gratified when we find a different treatment from that which strangers experi-

ence here ; but our reserve and *ill manners* are infinitely less dangerous to the stranger than these premature and hollow civilities.

To avoid what is termed abroad an *attachement.* If the other party concerned should happen to be sincere, it absorbs too much time, occupies too much your thoughts ; if insincere, it leaves you at the mercy of a profligate and probably interested character.

Never to attempt to export English habits and manners, but to conform as far as possible to those of the country where you reside—to do this even in the most trivial things—to learn to speak their language, and never to sneer at what may strike you as singular and absurd. Nothing goes to conciliate so much, or to amalgamate you more cordially with its inhabitants, as this very easy sacrifice of *your* national prejudices to *theirs.*

To keep your cypher and all your official papers under a very secure lock and key ; but not to *boast* of your precautions, as Mr. Drake did to Mehée de la Touche.

Not to allow any opponent to carry away any official document, under the pretext that he wishes " to study it more carefully " ; let him read it as often as he wishes, and, if it is necessary, allow him to take minutes of it, but *both in your presence.*

Not to be carried away by any real or supposed distinctions from the sovereign at whose Court you reside, or to imagine, because he may say a few more commonplace sentences to you than to your colleagues, that he entertains a special personal predilection for you, or is more disposed to favour the views and interests of your Court than if he did not notice you at all. This is a species of royal stage-trick, often practised, and for which it is right to be prepared.

Whenever you receive *discretionary* instructions (that is, when authority is given you) in order to obtain any very desirable end, to decrease your demands or increase your concessions according as you find the temper and disposition of the Court where you are employed, and to be extremely careful not to let it be supposed that you have any such authority ; to make a firm, resolute stand on the first offer you are instructed to make, and, if you find " *this nail will not drive,*" to bring forward your others *most gradually,* and not, either from an apprehension of not succeeding at all, or from an over-eagerness to succeed too rapidly, injure essentially the interests of your Court.

It is scarcely necessary to say that no occasion, no provocation, no anxiety to rebut an unjust accusation, no idea, however tempting, of promoting the object you have in view, can *need,* much less justify, a *falsehood.* Success obtained by one is a precarious and baseless success. Detection would ruin, not only your own reputation for ever, but deeply wound the honour of your Court. If, as frequently happens, an indiscreet question, which seems to require a distinct answer, is put to you abruptly by an artful minister, parry it either by treating it as an indiscreet question, or get rid of it by a grave and serious look : but on

no account contradict the assertion flatly if it be true, or admit it as true, if false and of a dangerous tendency.

In ministerial conferences, to exert every effort of *memory* to carry away faithfully and correctly what *you hear* (what *you say* in them yourself you will not forget) ; and, in drawing your report, to be most careful it should be faithful and correct. I dwell the more on this (seemingly a useless hint) because it is a most seducing temptation, and one to which we often give way almost unconsciously, in order to give a better turn to a phrase, or to enhance our skill in negotiation ; but we must remember we mislead and deceive our Government by it.

I am, etc.[1]

§ 144. A good diplomatist will always endeavour to put himself in the position of the person with whom he is treating, and try to imagine what he would wish, do and say, under those circumstances. As Callières observed :—

" Il faut qu'il se dépoüille en quelque sorte de ses propres sentimens pour se mettre en la place du Prince [say, the government] avec qui il traite, qu'il se transforme, pour ainsi dire en luy, qu'il entre dans ses opinions & dans ses inclinations, & qu'il se dise à lui-même après l'avoir connu tel qu'il est, *si j'étois en la place de ce Prince avec le même pouvoir, les mêmes passions & les mêmes préjugez, quels effets produiroient en moy les choses que j'ay à luy representer ?* "

§ 145. The man who speaks in a foreign tongue, not his own, is to a certain extent wearing a disguise. If one wants to discover his ideas *de derrière la tête* encourage him to use his own language. Prince Bismarck is reported to have said : " Der alte (ich verstand Meyendorff) hat mir einmal gesagt : Trauen Sie keinen Engländer der das Französische mit richtigem Accent spricht, und ich habe das meist bestätigt gefunden. Nur Odo Russell möchte ich ausnehmen." This remark cuts both ways. On the other hand, a minister who can spare time to study the language of the country to which he is sent, will find its acquisition of great advantage. The surest way to gain admission to the heart of a nation is to give this proof of a desire to cultivate intimate relations with, and to understand the feelings of, the people.

§ 146. A diplomatist must be on his guard to protect the dignity of the state which he represents. Thus, the Duc de Mortemart, French ambassador at Petersburg, having been invited to attend a performance of the *Te Deum* in celebration of Russian victories over the Turks, learnt that it was to be given in a church decorated with flags taken from the French, and on this ground declined to

[1] *Diaries and Correspondence*, iv. 420.

be present. This course was approved by both his own government and by the Emperor of Russia.[1] In October, 1831, after the capture of Warsaw from the Polish insurgents by the Russian troops, M. Bourgoing, the French minister, refused to be present at a *Te Deum* ordered to celebrate the triumph of the Russian Government, and he informed Count Nesselrode of his intention to absent himself, his reason being the strong sympathy for the Poles which was felt in France. On the same day he dined at an official banquet given at the Austrian embassy, went publicly the next day to the theatre, and passed the evening at a private house. It does not appear that his conduct was made a ground of complaint to the French Government by the Emperor.[2] But it is scarcely admissible for an envoy to refuse to be present on such occasions, merely on the ground of friendship between his own country and the belligerent over whose defeat the rejoicing is held.

§ 147. It is not always easy to avoid making mistakes in precedence and protocol generally in a foreign country. A diplomat who considers himself the victim of such an one and attempts to make a scene renders himself, more often than not, ridiculous, even if he tries to justify himself on the ground that it is his country's position that he is defending and not his own. Such mistakes are seldom made of malice aforethought.

§ 148. The head of a mission should be careful that the affairs, the manners and customs of the country in which he is residing are not criticised at his table. What he or his guests may say on such subjects is sure to be repeated to his disadvantage.

A native occasionally makes disparaging remarks about his own country. A diplomatist should think at least twice before he expresses agreement with them.

§ 149. A diplomatist should not hold government bonds or shares in a limited liability company in the territory of the state where he is accredited, and in general, neither real nor personal property which is under the local jurisdiction. *A fortiori* he should not engage in trade or hold directorships, or speculate on the Stock Exchange. He must not incur the risk of his judgment as to the financial stability of the state or of local commercial undertakings being deflected by his personal interest.

§ 150. A diplomatist must be on his guard against the notion that his own post is the centre of international politics, and against an exaggerated estimate of the part assigned to him in the general

[1] Garden, *Traité complet de la Diplomatie*, ii. 84.
[2] F. de Martens, *Recueil des Traités, etc.*, xv. 140.

scheme. Those in whose hands is placed the supreme direction of foreign relations are alone able to decide what should be the main object of state policy, and to estimate the relative value of political friendships and alliances.

§ 151. In former times a wide discretion in the interpretation of his instructions was permitted to an envoy, in case it became necessary to take a sudden decision, but in these days, when telegraphic communication is universal, if he is of opinion that his instructions are not perfectly adapted to secure the object in view, he can easily ask for the modification he judges to be desirable. In doing this he will be well advised to explain his reasons at full length. It is better to spend money on telegrams than to risk the failure of a negotiation.

§ 152. A diplomatic agent should beware of communicating the text of the instructions he receives, whether by telegram or written despatch, unless he is specifically told to do so. It sometimes happens that he is told to read a despatch to the minister for foreign affairs, and to leave with him a copy. With this exception, the ambassador should generally confine himself to making the sense of his instructions known by note, or by word of mouth.

The case of Bulwer at Madrid, in 1848, who enclosed, in an official note to the Spanish Minister for Foreign Affairs, a copy of a despatch of March 16, marked "confidential," in which Palmerston instructed him to offer to the Spanish Government advice on the internal affairs of the kingdom, is an example of the unwisdom of putting in writing language which, if used orally, would have been much less likely to give offence. (See § 497.)

§ 153. Before sending home the report of any important conversation with the minister for foreign affairs, in which the latter has made statements or given promises that may afterwards be relied on as evidence of intentions or undertakings of the government in whose name he is assumed to have spoken, it may be advisable to submit to him the draft report for any observations he may desire to make. It is said that Lord Normanby, when ambassador at Paris, reproduced a conversation of M. Guizot's, which the latter asserted was incorrect, and he pointed out that the report of a conversation made by a foreign agent can only be regarded as authentic and irrefragable when it has previously been submitted to the person whose language is being reported. He added that if Lord Normanby had conformed to this practice, he would have spoken otherwise and perhaps better.[1]

[1] Ollivier, *L'Empire Libéral*, i. 322.

§ 154. In concluding any written agreement with the state to which he is accredited, the agent should take ample time to study the document carefully so as to avoid any ambiguity or imperfection in the terms employed. The use of clear and definite language should in all cases be secured, the meaning of which shall not be open to doubt or dispute.

§ 155. *Despatches, their style.* " Il faut que le stile des dépêches soit net & concis, sans y employer de paroles inutiles & sans y rien obmettre de ce qui sert à la clarté du discours, qu'il regne une noble simplicité, aussi éloignée d'une vaine affectation de sçience & de bel esprit, de negligence & de grossiereté, & qu'elles soient également épurées de certaines façons de parler nouvelles & affectées, & de celles qui sont basses & hors du bel usage. Il y a peu de choses qui puissent demeurer secrettes parmi les hommes qui ont un long commerce ensemble, des lettres interceptées & plusieurs autres accidens imprevûs les découvrent souvent, & on en pourrait citer ici divers exemples ; ainsi il est de la sagesse d'un bon Negociateur de songer lorsqu'il écrit que ses dépêches peuvent être vûës du Prince ou des Ministres dont il parle, & qu'il doit les faire de telle sorte qu'ils n'ayent pas de sujet legitime de s'en plaindre." [1]

§ 156. An English writer of despatches should be careful to eschew Gallicisms or idioms borrowed from the language of the country where he is serving. Such phrases as "it goes without saying" (for " of course "), " the game is not worth the candle " (for " it is not worth while "), " in this connexion," " that gives furiously to think " (for " that is a serious subject for reflection "), and others adopted from the current style of journalism, are to be avoided. " Transaction " for " compromise " ; " franchise of duties " for " freedom from [customs] duties " ; " category " for " class " ; " suscitate " for " raise " ; " destitution " for " dismissal " ; " rally themselves to " for " come round to," and " minimal " for " very small " are also cases in point. The more flagrant examples of modern " officialese " are so notoriously objectionable as to need no special mention here. " Psychological moment " is a mistranslation of " das psychologische Moment," which properly means " the psychological factor." Never place an adjective before a noun, if it can be spared ; it only weakens the effect of a plain statement. Do not go out of your way to be witty. Each despatch should treat of one subject only, and the paragraphs should be numbered to admit of

[1] Callières, *op. cit.*, 298, 304.

convenient reference. To keep a diary of events and of conversations is very useful.

§ 157. When not too hard pressed, heads of missions and of Foreign Office departments can contribute greatly to the training of junior members of the Service in their duties and conduct in general, more particularly perhaps in the proper methods of drafting letters, despatches, etc. If, as is all too apt to happen now-a-days, they have too little time to act personally as instructors, they should make a point of delegating the task to some experienced member of their mission or department. This applies also to dress and behaviour : casualness in either on the part of a member of the Foreign Service reflects discredit not only on himself but also on the mission or department to which he belongs.

§ 158. The duties of the head of a mission include also the furtherance of the legitimate private interests of his own countrymen residing in or passing through the country to which he is accredited, the giving of advice to them when in difficulties, and especially intervention on their behalf, if they invoke his assistance when they are arrested and detained in custody. This should be done through the ministry for foreign affairs, to which alone he is entitled to address himself. He should not, however, interfere in civil actions that may be brought against them, or in criminal matters except where manifest injustice or a departure from the strict course of legal procedure has taken place. He must on no account occupy himself with the interests of any but the subjects or *ressortissants* (a much wider term) of his own sovereign or state, and especially not with those of the subjects of the local sovereign.

§ 159. The commercial intercourse of nations constitutes a sphere of great and increasing importance, and a diplomatic agent may often be engaged in the conduct of negotiations with the government to which he is accredited, with a view of fostering and developing relations of trade and commerce between the two countries. Mr. Lansing, a former Secretary of State of the United States, once observed :

" Formerly diplomacy was confined almost exclusively to political and legal subjects, and the training of the members of the diplomatic service was devoted to that branch of international intercourse. To-day our embassies and legations are dealing more and more with commercial, financial and industrial questions." [1]

This is even truer today than at the time when it was written.

§ 160. The diplomatic agent may grant passports to his own

[1] Lay, *Foreign Service of the United States*, 120.

countrymen and certify signatures to legal documents on their behalf. But in British practice, and in that of most important countries, the duties of issuing passports and of performing such notarial acts as are allowable under the laws of the foreign state wherein they reside, are now delegated to consular officers.

§ 161. A diplomatist ought not to publish any writing on international politics either anonymously or with his name. The rule of the British service is very strict in regard to the publication of experiences in any country where a diplomatist has served, without the previous sanction of the Secretary of State, and it applies to retired members as well as to those still on active service.

§ 162. *Bribery.* The books generally condemn the employment of bribes to obtain secret information or to influence the course of negotiation. Many cases are, however, recorded in history of such proceedings being practised on a large scale, and with considerable effect. Besides gifts, the furnishing of articles to the press, or information which editors would not be able to secure otherwise, was also found of great utility for influencing public opinion. "L'ambassadeur [Count Lieven] reçut enfin l'ordre d'exercer, par l'entremise de la presse périodique, une pression sur l'opinion publique et de démontrer au peuple anglais que son intérêt le plus naturel exigeait l'alliance et l'amitié de la Russie pour le meilleur développement de son commerce et de son industrie." [1] This was a century or more since, but instances of more recent date could no doubt be quoted.

"If an envoy seek by means of presents to secure the goodwill or friendship of those who can assist him in attaining his objects, but without either expressly or tacitly asking from them anything wrong, this is not to be regarded as bribery." [2]

"It must be left to the ingenuity of the envoy to form connections which will enable him to obtain news and to verify what he receives. The Law of Nations appears to hold that it is not forbidden to obtain information by means of bribery; at least no one doubts the daily practice of this expedient, and though it has often been censured, in other cases it has been not obscurely admitted. . . . An uniform policy, armed with strength and honesty, has little to apprehend from what is concealed, in either foreign or domestic affairs, and steady attention to what passes around us will mostly enable us to divine what is secret." [3]

It may be that the Law of Nations is not concerned with bribery. It seems rather a question of morality.

[1] F. de Martens, *Recueil des Traités, etc.*, xi. 212.
[2] G. F. de Martens, *Précis du Droit des Gens*, ii. 116.
[3] Schmalz, *Europäisches Völkerrecht*, 98.

§ 163. *Gifts.* A clear distinction can be drawn between bribery and the bestowal, and acceptance, of ordinary presents. In some countries it is the custom to give flowers on certain occasions, as, for instance, New Year's Day, or after, or at the time of, receiving hospitality from friends or officials. Representatives of countries which pride themselves on some special native product occasionally give a colleague a few specimens of it: if these are at all substantial, it is usual to offer some equivalent return. It sometimes happens that the Doyen of the Diplomatic Corps, or some other Head of Mission who has served a long time at the same post, is given on leaving a piece of plate or some other testimonial by his foreign colleagues. No possible exception can be taken to the acceptance of presents in such circumstances as these.

CHAPTER X

LATIN AND FRENCH PHRASES

Latin Terms

§ 164. *Ultimatum.*—This term signifies a note or memorandum in which a government or its diplomatic representative sets forth the conditions on which the state in whose name the declaration is made will insist. It should contain an express demand for a prompt, clear and categorical reply, and it may also require the answer to be given within a fixed limit of time. This is as much as to say that an *ultimatum* embodies the final condition or concession, "the last word," so to speak, of the person negotiating.[1] It ordinarily, but not always, implies a threat to use force, if the demand is not complied with.

§ 165. A good example of this is contained in the last paragraph of a note addressed by the Russian chargé d'affaires at Constantinople to the Reis-Effendi in 1826, which was thus worded :

> Le soussigné terminera la tâche que lui imposent les instructions de son souverain, en déclarant à la Porte Ottomane que, si, contre la légitime attente de l'Empereur, les mesures indiquées dans les trois demandes qui forment le présent office n'auraient pas été mises complètement à exécution dans le délai de six semaines, il quitterait aussitôt Constantinople. Il est facile aux ministres de Sa Hautesse de prévoir les conséquences immédiates de cet événement.
>
> Le soussigné, etc.
>
> Minciaki.[2]
>
> Constantinople,
> le 5 avril, 1826.

§ 166. Another case of *ultimatum* in the ordinary sense occurred in 1850, when, by the orders of Palmerston, the British minister at Athens presented a demand for the settlement of the Don Pacifico claim within twenty-four hours, failing which a blockade of the coasts of Greece would be established and Greek merchant ships seized.[3]

[1] Cussy, *Dictionnaire du Diplomate et du Consul*, s.v. ; Oppenheim, ii. § 95.
[2] Garden, *Traité Complet de Diplomatie*, iii. 344.
[3] *Br. and For. State Papers*, xxxix. 491.

The note from the British minister to the Greek Minister for Foreign Affairs of Jan. 5/17, 1850, after making a formal demand for reparation for the wrongs and injuries inflicted in Greece upon British and Ionian subjects, and the satisfaction of their claims within twenty-four hours, announced that if the demand were not literally complied with within that period after the note had been placed in the hands of the Hellenic Minister for Foreign Affairs, the Commander-in-Chief of Her Majesty's naval forces in the Mediterranean would have no other alternative (however painful the necessity might be to him) than to act at once on the orders he had received from Her Majesty's Government.[1]

§ 167. Art. I of the Hague Convention No. 3 of 1907 declares that :

" Les Puissances contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'un ultimatum avec déclaration de guerre conditionnelle."

§ 168. Austrian *ultimatum* to Serbia. This took the form of a note, dated July 23, 1914, to the Serbian Government, containing various demands, and requiring an answer by six o'clock in the evening of the 25th. The reply of the Serbian Government not being regarded as satisfactory, the Austro-Hungarian minister left Belgrade, and war was declared against Serbia on the 28th.

§ 169. On July 31, 1914, the German ambassador in Paris asked the President of the Council (who was also Minister for Foreign Affairs) what would be the attitude of France in the case of war between Germany and Russia, and said he would return for a reply at one o'clock on the following day. On August 3, at 6.45, alleging acts of aggression committed by French aviators, he communicated a declaration of war. This does not appear to have been preceded by an *ultimatum*.

§ 170. At midnight on July 31, 1914, the German ambassador at St. Petersburg, by order of his government, informed the Russian Minister for Foreign Affairs that if within twelve hours Russia had not begun to demobilise, Germany would be compelled to give the order for mobilisation, and at 7.10 P.M. on August 1 the German Government, on the alleged ground that

[1] See also Ollivier, *L'Empire Libéral*, ii. 320 ; and F. de Martens, *Recueil des Traités, etc.*, xii. 262.

Russia had refused this demand, presented a declaration of war. The demand for demobilisation was in the nature of an *ultimatum*.

§ 171. The German *ultimatum* to Belgium of August 2, 1914, demanded permission to march through Belgian territory and threatened to regard Belgium as an enemy

"sollte Belgien den deutschen Truppen feindlich entgegentreten, insbesondere ihrem Vorgehen durch Widerstand der Maas-Befestigungen oder durch Zerstörungen von Eisenbahnen, Strassen, Tunneln oder sonstigen Kunstbauten Schwierigkeiten bereiten."

The note of the German minister presenting this demand did not mention any length of time for an answer, but it appears from the telegram of August 3 sent out by the Belgian Minister for Foreign Affairs to the Belgian ministers at St. Petersburg, Berlin, London, Paris, Vienna and The Hague, that the German minister had verbally required an answer within twelve hours.

§ 172. On the same occasion the British Government, on July 31, asked the German and French Governments to engage to respect the neutrality of Belgium, adding that it was important to have an early reply. France at once acceded to the request, but, no reply having been received from the German Government, The United Kingdom on August 4 protested against a violation of the treaty by which Belgium was constituted a neutralized state, and requested an assurance that her neutrality would be respected by Germany. Later in the day a telegram was sent to Berlin, instructing the ambassador to ask for the same assurance to respect the neutrality of Belgium as had been given by France, and for a satisfactory reply to the requests of July 31 and of that of the morning of August 4 to be received in London by midnight. These requests, especially the last, amounted in substance to an *ultimatum*.

In the 1939–45 war the Hitler government more than once waited to present its *ultimata* until German troops had actually crossed the frontiers of the victim countries. Such action is contrary to diplomatic practice and greatly to be deprecated.

§ 173. But the meaning of *ultimatum* is not restricted to the sense which it bears in the foregoing examples. During the course of a negotiation it may imply the *maximum* amount of concession which will be made in order to arrive at an agreement, where no resort to compulsion is contemplated in case of refusal. Cases have occurred in which it has been used as denoting an irreducible minimum which would be accepted, a plan or scheme of arrangement which it was sought to impose, a maximum of what would be conceded, and the like.

§ 174. *Uti possidetis* and *Status quo*. These two phrases often amount to the same thing, and are used to denote actual possession by right of conquest, occupation or otherwise, at some particular moment, which has to be defined with as much exactness as possible in the proposals for a treaty of peace, or in the treaty itself.[1] But while *uti possidetis* relates to the possession of territory, the *status quo* may be the previously existing situation in regard to other matters, *e.g.* to privileges enjoyed by one of the parties at the expense of the other, such as the French privilege of taking and drying fish on a portion of the coast of Newfoundland.

In the memorial of the King of France of March 16, 1761, it was proposed

> that the two Crowns shall remain in possession of what they have conquered from each other, and that the situation in which they shall stand on the 1st September, 1761, in the East Indies, on the 1st July in the West Indies and Africa, and on the 1st May following in Europe, shall be the position which shall serve as a basis to the treaty which may be negotiated between the two Powers.[2]

The British reply accepted the *status quo*, but it is alleged to have said nothing "with regard to the epochs." It did, in fact, say[3] that

> expeditions at sea requiring preparations of long standing, and depending on navigations which are uncertain, as well as on the concurrence of seasons, in places which are often too distant for orders relative to their execution to be adapted to the common vicissitudes of negotiations, which for the most part are subject to disappointments and delays, and are always fluctuating and precarious: from whence it necessarily results, that the nature of such operations is by no means susceptible, without prejudice to the party who employs them, of any other epochs than those which have reference to the day of signing the treaty of peace.

The French Government took this to mean that the date of the treaty of peace should be the epoch to fix the possessions of the two Powers, and delivered a memorial of April 19, insisting on the dates previously proposed by them. On this, the British Government replied that they were ready to negotiate as to the dates. The French envoy to London was furnished with "extremely simple instructions".

[1] Foster, *A Century of American Diplomacy*, 246, defines *uti possidetis* by the belligerents as the territory occupied by their armies at the end of the war, but this seems too absolute. *Cf.* Oppenheim, ii. § 263.

[2] Jenkinson, iii. 91.

[3] *Ibid.*, 95, 96.

The basis of them regarded the proposition *Uti Possidetis* and he was enjoined to demand of the British Minister, whether the King of England accepted of the periods annexed to the proposition of *Status quo*, and if His Britannic Majesty did not accept of them, what new periods he proposed to France? [1]

The British proposal in reply was that July, September and November should respectively be the periods for fixing the *Uti possidetis*. So much difficulty arose from this original proposal of *Uti possidetis*, that it was ultimately replaced by a series of mutual concessions of territory to take place in consequence of the treaty which might be eventually concluded. In the preliminaries of peace finally signed at Fontainebleau, November 3, 1762, it was provided, for instance, by Art. 7 that Great Britain should restore the fortresses in Guadeloupe, Mariegalante, Desirade, Martinique and Belle-isle [2] in the same condition as when they were conquered by the British arms, *i.e. in statu quo*, and the French trading posts in India "in the condition in which they now are," *i.e.* also *in statu quo*.[3] These stipulations were renewed in the definitive treaty of peace of February 10, 1763.[4]

In stipulating for *uti possidetis* or for *status quo*, it is consequently of the utmost importance to fix the date to which either expression is to relate.

When on the conclusion of a treaty of peace the belligerents agree mutually to restore all their conquests, they are said to revert to the *status quo ante bellum*.[5] In 1813 Napoleon drafted instructions for his plenipotentiaries to the Congress of Prague: "Quant aux bases, n'en indiquer qu'une seule: l'*Uti possidetis ante bellum*," meaning by that the relative possessions of France and the Continental alliance before the invasion of Russia in 1812.[6]

In May 1850 the French President, Prince Napoleon, demanded of the Porte that the privileges accorded to the Latin Church by the treaty between Francis I and Soliman should be upheld, without regard to those granted to the Greek Church by various firmans. The Emperor Nicholas resented this action, and addressed a letter to the Sultan Abdul Medjid in which he insisted on the maintenance of the *status quo* with respect to the Holy Places, *i.e.* the arrangements that had existed up to that time in virtue of the firmans.[7] This is a case in which *status quo* has nothing to do with the state of territorial possession.

[1] *Ibid.*, 108. [2] Jenkinson, iii. 170. [3] *Ibid.*, 171. [4] *Ibid.*, 177.
[5] Foster, *A Century of American Diplomacy*, 246.
[6] Sorel, *L'Europe et la Révolution française*, viii. 159.
[7] Ollivier, *L'Empire Libéral*, ii. 323.

English writers ordinarily use the form *status quo*. *Statu quo* is the foreign expression for the same thing.

§ 175. *Ad referendum* and *Sub spe rati*. When the sovereign whom a diplomatic agent represents, or to whom he is accredited, dies, the mission of the agent is, strictly speaking, at an end. During the interval which must elapse before he can receive fresh credentials, he may carry on a negotiation which has already been commenced, *sub spe rati*, *i.e.* in the expectation that what he promises will be ratified by his sovereign.[1]

It has also been said that when a proposal is made to an agent, and the case is urgent and the distance from his own country is considerable, he may accept or decline it *sub spe rati*.[2] But in these days, when telegraphic communication is possible between capitals even the most distant from each other, a prudent diplomatist will take care not to commit his government by a provisional acceptance of what is not warranted by his previous instructions. The utmost he will do will be to receive the proposal *ad referendum*. *Sub spe rati* may be explained to indicate that the agent is himself inclined to favour the proposal, but there is no reason why he should compromise either himself or his government.

§ 176. *Ne varietur*. Louis Philippe wrote to Guizot, July 24, 1846 :

> " Une lettre de vous à Bresson, qu'il lui serait enjoint de lire à sa Majesté, et dont il devrait lui demander de laisser entre ses mains une copie *ne varietur*,"

i.e. from which no departure can be permitted. Again, an *acte authentique* is an instrument certified by a third authority who is competent for the purpose. It has a public and permanent character. It is perfect in itself, without ratification. It is inserted in the minutes of the notaries, *ne varietur*.[3]

The Final Protocol of the Locarno Conference, 1925, in reciting the various treaties and conventions prepared and initialled at that conference, continued :

> Ces actes, dès à présent paraphés *ne varietur*, porteront la date de ce jour, les représentants des parties intéressées convenant de se rencontrer à Londres le 1er décembre prochain, pour procéder, au cours d'une même réunion, à la formalité de la signature des actes qui les concernent.

[1] de Martens-Geffcken, i. 187.
[2] Pradier-Fodéré, i. 370.
[3] de Maulde-la-Clavière, ii. 3, 199.

Nevertheless some slight amendments in grammar and spelling were found necessary, and these were agreed to by the plenipotentiaries at the time of the signature of the instruments on December 1, 1925.

§ 177. A condition *sine quâ non* denotes a condition that must be accepted, if an agreement is desired by the party to whom it is proposed.

§ 178. *Casus belli* and *Casus fœderis*. These terms appear to be sometimes confused.

The former signifies an act or proceeding of a provocative nature on the part of one Power which, in the opinion of the offended Power, justifies it in making or declaring war. Palmerston defined it in 1853 as " a case which would justify war." [1]

The latter is an offensive act or proceeding of one state towards another, or any occurrence bringing into existence the condition of things which entitles the latter to call upon its ally to fulfil the undertakings of the alliance existing between them, *i.e.* a case contemplated by the treaty of alliance.

At the Congress of Paris, April 15, 1856, the English, French and Austrian plenipotentiaries signed a convention by which a reciprocal engagement was entered into to regard as a *casus belli* any violation of the main treaty, and any attempt, no matter from what quarter it might be made, on the independence and integrity of the Ottoman empire ; it also fixed the naval and military contingents to be mobilised in case this *casus fœderis* should arise.[2]

French Terms

§ 179. *Démarche* is defined by Littré as : " Ce qu'on fait pour la réussite de quelque chose," and one of the examples he gives is : " la démarche que l'Angleterre avait faite du côté de Rome." This " something " may have been what in English might be described as an offer, a suggestion, an advance, a demand, an attempt, a proposal, a protestation, a remonstrance, a request, an overture, a warning, a threat, a step, a measure—according to circumstances, and unless the translator happens to know what the circumstances were under which the *démarche* was made, he will be at a loss for a precise English equivalent.

§ 180. *Fin de non-recevoir* is originally a legal term. Littré explains *fin* or *fins* as

[1] Ashley, *Life of Lord Palmerston*, i. 35.
[2] Ollivier, *L'Empire Libéral*, ii. 363.

" toute espèce de demande, prétention ou exception présentée au tribunal par les parties. *Fin de non-recevoir*, refus d'admettre une action judiciaire, en prétendant, par un motif pris en dehors de la demande elle-même et de son mal-fondé, que celui qui veut l'intenter n'est pas recevable dans sa demande.[1] Dans le langage général, fin de non-recevoir, refus pour des raisons extrinsèques. Répondre par des fins de non-recevoir. Opposer des fins de non-recevoir."

Cussy says :

" Cette locution, en usage dans les tribunaux, signifie les exceptions diverses qui forment autant d'obstacles à ce que le juge saisi d'une instance puisse s'occuper, au moins immédiatement, de la connaissance et de l'appréciation de la demande ; c'est un moyen de droit *préjudiciel*, par lequel on repousse une action, sans qu'il soit nécessaire d'examiner le fond de la contestation." [2]

This latter explanation corresponds better to the notion conveyed when the expression is used to describe the diplomatic practice which consists in rejecting an official complaint or demand without examining into the merits.

" Evasive reply " may be sometimes the best rendering.

§ 181. *Prendre Acte. Donner Acte.* The legal definition of *acte* is " a declaration made before a court, whether spontaneously or in consequence of an order of a court, and which has been certified to have been made." In diplomacy it is applied to any document recording an international agreement by which an obligation is undertaken ; such as, for instance, the convention for the suspension of hostilities of April 23, 1814, signed between France and the four allied Great Powers.[3] " Instrument " is the proper English equivalent, though we sometimes find it rendered by " Act."

Prendre acte is to declare that one will avail one's self, should the necessity arise, of a declaration or admission made by the other party, without conceding that one is in any way bound by that declaration. " To take note of " is perhaps the English equivalent. Yet it may sometimes conveniently be rendered by " recognise " or " acknowledge."

" Mais les sagesses tardives ne suffisent point ; et même quand elles veulent être prudentes, l'esprit politique manque aux nations qui ne

[1] The nearest English legal equivalent is perhaps " demurrer," or " objection in point of law."

[2] *Dictionnaire du diplomate*, etc., s.v., 323.

[3] *Mémoires du Pr. de Talleyrand*, ii. 175, in the preamble.

sont pas exercées à faire elles-mêmes leurs affaires et leur destinée. Dans le déplorable état où l'entreprise d'un égoïsme héroique et chimérique avait jeté la France, il n'y avait évidemment qu'une conduite à tenir; reconnaître Louis XVIII, prendre acte de ses dispositions libérales et se concerter avec lui pour traiter avec les étrangers." [1]

Donner acte is to give recognition to another party that he has performed a certain necessary act.

§ 182. *Donner la main* (in English, give the hand, German *Oberhand*) means to give the seat of honour, *i.e.* on the right hand of the host or diplomatic agent receiving a visit from a person of lower rank. The Elector Max Joseph of Bavaria was reported in 1765 to have bestowed this mark of deference on the Imperial Ambassador " which certainly no crowned head in Europe would do." [2] In the instructions to Lord Gower, on his appointment as ambassador to Paris in 1790, he is directed to act in accordance with the Order in Council of August 26, 1668, and " to take the hand of envoys " in his own house, *i.e.* to place them on his left hand.[3] See also on this point § 450.

§ 183. *National.* This French term, of which the convenience must be admitted, corresponds in English to " subject or citizen." A similar convenience attaches to the term *ressortissant*, one who is subject to a particular jurisdiction, which comprises both citizens of the French Republic and persons under its protection, whether as subjects of a protected state, such as Tunis, or the natives of Morocco, who, in accordance with former treaty stipulations existing with that country, were entitled to French protection as being *semsars* or brokers, and *mokhalata* or employés of French commercial houses.[4]

[1] Guizot, *Mémoires, etc.*, i. 95.
[2] Temperley, *Frederick the Great and Kaiser Joseph*, 67.
[3] Browning, *The Despatches of Earl Gower*, 2.
[4] See also *Annual Digest, etc.* (1927–8), Case No. 24.

BOOK II

DIPLOMATIC AGENTS IN GENERAL

CHAPTER XI

DIPLOMATIC AGENTS, AND THE RIGHT OF LEGATION

Diplomatic Agents

§ 184. *Diplomatic agents* is a general term denoting the persons who carry on the political relations of the states which they represent, in conjunction with the minister for foreign affairs of the country where they are appointed to reside. They are also styled " ministres publics " in French. It is not meant that their official intercourse is limited to the head of the foreign department. Matters which come under the heading of current business, or the details of diplomatic negotiations, of which the principles have already been settled, may be and usually are discussed with one of the minister's immediate subordinates. Questions affecting the vital relations of the two nations will, however, be treated with the head of the office.

§ 185. The duty of the diplomatic agent is to watch over the maintenance of good relations, to protect the interests of his countrymen, and to report to his government on all matters of importance, without being always charged with the conduct of a specific negotiation. At many posts, the agent is assisted in furnishing reports of a special character by military, naval and air attachés, as well as by members of his staff specialising, at any rate for the time being, in matters of Commerce, Finance, Economics, Labour, the Press, etc.

§ 186. In addition to the head of the permanent mission, other diplomatic agents are sometimes accredited for special purposes of a ceremonial character, to represent the sovereign or state at a coronation or other state ceremony, or it may be to invest a foreign sovereign with a high decoration.

Right of Legation

§ 187. Every recognised independent state is held to be entitled to send diplomatic agents to represent its interests in other states, and reciprocally to receive such agents, but there is no obligation in international law to exercise either right.[1]

§ 188. In treaties with some Oriental states the right to have a diplomatic representative has been expressly stipulated, as with China, for instance, and formerly with Japan. This practice, however, dates from an earlier period. In 1614 it was provided by a treaty between Sweden and Holland that the two states should mutually accredit resident envoys. Holland had a similar agreement, also of 1614, with Brandenburg, Anhalt, Baden, Oettingen and Württemberg. The Treaty of Belgrade, 1739, between Russia and the Porte, provided that the former might have a resident minister at Constantinople, of whatever category the Russian sovereign might determine ; and by Article V of the Treaty of Kutchuk-Kainardji, 1774 (January 10, 1775), it was settled that the Russian representative should always be of the second class, taking rank immediately after the Imperial German minister ; but if the latter were of a higher or lower category, then the Russian to have precedence immediately after the Dutch, or, in his absence, after the Venetian ambassador.[2] The United Kingdom, up to December 1914, maintained no regular diplomatic intercourse with the Holy See ; formerly, before the annexation of Rome to the Kingdom of Italy, a secretary of the British legation at Florence usually resided at Rome as the unofficial medium of official communication. Prussia had a legation at Rome, while not receiving a *nuncio* at Berlin ; so also Russia.

§ 189. Within more recent years a number of treaties have been concluded, notably by Turkey and the Union of Soviet Socialist Republics, which by their terms provide for the establishment of diplomatic relations and treatment of diplomatic agents. The Treaty of Friendship between Turkey and Poland of July 23, 1923, provides :

" Les Hautes Parties Contractantes sont d'accord pour rétablir les relations diplomatiques entre les deux États conformément aux principes du droit des gens. Elles conviennent que les ministres, envoyés et agents diplomatiques de chacune d'elles jouiront à charge de

[1] See also Oppenheim, i. § 360.
[2] Koch and Schoell, *Histoire abrégée des Traités de Paix, etc.*, xiv.

réciprocité dans le territoire de l'autre, des privilèges, honneurs, immunités et exemptions accordés à ceux de la nation la plus favorisée." [1]

§ 190. Similar articles appear in treaties concluded by Turkey with Austria, Czechoslovakia, Germany, Hungary, the Netherlands, Norway, Spain, Sweden and Yugoslavia, but in these the latter part of the article is modified to read "le traitement consacré par les principes généraux du droit international public général."

§ 191. By the Treaty of Rapallo, April 16, 1922, Germany resumed diplomatic relations with Russia. Treaties have since been concluded by the Soviet Union with various countries to the same effect. The Convention of Friendship and Economic Co-operation of January 20, 1925, between Japan and the Union of Soviet Socialist Republics, *e.g.*, says :

"The High Contracting Parties agree that, with the coming into force of the present convention, diplomatic and consular relations shall be established between them." [2]

The Pan-American Convention, signed at Havana on February 20, 1928, provides in Article 1 : "States have the right of being represented before each other through diplomatic officers."

§ 192. Whether semi-sovereign states possess the right or not is determined by the form of the tie between them and the suzerain power, sometimes by treaty. The right to send diplomatic agents is not co-extensive with that of concluding treaties. Thus Egypt, as long as the Turkish suzerainty lasted, was able to conclude commercial treaties with foreign states, but was not empowered to maintain permanent missions.

Right of Making Appointment

§ 193. In monarchical states the sovereign has the right of making appointments. Generally speaking, this right is defined by the constitution. Thus in the French Republic it is exercised by the President; in the United States by the President in conjunction with the Senate, whose consent is necessary to the nominations sent to it by the former.

§ 194. In the case of a regency, the diplomatic agent is nevertheless accredited in the name of the sovereign, whether he be minor or be prevented by infirmity from discharging his function

[1] *Br. and For. State Papers*, cxviii. 974.
[2] *Ibid.*, cxxii. 895.

During the minority of Louis XV, the Duke of Orleans being regent, Cardinal Dubois negotiated the Triple Alliance of The Hague in 1717, in virtue of credentials, full powers and instructions made out in the name of the King. In England, during the periods when George III was incapacitated for the transaction of affairs, the right of sending embassies was vested in the Prince of Wales. The Republic of Poland, during a vacancy of the elective throne, exercised the right of embassy.[1]

§ 195. On the occasion of the serious illness of King George V in 1928 His Majesty signed Letters Patent authorising the issue of a Commission under the Great Seal creating a Council of State, composed of the Queen, Prince of Wales, Duke of York, Archbishop of Canterbury and the Prime Minister, who were authorised to sign documents.[2] During the Royal Commonwealth Tour of 1953–4 the following were appointed Counsellors of State by Letters Patent in accordance with the provisions of the Regency Acts of 1937, 1943 and 1953: Queen Elizabeth the Queen Mother, the Princess Margaret, the Duke of Gloucester, the Princess Royal and The Earl of Harewood. Formal documents such as the credentials of ambassadors and ministers, full powers and ratifications of treaties were signed on behalf of the Crown by the Regents.

§ 196. The maxim *delegatus non potest delegare* was formerly subject to certain exceptions. Thus, after the death of Gustavus Adolphus at Lützen in 1632 the Senate at Stockholm delegated the whole government to the Chancellor Oxenstierna. Grotius, nominated by him as ambassador to France, had credentials in the Chancellor's name. He was received as the ambassador of Sweden, in virtue of the procuration of the Senate, and not merely as the representative of the Chancellor who had appointed him.

Phillimore says that the Viceroy of a province, especially of a distant province, has always been held, *ex necessitate rei*, to possess the right of embassy; and he adds that during the period when Spain governed Naples by a viceroy, Milan by a governor, and the Spanish Netherlands by a governor-general, the right to confer upon others the *jus legationis* was frequently exercised by these high delegates of their sovereign, generally without controversy. But in 1646 the French ambassador in Switzerland persuaded the Cantons to refuse an audience at their general assembly to the ambassador of the governor of Milan, on the ground that this ambassador had no credentials from the Crown of Spain. During

[1] Phillimore, ii. 163–4. [2] Keith, *British Constitutional Law*, 35.

the time that the Netherlands (now Belgium) were a possession of the House of Austria, foreign diplomatic agents were sent to reside at Brussels, the seat of the governor-general's authority. The British Governor-General of India, the Dutch Governor of Java, and the Spanish Governor of the Philippines were other examples. The Dutch, French, and British East India Companies often possessed this power, but this cannot be presumed ; it must have been conferred by the special and express grant of their respective governments.[1]

§ 197. A monarch who is a prisoner-of-war cannot accredit diplomatic agents[2]; nor a monarch who has abdicated, or has been deposed.

§ 198. When a civil war or a revolution breaks out, agents despatched to foreign countries by the opponents of the hitherto constituted government ought not to be officially received until the new state of things has assumed a permanent character and given rise to the formation of a new *de facto* government. The fact that a party in a state, during a civil war, has been recognised as a belligerent, conveys no right to be diplomatically represented abroad. But foreign states may negotiate with the agents of such a belligerent informally, to provide for the safety of their subjects and of the property of their subjects resident within the territory under the sway of such a party.[3] During the continuance of a civil war or revolution the diplomatist on the spot may often have to intervene on behalf of his own countrymen with the insurgents in possession, but he will do this personally and unofficially until his government recognises the new power which has been set up and, if necessary, sends him new credentials. As long as its recognition does not take place, the diplomatic agent previously accredited continues to represent the head of the state which appointed him. In 1861, the United Kingdom, having recognised the Kingdom of Italy, which had annexed the Neapolitan dominions, intimated to the chargé d'affaires of Naples that he could no longer be accredited as a representative of the King of the Two Sicilies.[4] In 1871 Count Bismarck insisted that, in order that the Government of National Defence should be recognised as having the right to represent France diplomatically, it must be recognised by the French nation. The right may sometimes be doubtful or disputed, *e.g.* when a sovereign has assumed a title which is not as yet recognised by other Powers. On the occasion of the corona-

[1] Phillimore, ii. 164–6.
[2] G. F. de Martens, *Précis du Droit des Gens*, ii. 40.
[3] Oppenheim, i. § 362.
[4] de Martens-Geffcken, i. 39.

tion of King William I, Prussia not having recognised the Kingdom of Italy, it was doubtful whether the King of Italy could send an ambassador to attend the ceremony. The difficulty was overcome by appointing General de la Rocca ambassador of King Victor Emmanuel, without specifying the country of which he was King.

Recognition of Changed Form of Government

§ 199. There is no fixed method of according recognition to a new government which has assumed office as a result of a revolutionary outbreak. Any form of notification suffices for the purpose or any act on the part of a state which is consistent only with such recognition.

§ 200. In the case of the 1910 revolution in Portugal, official recognition was delayed by the British Government until the new republic had been confirmed by a general election, and until certain alterations, sufficient to protect British church property in Portugal, had been made in the Constitution. Recognition was accorded jointly with the Governments of Spain, Germany, Austria and Italy, and was expressed in notes stating that, in view of the fact that the Portuguese Constitution had been voted, the respective governments were glad to join in the recognition of the republic.

§ 201. In 1924, following the plebiscite which resulted in favour of a republican form of government in Greece, the British Government accepted the verdict as representing the wishes of the Greek people and formally recognised the régime thus established.

§ 202. The British note of February 1, 1924, to the Soviet Government stated that His Majesty's Government recognised the Union of Soviet Socialist Republics as the *de jure* rulers of those territories of the old Russian Empire which acknowledged their authority.

§ 203. In the case of revolutionary changes of government which have taken place in South American countries within recent years, viz.: Chile, Ecuador (1925), Peru (1930), the Argentine Republic (1930), and Brazil (1930), the British representative has been instructed to inform the government concerned that the British Government considered that diplomatic relations between the two countries were in no way affected by the change of government.

§ 204. On the occasion, in April 1931, of the revolution in Spain and the departure of the King of Spain from that country the governments of most foreign states, including those of the United

Kingdom and the other Commonwealth countries, forthwith recognised the new régime. The former Spanish ambassador at London, the Marquis de Merry del Val, having resigned, a chargé d'affaires *ad interim* was appointed by the provisional government, and in May Señor Pérez de Ayala took up his appointment at London as ambassador extraordinary and plenipotentiary from the provisional government, being received in that capacity, and his name placed on the diplomatic list. The British ambassador at Madrid was not, however, furnished with new credentials pending the confirmation by popular vote of the new régime which had been set up in Spain and the election of a constitutional president of the republic.

§ 205. The right of the Holy See to diplomatic representation was not affected by the annexation of the States of the Church to the Kingdom of Italy.

By the Treaty of February 11, 1929, between Italy and the Holy See, Italy recognised the full ownership and the exclusive and absolute dominion and sovereign jurisdiction of the Holy See over the Vatican City, all persons having permanent residence there being subject to the sovereignty of the Holy See. Under Article 12 of the treaty, Italy also recognised the right of the Holy See to active and passive legation, in accordance with the general rules of international law, envoys of foreign governments continuing to enjoy in the Kingdom all the privileges and immunities appertaining to diplomatic agents, while their headquarters may remain in Italian territories and enjoy all immunities due to them in accordance with international law; an Italian ambassador being accredited to the Holy See and a Papal nuncio to Italy, the latter being the *doyen* of the diplomatic corps in accordance with the customary right recognised by the Congress of Vienna. (See also § 427.)

Numbers and Class of Agents Accredited

§ 206. It is a general practice to have only one permanent diplomatic agent at each capital.

§ 207. In time of war the representative of a neutral friendly Power commonly undertakes the protection of the subjects of one belligerent in the dominions of the other belligerent, so far as is permitted by the state to which he is accredited, and, of course, with the sanction of his own government.

§ 208. There is no objection in principle to one and the same person being accredited to more than one country. Indeed, this

has often been done where several minor states lie adjacent to each other, or when it is desired for reasons of public economy to limit expenditure on diplomatic missions.

§ 209. What class of agents shall be accredited is a matter for arrangement between the governments concerned, the usual practice being to exchange agents of the same class. The Swiss Confederation, ~~however~~, receives ambassadors from various countries, including the United Kingdom, though it has not yet accredited any ambassadors of its own. Generally, only the principal states used to be represented by ambassadors, though up to 1893 the United States made it a rule to appoint agents of not higher rank than envoy. At the beginning of Queen Victoria's reign the United Kingdom had ambassadors at Vienna, Paris, St. Petersburg and Constantinople. From 1844 to 1860 the post at St. Petersburg was occupied by an envoy and minister. The legation at Berlin was raised to an embassy in 1862, that at Rome in 1876, at Madrid in 1887, at Washington in 1893, at Tokio in 1905, at Brussels in 1919, at Rio de Janeiro in 1919, at Lisbon in 1924, at Buenos Aires in 1927, at Warsaw in 1929, and at Santiago in 1930. The embassy at Vienna was reduced to a legation in 1920 and so remained until it was closed in 1938 at the time of the Anschluss with Germany. It is now again an embassy.

In all these cases the change of status took place by mutual consent and the British diplomatic agent became ambassador. Similar changes took place all over the world during the last century, chargés d'affaires being converted into ministers resident and ministers resident into envoys extraordinary and ministers plenipotentiary, as a matter of international compliment and in recognition of the growing importance of the political and commercial relations of states. Since 1940 the tendency has grown beyond all bounds. In 1942 the United States raised their mission to the Netherlands from legation to embassy and His Majesty's Government in the United Kingdom promptly followed suit. The same procedure was shortly after adopted in the case of the other exiled governments. Since the end of the war the *dégringolade*, if so it may be called, has spread in all directions, and the vast majority of the heads of Her Majesty's missions now have the title of ambassador. The inevitable result is the reverse of that originally, and indeed until recently, attaching to the exchange of ambassadors, namely a compliment from the initiating country to the other : the multiplication of embassies has sorely diminished the importance and prestige of the title.

§ 210. The continuous residence of an embassy is, to speak strictly, a matter of *comity*, and not of *strict right*.

Nevertheless, so long a custom and so universal a consent have incorporated this permission of strict residence into the practice of nations, that its refusal would require unanswerable reasons for its justification.

Such refusal was the ancient practice of Far Eastern nations towards European states up to about the middle of the nineteenth century, and in the case of Korea until 1883. And, more recently, diplomatic representation between Soviet Russia and many countries was suspended.

Representation at Congresses and Conferences

§ 211. As apart from diplomatic agents formally accredited to the heads of foreign states, representatives are often appointed to attend congresses or conferences for the discussion and settlement of matters of international concern, and to negotiate and sign treaties in regard to such matters ; or, it may be, to revise treaties which have been formerly concluded between the states concerned. These are commonly furnished with full powers from their sovereign or government for the purpose. (See §§ 363, 531.)

Commissioners are also sometimes appointed to regulate boundary questions or to transact other matters requiring adjustment which are outside the ordinary scope of the permanent diplomatic representative. (See §§ 364, 367.)

CHAPTER XII

THE SELECTION OF DIPLOMATIC AGENTS

§ 212. In theory the selection of heads of missions will be determined with reference to the absolute fitness of the man for the particular post. Most European states confine diplomatic appointments, at least to ranks below that of ambassador, to a close service consisting of trained men who have begun at the lowest step of the ladder and risen gradually; a similar practice now extends to various American countries. In some the diplomatic service is amalgamated with that of the Foreign Office and sometimes also with the higher ranks of the consular service. In the United Kingdom where the "Foreign Service" now embraces Foreign Office, Diplomatic Service and Consular Service in a single entity, from which women are no longer excluded, heads of missions are seldom appointed from outside the service; sometimes, but rarely, they have previously been politicians; formerly they belonged to the political party in power, and usually resigned on a change of government. The same combination of foreign office and diplomatic service apparently existed in Austria-Hungary, France, Germany, Italy, Russia and Spain. In all of those countries the interchange of the office of Minister for Foreign Affairs with that of ambassador was not infrequent, but in the United Kingdom no instance of the kind has occurred, at least in recent times, though the special missions to the United States of the Earl of Balfour in 1917, of Viscount Reading in 1918, and of Viscount Grey of Fallodon in 1919, may be mentioned. In the last ten years no less than four Ministers of Foreign Affairs in the Netherlands have become ambassadors, three of them, however, having previously been members of the Netherlands foreign service.

In 1754 Sir Thomas Robinson (afterwards Lord Grantham), who had been minister at Vienna, was made Secretary of State for the Southern Department and leader of the House of Commons, in which position he achieved no marked distinction. His son, the second Lord Grantham, was ambassador at Madrid from 1771 to 1779, and Secre-

tary of State for Foreign Affairs for a few months in 1782–3. The appointment of the fifth Duke of Leeds is scarcely a case in point, nor is that of George Canning, of Marquess Wellesley, nor of the second Earl Granville, all of whom were in real fact politicians. The fourth Earl of Clarendon had been envoy at Madrid from 1833 to 1839, but did not go to the Foreign Office till 1853. The first Earl of Kimberley was envoy at St. Petersburg under his earlier title of Lord Wodehouse from 1856 to 1858, but did not become Secretary of State till 1894.

§ 213. If the diplomatist suggested for appointment as ambassador or envoy is married, the social gifts, character, religion, past history, or original nationality of his wife may be an important ingredient in the determination of his appointment.

§ 214. The regulations for the British Foreign Service say :

> In regard to all appointments whatever in the Service, the Secretary of State will be free to make any such selection as, on his own responsibility, he may deem right without being bound by claims founded on seniority or on membership of the Service.

§ 215. In the United States Article II, sec. 2, 2, of the Constitution declares that " the President shall nominate and, by and with the advice of the Senate, shall appoint ambassadors, other public ministers and consuls." Diplomatic appointments to missions of all classes were formerly conferred almost without exception on political supporters of the party whose nominee had been elected president, but in 1924 a career service was established, from which a number of appointments has since been made. A feature is the interchangeability of the diplomatic and consular services. Heads of missions, however, it is understood, still formally send in their resignations when a new president is elected.

In Japan there have been several instances of the interchange of minister for foreign affairs and ambassador.

§ 216. In the Union of Soviet Socialist Republics appointments to heads of missions are apparently made on political grounds. By a decree of May 22–June 4, 1918, the titles of ambassador, envoy, etc., were abolished, and a single class created called *Représentants Plénipotentiaires*. But the need of indicating the rank of these agents when accredited to foreign states has since compelled a modification, and their credentials, while styling them *Représentants Plénipotentiaires*, add to this designation " à titre d'ambassadeur extraordinaire et plénipotentiaire " or other description, according to the rank to be assigned to them in the country in which they are to reside.

§ 217. In 1914 a British Royal Commission on the Civil Service presented a report containing a series of recommendations with respect to the organisation and recruitment of the diplomatic service. One was that the diplomatic establishment of the Foreign Office and the Diplomatic Corps serving abroad should be amalgamated, up to and including the grades of assistant under-secretary of state and minister of the lowest grade. Another that the existing property qualification (the possession of a private income of £400 a year) be abolished, and that members of the service employed abroad should receive a suitable foreign allowance. These recommendations were accepted in principle. It would be tedious and unprofitable to trace in detail the various developments which have taken place since that acceptance, and the present conditions of entry into the Service can readily be ascertained from the Civil Service Commission. As, however, the whole system of grading in the Service has been re-organised since the 1939–45 war, those interested may find the following tables informative:

The British Foreign Service is divided into four Branches. These are:

(i) *Branch A* or the Senior Branch. It is divided into nine grades and comprises officers holding the Queen's Commission such as belonged to the pre-war Foreign Office and Diplomatic Service and Consular Service. It provides the higher officials of the Foreign Office and most of the staff of the political departments in the Foreign Office; the Ambassadors, Ministers, Counsellors and Secretaries at Diplomatic Missions (Embassies and Legations) abroad; the Commercial Counsellors and Secretaries at Missions; the Consuls-General, many of the Consuls and Vice-Consuls at Consular posts and of the Information Officers at overseas posts. The total number of posts filled by Branch A officers is 780 of which 260 are in the Foreign Office and the remainder abroad.

Entry to Branch A is by open competitive examination, arranged by the Civil Service Commission, among men and women who are between the ages of 20½ and 24 years (with an allowance for compulsory service in Her Majesty's Forces) and who fulfil certain qualifications of nationality, education and health. The examination consists of a short written qualifying test—a more comprehensive written examination is taken by candidates who have not obtained an Honours degree of at least second class standard at a recognised university—followed by a foreign language test, a

series of personality tests by the Civil Service Selection Board and an interview before the Final Selection Board.

Prospects.

New entrants to Branch A by the normal competition join the Service as Third Secretaries and are on probation for three years. If they pass their probation successfully they receive the Queen's Commission and are established.

Promotion

Promotion from Third Secretary to Second Secretary takes place, subject to successful completion of probation five years after entry into the Service. Thereafter, up to the rank of First Secretary promotion is determined by seniority. Above the rank of First Secretary it is determined by merit and suitability for particular appointments at higher grades.

(ii) *Branch* B_1 which consists of officers of the executive and clerical grades, owes its origin like Branches C and D to the reforms introduced by the Foreign Service Order in Council in 1943. Up to that time the subordinate staff did not belong to the "career" Foreign Service. Either they were appointed from the Home Civil Service or they were recruited locally at posts abroad on an unestablished basis. Under the 1943 reforms the Foreign Service became a self-contained and distinct Service of the Crown with its own permanent and pensionable staff. Each of its four branches was constituted so as to provide a career service with its own scale of promotion, and provision was made for transfer from Branch C to Branch B and from Branch B to Branch A. Branch B is divided into six grades, the lowest of which comprises clerical officers employed as cypherers and clerks and the highest, executive officers in responsible technical posts in the Foreign Office (accountancy, communications and administration). Members of Branch B may serve at diplomatic posts as secretaries engaged in political, commercial or information work or in consular posts. The more senior members of this Branch may be in charge of Consular posts. Branch B comprises about 1790 posts, of which about 970 are in the Foreign Office and 820 abroad.

Entry into Branch B is by open competitive examination arranged by the Civil Service Commission. Entry is at two levels, to Grade 5, which corresponds roughly to the Executive class of the Home Civil Service, and to Grade 6 which corresponds to the Clerical class. The normal method of entry into Grade 5 is by means of the open competition which is held twice a year among boys at

girls between the ages of 17½ and 19 years. There is a similar competition for entry into Grade 6 for those between the ages of 16 and 18 years. In addition there is an annual competition among University graduates for appointment to Grade 5 posts, and competitions are held at both levels for men and women who have served on regular engagements in Her Majesty's forces, and for young men who have completed a period of compulsory service under the National Service Acts. Candidates for posts in Grade 5 undergo a written examination and appear before an Interview Board. Candidates for Grade 6 posts are declared successful on the results of a written examination, but before appointment have to establish in an interview at the Foreign Office that they are in other respects suitable for appointment to the Foreign Service.

In Branch B, promotion from Grade 6 to Grade 5 is by limited competition open to officers between the ages of 21 and 28 years. Officers who are unsuccessful in this competition may be considered for promotion by seniority after the age of 30. Above Grade 5, promotion is on the basis of merit, seniority and suitability for particular appointments in a higher grade.

Suitably qualified officers may also be considered for promotion to Branch A. Those between the ages of 25 and 30 years may be nominated by the Personnel Department to take part in an annual limited competition for the Senior Branch. Officers above the upper age-limit may be considered for direct promotion to Branch A.

(iii) *Branch C.* This Branch consists of typists and shorthand typists and its members are under the same liability as members of Branches A and B to serve either in London or anywhere abroad. Entry to Branch C is by the open competitive Civil Service examination for the typing classes. Its members may be promoted to the supervisory and secretarial posts comprised in Branch B, and openings are also provided to enable those who have transferred to Branch B to follow the normal career of the Branch.

(iv) *Branch D* consists of established Chancery messengers and is responsible at Foreign Service posts abroad for the carrying out of security and messenger duties and for the supervision of other staff engaged on similar duties. Its members are not employed in the United Kingdom. It is recruited by selection from among suitable married men between 25 and 50 years of age.

The following table shows the functions of the various grades in each Branch.

Branch A.

Grade 1	Permanent Under-Secretary, Ambassador or Head of certain permanent Delegations abroad.
Grade 2	Ambassador, Head of certain permanent Delegations abroad or Deputy Under-Secretary in Foreign Office.
Grade 3	Ambassador, Minister or Deputy Under-Secretary in Foreign Office.
Grade 4	Ambassador, Minister, Consul-General, Deputy Head of Delegation or Assistant Under-Secretary in Foreign Office.
Grade 5	Ambassador, Minister, Counsellor, Consul-General or Inspector.
Grade 6	Counsellor, Consul-General or Head of Department in Foreign Office.
Grade 7	First Secretary, Consul or Assistant to Head of Department in Foreign Office.
Grade 8	Second Secretary or Vice-Consul.
Grade 9	Third Secretary or Vice-Consul.

Branch B.

Grade 1 Grade 1A	Head or Assistant to head of Department in Foreign Office.
Grade 2	Assistant to Head of Department in Foreign Office or equally responsible duties abroad (e.g. independent Consul).
Grade 3	First Secretary or Consul.
Grade 4	Second Secretary or Vice-Consul.
Grade 5	Accountant, Archivist, etc.
Grade 6	Cypherer or Archivist.
Grade 6c	Personal Assistant/Secretary.

Branch C.

Grade 1	Shorthand-typist.
Grade 2	Typist.

Branch D.

Grade 1 Grade 2 Grade 3	Chancery servant, messenger, or security guard.

§ 218. "One would be disposed to say that some, if not all, of the following are necessary qualifications for the diplomatic career.

"Good temper, good health and good looks. Rather more than average intelligence, though brilliant genius is not necessary. A straightforward character, devoid of selfish ambition. A mind trained by the study of the best literature, and by that of history. Capacity to judge of evidence. In short, the candidate must be *an educated gentleman.* These points cannot be ascertained by means of written examinations. Those can only afford evidence of knowledge already acquired; they do not reveal the essential ingredients of a character." Thus the 1932 edition of this work. I would put it differently: I consider that a member of the Foreign Service must be endowed with four essentials, integrity, common-sense, versatility and imagination. To these may advantageously be added numerous embellishments, such as those previously mentioned, but without these four no amount of "frills" will make a good diplomat.

§ 219. In most countries it is an essential requirement for entry into the diplomatic service that the candidate should be a subject or citizen of the country.

In the United Kingdom

(1) Every candidate must

(*a*) be a natural-born British subject; and

(*b*) have been born within the United Kingdom or within one of the self-governing Dominions of parents both of whom were also born within the United Kingdom or within one of the self-governing Dominions.

(2) No departure from this rule will be made without the special permission of the Secretary of State for Foreign Affairs, and then only in exceptional cases and in favour of candidates who are British subjects and who also satisfy one of the following conditions:

(*a*) If natural-born British subjects, they must either

(i) have at least one parent who is, or was at death, a British subject; or

(ii) have resided in Her Majesty's dominions and/or been employed elsewhere in the service of the Crown for at least five years out of the last eight years preceding the date of their appointment.

(*b*) If naturalised British subjects, they must have resided in Her Majesty's dominions and/or been employed elsewhere in the service of the Crown for at least five years out of the last eight years preceding the date of their appointment.

(*c*) If not qualified under (*a*) or (*b*) of this sub-paragraph they must satisfy the Civil Service Commissioners that they are so closely connected with Her Majesty's dominions, either by ancestry, upbringing, or residence, or by reason of national service, that an exception may properly be made in their favour.

§ 220. In the British diplomatic service the age of retirement was formerly fixed at seventy years, though cases occurred in which, for special reasons, it was thought desirable to extend the period of service. But the Superannuation (Diplomatic Service) Act, 1929 applied to members of that service the provisions of the Superannuation Acts governing civil servants in general. Under the Foreign Service Act 1943, officers may be retired on pension before reaching the normal retiring age. The French rule is retirement at the age of sixty, which may be extended to sixty-five. Many states have no age limit.

§ 221. The qualifications and characteristics of the perfect diplomatist have been discussed in Chapter IX. Certain other observations may be cited :

> The attempt to reduce to rules the art of negotiating is as vain and futile as the attempt to teach the art of social intercourse. In addition to knowledge of affairs in general and comprehension of the interests of his own country in particular, the distinguishing characteristics of a successful negotiator, such as knowledge of men, which enables one to interpret looks and glances, an elasticity of demeanour which overcomes the weak man by earnestness and the strong man by gentleness, readiness to understand the opponent's point of view and skill in refuting his objections—all these are qualities which can be acquired only by natural disposition, social intercourse and practical acquaintance with affairs.[1]

§ 222. Kennedy[2] sets forth the essential qualities of the perfect diplomatist thus : He is conciliatory and firm ; he eludes difficulties which cannot immediately be overcome only in order to obviate them in more favourable conditions ; he is courteous and unhurried ; he easily detects insincerity, not always discernible to those who are themselves sincere ; he has a penetrating intellect and a subtle mind, combined with a keen sense of honour ; he has an intuitive sense of fitness and is adaptable ; he is at home in any society and is equally effective in the chanceries of the old diplomacy or on the platforms of the new.

[1] Schmalz ; cited by Schmelzing, ii. 105.
[2] Kennedy, *Old Diplomacy and New*, 366.

§ 223. Ch. de Martens said :

" Pour que l'agent diplomatique inspire la confiance si nécessaire au succès des affaires, il faut que, sans abandon affecté, son caractère fasse croire à sa franchise. Le soupçon de finesse provoque la méfiance, et la marche des affaires en souffre. Mais la loyauté n'exclut pas la prudence, et l'on peut répudier la ruse sans renoncer à la circonspection." [1]

§ 224. A well-known witticism of Sir Henry Wotton has been made use of by ill-natured persons as the foundation of a charge that the method principally employed by diplomatists is the perversion of truth. Izaak Walton, in the life prefixed to the *Reliquiæ Wottonianæ*, reports :

" At his first going ambassador into *Italy*, as he passed through Germany, he stayed some days at *Augusta* [Augsburg], where having been in his former Travels, well-known by many of the best note for Learning and Ingeniousness (those that are esteemed the *Vertuosi* of that Nation) with whom he passing an Evening in Merriments, was requested by *Christopher Flecamore* [2] to write some Sentence in his *Albo* (a Book of white Paper, which for that purpose many of the *German* Gentry usually carry about them) and Sir *Henry Wotton* consenting to the motion, took an occasion from some accidental discourse of the present Company, to write a pleasant definition of an Ambassadour, in these very words :

Legatus est vir bonus peregrè missus ad mentiendum Reipublicæ causâ.

" Which Sir *Henry Wotton* could have been content should have been thus Englished :

An Ambassador is an honest man, sent to lie abroad for the good of his Country.

" But the word for *lye* (being the hinge upon which the Conceit was to turn) was not so expressed in Latine, as would admit (in the hands of an Enemy especially) so fair a construction as Sir *Henry* thought in *English*. Yet as it was, it slept quietly among other Sentences in this *Albo*, almost *eight years*, till by accident it fell into the hands of *Jasper Scioppius*, a Romanist, a man of a restless spirit, and a malicious Pen : who with Books against King *James*, Prints this as a Principle of that Religion professed by the King, and his Ambassadour Sir *Henry Wotton* then at *Venice :* and in *Venice* it was presently written after in several Glass-windows, and spitefully declared to be Sir *Henry Wotton's*.

" This coming to the knowledge of King *James*, he apprehended it to be such an oversight, such a weakness, or worse in Sir *Henry Wotton* as

[1] de Martens-Geffcken, 152.

[2] John Christopher Flechammer or Fleckammer. See Logan Pearsall Smith, *Life and Letters of Sir H. Wotton*, i. 49 *n.*, 127 *n.* ; ii. 10. Also an article by E. Nys in *Revue de Droit International*, xxi. 388.

caused the King to express much wrath against him : and this caused Sir *Henry Wotton* to write two Apologies, one to *Velserus* (one of the Chiefs of *Augusta*) in the universal Language, which he caused to be Printed, and given, and scattered in the most remarkable places both of *Germany* and *Italy*, as an Antidote against the venemous [*sic*] Books of Scioppius ; and another Apology to King *James :* which were both so ingenius, so clear, and so choicely Eloquent, that his Majesty (who was a pure judge of it) could not forbear, at the receit thereof, to declare publickly, *That Sir* Henry Wotton *had commuted sufficiently for a greater offence* " [4th edit. 1685].

In the letter to Mark Welser, Wotton calls his " pleasant definition "

" iocosam Legati definitionem, quam iam ante octennium istàc transiens apud amicum virum Christophorum Fleckamerum fortè posueram in Albo Amicorum more Teutonico, his ipsis verbis ; ' Legatus est vir bonus, peregrè missus ad mentiendum reipublicæ causâ.' Definitio adeô fortasse catholica, ut complecti possit etiam Legatos à latere." [1]

This seems a sufficient exoneration as far as Sir Henry Wotton is concerned.

[1] L. P. Smith, *op. cit.*, ii. 9, and *Reliquiæ Wottonianæ* (4th ed.).

CHAPTER XIII

PERSONA GRATA

§ 225. EVERY state has the right of refusing to accept a particular diplomatic agent, whether on the ground of his personal character or of his previous record, as, for instance, if he is known to have entertained sentiments of enmity toward the state to which it is proposed to accredit him. A diplomatic agent may also be declined because of the character with which it is proposed to invest him, or, as it is tersely expressed in Latin, *ex eo ob quod mittitur*. If the Pope had announced his intention of sending a legate or *nuncio* to certain Protestant countries it is probable that such a representative would not have been received. The Ottoman Porte for a long time declined to exchange ambassadors with the United States, until the latter finally despatched a squadron of ships of war to Constantinople, and at the cannon's mouth, as it were, extracted a promise to fall in with the proposed arrangement.[1]

AGRÉATION

§ 226. To avoid unpleasantness arising from a refusal, it is the usual practice to submit the name of the person whom it is desired to appoint, beforehand, to the head of the state to whom he is to be accredited. This is done confidentially as a rule, the channel generally employed being the retiring diplomatic agent of the country which appoints, or the chargé d'affaires *ad interim*. Sometimes it is done by the minister for foreign affairs addressing himself to the diplomatic representative of the state to which the diplomatist is to be accredited. When the Pope was about to appoint a *nuncio* or legate to Spain (formerly also to the courts of Austria-Hungary, France and Portugal) he submitted a list of three names, called a *terna*, to the sovereign, who then was at liberty to make his choice. If there existed no special reasons for exercising the power of choosing, it was usual to take the name that stood first. In 1819, Dessolles, the French minister for foreign affairs, wrote to Nesselrode giving a list of four men, any one of

[1] Foster, *Practice of Diplomacy*, 31.

whom the king would be willing to appoint ambassador at St. Petersburg, recommending particularly the first on the list. Alexander, however, chose La Ferronays, who was the second.[1]

§ 227. It is a matter of dispute whether a refusal must be accompanied by a statement of the grounds on which it is made, but if in such a case the reasons are asked for, and they are not given, or if it appears to the government whose candidate has been refused that the grounds alleged are inadequate, that Power may refuse to make an appointment, and prefer to leave its diplomatic representation in the hands of a chargé d'affaires.

Nevertheless the Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules : " Article 8.—No state may accredit its diplomatic officers to other states without previous agreement with the latter. States may decline to receive an officer from another, or, having already accepted him, may request his recall, without being obliged to state the reasons for such a decision."

§ 228. The books give several instances of refusals, and others have occurred which have not been made public. One of the best known is that of the refusal of the Emperor Nicholas of Russia to receive Sir Stratford Canning in 1832, on the ostensible ground that the appointment was made without previous notice having been given, since it was only ten days after it had been officially gazetted that Palmerston mentioned it to the Russian ambassador in London. It has been suggested that the Emperor's objection to Sir Stratford Canning was on personal grounds, and though the British Government maintained that a government was perfectly free in the choice of its representatives at foreign courts, the Emperor refused to receive him, and the ordinary relations between the two courts were only resumed in 1835, when Lord Durham was appointed ambassador.

§ 229. In the past refusal to receive an envoy might occur on such grounds as the following : Sweden, in 1757, refused to accept the British envoy, Goodrich, because after his appointment he had visited a prince with whom Sweden was at war ; Great Britain consequently broke off diplomatic relations with Sweden.[2] In 1820, the King of Sardinia refused to receive the Prussian envoy, Baron von Martens, because he had married the daughter of a regicide. In 1847 the King of Hanover refused to accept Graf von Westphalen because he was a Roman Catholic.

[1] F. de Martens, *Recueil des traités, etc.*, xiv, 415.
[2] Schmalz, *Europäisches Völkerrecht*, 87, etc.

§ 230. At the present day the practice of making inquiry beforehand is recognised by most states as thoroughly well established, with the possible exception of the United States, which observes the practice of inquiring in advance as to the acceptability of persons nominated as ambassadors, but, at any rate until recently, adhered to the rule that this was unnecessary in respect of envoys and diplomatic representatives of a lower grade. It would seem, however, that this rule has undergone modification, for Article 8 of the Pan-American Convention of February 20, 1928, referred to above, between the United States and most American countries, prescribes that no state may accredit its diplomatic officers to other states without previous agreement with the latter.

§ 231. In 1885 Mr. Keiley was appointed United States minister at Rome. The Italian Government asked that another choice might be made, without, however, assigning any reason. But it was evident that the ground of the refusal to receive him was a speech made by Mr. Keiley at a public meeting of Roman Catholics, at which a protest was made against the annexation of the Papal States to the Kingdom of Italy. Mr. Bayard, the United States Secretary of State, recognised "the full and independent right" of the King of Italy "to decide the question of personal acceptability to him of an envoy," and Mr. Keiley, on being made acquainted with the refusal of the Italian Government, resigned his commission.

§ 232. Mr. Keiley was thereupon appointed to Vienna, and the Austro-Hungarian minister at Washington was instructed to the effect that since, as at Rome, scruples prevailed against this choice, he was to direct the attention of the United States Government, in the most friendly way, to the generally existing diplomatic practice to ask, previously to any nomination of a foreign minister, the consent (*agrément*) of the government to which he is to be accredited. It was added that "the position of a foreign envoy wedded to a Jewess by civil marriage would be untenable and intolerable in Vienna." This afforded Mr. Bayard the opportunity of asserting that the only reason given was the allegation as to Mrs. Keiley's religion, which he indignantly repudiated as sufficient ground for the refusal, while recognising

> "the undoubted right of every government to decide for itself whether the individual presented as the envoy of another state is or is not an acceptable person, and, in the exercise of its own high and friendly discretion, to receive or not the person so presented."

Later, he discussed the question whether it was necessary previously to ask for the consent of the government to whom the minister was to be accredited; there was no instance of this having been done by the United States, and the reason was that frequent elections at regular intervals might render it difficult to procure the consent of a foreign government to the appointment of agents whose views were in harmony with the latest expression of public opinion, if the new government should happen to have superseded one whose policy was more in accord with that of the foreign government concerned. Subsequently the Austro-Hungarian Government based their refusal on the ground that the Italian Government had objected to Mr. Keiley, and that its views had found earnest expression at Vienna since the President had nominated him to Austria-Hungary; the fact that his wife was a Jewess did not influence the judgment of the government, but the latter could not prescribe social usage, which might be unpleasant in that regard. The main reason for objection was not the action of Italy, but the public utterances of Mr. Keiley, which were of a character not agreeable to the Austro-Hungarian Government. Finally the latter definitely refused to receive Mr. Keiley, who thereupon sent in his resignation. The President declined to make a fresh nomination and the legation was left in the hands of a secretary as chargé d'affaires.[1]

§ 233½ In 1891 the United States appointed Mr. H. W. Blair minister to China. When he was on his way thither, the Chinese Foreign Office telegraphed their objection to the appointment on the ground that in 1882 and 1888 he had "bitterly abused China in the Senate" and "was conspicuous in helping to pass the oppressive Exclusion Act." In response to a request that they would consent to reopen the case the Chinese Foreign Office said "Mr. Blair is not popularly regarded in China," but that if the President could do anything to repeal the Exclusion Law of 1888 "the situation in China would be much changed, and then it would not make much difference what Mr. Blair has said, and he would be well received if the President asked for it." After the lapse of nearly three months, the President wrote to Mr. Blair accepting his resignation. At the same time, the minister then in China was instructed to deny the sufficiency of the allegations made in respect of the views concerning the Chinese people which were stated to have been entertained and uttered in legislative debate by Mr. Blair:

[1] *Foreign Relations of the United States*, 1886.

" If Mr. Blair may not be received as minister while that law [of 1888] remains unrepealed, and because of its existence as a law, it is not easy to reconcile that position with the continued friendly reception of the present minister of the United States at Peking. In this aspect, as in every other aspect, the position assumed by China is incongruous and inadmissible."

There was no interruption of the diplomatic representation at Peking.[1]

Reception of Own National as Foreign Diplomatic Agent

§ 234. It is seldom that the national of a state is employed as the envoy of a foreign state in his own country. Before he can appear in that capacity he must apply for the approval of his own sovereign or government.

§ 235. In France it appears to have been for some time settled as a constitutional maxim that French citizens are not admissible as foreign ambassadors or ministers at Paris. And for nearly a century past the British Government has refused to receive British subjects as heads of foreign missions.

§ 236. In 1878 Mr. M. Hopkins, who, in the absence of the Hawaiian envoy to the United Kingdom, desired to be recognised as chargé d'affaires, was informed that, being a British subject, he could not be received in that capacity, and was reminded of communications made to him to the same effect as far back as 1859. And in 1886 Mr. A. Hoffnung, who was accredited as Hawaiian chargé d'affaires, was only accepted as such on his becoming naturalised in Hawaii and so ceasing to be a British subject. His nephew, Mr. S. Hoffnung, divested himself of British nationality in like manner, and was thus enabled to act as chargé d'affaires *ad interim* in the absence of the head of mission.

§ 237. In the United Kingdom it has long been a settled principle that no British subject attached to a foreign embassy or legation, other than a servant, is entitled to the protection afforded to the diplomatic body by the statute 7 Anne, c. 12. On July 8, 1786, the following notice was published in the *London Gazette* :

" Whereas divers applications have of late been made by people of different descriptions to the foreign ministers resident in England to be appointed secretaries to some or other of the said foreign ministers in order to avail themselves of the protection due to persons in that situation against the ordinary course of legal proceedings in various cases.

[1] Hall, 355 *n.*

And whereas such indulgence is liable to many abuses, it is His Majesty's pleasure that henceforth no subject of His Majesty shall be permitted by the Secretary of State to have his name inserted at the Sheriff's office in the list of those who are to be deemed under the protection of any foreign minister, excepting only such persons as may be employed by the said foreign minister in the capacity of menial servants.

CARMARTHEN."

Since August 27, 1952 even servants are excluded from privilege.

§ 238. The objection to receiving British subjects as members of a foreign mission has not, however, applied to the post of secretary to certain Oriental missions in England. The Chinese, Japanese and Siamese missions have from time to time employed British subjects in this capacity, and the custom may have extended to some other missions. But the condition is made that they shall not be regarded as entitled to diplomatic privilege, and their names are not inserted in the list of persons so entitled furnished to the Sheriffs of London and Middlesex.

§ 239. A state may declare beforehand the terms on which it will consent to receive its own national as a foreign diplomatic agent or a member of his staff. But if he be received without any such previous stipulation he becomes entitled to the *jus legationis* [1]:

When, as an exception, a foreign minister is a subject of the state to which he is accredited, and his principal consents to his continuing to be regarded as such, he remains subject to the law of the state in all matters not connected with his diplomatic mission; but though a subject of the court at which he resides, he must, so far as his character of public minister is concerned, enjoy the independence and all the other immunities and prerogatives accorded to the character with which he is clothed, during the whole period of his mission, unless the sovereign has consented to receive him only under the express condition that he shall continue to be regarded as his subject.[2]

§ 240. In 1890, in the case *Macartney* v. *Garbutt and others*, the plaintiff, Sir H. Macartney, a British subject, and English Secretary to the Chinese Legation at London, sought to recover £118, which he had paid under protest to avoid distraint upon the furniture in his house, for parochial rates levied by the Vestry of St. Marylebone. It was held by the court that his name having been submitted to the Foreign Office in the usual way, and his position as a member of the

[1] Phillimore, ii. 179–81.
[2] de Martens-Geffcken, i. 89.

Chinese Legation having been recognised without reservation or condition of any sort, he was therefore clearly entitled to the privileges of the Corps Diplomatique, and it would follow that his personal effects were exempt from seizure. His rights in this respect appeared to be fully recognised by the local Act (35 Geo. III, c. 73) under which the rates were levied. An examination of the works of writers on international law confirmed the view that the only mode of escaping from the doctrine of exemption was to impose on an envoy, when received, that he shall be subject to the local jurisdiction. Judgment with costs was accordingly entered in Sir H. Macartney's favour.[1]

§ 241. Certain instances of the past are : in 1714 Sir Patrick Lawless was Spanish envoy in London, and General Wall from 1748 to 1762 ; both were Irishmen by birth. There is also the case of Benjamin Thompson, born in the United States, who entered the service of the Elector of Bavaria, by whom he was appointed as minister to Great Britain in 1798. He was refused by the British Government on the ground of his being a British subject, aggravated by the circumstance of his having formerly occupied the post of Under-Secretary of State in the American or Colonial Department in 1780. Several of the smaller German states were represented at Vienna by Austrians, and up to 1855 the chargé d'affaires of the Hanse Towns in London was a British subject. Wicquefort had been resident of the Duke of Lüneburg at The Hague, though he was a Dutch subject born at Amsterdam.

§ 242. " The laws of the United States forbid the employment of any other than a citizen of the United States in its diplomatic service. It is also a rule of the Department of State that no citizen of the United States shall be received by it as the diplomatic representative of a foreign government, but this rule is of a flexible character in its application. Anson Burlingame, who for some years had acted as the American minister in China, resigned to accept from the Chinese Government the post of special ambassador to the United States and certain European governments. He was received as such in Washington, and Secretary Fish negotiated with him and his colleagues an important treaty." [2]

" Mr. Camacho, a native of Venezuela but a naturalised citizen of the United States, was accepted as minister from Venezuela in 1880, on renewal of relations with that country which had been for some time suspended. On the other hand, General O'Beirne, a prominent citizen of New York, was accredited as diplomatic representative of the Transvaal Republic to the United States at the outbreak of hostilities

[1] L.R. [1890] 24 Q.B.D. 368.
[2] *Foreign Relations of the United States*, 1868–9, i. 493, 601 ; Foster, *op. cit.*, 49.

with Great Britain ; and the Secretary of State, applying the rule, declined to receive him on the ground of his American citizenship, thus avoiding the question of the reception of a representative of a country which the British Government claimed was a suzerain state.[1]

" In late years a practice grew up of securing the insertion in the *Diplomatic List*, published monthly by the State Department, of the names of resident attorneys of Washington as counsellors of certain legations of the less important countries. The main object of such insertion was to secure thereby invitations for the persons named and their wives to the receptions and teas at the White House. When the attention of Secretary Root was called to the practice he directed it to be discontinued, basing his action on the rule above cited, that an American citizen could not be clothed with a diplomatic character in a foreign legation in Washington." [2]

§ 243. The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rule : Article 7.—' States are free in the selection of their diplomatic officers, but they may not invest with such functions the nationals of a state in which the mission must function, without its consent.'

[1] Should be : state under suzerainty.
[2] Foster, *op. cit.*, 49, 50.

CHAPTER XIV

DIPLOMATIC AGENT PROCEEDING TO HIS POST

§ 244. In ordinary circumstances a newly appointed diplomatic agent proceeding to his post will find there an established mission, fully provided with archives containing previous correspondence with his own Foreign Office, with the Minister for Foreign Affairs of the state to which he is accredited and with miscellaneous persons; also cyphers, collections of treaties and all other helps and appliances which he will require. He must carry with him his credentials to the head of the state, or if he is a chargé d'affaires a letter accrediting him in that capacity to the Minister for Foreign Affairs at the capital where he is to reside. It will be prudent on his part to ascertain beforehand that the letter of recall of his predecessor has been presented in the proper quarter, or if that formality has not yet been complied with, to take the letter of recall with him. For in the contrary event it may happen that on arriving at his post and applying for an audience to present his credentials, he may receive for answer that his predecessor is not yet *functus officio*, and so his own recognition may be delayed until the necessary document can be procured from home.

§ 245. In addition to his credentials it is the custom of the Court of St. James to furnish a newly appointed ambassador or minister with a commission of appointment in such terms as the following:

(*Seal*) (Signed) ELIZABETH R.

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Defender of the Faith, etc., etc., etc.

To all and singular to whom these Presents shall come, Greeting.

Whereas it appears to Us expedient to nominate some person of approved Wisdom, Loyalty, Diligence and Circumspection to represent Us in the character of Our Ambassador Extraordinary and / Envoy Extraordinary and Minister Plenipotentiary / Plenipotentiary to.....in respect of Our United Kingdom of Great Britain and Northern Ireland.

Now Know Ye that We, reposing especial trust and confidence in the discretion and faithfulness of Our Trusty and Well-beloved Mr. A. B. XYZ .....have nominated, constituted and appointed, as We do by these Presents nominate, constitute and appoint him, the said.....to be Our

Ambassador Extraordinary and Plenipotentiary
Envoy Extraordinary and Minister Plenipotentiary

to.....aforesaid. Giving and granting to him in that character all power and authority to do and perform all proper acts, matters and things which may be desirable or necessary for the promotion of relations of friendship, good understanding and harmonious intercourse between Our Said Realm and....., and for the protection and furtherance of the interests confided to his care; by the diligent and discreet accomplishment of which acts, matters and things afore-mentioned he shall gain Our approval and show himself worthy of Our high confidence.

And We therefore request all those whom it may concern to receive and acknowledge Our said.....as such

Ambassador Extraordinary and Plenipotentiary
Envoy Extraordinary and Minister Plenipotentiary

as aforesaid, and freely to communicate with him upon all matters which may appertain to the objects of the high mission whereto he is hereby appointed.

Given at Our Court of St. James, the.....day of....., in the year of Our Lord....., and in the.....year of Our Reign.

By Her Majesty's Command,
(Countersigned)

§ 246. Formerly printed instructions for the guidance of their conduct were furnished to British ambassadors and ministers on taking up their appointments, but these were mainly of a formal nature, relating to matters which have become stereotyped by usage, and the custom no longer exists.

§ 247. The case of a negotiator at a congress or conference is naturally different. On such occasions special written instructions are indispensable. The delegate to such gatherings receives only full powers, not credentials. An ordinary permanent diplomatic agent is not provided with full powers, unless he is entrusted with the negotiation of a treaty instrument.

§ 248. Before starting for his post the agent should take care to let the probable date of his intended arrival be known, in order that when he reaches the frontier he may at once enter on the enjoyment of all the privileges and immunities attaching to his

position, especially with regard to the passage of his personal effects through the Customs.

§ 249. A passport, in which his official status is fully detailed, should be taken, duly *visé* where necessary by the representative of the foreign state concerned, who should also be asked for the favour of a *laisser-passer* to admit of the free entry through the Customs of the agent's baggage and effects. If he has to pass through a third country before arriving at his destination, similar steps are advisable.

§ 250. Before proceeding to his post Callières recommends the perusal of the despatches exchanged between his predecessor and the Foreign Office, and after having perused them with care and reflection, to discuss pending questions with the head of the office. He should gain as much information as possible from those who have preceded him at the post to which he has been appointed, and also make friends with the diplomatic representative of that state, who will be able to write home a favourable account of his character and disposition. This applies equally to all members of the Foreign Service appointed to posts abroad : whether Ambassador or Third Secretary, and whether appointed from the Foreign Office or from another post abroad, the officer, as soon as his transfer ceases to be confidential, should lose no time in calling on his equivalent in rank at the Mission of the country in which his new post is situated.

§ 251. In the past it was the custom for ambassadors to make a formal state entry into the capital of the sovereign to whom he was accredited, but this practice is no longer observed. A special ambassador is sometimes welcomed at the railway station on his arrival by the Minister for Foreign Affairs or his representative : in Great Britain by the Vice-Marshal of the Diplomatic Corps, as Head of the Protocol Department of the Foreign Office. But, generally speaking, diplomatic agents travel to their posts with as little outward show as private persons.

With regard to his passage through a third country before arriving at his destination, see § 419.

§ 252. On reaching the capital he should at once formally notify his arrival to the Minister for Foreign Affairs, and ask when it will be convenient to the latter to receive him. At some capitals he may also be expected to notify the Master of the Ceremonies or the Introducer of Ambassadors. This may be done by letter. He also requests the Minister for Foreign Affairs to take the orders of the head of the state respecting an audience for the purpose of

presenting his credentials, of which he must furnish a copy beforehand.

Presentation of Credentials

§ 253. Until he has presented his credentials, with the due ceremonies which are the outward and visible signs of his official character, the agent makes no official calls. But as most European Powers at the present day appoint members of their regular diplomatic service to represent them at foreign capitals, he is likely to find among his future colleagues acquaintances or friends with whom he has been previously associated in the course of his career, and he can freely make *private* visits to them. It is also advisable to call privately on the *doyen* of the diplomatic body, who will be able to afford him useful information as to the ceremonies accompanying the presentation of his credentials, the audiences of members of the reigning family in a monarchical country, for which he may perhaps have to ask, the official calls he must make, and other matters of local etiquette. On these points, however, it must be understood that court and departmental officials, like the Master of the Ceremonies, the Marshal of the Diplomatic Corps in Great Britain, or Introducer of Ambassadors, are the authoritative exponents of the local etiquette.[1]

§ 254. On being informed by the minister for foreign affairs of the day and hour at which his audience is to take place, if, which is not always the case, it is the customary local usage for the agent to address a formal speech to the sovereign or president, he sends to the minister for foreign affairs a copy of what he proposes to say, but he has no right to expect a copy of the reply which will be made to him. Such a speech should be of a general character. It might, for instance, begin by expressing the agent's satisfaction at having been appointed to represent his country; convey assurances of friendship on the part of his own sovereign or president, and his own wishes for the prosperity and welfare of the sovereign or president he is addressing; state that he will do all in his power to strengthen the friendly relations existing between the two countries; and bespeak the friendly co-operation of the sovereign's or president's ministers in his endeavour to fulfil the purpose of his mission. He will mention also his credentials, presenting them to the sovereign or president, who hands them, usually

[1] Nevertheless, the most useful and reliable advice can usually be obtained from the agent's predecessor, if accessible.

unread, to the minister for foreign affairs. If the agent has formerly had diplomatic service in the country, *e.g.* as secretary, a graceful allusion to an agreeable sojourn will be in place.

§ 255. His speech must on no account contain any reference to matters of controversy between the two states, nor to any current business, but, if an alliance of a definite character exists, mention of it may be fitly introduced.

There was once a diplomatic agent, who, when presenting his credentials, committed the mistake of urging certain pecuniary claims of his countrymen against the government of the country to which he was accredited, and thereby gave serious offence at the very outset of his mission.

The object of communicating a copy of the speech beforehand is to give the head of the state, to whom it is to be addressed, an opportunity of requesting modifications, and it has happened on more than one occasion that this has been done.[1]

§ 256. Besides committing his speech to memory as far as he is able, the agent would do well to have a copy in his pocket.

The Comte de Ségur, in 1785, on proceeding to the Palace for his audience of Catherine the Great, and while waiting in the anteroom, engaged in a conversation with his Austrian colleague, which proved of such an absorbing character that the speech which he had prepared faded from his memory. When he entered the presence of the Empress, he found that he could not recollect a single word of it, but, with great presence of mind, he improvised an entirely new speech, to her great surprise, as she had received a copy of the original discourse, and had framed a corresponding answer.

Subsequently when he came to be on intimate terms with the Empress, she asked him one day why he had suddenly taken it into his head to change his speech at his first audience. He replied that he had lost his nerve in the presence of so much glory and majesty, and so expressed the sentiments of his sovereign in the first phrases that suggested themselves. The Empress answered that he had done right. Everyone had his failings, and one of hers was easily to conceive prejudices. "I remember that one of your predecessors was so perturbed on the occasion of his presentation to me that he could only say 'Le Roi mon maître, Le Roi mon maître.' The third time he repeated these words I interrupted him by saying that I had long been aware of his master's friendship for me. Everybody assured me that he was an intelligent man, but his bashfulness always made me prejudiced against him, for which I reproach myself, but, as you see, somewhat late in the day."[2]

[1] García de la Vega, 635.

[2] *Mémoires et Souvenirs de M. le Comte de Ségur* (3rd ed.), ii. 215.

§ 257. It is not usual for the diplomatic agent to speak again in reply to the answer made to him by the sovereign or president.

The language of the speech may be that of his own nationality, or French. In Oriental countries the former is most usual, the speech being translated into the language of the country by an official interpreter ; the head of the state replies in his own tongue, and the reply is, if necessary, then translated.

§ 258. The following is an instance of a discourse on such occasions :

SIRE,

J'ai l'honneur de présenter à Votre Majesté les lettres qui m'accréditent auprès de son auguste personne en qualité de . . .

Permettez-moi, Sire, d'être en même temps auprès de Votre Majesté l'interprète des sentiments d'estime et de sympathie que mon souverain professe à un si haut degré pour la personne de Votre Majesté, et les vœux qu'il fait pour la félicité de votre famille et pour la prospérité de vos peuples.

A l'expression de ces sentiments, daignez, Sire, me permettre d'ajouter l'hommage de mon profond respect. Pendant le cours de la mission que je vais commencer, je ferai tout ce qui dépendra de moi pour mériter la confiance de Votre Majesté ; je me trouverai heureux si j'y réussis et si mes constants efforts contribuent à resserrer encore les liens d'amitié et d'intérêt qui unissent déjà si étroitement les deux peuples.[1]

§ 259. Speech of a Spanish ambassador to the President of the French Republic :

MONSIEUR LE PRÉSIDENT,

J'ai l'honneur de remettre à Votre Excellence les lettres par lesquelles S. M. le roi Don . . . m'accrédite en qualité d'Ambassadeur Extraordinaire et Plénipotentiaire auprès du Président de la République Française.

C'est avec empressement que je saisis cette occasion solennelle pour exprimer, au nom de mon auguste Souverain, les vœux très sincères qu'il forme pour la prospérité de la France et pour le bonheur de l'homme d'État élevé par ses concitoyens à la première magistrature du pays.

Quant à moi, porté vers la France par toutes mes sympathies, j'accepte avec joie l'honorable mission de maintenir, de développer et de rendre encore plus intimes les bons rapports déjà existants entre deux nations sœurs par la race et l'origine, par le voisinage et la communauté des intérêts.

[1] García de la Vega, 636.

J'apporterai tout mon zèle dans l'accomplissement d'un devoir si conforme à mes sentiments, et j'espère pouvoir compter, pour y réussir, sur la haute bienveillance de M. le Président de la République comme sur le puissant et amical concours de son gouvernement.

§ 260. Reply of the President of the French Republic :

MONSIEUR L'AMBASSADEUR,

Je remercie S. M. le roi d'Espagne des vœux que vous m'apportez en son nom pour la France et pour le Président de la République. J'ai eu récemment l'honneur de dire à votre illustre prédécesseur, et je saisis avec empressement cette nouvelle occasion de répéter, combien je désire ardemment le bonheur de la noble nation espagnole et de son auguste Souverain.

Pour vous, monsieur l'Ambassadeur, qui connaissez la France, et qui en parlez si affectueusement, soyez persuadé qu'elle vous accueillera avec une vive sympathie et que vous trouverez auprès de son gouvernement, dans l'accomplissement de votre mission, tout le concours et toute la cordialité que vous pouvez souhaiter.[1]

RECEPTION OF DIPLOMATIC AGENTS

§ 261. At most capitals there is a marked distinction between the reception of ambassadors, on the one hand, and of envoys extraordinary and ministers plenipotentiary and diplomatic agents of lesser rank on the other.

An ambassador is taken to the palace by a court or state official with one or more carriages for himself and his suite, while envoys and other ministers use their own carriages. Usually the ambassador enters the presence unaccompanied by the members of his mission, and after the conclusion of the ceremony of delivery of credentials he asks permission to present them. At most capitals he is introduced to the presence of the head of the state by the Master of the Ceremonies or by a court or state official of equivalent importance. He does not always make a set speech ; this is a point regulated by local custom. The ceremonial in returning to his residence is the same as on going to the audience. In most countries, after having presented his credentials, the ambassador makes the first official call on the other ambassadors, but he receives the first call from envoys, ministers resident and chargés d'affaires. He may also hold one or two official receptions, to which are invited the other members of the diplomatic body, official persons and other distinguished members of society, of whom a list is furnished to him by the proper court or state official

[1] de Castro y Casaleiz, ii. 291–2.

If he is married, the ambassadress must call on, and receive, respectively, the wives of the before-mentioned persons. In all cases return visits must be paid as soon as can conveniently be arranged.

§ 262. It is unusual, in modern practice, for an ambassador, on retiring from his post, to present his letters of recall himself. They are more often delivered by his successor together with his own credentials. But, in the United Kingdom, he may apply to the Secretary of State for Foreign Affairs to be granted an audience for the purpose of taking leave of the Sovereign.

§ 263. An envoy extraordinary and minister plenipotentiary, or a minister resident, usually goes to his audience without the members of his legation and in his own carriage, and makes no set speech when delivering his credentials. At some capitals, however, he takes his *personnel* with him, and presents them at the end of his audience. Altogether it is a much simpler affair than the audience accorded to an ambassador.

§ 264. At Washington both ambassadors and ministers are received by the President in the same manner. Shortly after the arrival of the envoy at Washington an appointment is made for him to see the Secretary of State. For this appointment he goes to the Department of State in his own car, usually accompanied by the Chargé d'Affaires *ad interim*, where he is met by the Chief of Protocol, who escorts him to the office of the Secretary. The envoy is presented to the Secretary by the Chief of Protocol, who is the only officer of the Department present for this meeting. The envoy presents to the Secretary copies of his Letter of Credence, Letter of Recall of his predecessor, and speech, and requests an audience with the President. The meeting is brief and no matters of substance are discussed.

Within about ten days of the envoy's call on the Secretary a date is set for his audience with the President. For this audience, he is escorted from his residence in a White House automobile, by the Chief of Protocol, to the executive office of the President. The envoy is not accompanied by any members of his staff. Upon arrival at the office of the President the envoy is presented to the President by the Chief of Protocol. No one else is present at the meeting. The envoy hands his Letter of Credence, Letter of Recall of his predecessor, and speech to the President. The speech is not read, and the President hands the envoy his reply to the speech. After a brief informal conversation the audience ends. The Chief of Protocol then escorts the envoy back to his residence in the White House car.

§ 265. Besides the audience for the presentation of credentials to a sovereign or president there may be other audiences or presentations. To attempt to give details, as they are laid down in the *Guía Práctica* and in other sources of information, would unduly increase the bulk of this chapter, and they can be best learnt at each capital by the newly arrived diplomatic agent from the proper official. No attempt is therefore made to supply them here.

§ 266. *Ceremonial of the Court of St. James.*

Ambassadors on arrival in Great Britain notify the fact to the Secretary of State for Foreign Affairs in the usual manner, and ask for an audience of the Sovereign for the purpose of presenting their credentials, at the same time furnishing the usual copy of the latter. They write also to the Secretary of State, asking when he can receive them.

When the date of the audience is appointed, the ambassador is taken to the palace by the Marshal of the Diplomatic Corps in a town coach. The *personnel* of the embassy follow in other town coaches, with attendants in royal scarlet, and two footmen standing on the footboard at the back of each carriage. Ambassadors never make set speeches.

The ambassador is received at the grand entrance by the Equerry-in-Waiting, and in the Grand Hall by the Master of the Household, and is conducted by them to the Bow Room, where he meets the Secretary of State for Foreign Affairs (or in his absence the Permanent Under-Secretary of State for Foreign Affairs), the Lord-in-Waiting and the Groom-in-Waiting. The personnel of the embassy are also shown into the Bow Room.

The Secretary of State having taken Her Majesty's commands, the ambassador is conducted to the Presence by the Lord-in-Waiting and the Marshal of the Diplomatic Corps, and is announced to Her Majesty by the Marshal of the Diplomatic Corps.

The Lord-in-Waiting and the Marshal of the Diplomatic Corps withdraw.

At the conclusion of the audience the personnel of the embassy are introduced into the Presence by the Marshal of the Diplomatic Corps, and severally presented to Her Majesty by the ambassador.

The reception over, the ambassador is conducted to the grand entrance by the Master of the Household and to the coach by the

Equerry-in-Waiting. He is then accompanied to the embassy by the Marshal of the Diplomatic Corps, the personnel following as before.

Levée dress is worn, or morning dress, when so desired by Her Majesty.

Arrangements for any subsequent reception by members of the Royal Family are made through the Marshal of the Diplomatic Corps.

Ambassadors do not hold receptions after the presentation of their credentials, as may be the custom in some other countries. With respect to ordinary visits, heads of missions generally have recourse to their *doyen* for help and assistance.

An ambassador desirous of obtaining an audience of the Sovereign (other than that for presenting his credentials) would apply to the Marshal of the Diplomatic Corps

§ 267. An *Envoy Extraordinary and Minister Plenipotentiary*, or a *Minister Resident*, drives to the palace in his own carriage, and attends the audience alone.

He is met at the grand entrance by the Marshal of the Diplomatic Corps and the Equerry-in-Waiting, and conducted to the Grand Hall, where he meets the Master of the Household and is taken by him to the Bow Room.

Here he meets the Permanent Under-Secretary of State for Foreign Affairs, the Lord-in-Waiting and the Groom-in-Waiting

The Under-Secretary of State having taken Her Majesty's commands, the minister is conducted to the Presence by the Lord-in-Waiting and the Marshal of the Diplomatic Corps, and is announced by the Marshal of the Diplomatic Corps.

The Lord-in-Waiting and the Marshal of the Diplomatic Corps withdraw.

At the conclusion of the audience the minister is conducted to the Grand Hall by the Master of the Household, and to his carriage by the Marshal of the Diplomatic Corps and the Equerry-in-Waiting.

Levée dress is worn, or morning dress, when so desired by Her Majesty.

The procedure is the same as in the case of an ambassador, so far as asking for an audience and calling on the Minister for Foreign Affairs are concerned.

§ 268. Reception of a *Special Ambassador or Special Envoy*. The ceremonial is the same as in the case of a permanent ambassador.

§ 269. Reception of the *Wife of a new Ambassador or Minister.* At the Court of St. James this now takes place, if the wife has reached London, immediately following the audience at which her husband presents his letters of credence.

§ 270. A titular *Chargé d'affaires* is presented to the Sovereign at ~~a Levée or~~ a Court by the Secretary of State for Foreign Affairs.

§ 271. A *Chargé d'affaires ad interim* will have been presented in his proper rank—Counsellor, First Secretary, or whatever he may be—on his arrival, at the earliest Levée, but there is no second presentation as *Chargé d'affaires*; he simply assumes the duties of his chief, and attends Levées, Courts, etc., in his absence. When a foreign representative goes on leave, he writes to the Foreign Office to announce his departure and whom he has left in charge.

§ 272. Presentation of the Corps Diplomatique on the occasion of the *Visit of a Foreign Sovereign*: The Chefs de Mission are presented to the Sovereign by the ambassador or minister, assisted by the Marshal of the Diplomatic Corps.

§ 273. In former days the reception of an ambassador was attended by an elaborate ceremonial. An account of the public entry into London of the Venetian ambassador in 1715 is as follows:

Leaving his house at nine in the morning of August 27, he drove with his suite *incogniti* in hired carriages to the Tower, whence they were conveyed to Greenwich in boats furnished by the Master of the Ceremonies. Greenwich was the point from which these public entries commenced. There they waited, at a house previously hired for the ambassador, for the arrival of the Master of the Ceremonies and the Earl of Bristol, who had been deputed by the King to accompany the *cortège* to London. After refreshments had been served, the party embarked in royal barges, and were rowed to the Tower, where they disembarked. Here two of the royal carriages and one of the Prince of Wales were standing ready, and three belonging to the ambassador. The moment the procession started a salute was fired by the Tower artillery. It was headed by the carriage of Lord Bristol, next came twenty of the ambassador's footmen, a squire on horseback and six pages on foot, then the two royal coaches and the coach of the Prince of Wales, the ambassador's three carriages, the first of which was drawn by eight horses, followed by the coaches and six belonging to a small number of peers. In this style the ambassador was conveyed to his residence in St. James' by seven o'clock in the evening. The public audience of the ambassador took place on September 2, with great pomp and ceremony, and he was afterwards presented to the Prince

and Princess of Wales. The King's reply to the ambassador's speech was read in French by the Master of the Ceremonies.[1]

Other Ceremonials

§ 274. *Ceremonial on the presentation of Letters of Credence by foreign representatives accredited to the Government of the Union of Soviet Socialist Republics.*

On the day appointed for the audience the *Chef du Protocole* attends at the house of the foreign representative (ambassador, *représentant plénipotentiaire*, or minister), who presents him to the members of his staff who are to accompany him to the Kremlin. The representative is escorted thither by the *Chef du Protocole* and an official attached to the *Service du Protocole*. The members of the staff follow independently, the representative and his escort travelling in the President's personal car.

The procession enters the Kremlin through the Borovitsky Gate, and the representative is met at the entrance to the Palace of the Supreme Soviet by the *Commandant du Palais*. The representative is conducted into the Palace by the *Chef du Protocole* and is met in the Assembly Hall by the President's *Chef du Cabinet* and the Head of the department of the Foreign Ministry which deals with his particular country.

The representative and those now accompanying him proceed into the Reception Hall. Simultaneously the President, the Secretary of the Presidium of the Supreme Soviet and the Minister for Foreign Affairs of the Soviet Union enter the Hall from the Audience Chamber. The two processions halt opposite each other and the *Chef du Protocole* announces the arrival of the representative.

The representative delivers his speech, if any, and hands his letters of credence to the President, who passes them to the Minister for Foreign Affairs. If the speech is in a foreign language an interpreter reads a Russian translation of it. In this event the speech made in Russian by the President is equally followed by a translation. The making of a speech is optional.

At this point the representative presents the *personnel* of the mission to the President.

The President then accords a private audience to the foreign representative. This takes place in an adjoining room, in the presence of the Minister for Foreign Affairs, the *Chef du Cabinet* of the President and the Secretary of the Presidium.

[1] *Nozze Busnelli-Ballarin*, Bologna, Giacoma.

The audience over, the foreign representative returns to his residence with the same ceremonial.

§ 275. *Ceremonial of the Vatican for Ambassadors, Ministers and Chargés d'affaires.*

When the automobiles from the Sacred Apostolic Palaces arrive at the Embassy, the Supernumerary Privy Chamberlain of Sword and Cape and the Supernumerary Honorary Chamberlain of Sword and Cape enter and present themselves to the ambassador. The Supernumerary Privy Chamberlain of Sword and Cape invites him to descend, and takes his place with him in the automobile, while the Supernumerary Honorary Chamberlain of Sword and Cape takes his place with the ambassador's suite.

On arrival at the Courtyard of St. Damasus, the ambassador is received at the covered entrance to the Staircase of Honour by a Supernumerary Privy Chamberlain of Sword and Cape, and by four Footmen, accompanied by the Under-Dean of the Antechamber in full dress. (In the absence of the Under-Dean, his place is taken by the Senior Footman, who wears evening dress on this occasion).

When the ambassador alights from the automobile, the Supernumerary Privy Chamberlain of Sword and Cape who has accompanied him presents to him the Supernumerary Privy Chamberlain of Sword and Cape who is waiting at the entrance to the Staircase.

After the introduction, the Supernumerary Privy Chamberlain of Sword and Cape who has received the ambassador invites him to ascend the Staircase to the Papal Apartments, and walks on the left of the ambassador. The other Supernumerary Privy Chamberlain of Sword and Cape and the Supernumerary Honorary Chamberlain of Sword and Cape follow, walking on the left of the ambassador's suite, while the Bussolante brings up the rear. The four Footmen with the Under-Dean of the Antechamber (or the Senior Footman) go in front, two by two.

When the cortège arrives in the Sala Clementina, His Excellency the Secretary of the Sacred Congregation of Ceremonies comes forward to meet the ambassador, and, walking on his left, accompanies him through the Papal Apartments to the Sala degli Arazzi.

The Supernumerary Privy Chamberlain of Sword and Cape who received the ambassador at the entrance takes his place on

the left of the senior official of the Embassy and remains there for the entire ceremony.

The four Footmen and the Under-Dean, on reaching their own hall, shall remain there, taking up their places with the others who are on duty.

In the Sala degli Arazzi, the ambassador shall wait with His Excellency the Secretary of the Sacred Congregation of Ceremonies remaining all the time at his left, until the Holy Father has been informed of his arrival.

Meanwhile, the Supernumerary Privy Chamberlain of Sword and Cape, the Supernumerary Honorary Chamberlain of Sword and Cape, and the Bussolante who had gone to accompany the ambassador from his residence, proceed to their respective halls and wait there until the end of the audience.

His Holiness, informed of the arrival of the ambassador by His Excellency the Master of the Chamber, puts on the rochet and the mozzetta and proceeds to the Throne, accompanied by the officials of the Antechamber, who take their respective places on both sides according to the order of precedence, viz. :

On the right of His Holiness : His Excellency the Majordomo ; His Excellency the Private Almoner ; The senior Monsignor Participating Privy Chamberlain ; The Quartermaster Major of the Sacred Apostolic Palaces ; The General Superintendent of Pontifical Posts ; The Secretary of Legations ; The Colonel of the Noble Guard on duty for the week ; A Monsignor Supernumerary Privy Chamberlain ; A Supernumerary Privy Chamberlain of Sword and Cape.

On the left of His Holiness : His Excellency the Most Reverend Master of the Chamber ; His Excellency the Most Reverend Sacristan ; The junior Monsignor Participating Privy Chamberlain ; The Master of the Horse ; The Bearer of the Golden Rose ; The Commandant of the Pontifical Swiss Guard ; A Monsignor Honorary Chamberlain " in abito paonazzo " ; A Supernumerary Chamberlain of Honour of Sword and Cape.

Beside the Papal Throne, there are six Noble Guards, three on either side, under the command of a Lieutenant-Colonel.

As soon as His Holiness is seated on the Throne, the Participating Privy Chamberlain on duty for the week proceeds, on the instructions of the Master of the Chamber, to the Sala degli Arazzi, having first made the ritual genuflections to His Holiness. The Chamberlain tells His Excellency the Secretary of the Sacred Congregation of Ceremonies that he may usher in the ambassador,

and then he returns to his place after repeating the ritual genuflections.

His Excellency the Secretary of the Sacred Congregation of Ceremonies then introduces the ambassador into the presence of the Holy Father, announcing him in a clear voice with the usual formula of protocol.

The ambassador, with His Excellency the Secretary of the Sacred Congregation of Ceremonies on his left and followed by the Suite of the Embassy with the Privy Chamberlain of Sword and Cape, proceeds towards the Papal Throne.

Simultaneously with His Excellency the Secretary of the Sacred Congregation of Ceremonies, the ambassador and his suite make three genuflections : the first on entering the Hall, the second in the centre and the third near the Throne. Ambassadors who are not Catholics make three profound bows instead of three genuflections. The members of their suite who are not Catholics do likewise.

His Excellency the Secretary of the Sacred Congregation of Ceremonies remains on the left of the ambassador, while the suite of the Embassy, with the Supernumerary Privy Chamberlain of Sword and Cape take their places immediately behind him. The ambassador, standing, reads his address, and having finished the reading, places his Letters of Credence in the hands of the Holy Father, Who passes them to His Excellency the Majordomo. His Holiness replies briefly, and then, descending from the Throne, He invites the ambassador to the Audience Hall where He speaks to him privately. As His Holiness is descending from the Throne, the Privy Chamberlain on service during that week opens the door of the Audience Hall, and His Excellency the Master of the Chamber accompanies His Holiness into the room to place a chair for the ambassador. The other Pontifical dignitaries who have been present at the ceremony of the presentation of the Letters of Credence return to their places in their respective Halls. During the private talk, the Suite of the Embassy waits in the Hall of the Antechamber, and His Excellency the Secretary of the Sacred Congregation of Ceremonies presents them to His Excellency the Master of the Chamber. They are also introduced to the Pontifical dignitaries on service. At a signal given by the Holy Father, His Excellency the Master of the Chamber introduces into His presence the suite of the Embassy and His Excellency the ambassador presents them to His Holiness.

As soon as the audience has terminated, His Excellency the

Secretary of the Sacred Congregation of Ceremonies presents His Excellency the Master of the Chamber to His Excellency the ambassador in the Hall of the Small Throne.

His Excellency the ambassador, having on his left His Excellency the Master of the Chamber, and followed by his own suite accompanied by His Excellency the Secretary of the Sacred Congregation of Ceremonies, passes through the Hall of the Privy Antechamber, where His Excellency the Majordomo of His Holiness is presented to him by His Excellency the Master of the Chamber. The other members of the Privy Antechamber who are on duty are also presented according to the order of precedence.

From there they pass to the Throne Room. The Pontifical dignitaries who are present there are introduced to His Excellency the ambassador by His Excellency the Master of the Chamber, and to members of the ambassador's suite by His Excellency the Secretary of the Sacred Congregation of Ceremonies.

After the introductions, His Excellency the Master of the Chamber accompanies His Excellency the ambassador to the threshold of the Throne Room and there takes leave of His Excellency and of his suite.

In passing through the Pontifical Apartments, the cortège is formed again as follows: two Bussolanti, His Excellency the ambassador, having on his left His Excellency the Secretary of the Sacred Congregation of Ceremonies; the suite of the Embassy, accompanied by the Supernumerary Privy Chamberlain of Sword and Cape who previously received His Excellency the ambassador at the entrance to the Staircase of Honour as also by the Privy and Honorary Chamberlains of Sword and Cape, and the Bussolante who accompanied His Excellency and his suite in the automobiles. The cortège, accompanied by four Swiss Guards with halberds, is preceded by four Footmen, under the orders of the Under-Dean of the Antechamber.

On the way, His Excellency the ambassador receives military honours from the detachments on duty drawn up in the various halls: the Noble Guard, the Swiss Guard, the Palatine Guard of Honour and the Gendarmes.

The procession, formed as indicated above, having left the Pontifical Apartment goes by way of the Staircase of Honour to the first floor and to the apartment of His Eminence the Cardinal Secretary of State. At the entrance to the apartment two gendarmes in full dress are on duty. In the corner room the

Antechamber Staff of His Eminence is in attendance, consisting of the Master of the Chamber, the Cardinal's Gentleman-in-waiting, and the Chaplain Train-bearer, all in ceremonial dress.

Upon the arrival of the procession, the Master of the Chamber goes to inform His Eminence. The Cardinal, in robes of the prescribed seasonal colour, comes to greet His Excellency the ambassador on the threshold of the Audience chamber, where His Excellency the Secretary of the Sacred Congregation of Ceremonies makes the introduction. The interview follows.

During the visit, members of the Swiss Guard are in attendance at the entrance to the apartment. The Footmen with the Under-Dean of the Chamber are in the first antechamber, the Bussolanti in the corner room ; the ambassador's suite in the Throne Room, together with His Excellency the Secretary of the Sacred Congregation of Ceremonies, the Privy Chamberlains and the Supernumerary Honorary Chamberlains of Sword and Cape.

At the end of the conversation, His Excellency the ambassador presents his suite to His Eminence the Cardinal Secretary of State in the Throne Room, and then takes his leave.

After the visit to His Eminence the Cardinal Secretary of State, ambassadors who are not Catholics go by way of the Staircase of Honour to the Courtyard of Saint Damasus, accompanied by the same members of the cortège and with the escort of honour of the Swiss Guard. ~~There~~ they take leave of His Excellency the Secretary of the Sacred Congregation of Ceremonies and of the Supernumerary Privy Chamberlain of Sword and Cape who received them. They then take their places in the automobiles and return to the Embassy.

Catholic ambassadors, after the visit to His Eminence the Cardinal Secretary of State, pass through the First Loggia, the Sala dei Paramenti, the Sala Ducale, the Sala Regia and descend by the Scala Regia to the Patriarchal Basilica of St. Peter to venerate the tomb of the Prince of the Apostles. They are accompanied by the same attendants and the escort of honour of the Swiss Guard.

His Excellency the Master of the Chamber informs the Secretary of the Vatican Chapter sufficiently in advance of this visit, advising him of the day and hour. The Secretary in turn informs His Excellency the Economo of the Reverend Fabric of St. Peter's.

Following the orders given by His Excellency the Economo, four Sampietrini wait in the Porch of the Basilica at the foot of the stairs to join the procession, two of whom will stand at the

entrance to the Chapel of the Blessed Sacrament, and two at the outer door of the Scala Braschi.

At the principal entrance to the Basilica, His Excellency the ambassador is received by four Canons in choir dress and purple cassock, accompanied by one of the Masters of Ceremonies of the Basilica in violet cassock and surplice. A minor sacristan is also in attendance.

His Excellency the Secretary of the Sacred Congregation of Ceremonies presents the four Canons to His Excellency the ambassador; the senior Canon offers him Holy Water and His Excellency the Ambassador, having taken it, makes the sign of the Cross.

His Excellency the ambassador, accompanied by the first two Canons, and his suite by the other two, proceeds along the central nave to the Chapel of the Blessed Sacrament, and at the entrance kneels on the prie-dieu placed there for the occasion. Those who precede His Excellency the ambassador arrange themselves on either side, forming a line at some distance from the prie-dieu. Those who follow, observing the order of precedence, kneel during the visit.

From the Chapel of the Blessed Sacrament His Excellency the ambassador, accompanied as above, goes to the Altar of Our Lady of Help to pray briefly, and then to the Altar of the Confession to pray at the tomb of the Prince of the Apostles.

The visit over, His Excellency the ambassador and his suite leave the Basilica by way of the passage of the Sacristy and descend by the Scala Braschi. Those who go first in the procession arrange themselves on either side of the last flight of stairs.

His Excellency the ambassador having reached his automobile, which is waiting at the foot of these stairs, takes leave of the Canons, of His Excellency the Secretary of the Sacred Congregation of Ceremonies and of the Supernumerary Privy Chamberlain of Sword and Cape who had received him at the covered entrance to the Staircase of Honour.

His Excellency the ambassador and his suite take their places in the automobiles, accompanied by the same Supernumerary Privy Chamberlain of Sword and Cape, Honorary Chamberlain of Sword and Cape, and Bussolante who had gone to fetch them earlier, return to the Embassy.

Upon arrival there, the Supernumerary Privy Chamberlain and the Supernumerary Honorary Chamberlain of Sword and Cape accompany His Excellency and his suite into the Embassy,

and after the customary exchange of greetings they take their leave.

His Eminence the Cardinal Secretary of State, in Abito Piano and Ferraiolone of the prescribed seasonal colour, accompanied by his Master of the Chamber, goes to the Embassy the same day of the presentation of the Letters of Credence to return the visit of His Excellency the Ambassador.

Their Excellencies the Majo-rdomo, the Master of the Chamber of His Holiness and the Secretary of the Sacred Congregation of Ceremonies, go also in their turn to visit His Excellency the Ambassador. The other dignitaries of the Privy Antechamber and the Antechamber of Honour who were in attendance during the ceremony of presentation of the Letters of Credence, go to the Embassy and sign the visitor's book, indicating at the same time their position in the Papal Household.

After the presentation of his Letters of Credence, His Excellency the ambassador communicates in writing to His Eminence the Most Reverend Cardinal Dean of the Sacred College that the ceremony of presentation has taken place and requests that he graciously receive him in audience.

The Cardinal Dean, when answering His Excellency the ambassador, fixes the day and the hour for the visit, which will take place, in an official manner, in his apartment.

For this occasion His Eminence wears the cardinalitial robes of the prescribed seasonal colour, and His Excellency the ambassador and his suite wear diplomatic uniform with decorations.

The Antechamber Staff of His Eminence, comprising the Master of the Chamber, the Gentleman-in-waiting and the Chaplain Train-bearer, all in ceremonial dress, assemble in the Hall assigned to them.

The Master of the Chamber, on the arrival of His Excellency the Ambassador, notifies His Eminence the Cardinal Dean, who comes to meet His Excellency the ambassador on the threshold of the Audience room.

During the visit, the ambassador's suite wait in the Hall outside the Audience room.

At the end of the conversation, His Excellency the ambassador presents his suite to His Eminence, and then takes leave of him.

On the same day, the Most Eminent Cardinal Dean, in Abito Piano and Ferraiolone of the prescribed seasonal colour, accompanied by his Master of the Chamber, goes to the Embassy to return the visit of His Excellency the ambassador.

During the following days, His Excellency the ambassador will personally visit Their Eminences the Cardinals present in Curia.

Likewise His Excellency the ambassador will visit the Dean of the Diplomatic Corps and, subsequently, his other colleagues.

The reception of ministers plenipotentiary, ministers resident and chargés d'affaires is on the same lines, but with differences as to the number of escorting officials, category of uniform, place of meeting.

CHAPTER XV

CLASSIFICATION OF DIPLOMATIC AGENTS

§ 276. DIPLOMATIC agents are divided into the following classes :

1. Ambassadors. Legates, who are papal ambassadors extraordinary, charged with special missions, primarily representing the Pope as Head of the Church, always cardinals, and sent only to states acknowledging the spiritual supremacy of the Pope. Nuncios, who are ordinary ambassadors resident, and are never cardinals.
2. Envoys and ministers plenipotentiary.
3. Ministers resident, accredited to the sovereign.
4. Chargés d'affaires, accredited to the minister for foreign affairs.[1]

§ 277. This classification is based on the following regulations adopted at the Congress of Vienna in 1815 and added to at the Congress of Aix-la-Chapelle in 1818.

Règlement sur le rang entre les agents diplomatiques [2]

Pour prévenir les embarras qui se sont souvent présentés et qui pourraient naître encore des prétentions de préséance entre les divers agents diplomatiques, les plénipotentiaires des puissances signataires du traité de Paris sont convenus des articles qui suivent ; et ils croient devoir inviter les représentants des autres têtes couronnées à adopter le même règlement.

Art. 1.—Les employés diplomatiques sont partagés en trois classes :

Celle des ambassadeurs, légats ou nonces ;

Celle des envoyés, ministres ou autres, accrédités auprès des souverains ;

Celle des chargés d'affaires, accrédités auprès des ministres chargés du portefeuille des affaires étrangères.

Art. 2.—Les ambassadeurs, légats ou nonces, ont seul le caractère représentatif.

Art. 3.—Les employés diplomatiques en mission extraordinaire n'ont, à ce titre, aucune supériorité de rang.

Art. 4.—Les employés diplomatiques prendront rang entre eux,

[1] Hall, 356.

[2] de Martens-Geffcken, i. 53.

dans chaque classe, d'après la date de la notification officielle de leur arrivée.

Le présent règlement n'apportera aucune innovation relativement aux représentants du pape.

Art. 5.—Il sera déterminé dans chaque État, une mode uniforme pour la réception des employés diplomatiques de chaque classe.

Art. 6.—Les liens de parenté ou d'alliance de famille entre les cours ne donnent aucun rang à leurs employés diplomatiques.

Il en est de même des alliances politiques.

Art. 7.—Dans les actes ou traités entre plusieurs puissances qui admettent l'alternat, le sort décidera, entre les ministres, de l'ordre qui devra être suivi dans les signatures.[1]

Le présent règlement sera inséré au protocole des plénipotentiaires des huit puissances signataires du traité de Paris, dans leur séance du 19 mars, 1815.

(Signed in alphabetical order of the states represented, viz. : Autriche, Espagne, France, Grande-Bretagne, Portugal, Prusse, Russie, Suède.)

§ 278. Addition made at the Congress of Aix-la-Chapelle by the plenipotentiaries of the five Great Powers, at their meeting of November 21, 1818 :

" Pour éviter les discussions désagréables qui pourraient avoir lieu à l'avenir sur un point d'étiquette diplomatique que l'annexe du recès de Vienne par laquelle les questions de rang ont été réglées ne paraît pas avoir prévu, il est arrêté entre les cinq cours que les ministres-résidents accrédités auprès d'elles formeront, par rapport à leur rang, une classe intermédiaire entre les ministres du second ordre et les chargés d'affaires."

(*Vide* Protocole de la Conférence du 21 novembre 1818.) It was signed by Metternich, Wellington, Nesselrode, Richelieu, Hardenberg, Capo D'Istria, Castlereagh, Bernstorff, *i.e.* in no regular order.) [2]

§ 279. It appears from the foregoing that on neither of these two occasions did the plenipotentiaries act in conformity with what they had laid down in Article 7 of the Vienna regulations, but signed in the alphabetical order, according to the French language, of the names of the states they represented, or else *pêle-mêle*. The former is the modern usage in similar cases.

§ 280. The classification established by the Congress of Vienna in 1815, as amended by the Protocol of Aix-la-Chapelle in 1818,

[1] See footnote to § 40. Though the article speaks only of "several" Powers, the principle of the *alternat* is equally followed in bilateral treaties.

[2] de Martens-Geffken, i. 54 ; Calvo, *Le Droit international, etc.*, iii. 183 *n.*

constitutes to-day an integral part of diplomatic custom admitted throughout the world.[1] The United States, *e.g.*, adopted it for reasons of convenience and uniformity[2]; the law of March 1, 1893, declared:

"Whenever the President shall be advised that any foreign government is represented, or is about to be represented, in the United States by an ambassador, envoy extraordinary, minister plenipotentiary, minister resident, special envoy or chargé d'affaires, he is authorised in his discretion to direct that the representative of the United States to such government shall bear the same designation."[3]

§ 281. The determination of rank among diplomatic agents effected by the regulations adopted in 1815 and 1818 put an end to the disputes formerly existing regarding matters of precedence.[4]

§ 282. Venice originated the institution of permanent diplomatic missions. In the sixteenth century the Republic had ambassadors ordinary at Vienna, Paris, Madrid and Rome, while the Emperor and the Kings of France and Spain had ambassadors, and the Holy See a nuncio, at Venice. Residents were accredited to the courts of Naples, Turin, Milan and London, as well as to the Swiss cantons. At Constantinople there was a *bailo* (bajulus).[5] It was partly the cost of embassies, partly the trouble arising from disputes about precedence and ceremonial, that led to the appointment of agents or *residents*, who were not entitled to the same ceremonial honours as ambassadors.[6] In the sixteenth century the less honourable title of agent began to fall into disuse, and the process continued during the seventeenth century.[7] Chargé d'affaires was another title for these diplomatists of inferior rank. Residents are found at various periods till the close of the eighteenth century. In 1675 the Dutch negotiator of the preliminary treaty with Sweden respecting contraband of war, etc., is described as "Minister Celsorum & Præpotentium Dominorum Ordinum Generalium Fœderati Belgii ad Aulam altissime memoratæ Regiæ Sacræ Majestatis Sueciæ Residens," and also as "Dominus Residens," both in the preamble.

[1] Deák, *Classification, etc. des agents diplomatiques*, Rev. de Dr. Int. (1928), 183.
[2] *Instructions to Diplomatic Officers of the United States* (1897), §§ 18–19.
[3] 27 *Statutes at Large*, 497, c. 182.
[4] Deák, *op. cit.*, 185.
[5] Nys, *Les Origines du Droit international*, 312. There was a Venetian *bailo* there already in 1249, but not till after the conquest by the Turks did he come to have a diplomatic character (Holtzendorff, iii. 613).
[6] Schmelzing, ii. 115; de Martens-Geffcken, i. 59.
[7] Krauske, 160.

Frederick William of Brandenburg (Der Grosse Kurfürst), from motives of economy, appointed no ambassadors. In 1651 he had residents at The Hague, Vienna, Paris, Stockholm, Cologne and Brussels.[1] Bonet was the King of Prussia's resident in London in 1710. In 1745, France had a resident at Geneva. The Holy Roman Emperor in 1727 had residents at London, Lisbon and Constantinople. Vattel, in 1758, speaks of ambassadors, envoys, residents and ministers.[2]

§ 283. The designation *envoyé*, which is a translation of *ablegatus*, seems up to the middle of the seventeenth century not to have been more highly esteemed than that of resident.[3] At that period the general position was as follows: Diplomatic agents were still divided into two classes, the first consisting of ambassadors or *legati*, the second comprising agents, residents, *envoyés* and *ablegati*; of these agent is the earliest, *envoyé* the latest in origin. Just as the title of resident had superseded that of agent, so the *envoyé* with the additional qualification of *extraordinaire* pushed the resident ever further into the background.

§ 284. In the second half of the seventeenth century arose the practice of designating resident ambassadors as "extraordinary." Originally this term had been applied only to those who were sent on special missions. The disputes about precedence between ordinary and extraordinary ambassadors furnished the motive to both monarchs and their agents for this otherwise unreasonable custom. In imitation of the ambassador extraordinary, the addition was conferred upon envoys, who thereupon began to claim precedence over residents. Such questions of precedence were naturally regulated by the etiquette of the court to which the diplomatic agent happened to be appointed, and in Louis XIV's time the French Court refused to make any difference. Still the envoys extraordinary went on asserting their pretensions, until in the beginning of the eighteenth century the balance began to incline in their favour at Paris and Vienna, the two courts which were most regarded as having a voice in such matters, while lesser courts continued to recognise only the old division into two classes. The title of resident was also degraded by the smaller German courts giving, or even selling, it to private persons who had no diplomatic functions at all[4] (much in the same way as in more recent times they had conferred decorations with a lavish hand). In the eighteenth century, between the envoy extra-

[1] Krauske, 129.
[2] Krauske, 163.
[3] Nys, *Droit International*, ii. 345.
[4] *Ibid.*, 165, 174.

ordinary and the resident there are found ministers, ministers resident and ministers plenipotentiary.[1] (*Plenipotentiarii nomine tales magis in usu sunt, quam vere tales*, says a writer of 1740 quoted by Krauske.) At the negotiations which preceded the peace of Nijmegen (1678), the conjunction of the two titles of envoy extraordinary and minister plenipotentiary in one person made its appearance. According to the regulations at the French Court the envoy extraordinary presented his letters of credence to the King, while the mere minister plenipotentiary, like the resident and others of the third class, such as the chargé d'affaires, delivered theirs to the minister for foreign affairs.

Ambassadors

§ 285. The ordinary practice now is to give to a diplomatic agent of the first class the title of ambassador extraordinary and plenipotentiary.

Until the close of last century France appears to have used the title ambassador alone in letters of credence, but has since made the usual addition "extraordinary and plenipotentiary." The United States until 1893 did not appoint diplomatic agents of ambassadorial rank, and consequently foreign diplomatic agents accredited to Washington prior to that date were also of lesser rank. And within recent years numerous appointments of ambassadors have been made where formerly the diplomatic agent accredited held the rank of envoy only. (See § 209.)

§ 286. The derivation of ambassador seems to be as follows: Fr. *ambaxadeur* (15th cent.), OSp. *ambaxador*, It. *ambasciatore*, from *ambaxade*, OSp. *ambaxada*, It. *ambasciata*; all these from *ambactiâre*, a word not found but inferred to have existed, and formed on *ambactia*, *ambaxia* in the Salic and Burgundian laws, meaning charge, office, employment, name of an office formed on *ambactus*, a servant (? vassal, retainer). (See Oxford Dictionary and note to Rice Holmes' *Cæsar B. G.*, vi. 15; adaptation of a Gallic word.) "Le mot ambaxador était apparu au milieu du XIII^e^ siècle"

[1] *L'Intermédiaire des Chercheurs* of Aug. 13–30, 1931, notes that the term "ministre plénipotentiaire" appears in the first edition of the Dictionnaire de l'Académie in 1694, and that Richelet's Dictionary, which omits it from the first edition (1680), includes it in that of 1719, with the note "mot écorché du latin," which is taken to signify that grammarians did not approve of it. Quotation is made from the Treaty of Münster (1648) "congressus plenipotentiariorum" and "legati plenipotentiarii"; and of somewhat later seventeenth-century instances of the French word—thus Cardinal Mazarin is "Plénipotentiaire de S.M. Très-Chrétienne" in the Treaty of the Pyrenees. Hatzfeld-Darmesteter gives as the first occurrence that in Balzac's address to the Regent in 1615. (*Notes and Queries*, Sept. 12, 1931.)

(Nys, *Origines du droit international*, p. 317). "Au XIV^e siècle, la terminologie *ambaxiator continuus* atteste déjà la stabilité de l'institution." *Ambaxiator* occurs in the treaty between Henry V and Charles VI of France, of October 14, 1417 (Dumont, ii, pt. ii, 92; Rymer, IX, 517). "Du VIII^e au X^e siècle, dans les actes de la chancellerie, le verbe d'origine germanique *ambasciare* désigne l'intervention de quelque grand personnage dans le but de faire obtenir une concession du souverain; l'intermédiaire s'appelle l'*ambasciator*. Au XIV^e siècle, ce dernier mot devient usuel et passe dans plusieurs langues" (R. de Maulde-la-Clavière, cited by Nys, *Le Droit international*, ii. 341).

§ 287. Article 2 of the Vienna *Règlement* says of ambassadors, legates and nuncios, that they alone have representative character, and by this ~~was meant~~ that agents of the first class only were considered as representing the person of their sovereign, though they did not receive all the honours due to the sovereign himself. Their privileges were originally founded on the supposition that they alone were competent to carry on negotiations with the sovereign himself. But this has no real signification in modern times, for they deal as a rule with the Minister for Foreign Affairs, even in countries which preserve a monarchical form of government. It is sometimes supposed that an ambassador can demand access to the person of the head of the state at any time, but this is not the case, as the occasions on which the ambassador can speak with the head of the state are limited by the etiquette of the court or government to which he is accredited. The so-called "representative character" of the ambassador extends no farther, as Leibnitz says, than

'*quantum fert ratio aut consuetudo.*' It gives him no right to go behind the back of the minister for foreign affairs, and negotiate with the sovereign direct. As Prince Bismarck rightly observed, no envoy or ambassador has the right of demanding a personal interview with the head of the state, nor can the sovereign in any state which possesses a parliamentary constitution negotiate apart from the advice of his responsible minister. Only in practice, and especially in the case of absolute rulers, has the easier access to the sovereign which an ambassador enjoys, any political importance, as was perceived in 1853 in the personal negotiations of Lord Stratford with the Sultan, and of the Prussian ambassador Graf v. d. Goltz with Napoleon III in 1866. The same ground is opposed to it from the side of the state to which he is accredited. If a minister for foreign affairs has to endure that what he has settled with an envoy is upset by conversations of the latter with the sovereign, no steady (*folgerichtige*) policy is possible. Frederick the

Great refused to have any ambassadors, because they were an inconvenience.[1]

Legates and Nuncios

§ 288. The following may be regarded as an authoritative explanation of these two designations :

" Legati in jure canonico sunt in triplici differentia, nempe legati *a latere*, legati missi seu nuncii apostolici, et legati *nati*. . . . Legati *a latere* alii sunt ordinarii et alii extraordinarii. Legati *a latere* ordinarii sunt cardinales qui mittuntur a Summo Pontifice in alia provincia legationis officium cum jurisdictione, seu potestate ordinaria ad instar præsidium provinciarum, ut sunt legati Bononiæ, Ferrariæ, Romandiolæ, etc. [The so-called Legations.] . . . Legati *a latere* extraordinarii sunt illi qui mittuntur occasione alicujus emergentis necessitatis Ecclesiæ universalis, ut ad Concilia convocanda, vel etiam apud reges pro pace promovenda, sive pro Summi Pontificis paterno amore alicui regi in ejus adventu testificando, vel alia simili gravi causa. . . . Et quamvis pluries a Summis Pontificibus pro similibus causis fuerint missi episcopi, et alii non cardinales ; nunc autem constans praxis obtinuit non mitti nisi cardinales legatos *a latere*. . . . Et dato quod contingat, ut contingit, mitti alios non cardinales, non datur eis titulus legati *a latere*, sed missus nominatur, nuntius cum *potestate legati a latere*. . . . Legati missi, seu nuntii apostolici dicuntur, et sunt illi prœlati, non cardinales, qui a Papa mittuntur ad alios principes pro obeundo apud ipsos munere legationis. . . . Et tales sunt nuntii Germaniæ, Franciæ, Hispaniæ, etc. et olim apocrisarii dicebantur Græco vocabulo. . . . Legati nati dicuntur, et sunt illi, quorum dignitati, quam in Ecclesia obtinent, munus legationis est annexum, et dicuntur legati nati, non quod a Sede Apostolica non hauriant auctoritatem, sed quod hanc illa dederit fixæ cuidam Ecclesiæ, et quicumque illi fuerit præfectus, una simul etiam fiat, ac veluti nascatur legatus apostolicus, utpote cujus munus suæ dignitati de jure annexum habet. Sic legatus natus a jure dicitur archiepiscopus Cantuariensis in Anglia, archiepiscopus Eboracensis item in Anglia. . . . Archiepiscopus Rhemensis in Gallia. . . . In Germania plures archiepiscopi legatorum natorum nomine insigniuntur, ut archiepiscopus Salisburgensis, elector Coloniensis, archiepiscopus Pragensis." [2]

§ 289. So that, strictly speaking, a nuncio is also a *legatus*, of the class called *missus*, being thus distinguished from the *legatus a latere*, who nowadays is always a cardinal, and from the *legatus natus*, who is not a diplomatic agent at all. In 1914 the Holy See

[1] Holtzendorff, iii. 641.

[2] Ferraris, *Prompta Bibliotheca, Canonica, Juridica, etc.*, iv. 1401. See also Schmelzing, ii. 120.

was represented by *nonces apostoliques* in Bavaria, Austria-Hungary, Belgium, Brazil and Spain. Representatives with that title were accredited to France till 1905, and to Portugal till 1911. In 1836 Prussia refused to receive a *nuncio*, as a serious innovation, not only rejecting the proposal in the particular instance, but for all future time, and firmly and unequivocally.[1] France in 1921 received a *nuncio*.

§ 290. Under Article 4 of the Vienna *Règlement* of 1815, the *nuncio* was regarded as the *doyen* of the resident diplomatic body. This might apparently be construed as making a *nuncio* the *doyen* in every country to which he may be accredited, or only in such countries as those to which a *nuncio* was in 1815 accredited, and to whom a privileged position was by the *Règlement* accorded. The British official interpretation of the article was in 1856 as follows: "It is intended that if by the invariable custom of any court the representative of the Pope had at the time of the Congress been allowed to take precedence of all other diplomatic agents of the same class, without reference to the date of his arrival, that custom should not be affected by the new regulation"; and this view has since been maintained. But in certain countries to which a *nuncio* has since been accredited the point has, in the local circumstances and as an act of courtesy, been conceded, with the practical unanimity of the resident diplomatic body. (For the functions of *doyen* see § 434).

Envoys

§ 291. The ordinary custom is to give to an agent of the second class the double title of envoy extraordinary and minister plenipotentiary. These constitute, as has been already remarked elsewhere, a rapidly dwindling class of diplomatic agents.

Internuncios

§ 292. The Holy See employs for its ministers of the second class the title of *internonce apostolique*. From the Middle Ages onwards *internuntius* was in use to denote the diplomatic agent of a lay sovereign, but was not so common as *ambasciator* and *orator*. It first occurs in the literature of the subject in 1595. Its signification was gradually restricted until from the seventeenth century onwards it became the technical term for the Austrian agent at Constantinople from 1678 to 1856.[2] Its use by Austria is though

[1] Holtzendorf, iii. 630.
[2] Heffter, *Das Europäische Völkerrecht der Gegenwart*, 7te Ausg., 428.

to have been adopted in order to avoid conflicts of precedence with the French ambassador, to whom Soliman the Magnificent (1520–1566) had undertaken by treaty to accord precedence over the representatives of all other potentates, and it was continued down to the time of the Crimean War. The *internonce* always belonged to the second class of diplomatic agents, when there were only two.[1] It seems possible that the English ambassador at Constantinople ranked after the French, and unless there were also Spanish and Dutch diplomatic agents of the first class the Austrian *internuntius* had the third place. In any case he ranked before agents of the second class.[2] But Rivier says, "Ils n'ont aucune préséance sur les autres ministres de la même classe."[3]

Ministers Plenipotentiary

§ 293. These, being accredited to the head of the state, rank with envoys, according to Article 1 of the Vienna *Règlement*. There appears, therefore, to be no substantial difference in status between a minister plenipotentiary *en titre* and one who has the title of envoy extraordinary.

Ministers Resident

§ 294. These, being accredited to the head of the state, form the third class of diplomatic agents, and rank, according to the rule adopted at the Conference of Aix-la-Chapelle in 1818, after ministers of the second class and before chargés d'affaires.

Chargés d'affaires

§ 295. These are accredited to the Minister for Foreign Affairs, in accordance with Article 1 of the Vienna *Règlement* and not to the head of the state (though instances have occurred in which their credentials have been addressed to the latter)

A distinction is drawn between such as present letters of credence from their government formally appointing them on a permanent footing as chargés d'affaires (chargés d'affaires *en titre*) and such as are appointed only temporarily, or are notified by the head of a mission as being left in charge of the mission during his absence or pending the appointment of his successor. The latter are styled chargés d'affaires *ad interim*, and rank after those accredited in a permanent capacity. In British practice, it

[1] Krauske, *s.v.* [2] C. O. L. *v.* Arnim, cited by Miruss, 115.
[3] *Principes du Droit des Gens*, i.450.

is customary also to rank chargés d'affaires *ad interim* of embassies before chargés d'affaires *ad interim* of legations.

Questions of Precedence

§ 296. By Article 4 of the Vienna *Règlement* diplomatic agents take rank in each class according to the date of the official notification of their arrival.

By Article 3, those entrusted with an extraordinary mission have no special claim to precedence on this ground. See, however, § 79 as regards ceremonial missions.

§ 297. In case of disagreement among members of the diplomatic body as to precedence, the rules adopted by the court or government to which they are accredited will be decisive (§ 79 & 438), and especially as to whether the question is governed by the date of official notification of arrival or by that of presentation of credentials.

§ 298. A question has occasionally arisen which was not decided by the regulations of 1815 or 1818, viz., what is to be the order of seniority when the death of the sovereign or a change in the form of government necessitates the presentation of new credentials by diplomatic agents formerly accredited. On this point see § 437.

§ 299. In the United Kingdom, besides the list of foreign diplomatic agents and their suites, furnished to the Sheriffs of London and Middlesex for the purpose of ensuring the enjoyment of diplomatic immunities (§ 339), monthly lists are prepared—the social list and the precedence list. In the latter the relative precedence of heads of missions is given.

§ 300. Formerly it was the practice of some governments to accredit representatives with the title of "agent and consul-general" or "commissioner and consul-general," and these might be regarded as forming a fifth class. Thus, the United Kingdom was represented by an agent and consul-general in Serbia till 1879, Roumania till 1880, Tunis till 1881, Siam till 1885, Bulgaria till 1908, and Zanzibar till 1913. In all these cases, except that of Siam, the country concerned was a vassal-state. In Egypt, a vassal-state of Turkey till 1914, the representatives of the Powers were "agent and consul-general." [1] Legally they were consuls-general with a *bérat* from the Porte. But for a long time the title of agent (or diplomatic agent) had been recognised. Most of the Great Powers gave local diplomatic rank to their agents. Thus

[1] *Almanach de Gotha.*

the Russian was envoy extraordinary and consul-general. Many of the others had also the honorary rank of envoy and minister, minister-resident or chargé d'affaires. But these titles did not affect precedence, which was regulated by seniority only, according to the date of arrival in Egypt. In Morocco the position was much the same, and the agents ranked according to seniority, no matter whether they were chargés d'affaires in the absence of a minister or not. Formerly Holland was represented in Japan by a consul-general and political agent. It may, however, be concluded that this class of diplomatic agent was, as a rule, appointed only to states which were not fully sovereign.

§ 301. Ullman says [1]: "In 1875 a dispute about relative rank arose at Belgrade between the French consul-general and diplomatic agent Debains and the German consul-general v. Rosen, which was decided by the Serbian Government in favour of the former.[2] The German Government recognised in the designation 'diplomatic agent' only an honorary title; the right of receiving diplomatic representatives belonged only to the suzerain. Eventually the affair was decided in the latter sense; the consuls appointed to semi-sovereign states with the title 'diplomatic agent' possess merely the character of consuls." But elsewhere he states that "to the fourth class of diplomatic agents belong generally all remaining diplomatic agents without regard to their further title, such as ministers resident, simple residents and consuls, accredited to Foreign Offices, if, as is the case in the East, they function as diplomatic agents." [3]

§ 302. In 1914, on the outbreak of war with Turkey and the establishment of a British protectorate over Egypt, His Britannic Majesty's representative at Cairo was given the rank of high commissioner. This title was changed to ambassador in 1936.

§ 303. In 1927 the Committee of Experts for the Progressive Codification of International Law, which was set up at Geneva under the auspices of the League of Nations, requested that they might be furnished with the replies of the various governments to certain questions, among which were the following:

"Is it desirable to revise the classification of diplomatic agents made by the Congresses of Vienna and Aix-la-Chapelle? In the

[1] Ullmann, 166 *n.*

[2] Holtzendorff states that the German Government thereupon recalled Dr. Rosen and induced the Powers to agree that consuls-general in semi-sovereign states, irrespective of their title, have no diplomatic character at all (iii. 621).

[3] *Ibid.*, 172.

affirmative case, to what extent should the existing classes of diplomatic agents be amalgamated, and should each state be recognised to have the right, in so far as differences of class remain, to determine at its discretion in what class its agents are to be ranked ? "

In the analysis made by the Committee of the answers to these questions received from the various governments, it was shown that eleven governments replied to the questions in the negative, viz. Belgium, British Empire, France, Germany, India, Japan, New Zealand, Norway, South Africa, Spain and the United States. Four replied neither affirmatively nor negatively, viz. Australia, Brazil, Egypt and Roumania ; while twelve replied affirmatively, if briefly and sometimes with qualification, viz. Austria, Denmark, Estonia, Finland, Hungary, Latvia, the Netherlands, Poland, Portugal, Salvador, Sweden and Switzerland. Italy does not appear to have replied.

The report made to the Council of the League, as adopted by the Committee at its fourth session held in June 1928, states : " While noting that the majority of the replies received recommend that the third question above mentioned (*i.e.* the question of revising the classification of diplomatic agents) should be placed on the agenda, the Committee has found the contrary opinion to be so strongly represented that, for the moment, it does not feel it can declare an international regulation of this subject matter to be realisable." [1]

§ 304. The Pan-American Convention, signed at Havana on February 20, 1928, classifies diplomatic officers as ordinary and extraordinary, those permanently accredited being ordinary, and those entrusted with a special mission or those accredited to represent the government in international conferences and congresses or other international bodies being extraordinary. (See § 363.)

[1] *Report of the Committee* (A. 15, 1928, V).

CHAPTER XVI

IMMUNITIES OF DIPLOMATIC AGENTS

§ 305. THE immunities of diplomatic agents form an exception to the rule that all persons and things within a sovereign state are subject to its jurisdiction. Grotius says [1]:

"The common rule, that he who is in a foreign territory is subject to that territory, does, by the common consent of nations, suffer an exception in the case of ambassadors; as being, by a certain fiction, in the place of those who send them (*senatus faciem secum attulerat, auctoritatem reipublicæ*, ~~ait de legato quodam~~ M. Tullius), and by a similar fiction they are, as it were, *extra territorium*; and thus, are not bound by the Civil Law (*civili jure*) of the People among whom they live."

§ 306. The obligation to exempt diplomatic agents from the local jurisdiction is a necessary consequence of the conditions on which they are sent and received, viz. that as representing sovereign states they owe no allegiance to the state to which they are accredited. Should they offend against its laws, complaint will justly be made to their government. But, without the consent of the latter, proceedings cannot be taken against them before the local tribunals.

"Le même droit des gens qui oblige les nations à admettre les ministres étrangers les oblige donc aussi manifestement à recevoir ces ministres avec tous les droits qui leur sont nécessaires, tous les privilèges qui assurent l'exercice de leurs fonctions. Il est aisé de comprendre que l'indépendance doit être l'un de ces privilèges. . . . Il importe qu'il n'ait point de pièges à redouter, qu'il ne puisse être distrait de ses fonctions par aucune chicane." (Vattel.) [2]

"Le droit des gens a voulu que les princes s'envoyassent des ambassadeurs, et la raison, tirée de la nature de la chose, n'a pas permis que ces ambassadeurs dépendissent du souverain chez qui ils sont envoyés, ni de ses tribunaux. Ils sont la parole du prince qui les envoie, et cette parole doit être libre." (Montesquieu.) [3]

[1] Whewell's edition, ii. 209 (Book II, chap. 18, § 4, no. 5); see also Nys, *Droit International*, ii. 368.

[2] *Droit des Gens*, iv. ch. 7, § 92. [3] *Esprit des Lois*, xxvi. ch. 21.

"The privilege of a public minister is to have his person sacred and free from arrests, not on his own account, but on the account of those he represents, and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents when they cannot meet themselves." (Lord Chancellor Talbot in *Barbuit's* case.)[1]

"A sovereign committing the interests of his nation with a foreign Power to the care of a person whom he has selected for that purpose, cannot intend to subject his minister in any degree to that Power; and therefore a consent to receive him implies a consent that he shall possess those privileges which his principal intended he should retain, privileges which are essential to the dignity of his sovereign, and to the duties he is bound to perform." (Chief Justice Marshall in *Exchange* v. *Macfaddon*, Supreme Court of the United States.)[2]

§ 307. These immunities are founded on common usage and tacit consent; they are essential to the conduct of the relations between independent sovereign states; they are given on the understanding that they will be reciprocally accorded, and their infringement by a state would lead to protest by the diplomatic body resident therein, and would prejudicially affect its own representation abroad.[3]

§ 308. The term exterritoriality (or extraterritoriality) is that used to denote the immunities accorded to foreign sovereigns, and to diplomatic agents, their families and staffs, and used also to apply to foreign residents in certain non-Christian countries in virtue of special treaty provisions. The use of the term, like that of "diplomacy," is more modern than the application of the principle. The word "extraterritorialitas" was used by Wolff in 1749, and G. F. de Martens, writing towards the end of the eighteenth century, converted it into *exterritorialité* and *Exterritorialität* in French and German respectively.[4] Though used of the agent in his wholly representative capacity, it is more in accordance with the actual position to interpret it as denoting that he is not subject to the authority or jurisdiction of the state to which he is accredited.

"C'est donc très convenablement aux devoirs de nations, et conformément aux grands principes du droit des gens, que par l'usage et le consentement de tous les peuples, l'ambassadeur ou ministre

[1] Hudson, *Cases on International Law*, 875.
[2] 7 Cranch 116; Hudson, *op. cit.*, 546.
[3] Hurst, *Les Immunités Diplomatiques*, Cours de La Haye (1926), ii. 123.
[4] Nys, *Droit International*, ii. 371.

public est aujourd'hui absolument indépendant de toute juridiction de l'État où il reside." (Vattel.) [1]

" L'Exterritorialité a sa base juridique, d'une part dans la renonciation à l'exercice du pouvoir territorial (exemption du ministre public) ; d'autre part dans l'assurance de l'exercice du pouvoir exterritorial (sujétion du ministre public). Le consentement des États est formel ou tacite. La réception de l'ambassadeur, si aucune volonté n'a été exprimée de part ou d'autre, est en même temps, pour l'État qui le reçoit une renonciation tacite, pour l'État qui l'envoie une acceptation tacite, de l'exercice de son pouvoir sur le ministre public. Cette présomption de l'exterritorialité est basée sur la reconnaissance que l'ambassadeur ne peut, sans son appui, remplir la tâche qui lui incombe ; c'est pour lui *conditio sine qua non.*" [2]

§ 309. The immunities and privileges of diplomatic agents extend to exemptions from criminal, civil, police, fiscal and ecclesiastical jurisdiction. They are, however, best considered under their various heads, and of these the foremost are Inviolability, Freedom of Communication, and Exemption from the Local Jurisdiction. Others will be referred to later, in this and the following chapters.

INVIOLABILITY

§ 310. This term implies a higher degree of protection to the person of the diplomatic agent and his belongings than is accorded to a private person. It extends to his family, suite, servants, houses, carriages, goods, archives, documents of whatever sort, and to his official correspondence carried by his couriers or messengers.

Sir Cecil Hurst has said [3] : ". . . unfortunately in the writings of the publicists the word ' extraterritoriality ' in connexion with diplomatic immunities has been used to describe a theory first put forward by Grotius, that the basis of diplomatic immunities was to be found in the principle that, though physically present upon the soil of the country to which he was accredited, a diplomatic representative remained for all purposes upon the soil of the country which he represented.

" As a popular explanation such a theory may for certain purposes be useful, but it is untrue in fact, it leads to absurd results and it has now been definitely repudiated by the more modern writers and by the decisions of the Courts."

[1] *Op. cit.*, iv. ch. 8, § 110.
[2] Heyking, *L'Exterritorialité*, Cours de La Haye (1925), ii. 265.
[3] *Lectures delivered at the Academy of International Law at The Hague*, 1926.

§ 311. It is the duty of the government to which they are accredited to take all necessary measures to safeguard the inviolability of diplomatic agents and to protect them from any act of violence or insult. Should such an act be committed by a public official adequate reparation is due, and in extreme cases serious consequences have sometimes followed. One of the most noted is that of the arrest of the Russian ambassador in London in 1708, which led to the passing of the Act 7 Anne, cap. 12, "to prevent the like insolences for the future."[1]

In 1708 M. de Mathveof (Matveev), the Russian ambassador, who was about to present his letters of recall, was arrested, with some degree of violence, in the streets of London, at the instigation of certain merchants, to enforce payment of debts. He was shortly afterwards released, on bail being offered by his friends. On hearing of the incident, the Queen commanded the Secretary of State to express regret to the ambassador, who was informed that the offenders would be brought to trial, and punished with the utmost rigour of the law. He was, however, in no way satisfied with this apology, and hurriedly left the country, without presenting his letters of recall, or availing himself of any of the courtesies placed at his disposal. To make amends, Lord Whitworth, the British envoy at St. Petersburg, was accredited as special ambassador, for the purpose of conveying to Peter the Great at a public audience the expression of the Queen's regret for the insult offered to his ambassador, and it is recorded that the Czar's carver and cupbearer proceeded to his residence in a court carriage to fetch him to the audience, followed by twenty other coaches conveying court personages and gentlemen of the embassy.[2]

In 1915, at a time when public feeling ran high, the Greek naval attaché at Constantinople was openly insulted by a Turkish police agent. For this offence official apologies were rendered in person by the Turkish prefect of police, the police agent was dismissed and punished, and a public announcement was made by the Turkish Government of the steps taken to give satisfaction to the Greek Government.[3]

§ 312. More serious instances are the Boxer rising in China in 1899, when the German minister and the Japanese chancellor were killed by Chinese troops and the foreign legations besieged, and the assassination at Moscow and Petrograd in 1918 of the German ambassador and the British naval attaché; while an instance in which it was alleged that neglect to afford proper protection had been shown was the assassination in Poland in

[1] *Br. and For. State Papers*, i. 993.
[2] Ch. de Martens, *Causes célèbres, etc.*, i. 68, etc.
[3] Hurst, *Les Immunités Diplomatiques*, ii. 126.

1927 of M. Voikov, Soviet minister at Warsaw, though he had been offered police protection. While of a different class, the case of M. Vorowsky, Soviet observer to the Lausanne Conference, who was murdered in Switzerland in 1923, may also be mentioned, since it formed the subject of serious complaint by the Soviet Government to the Swiss Government, though the latter had not been officially informed of his presence in Switzerland.

§ 313. A government should ensure that proper means exist for the punishment of offences committed by individuals against diplomatic agents. In most countries special laws have been enacted for the purpose.

"Every person who assaults, strikes, wounds, imprisons, or in any other manner offers violence to the person of a public minister, in violation of the law of nations, shall be imprisoned for not more than three years, and fined at the discretion of the court." (Revised Statutes of the United States, § 4062.)

§ 314. But if no such special law exists, the ordinary procedure of the penal law should be employed.[1]

The punishment of a crime or offence depends upon the rules of the penal law and the criminal procedure in force in the country. The executive power of that country cannot as a rule intervene in the administration of justice. If, therefore, there is no other procedure for dealing with offences against international law, the judgment of those offences must be remitted to the ordinary tribunals. The offended state has no ground for reclaiming a departure from the ordinary process of justice, and should be satisfied even if the accused might be acquitted or punished by the infliction of a lesser penalty than that state might deem just. (Bluntschli.)[2]

§ 315. The above may, however, be open to the qualification that the law provides a proper means of punishment, and that the trial is properly conducted.

"Le moyen ordinaire qu'on emploie pour la réparation d'une injustice causée à l'ambassadeur, c'est de lui rendre satisfaction par des excuses faites soit à sa personne, soit à l'État qu'il représente, par l'envoi d'une députation solennelle, par le paiement d'une indemnité, par la punition du coupable (bien entendu d'après les lois locales)."[3]

§ 316. In 1912 the *United States chargé d'affaires* in Cuba was assaulted by the reporter of a Cuban journal, who was arrested, but was released on bail by the Cuban court, with the remark that it was indifferent

[1] Hurst, *Immunités Diplomatiques*, ii. 130.
[2] *Das Moderne Völkerrecht, etc.* (1872), § 467.
[3] Heyking, *op. cit.*, ii. 272.

whether the person attacked was the American minister or a Cuban of the lowest class. The United States Government protested against this interpretation of international law, and the offender was ultimately sentenced to two and a half years' imprisonment.[1]

§ 317. Inviolability, in common with other immunities, attaches from the moment that the diplomatic agent has set foot in the country to which he is sent, if previous notice of his mission has been imparted to the government of the receiving state and accepted, or at any rate as soon as he has made his public character known by the production either of his passports or his credentials. It extends, as far as the state to which he is accredited is concerned, over the period occupied by him in his arrival, his sojourn, and his departure within a reasonable time after the termination of his mission. Should his letters of credence expire, owing to the death of his own sovereign or the sovereign to whom he is accredited, he is nevertheless accorded all the usual immunities during the interval before he receives fresh credentials.

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules: "Article 22.—Diplomatic officers enter upon the enjoyment of their immunity from the moment they pass the frontier of the state where they are going to serve and make known their position. The immunities shall continue during the period that the mission may be suspended, and even after it shall be terminated, for the time necessary for the officer to be able to withdraw with the mission."

§ 318. It is not affected by the breaking out of war between his own country and that to which he is accredited.[2] In such an event, it is the duty of the government to which he is accredited to take every precaution against insult or violence directed against him or any of the persons, whether belonging to his family or suite, covered by the right of inviolability, or against his residence or baggage, and to allow him to withdraw with his suite in all security. In case of need, special facilities should be afforded him, free of expense,[3] and after his departure the embassy house and its contents should be respected.

§ 319. It is, of course, expected that, on his part, a diplomatic agent will pay due regard to the laws and regulations for the maintenance of public order and safety in the state where he is appointed to reside, and abstain from any act which might call for the imposition of restraint to prevent injury or detriment to

[1] Deák, *Classification, etc., des Agents diplomatiques*, Rev. de Dr. Int. (1928), 201.
[2] Phillimore, ii. 183.
[3] Hurst, *Immunités Diplomatiques*, ii. 231.

others or give rise to reasonable ground for complaint. The correctness of his own conduct will afford the best guarantee of the inviolability claimed by him. While in general exempted from police jurisdiction, this does not imply a right to disregard measures necessary for the well-being of the community.

"Les règlements de police sont pour l'ambassadeur *lex, sed lex imperfecta*, car toute punition et toute contrainte à son égard doivent être exclues. Si l'ambassadeur se croit affranchi de toute mesure de police, par exemple s'il trouble la tranquillité et la sécurité publique, ourdit des conspirations ou commet enfin des crimes, l'État qui reçoit ne peut rester indifférent à ces agissements et la police doit employer des mesures de prévention et de securité. Le gouvernement local adresse dans ce cas une plainte au gouvernement de l'État qui envoie."[1]

In 1927, in a case before the Cour de Cassation of Costa Rica, regarding an assault committed on the *Peruvian chargé d'affaires* by one Araya, it was held that this being the natural and logical consequence brought about by the offended person himself—who had previously insulted and threatened to strike the accused—could not be regarded as a violation of diplomatic immunity.[2]

§ 320. If, on the other hand, an offence should be committed against him, his proper course is to lodge complaint with the government to which he is accredited, and, failing satisfaction, to turn to his own government for the means of redress.

Freedom of Communication

§ 321. As it is essential for the fulfilment of his mission that a diplomatic agent should be able to communicate freely and in all security on matters in which he is engaged, it is in general recognised that couriers who bear official despatches to and from the mission are exempt from the local jurisdiction, even in third countries which they may have to traverse while engaged in the performance of their duties. They should, of course, carry official passports clearly defining their status.

"For the discharge and expedition of his business and negotiations, an uninterrupted exchange of correspondence with his own court or government is necessary to the envoy. He employs messengers, whom he despatches to convey information to his sovereign, or to his colleagues at other courts with the least possible delay. The correspondence of an envoy sent through the ordinary post comes under the special protection of international law, the messengers despatched by him to his court and *vice versa* enjoy, in times of peace, inviolability for their

[1] Heyking, *op. cit.*, ii. 275.
[2] *Annual Digest* (1927–28), Case No. 243.

person and the despatches they carry—complete inviolability, even in the territory of a third state. They must . . . carry proper passports. To such messengers must be accorded every possible facility for pursuing their journey." [1]

"To ensure the safety and secrecy of the diplomatic despatches they bear, couriers must be granted exemption from civil and criminal jurisdiction, and afforded special protection during the exercise of their office. It is therefore usual to provide them with special passports. It is particularly important to observe that they must have the right of innocent passage through *third* states, and that, according to general usage, those parts of their luggage which contain diplomatic despatches, and are sealed with the official seal, must not be opened and searched." [2]

§ 322. Within recent years special arrangements have been made between several countries under which bags, officially sealed, are transmitted through the ordinary post to and from their diplomatic missions abroad, and are exempted from all interference.

Immunity from Local Criminal Jurisdiction

§ 323. If a diplomatic agent commits an ordinary crime in the country to which he is accredited he cannot be tried or punished by the local courts. No case can be cited where, without his consent or that of his government, such a course has been followed.[3] But in such a case his government would doubtless be asked to recall and punish him.

"Déjà le droit des gens universel offre des arguments plus décisifs pour exempter le ministre étranger de la juridiction criminelle de l'État auprès duquel il réside que pour l'exempter de la juridiction civile ; la nature des actes inséparables d'une procédure criminelle, et toutes les suites qu'on en pourrait craindre pour le sort des négotiations semblent s'opposer à l'exercice d'une telle juridiction." [4]

§ 324. But an offence of a flagrant character might justify the state to which he is accredited in seizing his person and expelling him. Certain incidents of this kind ~~have~~ happened in the past, though now of little more than historical interest.

In 1716 *Count Gyllenborg*, Swedish minister in London, entered into communication with the leading Jacobites, in furtherance of a plot which aimed, amongst other things, at the deposition of George I from the throne. Görtz, a secret agent of Charles XII of Sweden, at

[1] Schmelzing, ii. 224.
[2] Oppenheim, i. § 405.
[3] Hurst, *Immunités Diplomatiques*, ii. 164.
[4] G. F. de Martens, *Précis du Droit des Gens*, ii. 90.

the same time pursued negotiations in Holland and elsewhere for funds to prosecute these designs. The plot was discovered, Gyllenborg was arrested, and his papers seized. The diplomatic body protested, but are said to have withdrawn their protest. Görtz was also arrested in Holland at the request of the British Government. As a reprisal Jackson, the British minister at Stockholm, was arrested there, and the Dutch minister forbidden to appear at the Swedish court. Eventually Gyllenborg was exchanged for Jackson, and Görtz set at liberty in Holland.[1]

In 1718 *Prince de Cellamare*, Spanish ambassador at Paris, conspired to deprive the Duc d'Orléans of the Regency and transfer it to his master the King of Spain. The conspiracy was discovered, and Cellamare was placed under arrest. The resident diplomatic body declined to take up the case. Meanwhile in Spain orders had been given for the arrest of the French ambassador, but he managed to reach the frontier in safety. Cellamare was thereupon conducted to the Spanish frontier and expelled from France.[2]

§ 325. Other cases in which the offence, though flagrant, was not followed by arrest are mentioned in Chapter XXI (Termination of Mission). A notable case of the past is also that of Dom Pantaleon de Sá, who in 1653 was accused of murder in London, and his surrender forcibly compelled from the Portuguese ambassador's house. He was placed on trial, and being found guilty was executed. But in this case the claim to privilege could not be maintained as he had only a dormant commission, and his plea of relationship to the ambassador did not suffice.

§ 326. A decree of the Soviet Union of January 14, 1927, framed on a basis of reciprocity, declares that diplomatic representatives and members of their missions (counsellors, first, second, and third secretaries and attachés—including commercial, financial, military, and naval) enjoy personal immunity in virtue of which they cannot be subjected to arrest or to detention of an administrative or judicial character; and are not amenable to the jurisdiction of the judicial institutions of the U.S.S.R. and of the Allied Republics on a criminal charge, except with the consent of the foreign state concerned.

Immunity from Local Civil Jurisdiction

§ 327. It is likewise generally recognised that a diplomatic agent is exempt from the jurisdiction of the local civil tribunals, though some writers have been inclined to place limitations on this exemption. In Holland and England their immunity was recognised as far back as the seventeenth century, and both there

[1] Ch. de Martens, *op. cit.*, i. 83. [2] *Ibid.*, i. 139.

and in France and Prussia special enactments were passed to safeguard the right.

§ 328. The Statute of 7 Anne, c. 12, declares that :

" all writs and processes that shall at any time hereafter be sued forth or prosecuted, whereby the person of any ambassador, or other publick minister of any foreign Prince or state, authorised and received as such by Her Majesty, Her Heirs or Successors, or the domestick, or domestick servant of any such ambassador, or other publick minister, may be arrested or imprisoned, or his or their goods or chattels may be distrained, seized or attached, shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever."

§ 329. In 1823, in the case *Novello* v. *Toogood*,[1] Lord Chief Justice Abbott, in speaking of this Act, said that it was only declaratory of the common law,[2] and that it must therefore be construed according to the common law, of which the law of nations must be deemed a part.

" Les agents diplomatiques sont les représentants des États. C'est en raison de cette qualité que ces privilèges leur sont accordés, et c'est en raison de cette qualité que des privilèges leur sont reconnus par les États sur le territoire desquels ils résident. Cette matière relève donc exclusivement des relations entre les États, et fait partie par conséquent du droit international public." [3]

§ 330. The corresponding United States statute is § 4063 of the Revised Statutes of the United States :

" Whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a state, or by any judge or justice, whereby the person of any ambassador or public minister of a foreign prince or state, authorised and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized or attached, such writ or process shall be deemed void."

§ 331. In France the law and practice are the same, and under the decree 13 ventôse, an II, a diplomatic agent who was about to quit his post on presenting his letters of recall, would not now be subjected to the treatment accorded in 1772 to the Baron von Wrech, minister of Hesse-Cassel, who was refused his passports

[1] 1 B. & C. 554.

[2] This has been the subject of controversy : see Adair, *The Exterritoriality of Ambassadors in the 16th and 17th Centuries* (1929), 88, 237 *et seq.*, and in *Cambridge Historical Journal*, ii. no. 3, 290–7 ; and Berriedale Keith and Adair in *Journal of Comparative Legislation*, xii. (1930), 126–8, and xiii. (1931), 133–7.

[3] Hurst, *Immunités Diplomatiques*, ii. 141.

until his creditors had been satisfied.[1] In Austria the civil code confers on a diplomatic agent whatever immunities are established by international law. The German code exempts from local jurisdiction diplomatic agents and their suites. In the Soviet Union a decree of January 14, 1927, declares that diplomatic representatives and the members of their missions (counsellors, first, second and third secretaries, and attachés, including commercial, financial, military and naval) are amenable to the jurisdiction of the judicial institutions of the U.S.S.R. and of the Allied Republics, for civil offences only within the limits laid down by international law or by agreements with the states concerned.

The Pan-American Convention of February 20, 1928, signed at Havana, which says in its preamble that it incorporates the principles generally accepted by all nations, lays down for the signatory states the following rules: "Article 19.—Diplomatic officers are exempt from all civil or criminal jurisdiction of the state to which they are accredited; they may not, except in the case when duly authorised by their government, waive immunity, be prosecuted or tried unless it be by the courts of their own country."

§ 332. Certain noteworthy cases in the English, French and Belgian courts are given below:

(1) In 1854, in the case *Taylor* v. *Best, Drouet, Sperling and Clarke*, in which M. Drouet, First Secretary of the Belgian Legation in London, and one of the directors of a mining company, was one of the defendants, his attorney, upon his instructions, accepted service on his behalf of a writ issued against the directors to recover deposits on shares, and entered an appearance thereto. Afterwards M. Drouet claimed privilege. It was held by the court that, having charge of the executive of the legation, and acting in the absence of the minister as chargé d'affaires, he was a public minister to whom the privilege of ambassador applied; that his exemption (being one at common law) was not lost by his trading in England (as that of a servant would be under the Act of Anne); but that having submitted to the jurisdiction, he could not succeed in his application for the action to be stayed or his name to be struck out of the proceedings.[2] The court indicated that if the question of executing a judgment against M. Drouet had been in question his privilege would have protected him.

(In the case of *In re the Republic of Bolivia Exploration Syndicate*,[3] 1913, Astbury, J., referred to the above case, and said of it: "Having appeared and taken steps and allowed the action to go through several stages, he was not allowed subsequently to insist on his privilege so as

[1] Ch. de Martens, *op. cit.*, ii. 110. [2] 14 C. B. 487. [3] L.R. [1914] 1 Ch. 139.

to cause the action to abate to the prejudice of the plaintiff and his co-defendants, who had incurred expense in reliance on his apparent waiver." See also §§ 332 (6) and 345 (2) (6)).

(2) In 1859, in the case of the *Magdalena Steam Navigation Company* v. *Martin*, the Guatemalan minister in London claimed immunity against answering an action for debt, being a call on shares on the winding-up of the company. The court held that " the writs and processes described in the 3rd section (of the Statute of 1708) are not to be confined to such as directly touch the person or goods of an ambassador, but extend to such as, in their usual consequences, would have this effect. . . . It certainly has not hitherto been expressly decided that a public minister duly accredited to the Queen of a foreign state is privileged from all liability to be sued here in civil actions ; but we think that this follows from well-established principles, and we give judgment for the defendant." [1]

(3) In 1868 in *The Case of Tchitchérine, before the Court of Appeal at Paris*, a certain Léonce Dupont, manager of a newspaper, *La Nation*, having become bankrupt, it was discovered in the course of the proceedings that he had lent his name to Tchitchérine, counsellor of the Russian embassy at Paris, who in the interests of his government had furnished funds to start the journal, and had undertaken to support it, on various conditions, of which proof was furnished. By its judgment of January 15, 1867, the commercial court at Paris decided that it had jurisdiction in the matter, holding that if the diplomatic immunities to which Tchitchérine appealed belonged to the representatives of foreign governments in order that they should not be molested in the discharge of their functions, these immunities could not be extended to them when they entered into commercial transactions in their private interest.

The Court of Appeal reversed this decision on the following grounds : Seeing that it is an established fact, and not disputed, that Tchitchérine is attached as counsellor to the embassy of H.M. the Emperor of Russia to H.M. the Emperor of the French, and that thus he had in France the character of a foreign diplomatic agent ; seeing that it is an established principle of the Law of Nations that the diplomatic agents of a foreign Government are not subject to the jurisdiction of the courts of the country to which they are sent ; that this principle is based on the nature of things which in the respective interest of the two nations does not allow these agents to be exposed in their person or property to legal proceedings, which would not leave to them complete liberty of action, and would embarrass the international relations of which they serve as intermediaries ; that in France this principle has been specially recognised by the decree of the 13th ven-

[1] 2 El. & El. 94.

tôse, an II, from which it follows that claims which may be put forward against the envoys of foreign governments must be stated and pursued through diplomatic channels ; seeing that supposing an exception could be made to this principle in the case of diplomatic agents who devote their attention to commercial operations and by reason of such commercial operations, the contract by which Tchitchérine secured the right of directing the publication of the newspaper *La Nation* would be of a character quite other than that of a commercial speculation entered into in private interest ; it was erroneously therefore that the court maintained cognizance in the claim made by the trustee of the bankruptcy of Dupont and by Dupont himself, and ruling upon the appeal of Tchitchérine says that the commercial court of the Seine was not competent to take cognizance of the claim put forward by him and Dupont.

(4) 1891. *Case of Count Errembault de Dudzeele before the Cour de Cassation at Paris.*

In July 1889 the Civil Court of the Seine condemned in default Count Errembault de Dudzeele, counsellor of the Belgian legation, to payment of a sum of fr. 377.05. As he did not appeal within the legal period against this decision, an appeal was entered against it, at the instance of the French Ministry of Justice, in the interest of the law. The decision of the lower court was reversed by a judgment of January 10, 1891, from which the following passages may be quoted :

" La Cour, vu le décret de la Convention nationale du 13 ventôse, an II, défendant à toute autorité constituée d'attenter en aucune manière à la personne des envoyés des gouvernements étrangers. Attendu qu'une des conséquences du principe rappelé dans le décret susvisé est que les agents diplomatiques des puissances étrangères ne sont pas soumis en règle générale à la juridiction des tribunaux français ; attendu que cette immunité doit s'étendre à toutes les personnes faisant officiellement partie de la légation. Attendu que l'incompétence des tribunaux français en cette matière étant fondée sur le besoin d'indépendance réciproque des différents États et des personnes chargées de les représenter, ne peut fléchir que devant l'acceptation certaine et régulière que feraient les dites personnes de la juridiction de ces mêmes tribunaux. . . .

" Les immunités ont été reconnues de même aux attachés d'ambassade par le tribunal de la Seine par jugement du 10 août, 1855. ' Attendu, dit ce jugement, qu'Aurelio Pinto justifie qu'il est attaché à la légation impériale du Brésil en France ; que conformément aux règles du droit des gens, le caractère dont il est revêtu ne permet pas qu'il soit traduit devant la juridiction française pour une affaire purement personnelle, . . . se déclare incompétent. . . .' En Allemagne la loi nous dit : ' Les tribunaux nationaux n'ont pas juridiction sur les chefs et les membres des missions diplomatiques accréditées auprès de

l'empire Allemand' (Code d'organisation judiciaire de l'empire Allemand, art. 18). En Autriche nous trouvons la disposition suivante : 'Les ambassadeurs, les chargés d'affaires, et les personnes qui sont à leur service jouissent des franchises établies par le droit des gens et par les traités publics' (Code civil autrichien, art. 38)." [1]

(5) In 1897 the Cour de Cassation at Brussels, at the instance of the Belgian Ministry of Justice, and after examination of the authorities and precedents, quashed the decision of the lower court, which had condemned the *military attaché of the Turkish legation*, in default, to payment of an amount claimed by a veterinary surgeon for services rendered.[2]

(6) 1913.—*In re Republic of Bolivia Exploration Syndicate, Ltd.*

This was an action in the Chancery Division of the High Court of Justice at London. The liquidator of the above company having issued a summons against the directors, among whom was M. R. E. Lembcke, 2nd Secretary of the Peruvian Legation, and the auditors claiming damages for various acts of misfeasance, M. Lembcke, on the hearing of the summons, asserted diplomatic privilege, with the sanction and at the wish of the Peruvian Legation, although he had previously entered an unconditional appearance to the summons.

In this case a number of previous cases bearing on the point came under review, and amongst others that of *Taylor* v. *Best*, and the *Magdalena Steam Navigation Co.* v. *Martin.* (See above.)

Held : Both under the common law and under the Diplomatic Privileges Act, 1708, a diplomatic agent accredited to the Crown by a foreign state is absolutely privileged from being sued in the English courts and any writ issued against him is absolutely null and void.

The diplomatic privilege can be waived, if at all, only with full knowledge of the party's rights, and only with the sanction of his sovereign or legation.

Except in cases like *Taylor* v. *Best*, where the agent is merely joined as a formal defendant, it is doubtful if such waiver is possible.

"Whatever the true view of M. Lembcke's conduct in entering appearance and taking the subsequent steps, it is clear that the summons must prove abortive against him. No judgment or execution can be enforced or levied against him, and the authorities show the impropriety of allowing the action to go on merely for the purpose of defining his liability." [3]

In 1925 an attempt was made to serve on a member of the staff of the Spanish Embassy in London a notice from a firm of solicitors joining him as co-respondent in a divorce suit. The document was returned to them through another firm of solicitors

[1] Clunet (1891), 137. [2] Clunet (1897), 839. [3] L. R. [1914] 1. Ch. 139.

and, after some acrimonious correspondence with the former firm, the Spanish Ambassador lodged a protest with the Foreign Office. The Foreign Office accepted the ambassador's complaint but, in doing so, conveyed a hint that on any future similar occasion His Excellency should place the matter in their hands before, rather than after, bandying words with a private firm.

§ 333. The immunity of the diplomatic agent extends in general to events which may have occurred prior to his reception, and on the termination of his mission it is generally recognised that it continues for such reasonable time as may be necessary for him to complete the work of his mission before departing from the country.

Spanish law appears to prescribe that an envoy, while exempt from being sued in respect of obligations contracted before the commencement of the mission, is not so for those incurred during its continuance. Portuguese law seems to be to the opposite effect. And in France the immunity apparently now ceases, at any rate in the case of a member of the staff, as soon as his appointment terminates, if the action is begun after that date.

(1) In 1859, in the case of the *Magdalena Steam Navigation Company* v. *Martin*, in the English courts, Lord Chief Justice Campbell observed : " There can be no execution while the ambassador is accredited, nor even when he is recalled, if he only remains a reasonable time in this country after his recall." [1]

(2) In 1894, in the case *Musurus Bey* v. *Gadban*, in the English courts, the question of freedom from suit of ambassadors was raised in connection with a liability incurred. The plaintiff was the executor of Musurus Pacha, who had been Turkish ambassador at London, and had presented his letters of recall on December 7, 1885, but had continued to reside in England until February 1886. In an action by the plaintiff, as such executor, against the defendants to recover moneys collected by them, they counterclaimed in respect of a debt alleged to be due to them by Musurus Pacha, and the question arose whether their claim was not barred by the lapse of six years from the date of its accrual. Accordingly it became necessary to determine whether the defendants had an effective cause of action against the ambassador during the period between December 7, 1885, and February 1886, and it was held by the Court of Appeal that the point was decided in the case of *Magdalena Steam Navigation Co.* v. *Martin.* (See § 332 (2).) " It was there held that there could be no execution against an ambassador while he is accredited, nor even when he is recalled, if

[1] El. & El. 94. (*See* 332 (2) above.)

he only remains a reasonable time in this country after his recall, and that is precisely what Musurus Pacha did in the present case. During these two months Musurus Pacha was in the same position as he was in before his recall as to immunity from being sued." Accordingly the plaintiff could not set up the Statute of Limitations against the defendants' counter claim.[1]

(3) In 1906, the French Government having broken off diplomatic relations with Venezuela, and entrusted their interests to the United States, the Venezuelan Government contended that the *French Minister* became subject to the local law immediately his representation ceased. The resident diplomatic body entered a protest against this view.[2] (See § 503.)

(4) In 1929 the Netherlands tribunal at The Hague, in the case *Banco de Portugal* v. *Marang, etc.*, held that the immunity from civil jurisdiction enjoyed by a foreign diplomatic representative ceases on the termination of his mission, except for the time required by him to liquidate his affairs.[3]

§ 334. The following are French judgments on the liability of members, or ex-members, of the staff of a diplomatic agent.

(1) In 1921 the French Cour de Cassation, at the instance of the Procureur-Général, reversed a judgment pronounced against the *Secretary of the Persian legation*, observing : " Attendu qu'il importe peu que l'obligation contractée par l'agent diplomatique l'ait été à une date antérieure ou postérieure à son entrée en fonctions ; qu'il suffit qu'il soit investi de son caractère officiel au moment où des poursuites sont dirigées contre lui." [4]

(2) In 1925 the Cour d'Appel at Paris condemned *Mr. Belin*, ex-Secretary of the United States Embassy (in an action begun after he had ceased to be a member of that mission), to payment of damages in respect of an accident caused by his motor car, though this occurred while he was still a member of the mission, observing : " Attendu que l'immunité diplomatique érigée dans l'intérêt des gouvernements et non dans celui des diplomates, ne s'étend pas au delà de la mission ; que la thèse contraire aboutirait à créer au profit de l'agent diplomatique une sorte de prescription et une irresponsabilité indéfinie ; rejette comme mal fondée l'exception soulevée par Belin, et le déclare civilement responsable." [5]

[1] L.R. [1894] 2 Q.B. 352.
[2] *Foreign Relations of the United States* (1906), 1448 ; de Boeck, *l'Expulsion et les difficultés internationales qu'en soulève la pratique*, Cours de La Haye (1927), iii. 509.
[3] Hill, *American Journal of International Law* (1931), 259.
[4] Clunet (1921), 922. [5] Clunet (1926), 64.

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules: "Article 20. The immunity from jurisdiction survives the tenure of office of diplomatic officers in so far as regards actions pertaining thereto; it may not, however, be invoked in respect to other actions except while discharging their diplomatic functions" (*sic*).

§ 335. A distinction drawn by some writers between acts performed by the agent in an official capacity and those performed in a private capacity, and, again, the opinion that the immunity should not go beyond cases where submission to the jurisdiction would impair the free exercise of his functions, do not find any general acceptance, though certain much criticised decisions of the Italian tribunals in 1915 and 1922 may be mentioned.

(1) In 1883 the French Cour d'Appel at Lyons gave the following decision in an action brought against the *Comte de Bruc*, diplomatic agent of San Marino at Paris, concerning alterations effected in his private property situated at Ste. Foy-les-Lyon:

"La Cour, considérant que la position des représentants étrangers en France est réglée par le décret du 13 ventôse, an II, qui interdit à toute autorité d'attenter en aucune manière à la personne d'un envoyé d'un gouvernement étranger; considérant que les auteurs ayant écrit sur le droit international ont eu quelques divergences entre eux; que l'on a cherché à faire une distinction entre la personne officielle et la personne privée, de même qu'entre les actes accomplis en qualité de représentant et pour le compte d'un gouvernement étranger, et les actes accomplis par le même représentant dans son intérêt personnel et privé; que dans ce dernier cas, certains auteurs accordent une action en justice; que d'autres auteurs, au contraire, la refusent absolument dans quelque cas et pour quelque cause que ce soit; considérant que cette opinion est celle qui a prévalu, et que la jurisprudence n'a jamais varié sur ce point d'accord en ceci avec les principes du droit des gens: qu'ainsi il faut reconnaître que l'immunité complète de la juridiction en matière civile existe en faveur de toute personne investie d'un caractère officiel, comme représentant à un titre quelconque d'un gouvernement étranger; que le Comte de Bruc est donc fondé à se retrancher derrière cette immunité." [1]

(2) In 1888 the Federal Court of Buenos Aires, in an action concerning the goods of the *Paraguayan minister*, rejected the opinion expressed by certain writers that the immunity accorded to foreign representatives should be confined to cases where submission to the jurisdiction hindered the free exercise of their functions, and declared that the more generally accepted rule was that foreign representatives

[1] Clunet (1884), 57; Hurst, *Immunités Diplomatiques*, ii. 182.

should not be subjected to the local jurisdiction unless they renounced privilege with the authorisation of their government.[1]

(3) In 1915 the Court of Cassation at Rome, in the case of one *Rinaldi*, who had seized a motor car belonging to the Secretary of the Prussian legation to the Vatican, reversed the judgment of the lower courts, and held that private acts accomplished by a diplomatic agent are subject to the local jurisdiction ; further, the secretary was not head of the mission but a subordinate, and the act of seizure was in a court-yard and not in his abode.[2]

(4) In 1922 the Italian Court of Cassation, in the case of *Cominat* v. *Kite*, pronounced against the doctrine of absolute immunity, declaring that this was born of theories long rejected and contrary to justice and law ; it was inadmissible that a diplomatic agent should contract a debt, or conclude a contract, without means existing of making him pay, or obliging him to fulfil his engagements.[3]

Of these latter decisions M. Deák writes :

" Néanmoins, cette interprétation radicale de l'immunité de juridiction est unique dans la pratique des tribunaux, et semble être la conséquence d'une trop grande importance attachée au caractère territorial du droit." [4]

It appears also that the judgment in the last mentioned case gave rise to a representation made by the doyen of the Diplomatic Corps at Rome to the Italian Ministry for Foreign Affairs.[5]

But by a subsequent judgment in 1927 the Court of Rome reversed the rule adopted by the Court of Cassation in these cases :

(5) In 1927, in the case *Lurie* v. *Steinmann*, before the Court of Rome, an action was brought against the ecclesiastical counsellor of the German Embassy accredited to the Holy See, in respect of a commission for having purchased certain property on his behalf, on the ground that Article 11 of the Law of Guarantees, on which the defendant relied, covered only acts of diplomatic agents executed in the exercise of their diplomatic functions, but not acts relating to their private affairs ; and that immunity protected only the head of the diplomatic mission. The Court held that it had no jurisdiction ; that it was obvious that when questions of immunities of diplomatic agents arise, such immunity could refer only to the persons of diplomatic agents with regard to their private affairs, since one could hardly speak of immunity in cases where they act as agents of states ; that the principle of immunity or exterritoriality of diplomatic agents plainly implies the fact that diplomatic agents are to be considered outside the

[1] Hurst, *ibid.*, ii. 179. [2] Deák, *op. cit.*, 205. [3] *Ibid.*, 205.
[4] *Ibid.*, 206. [5] Genet, *Traité de Diplomatie, etc.*, i. 586 *n.*

jurisdiction of the country in which they are officially recognised with regard also to their private affairs ; and that it is similarly recognised by international custom that the immunity comprises the whole of the official staff of the embassy or legation.[1]

§ 336. The view that real property privately owned by the diplomatic agent is subject to the local jurisdiction on the principle of the *lex loci rei sitae*, with the exception of the legation house if owned by him, does not escape criticism.[2]

In 1925, in the case *Montwid-Biallozor* v. *Ivaldi*, before the Supreme Court of Poland, regarding a contract of lease entered into by the military attaché to the Italian legation, it was held that municipal courts have jurisdiction in regard to the private immovable property of a public minister, except where it is devoted to the official use of the legation ; and that though it is doubtful whether immunity from suits covers actions *in rem* relating to immovable property, it covers action *in personam*, and that actions arising out of a contract of lease are personal actions.[3]

§ 337. A diplomatic agent will do well to inform himself of all local legislation respecting diplomatic immunities. But as he ought carefully to avoid giving rise to any questions touching the extent of his immunities between his own government and that to which he is accredited, the obvious recommendation to make is that he should not acquire any kind of personal interest, or accept any obligations, likely to give rise to such questions. It will be better, for more reasons than one, to eschew all speculation and commercial transactions of whatever nature in the country where he is accredited, and to pay his local tradesmen's bills with regularity and despatch.

Suite, etc.

§ 338. The jurisdictional immunities of the diplomatic agent extend to the personnel of his mission, viz. the official suite, *i.e.* counsellors, secretaries and attachés, including naval, military, air and commercial attachés, appointed to assist him in his duties ; those engaged in the office work of the mission, archivists, clerks, etc., and, in the East, dragomans and interpreters ; doctor and chaplain where these are *bonâ fide* members of the mission. Also

[1] *Annual Digest* (1927–8), Case No. 246.
[2] See on this point Hurst, *Immunités Diplomatiques*, ii. 180–4.
[3] *Annual Digest* (1925–6), Case No. 246.

to the wives [1] and families of the above. And further to such persons as are in his employment for his personal convenience or that of his family—tutors, governesses, private secretaries, cooks, chauffeurs, gardeners, etc.

" Il y a lieu de remarquer que les agents diplomatiques autres que les chefs de mission (les conseillers, secrétaires et attachés) sont considérés comme des ministres publics, jouissant des privilèges dans la même mesure que les envoyés eux-mêmes. Bien qu'il n'existe aucun document international exprimant cette opinion, des dispositions inscrites dans les législations nationales rangent ces agents dans la hiérarchie diplomatique. On verra par les exemples ci-après que les tribunaux partagent unanimement l'avis que les privilèges des agents diplomatiques existent quels que soient le grade ou le titre de ces agents." [2]

" La prérogative de ces agents s'étend à les fonctionnaires qui les accompagnent et qui leur sont adjoints pour les assister et les suppléer soit dans la mission générale qu'ils ont à remplir, soit dans les branches spéciales ressortissant à cette mission ; elle appartient à leurs secrétaires, à leurs attachés, au personnel de leur suite, à leur famille, à tous les gens, en un mot, dont la présence est nécessaire pour leur permettre de représenter dignement leur pays, et d'accomplir complètement et utilement leur mission." [3]

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rules : " Article 14. Diplomatic officers shall be inviolate as to their persons, their residence, private or official, and their property. This inviolability covers : (*a*) all classes of diplomatic officers ; (*b*) the entire official personnel of the diplomatic mission ; (*c*) the members of the respective families living under the same roof ; (*d*) the papers, archives, and correspondence of the mission."

§ 339. In most countries it is usual for the diplomatic agent to furnish to the ministry for foreign affairs a full list of the persons composing his mission for whom immunity is claimed. In Great Britain this is done annually at the beginning of each year, and the list is revised from time to time as changes are notified. By the Act 7 Anne, c. 12, every servant must be registered in the office of one of the Principal Secretaries of State, *i.e.* the Foreign Office.

[1] Even if living apart, according to French and English decisions : *Cottenet* c. *Rafalovitch*, Clunet (1908), 153 ; *Macnaghten* v. *Coveridias*, Annual Practice, *etc.* (1923), vol. i ; Hurst, *Immunités Diplomatiques*, ii. 158.

[2] Deák, *op. cit.*, 198.

[3] *Aff. Dientz* c. *de la Jara* (Paris), Clunet (1878), 501 ; Hurst, *Immunités Diplomatiques*, ii. 153.

In 1923, in the case *Assurantie Compagnie Excelsior* v. *Smith*, at London, Mr. Smith, clerk in the United States embassy, whose name was recorded in the embassy list, was sued for calls on shares. He held a confidential position in the embassy, outgoing despatches were handed to him, he had charge of the embassy seal, and controlled the formal clerical work. It was held that, being on the official staff of the embassy, and carrying out official duties, he was entitled to the immunity claimed by him.[1]

§ 340. As regards the method of claiming immunity in the event of an action arising before the local tribunals, practice may vary. The claim may be made direct to the tribunal, or the diplomatic agent may address himself to the government to which he is accredited, with the request that the necessary action may be taken. As is shown in the cases mentioned in § 332 (4), (5), in both France and Belgium the ministry of justice intervened to safeguard the immunity, and in the United Kingdom similar action has been taken.

1928. *Engelke* v. *Musmann*.—In this case the House of Lords gave judgment on appeal from an order of the Court of Appeal. An action having been brought against Herr Engelke in the King's Bench Division of the High Court for arrears of rent alleged to be due under the lease of a dwelling-house, he entered a conditional appearance, but claimed immunity on the ground that he had been consular secretary on the staff of the German embassy in London since 1920, had been notified as such to the Foreign Office, and that his name appeared in the diplomatic list issued by the Foreign Office. The plaintiff asked for leave to cross-examine the deponent on the facts asserted in his affidavit. This the court refused ; the Judge in Chambers reversed this decision ; the Court of Appeal concurred ; and the matter was then carried to the House of Lords.

The questions were (1) whether a statement by the Attorney-General, at the instance of the Foreign Office, as to the status of a person claiming diplomatic privilege, was conclusive, and (2) whether the appellant should be ordered to be cross-examined in the courts on the affidavits in which his claim was preferred.

The contentions of the Attorney-General were submitted in a written case, and were to the effect that if a statement made on behalf of the Crown as to the position of a member of the diplomatic staff was not conclusive, and if the court by seeking to investigate the facts, compelled the person for whom immunity was claimed to submit to legal process, it would be impossible for the Crown to fulfil the obligations imposed by international law and the comity of nations, since the steps taken would themselves involve a breach of diplomatic immunity.

[1] 40 T. L. R. (1923), 105.

Held: that the statement of the Attorney-General, made at the instance of the Foreign Office, as to the status of a person claiming diplomatic privilege, was conclusive.[1] *Per* Viscount Dunedin: Apart from that statement the cross-examination of the defendant would have been justified.

/In the United States various instances show that a certificate from the Secretary of State is accepted by the courts as sufficing to establish the diplomatic status of the person concerned./

§ 341. Inasmuch as a diplomatic agent is the representative of the state which has accredited him, it is through the government of that state that an aggrieved person can in the last resort obtain satisfaction. If the matter is a civil one, and a direct request for a settlement proves inefficacious—or, in the case of a member of the staff, a representation to the head of the mission—the aggrieved person may lay the facts before his own government, with a view to all proper measures being taken to obtain redress, a course which is often successful[2]; or he may carry the matter to the tribunals of the country which has accredited the agent.

"Quoique le centre des affaires de l'ambassadeur se trouve à l'endroit de sa mission, dans l'État qui reçoit, il n'y acquiert pas un domicile légal. Toutes les prétentions civiles qui naissent pendant l'exercice de ses fonctions, et celles qui se sont produites avant, sont justiciable des tribunaux de l'État qui envoie."[3]

In the case of a Belgian diplomatic agent who endorsed letters of exchange to the profit of an Austrian creditor, and payable in Austria, the Cour d'Appel at Brussels held that he could only be sued in Belgium, unless he had accepted the jurisdiction of the foreign tribunal, and declared that the Belgian law of prescription applied.[4] In Roumania, the High Court of Cassation and Justice held that the Roumanian commercial attaché in Italy could be proceeded against in Roumania for *trafic d'influence* when the latter was punishable both by Roumanian and Italian law.[5] (See also the case of *Dickenson* v. *Del Solar* in the English courts, § 345 (6).)

§ 342./In a criminal matter the recall of the offender would doubtless be demanded by the state offended./

In 1881 the German ambassador at London claimed privilege in respect of a secretary of the embassy accused of a criminal offence.

[1] L. R. [1928] A.C. 433; Hurst, *British Year Book of International Law* (1929), 11.
[2] See Hurst, *Immunités Diplomatiques*, ii. 209.
[3] Heyking, *op. cit.*, 272.
[4] Hill, *American Journal of International Law* (1931), 255.
[5] *Ibid.*, 255.

Assurances were given that he would not be retained in the service of the embassy, and no further proceedings were taken in England.

In 1915 the United States Government notified the German ambassador at Washington that the continued presence of *Captains Boy-Ed* and *Von Papen*, German naval and military attachés, would no longer serve the purpose of their mission, and would be unacceptable, owing to their connection with the illegal acts of certain persons within the United States. They were recalled, and returned to Germany under safe-conducts granted by the Allied Powers at the request of the United States Government.[1]

In 1916 *Von Igel*, former secretary of Von Papen (see above), was arrested in New York, and his papers seized and copies taken. They were said to contain evidence of complicity in conspiracies against the neutrality of the United States ; and it is said that Von Papen and Von Igel directed and financed an office for procuring fraudulent passports for German reservists. The German ambassador protested, claiming Von Igel as an attaché, and his papers as embassy papers ; the United States Government replied that the acts complained of were prior to his connection with the embassy, and asked the ambassador to identify which papers belonged to the embassy, but he declined. (The action taken in this case appears to have met with criticism in the United States.) [2]

§ 343. In the case of servants it is essential that they should be actually and *bonâ fide* employed, and in the United Kingdom they have no immunity if engaged in trade. Often they may be nationals of the state in which the diplomatic agent resides, and in some countries distinctions are drawn ; in the United States, for instance, no citizen or inhabitant of that country has immunity in respect of debts contracted before entering such service. And in the United Kingdom, since August 27, 1952—with the exception of servants employed before that date—servants of British nationality no longer enjoy diplomatic immunity. But the immunity of servants, being purely derivative, lapses with the termination of their employment,[3] and it would be appropriate, should they come into conflict with the local law, either that privilege should be waived, or that they should be dismissed, in order that justice may be done. As Hall says,[4] " No minister wishes to shield a criminal, and there is no reason to believe that permission to exercise jurisdiction is refused upon sufficient cause being shown."

[1] *Diplomatic Correspondence between the United States and Belligerent Govts.*, x. 363.
[2] Hershey, *Diplomatic Agents*, etc., 149.
[3] See, *e.g.*, decision of Supreme Court, Berlin (1899) ; Clunet (1902), 146.
[4] Hall, 230.

The Pan-American Convention of February 20, 1928, concerning diplomatic officers, makes no mention of servants.

§ 344. Abuses such as existed in the past, as mentioned in the following extract from a letter written in 1818 by the United States Attorney-General, are of course highly improbable at the present day :

" English books abound with instances of attempts on the part of foreign ministers to screen debtors from their creditors by the abuse of this privilege, and some of these cases are marked with an audacity only equalled by their absurdity. Thus in one case an attempt was made to protect a debtor on the ground of his being ostler to a foreign minister, who it was proven never kept horses ; in another, on the ground of the defendant's being coachman to a foreign minister who kept no coach ; in a third, of his being cook to one who kept no kitchen nor culinary instruments ; in a fourth, of his being gardener to one who had no garden ; in a fifth, of his being a physician, although there was no proof that he had ever prescribed in his life ; and in a sixth, on the ground of his being English chaplain to the ambassador from Morocco, who was a Mohammedan." [1]

In 1823, in the case *Novello* v. *Toogood*, in the English courts, the plaintiff, a British subject, was first chorister in the chapel of the Portuguese ambassador at London, and had also other occupations—prompter at a theatre, teacher of music and languages. He rented a house, letting part in lodgings, and was subjected by a rate-collector, the defendant Toogood, to a distress for rates. In an action brought by the plaintiff for trespass, a verdict was found for him, subject to the opinion of the Court of King's Bench.

Abbott, C.J., in giving judgment against the plaintiff, said that his opinion was " founded upon one point only, that the action is for taking the plaintiff's goods and not for arresting his person ; as to which I give no opinion. . . . I am of the opinion that whatever is necessary to the convenience of an ambassador, as connected with his rank, his duties and his religion, ought to be protected ; but an exemption from the burthens borne by other British subjects ought not to be granted in a case to which the reason of the exemption does not apply." [2]

Renunciation of Privilege

§ 345. The right of a diplomatic agent to waive privilege and submit to the local jurisdiction is recognised and supported by various instances. Such renunciation, where given, should be expressed in regular and definite form.[3] It may be a question

[1] Moore, iv. 655. [2] 1 B. & C. 554. [3] Hurst, *Immunités Diplomatiques*, ii. 194.

whether the consent of his government should not also be shown. The instructions to United States diplomatic officers are that immunity from criminal and civil process cannot be waived except by the consent of the government; but doubtless in most cases a diplomatic agent waiving privilege would do so only on obtaining the consent of his government.

(1) In 1906, *M. C. Waddington*, son of the Chilean chargé d'affaires at Brussels, being accused of murder, took refuge in the legation, which was surrounded by police. Later, the chargé d'affaires informed the Public Prosecutor that he renounced immunity from the jurisdiction for his son. The Belgian authorities, however, decided that the consent of the Chilean Government must be awaited, and this having been given, the accused was brought before the Cour d'Assises of Brabant, where, after trial, he was acquitted.[1]

(2) 1917. Case of *Suarez* v. *Suarez*. The Bolivian Minister in London, in an action brought against him in 1914, concerning the estate of Francisco Suarez, deceased, of which he was administrator, waived his privilege and submitted to the jurisdiction, but failed to comply with an order of the court to pay a certain sum of money into court, and the question arose whether, notwithstanding such submission, any writ of execution could be sued out or issued, whereby his goods, etc., could be seized. It was held by Eve, J., that a minister accredited to Great Britain by a foreign state, who has submitted to the jurisdiction, and against whom judgment has been pronounced, is nevertheless under the Act of 1708 entitled, when leave to issue execution is applied for, to assert and obtain immunity from process by way of execution.[2]

A few months later the Bolivian Government terminated the defendant's appointment as minister in London, and the plaintiff's application for leave to proceed to execution and for liberty to issue a writ of sequestration of the defendant's property was restored to the list. Eve, J., granted the plaintiff's application, and held further that, as the defendant had departed secretly from the country knowing that an order for payment had been made against him, the sequestration could issue against him, notwithstanding that service of the order requiring payment had not actually been made upon him. This decision was affirmed by the Court of Appeal.[3]

(3) In 1925, in the case *Drtilek* v. *Barbier*, before the Cour d'Appel at Paris, the chancellor of the Czechoslovak legation claimed immunity from distraint. Having rented a flat, he was two years later given notice

[1] *Revue Générale du Droit International Public*, xiv. 159.
[2] L. R. [1917] 2 Ch. 131.
[3] L. R. [1918] 1 Ch. 176.

to quit ; relying on French legislation concerning rents, he thereupon applied to the courts for reduction of rent, and then declined to pay more than the reduced amount which he alleged to be due as the result of this legislation. It was held by the court that even had his name appeared in the official diplomatic list (which it did not) he had waived immunity from jurisdiction by invoking against his landlord the benefit of French legislation as to rents ; he could not thereafter shelter himself against his landlord behind diplomatic privilege.[1]

(4) In 1925, in the case *Montwid-Biallozor* v. *Ivaldi*, before the Supreme Court of Poland, concerning a contract of lease of a flat entered into by the military attaché of the Italian legation, which provided that " the diplomatic clause shall not be invoked," the court held that the courts below should have considered, and that the Supreme Court must begin with considering, the question of exterritoriality, which is a question of public law. The immunity of diplomatic agents from the civil jurisdiction of the receiving state being a recognised principle of international law, flowing from the idea of sovereignty and the necessities of international intercourse, the privilege accorded by it was not a personal privilege of the diplomatic agent, but of the state itself, and that it could not therefore be waived in a private contract at the discretion of the diplomatic agent and without the approval of his government.[2]

(5) In 1927, in the case *Herman* v. *Apetz*, before the Supreme Court of New York, the wife of the Costa Rican secretary of legation entered appearance, but afterwards pleaded immunity from process. The Court observed that there was no doubt that an envoy might not waive his diplomatic immunity without consent of the sending state ; whether this inability to waive also applied to his wife, family and domestic servants, was a matter of conflict among text writers ; the better view seemed to be that waiver on the part of such persons did not require the consent of the home state and was therefore effective.[3]

(6) 1930. *Dickinson* v. *Del Solar-Mobile and General Insurance Co., Ltd.*, third parties.

This was an action in the King's Bench Division of the High Court of Justice against the First Secretary of the Peruvian legation in London for damages for personal injuries alleged to have been caused by his negligent driving of a motor car. The defendant was forbidden by the Peruvian minister to claim diplomatic immunity, and an unconditional appearance was entered on his behalf. But, being

[1] Clunet (1926), 638 ; *Annual Digest* (1925–6), Case No. 242.
[2] *Annual Digest* (1925–6), Case No. 245.
[3] 130 *Misc.* (*N.Y.*), 618 ; *Annual Digest* (1927–8), Case No. 244.

insured against third party claims, he had called upon the company to indemnify him in respect of the plaintiff's claim and his own costs.

A verdict for damages having been given, the insurance company disputed their liability to indemnify him, alleging that as he possessed diplomatic privilege, there was no legal liability to the plaintiff, and so no claim under the policy ; also that by refusing to claim diplomatic privilege he had acted in breach of the conditions of the policy.

Held : that a person covered by diplomatic immunity is not immune from legal liability, but only from proceedings in the local jurisdiction (unless he submits thereto) so long as he possesses diplomatic status. The defendant was therefore under a legal liability to the plaintiff, and there was a claim arising under the policy ;

The privilege of immunity attaching to a person having diplomatic status is the privilege not of himself, but of the sovereign by whom he is accredited, and the right of waiver of such privilege belongs to such sovereign. The claiming and waiver of the privilege was not a matter within the volition of the defendant, who, being forbidden by his official superior to claim immunity, could not do so, and so his failure to do so could not be said to be a breach of the conditions of the policy ;

The entry of an unconditional appearance to the proceedings, which had been done on the defendant's behalf by the solicitor of the third parties, was itself a waiver of the privilege and a submission to the jurisdiction, and privilege could not therefore be pleaded thereafter by way of defence, and the action must proceed to judgment.

The court refrained from deciding whether, after a submission to the jurisdiction, diplomatic immunity could be asserted as a bar to the execution of the judgment, since, even if it were so, execution might issue as soon as the defendant ceased to be a privileged person, and the judgment might be the foundation of proceedings against him at any time in Peru.[1]

Proceedings by a Diplomatic Agent

§ 346. If, on the other hand, the diplomatic agent himself chooses to bring an action before the local tribunals, he obliges himself, like a sovereign in similar circumstances, to comply with the rules of the court. He is liable therefore to defences by way of counterclaim to the action (*i.e.* relating to the same matter),[2] and to condemnation in costs (concerning which security may

[1] L. R. [1930] 1 K. B. 376 ; *British Year Book of International Law* (1930), 231.

[2] See Dicey, *Conflict of Laws* (4th Ed.), 214 : "A sovereign or ambassador who brings an action in the High Court undoubtedly submits himself to its jurisdiction in regard to that action, but no further. This principle decides the extent to which the court has jurisdiction to entertain a counterclaim against, *e.g.*, an ambassador who is plaintiff in an action. If the counterclaim is really a defence to the action, *i.e.* is a set-off, or something in the nature of a set-off, the court has a right to entertain it. If the counterclaim is really a cross-action, the court has no jurisdiction to entertain it." See also Hurst, *Immunités Diplomatiques*, ii. 19(

perhaps be required) if the suit fails. If the suit succeeds, and the defendant prosecutes an appeal, which is also a mode of defence, the diplomatic agent cannot decline the jurisdiction of the superior court.

In 1925 a *secretary of the Chinese embassy* at Berlin, having bought a motor car and paid part of the price, brought an action to claim possession, offering to pay the balance; and a provisional order was issued decreeing delivery of the car. The defendant, who claimed that the contract had lapsed, owing to delay in payment, brought a cross-suit, claiming restitution of the car; and this was decreed, the provisional order being revoked. The plaintiff appealed, objecting to the counter-claim on the ground of exterritoriality, and the appeal was allowed.

An appeal to the Reichsgericht followed, and it was held that as the plaintiff was wrongly in possession, and merely availing himself of his exterritoriality to render perpetual the provisional decree, thus depriving the defendant of his legal remedies incidental to the plaintiff's suit, the plea of exterritoriality could not be recognised. Whether a diplomatic agent by bringing an action impliedly accepts the jurisdiction of the court in a cross-suit arising out of that action depends upon the merits of each particular case.[1]

Evidence of a Diplomatic Agent

§ 347. A diplomatic agent cannot be required to attend in court to give evidence of facts within his knowledge, nor can a member of his family or suite be so compelled. Sometimes his evidence has been taken down in writing by a secretary of the mission, or by an official whom the diplomatic agent may have consented to receive for the purpose, and the evidence has been communicated to the court in that form. But in some countries evidence, particularly in a criminal case, may have to be taken orally and in presence of the accused.

In 1856 the Netherlands minister at Washington was requested by the Secretary of State to appear in court, to give evidence regarding a homicide committed in his presence. By the unanimous advice of his colleagues he refused. Representations were made to the Netherlands Government by that of the United States, which, while admitting that in virtue of international usage and of the law of the United States, the minister had the right of refusal, appealed to the general sense of justice of the Netherlands Government. The latter, however, declined to give the desired instructions, but authorised the minister to give his evidence in writing, and he accordingly offered to do so, adding that he could not submit to cross-examination. The offer was declined, as the district

[1] *Annual Digest* (1925–6), Case No. 243.

Attorney-General reported that such a written statement would not be receivable as evidence.[1]

In 1881, at the trial of Guiteau in the United States for the assassination of President Garfield, the Venezuelan minister was called as a witness for the prosecution, and was authorised by his government to waive his rights and appear as a witness.[2]

The instructions to United States diplomatic representatives are that they cannot be compelled to testify in the country of their sojourn before any tribunal whatsoever; the right being regarded as appertaining to their office, and not to their person, and one of which they cannot divest themselves except by consent of their government.

§ 348. Writers express different views on this subject. Hall[3] considers that where by the laws of the country evidence must be given orally before the court, and in the presence of the accused, it is proper for the minister, or the member of the mission whose evidence is needed, to submit himself for examination in the usual manner; Calvo, that the principles of the law of nations did not allow him to refuse to appear in court and give evidence in the presence of the accused where the laws of the country absolutely require this to be done; Oppenheim,[4] that no envoy can be obliged, or even requested, to appear as a witness in a civil, or criminal, or administrative court, or to give evidence before a commissioner sent to his house; and Ullmann,[5] that the envoy may, if he is so disposed, authorise the appearance of a member of his suite or of his household. The Spanish code formerly contained provisions to the effect that local magistrates might compel the evidence of foreign diplomats; the entire diplomatic body protested with success to the Spanish Government against these provisions.[6]

The Pan-American Convention of February 20, 1928, concerning diplomatic officers, lays down for signatory states the following rule: "Article 21. Persons enjoying immunity from jurisdiction may refuse to appear as witnesses before the territorial courts."

A decree of the Soviet Union of January 14, 1927, declares that diplomatic representatives and the members of their missions are not obliged to give evidence in court, and in the event of an agreement to give such evidence they are not obliged to appear in court for that purpose.

[1] Calvo, *Le Droit international, etc.*, § 1520 *n.* [2] Moore, iv. 644–5.
[3] Hall, 235. [4] Oppenheim, i. § 392. [5] Ullmann, 188 *n.* i.
[6] *Foreign Relations of the United States* (1877), 492; Deák, *op. cit.*, 206.

Inquests

§ 349. In the event of members of the diplomatic corps dying in England, whether within or without the legation, in circumstances which would normally necessitate the holding of a coroner's inquest, it appears to have been the practice, where immunity has been claimed, to waive the proceedings, or, where consent has been given subject to reservations, to comply with the latter.

§ 350. On the suicide of the butler of the British embassy at Madrid in 1921, the ambassador waived exterritorial rights to the extent of receiving the examining magistrate of the district at the embassy, the evidence given by him and some of the servants being embodied in a procès-verbal, which stated that he had waived those rights for the occasion.

Independence

§ 351. A topic upon which writers, more especially those of earlier times, have dwelt largely is that of the independence of the diplomatic agent.

We have seen that international law regards the inviolability of the head of a mission as the chief attribute of the diplomatic character; absolute independence is, in principle, its corollary, as being in itself the consequence of the independence of the nation of which the public minister is the mandatory.[1]

And from this it is deduced that the diplomatic agent should abstain from any act likely in any way to prejudice that independence.

" Il importe qu'il n'ait rien à espérer, ni rien à craindre du souverain auquel il est envoyé." [2]

§ 352. A diplomatic agent should be careful to abstain from all interference in the domestic affairs of the state to which he is accredited. Instances in which such interference has led to requests for his recall, or to his dismissal by the state concerned, are set out in Chapter XXI.

In 1925 *M. Volhine*, secretary to the Soviet embassy at Paris, was relieved of his functions in consequence of representations made by the French Government regarding a speech made by him at a public meeting in France to commemorate Sun Yat-Sen.[3]

[1] de Martens-Geffcken, i. 88.
[2] Vattel, *Droit des Gens*, iv., c. 7, § 92.
[3] *The Times*, May 12, 1925.

The Pan-American Convention of February 20, 1928, signed at Havana, lays down for the signatory states the following rule : " Article 12. Foreign diplomatic officers may not participate in the domestic or foreign politics of the state in which they exercise their functions."

§ 353. On June 15, 1931, in the House of Commons, London, questions were asked of the Prime Minister regarding certain addresses given by members of the Soviet embassy and the Finnish legation within the precincts of the House, and it was suggested in reply that Members might consider whether in using the committee rooms for addresses by members of the diplomatic body upon controversial questions they were not adopting a practice open to grave objection. In reply to further questions by Sir A. Chamberlain whether such addresses by foreign diplomats were not contrary to diplomatic usage, whether the interference of diplomats in the internal affairs of other countries had not led to their being handed their passports, and whether it was not right that members of embassies and legations should refrain in future from delivering addresses of that kind, the Prime Minister said that that was the character and nature of the statement he had made, and that he hoped its complete significance would not be lost.[1]

Attacks in the Local Press

§ 354. As regards such attacks directed against diplomatic agents in countries to which they are accredited, in cases where the publications are under the control of the government it is the duty of the latter to prevent this. In 1856 the Peruvian Government dismissed the editor of a journal under their control which had published an article offensive to the resident diplomatic body, and caused their disapproval of his action to be published. The codes of many European countries punish with severity such offences defamatory to the reputation of diplomatic agents.[2] But where, as is often the case, the Press is free from government control, and if the articles do not transcend the limits fixed by law, the government can usually only act indirectly in the matter.[3] During the war of 1914–18 the Swiss Government found it necessary to prohibit by decree propaganda directed against the German minister and military attaché.

Jurisdiction over Members of Suite

§ 355. On this point Oppenheim says :

" As the members of an envoy's retinue are considered to be exterritorial, the receiving State has no jurisdiction over them, and the home

[1] Parliamentary Debates, June 15, 1931.
[2] Deák, *op. cit.*, 538.
[3] Hurst, *Immunités Diplomatiques*, ii. 132.

State may therefore delegate civil and criminal jurisdiction to the envoy. But no receiving State is required to grant self-jurisdiction to an ambassador beyond a certain reasonable limit. Thus, an envoy must have jurisdiction over his retinue in matters of discipline, he must be able to order the arrest of a member of his retinue who has committed a crime and is to be sent home for his trial, and the like. But no civilised State would nowadays allow an envoy himself to try a member of his retinue, though in former centuries this used to happen." [1]

§ 356. Baron Heyking observes :

" L'ambassadeur est le chef de tout le personnel de l'ambassade et possède en cette qualité une juridiction disciplinaire. Mais a-t-il encore d'autres droits judiciaires ? Grotius était de l'opinion que l'État qui reçoit avait à decider sur l'admissibilité de la juridiction personnelle des ambassadeurs. Par contre Bynkershoek soutenait que l'État qui envoie avait seul le pouvoir d'accorder ce droit. Une combinaison des deux opinions donne le vrai principe ; la juridiction personnelle exige un double titre légal et ne peut se produire que lorsque l'État qui envoie et celui qui reçoit consentent des deux côtés. Elle se borne aujourd'hui, dans la plupart des États européens, à la juridiction volontaire en matière civile et à ce qu'on appelle ' premier procédé ' (erster Angriff) en matière criminelle. C'est-à-dire que l'on procède après l'arrestation à la constatation des faits et le délinquant est renvoyé ensuite dans sa patrie, où il est l'objet d'une instruction formelle. L'ambassadeur est, à cette occasion, en droit de requérir les autorités et les tribunaux locaux. Pour les délits ou contraventions de police, l'ambassadeur ne doit jamais dépasser la mesure d'une punition correctionnelle." [2]

§ 357. But in times gone by diplomatic agents claimed a more extensive jurisdiction over the members of their suites.

According to early writers, a distinction was to be drawn between (1) an offence against his own country, or a fellow subject, committed within the embassy, in which case the agent claimed the right to send home the accused in fetters to the courts of his own country for punishment ; and (2) an offence committed outside the embassy against a subject of the state, or against public order, in which case, in order to avoid disputes, the envoy either dismissed the offender from his service, or handed him over to the local authorities on their requisition. But the latter did not apply to members of the diplomatic personnel, whom he had no power to dismiss, and he had either to arrange for their dismissal with his own government, with a view to the surrender of the culprit to the authorities, or for an order to send him home for punishment.[3]

[1] Oppenheim, i. § 396.
[2] Heyking, *op. cit.*, ii. 268.
[3] Schmelzing, ii. 241 ; Schmalz, *Europäisches Völkerrecht*, 118.

A famous case is that of the Duc de Sully, who in 1603 was sent on a special mission from France to James I. Combault, a member of his mission, having killed an Englishman, Sully sent a message to the Mayor of London, saying that he had condemned the offender to be decapitated, and asking for the services of an executioner on the following morning. The Mayor having counselled moderation, Sully replied that he saw no way of satisfying his own people and the Mayor, but to ask the latter to take charge of the prisoner, and to inflict on him whatever penalty the law of England might prescribe. Combault was accordingly handed over, but was pardoned by James I at the solicitation of the French ambassador-in-ordinary.[1]

Civil Jurisdiction

§ 358. Oppenheim says :—

"Negotiation, observation and protection are tasks common to all diplomatic envoys of every state. But a State may order its permanent envoys to perform other tasks, such as the registration of deaths, births, and marriages of subjects of the home State, legalisation of their signatures, issue of passports for them, and the like. However, in doing this, a State must be careful not to order its envoys to perform tasks which are by the law of the receiving State exclusively reserved to its own officials. Thus, for instance, a State whose laws compel persons who intend marriage to conclude it in the presence of its registrars, need not allow a foreign envoy to legalise a marriage of compatriots before its registration by the official registrar. So, too, a State need not allow a foreign envoy to perform an act which is reserved for its jurisdiction, as, for instance, the examination of witnesses on oath." [2]

At the present day, however, most of these matters fall within the province of consular officers, who are often empowered, under rules issued for their guidance, to perform notarial and other acts in respect of their compatriots, within the limits allowable by the laws of the state wherein they reside.

§ 359. As regards marriages at foreign embassies and legations, where such are possible, these, even if valid under the law of the state which the ambassador or minister represents, are not necessarily so in the law of the state in which they are celebrated, and in many instances it is known they are not.

§ 360. While statements are to be found in text-books of repute that marriages at foreign embassies and legations in England would be valid in English law, no decided case appears to be mentioned in which this has been laid down by a court of law, and

[1] Michaud and Poujoulat, *Nouvelle Collection de Mémoires, etc.*, ii. 444.
[2] Oppenheim i. § 382.

in the circumstances it would be difficult to say definitely that any such marriages are valid in English law. In the case of such marriages between persons who are not both nationals of the country in whose embassy or legation the marriage was celebrated, the best opinion appears to be that they are invalid in English law.

Domicile and Nationality

§ 361. Diplomatic agents [1] and their staffs maintain their domicile in their own country, and children born to them in the country where they are temporarily residing in the performance of their official duties have as a general rule the nationality of their parents, and are not claimed as nationals by the latter country In English law the children born in Great Britain of members of foreign missions having diplomatic immunity are not deemed to be British subjects, though their births should be registered in order to comply with the local law ; while children born abroad of British subjects who are members of British diplomatic missions are deemed to be British subjects under statute law, or, in certain cases, the common law.

Extensions

§ 362. While the foregoing paragraphs of this chapter relate to permanent missions accredited to foreign countries, missions of a temporary character are sometimes sent, as, for instance, when a special agent is accredited to represent his sovereign or country at a coronation or other royal ceremony, to invest a sovereign with a high decoration, or on the occasion of some important national celebration. Such representatives also enjoy diplomatic immunities and privileges both as regards themselves and their suites. (See §§ 81–82.)

§ 363. As regards delegates to the numerous conferences now held on a great variety of matters, some doubt might perhaps be felt, in the absence of cases arising for settlement, as to the extent of the immunities to which they and the members of their suites are entitled. Formerly international congresses and conferences were for the most part attended by personages of high ministerial rank, or by resident diplomatic agents who already possessed diplomatic privilege ; now the plenipotentiaries appointed are often officials or persons chosen for their special knowledge of the subject to be discussed, who with their retinues constitute the delegations to the

[1] Hall, 236.

conference. In the view of most writers such representatives are entitled to full diplomatic privilege.

" Ces personnes n'occupant pas un rang déterminé dans la hiérarchie diplomatique, leur qualité se trouve essentiellement attachée à la nature de leur mission, qui est de représenter les intérêts d'un État non point auprès d'un État étranger, mais auprès de tous les États participant au congrès. Or, la doctrine moderne admet que la qualité diplomatique est attachée à la fonction et à la nature de la mission plus qu'au titre. Elle reconnaît l'utilité des distinctions de classes et de rangs, mais se refuse à les considérer comme substantielles, toutes les personnes qui représentent régulièrement leur souverain ou leur pays ayant également un caractère officiel qui leur assure des prérogatives et immunités analogues. Il semble donc que l'on ne soit pas fondé à refuser aux délégués aux congrès et conférences la qualité de ministres publics. . . ." [1]

" Among the envoys political, again, two kinds are to be distinguished—namely, (1) such as are permanently or temporarily accredited to a State for the purpose of negotiating with such State, and (2) such as are sent to represent the sending State at a congress or conference. The latter are not, or need not be, accredited to the State on whose territory the congress or conference takes place, but they are nevertheless diplomatic envoys, and enjoy all the privileges of such envoys as regards exterritoriality and the like which concern the inviolability and safety of their persons and the members of their suites." [2]

" The case of negotiators at a congress or conference is exceptional. Though they are not accredited to the government of the state in which it is held, they are entitled to complete diplomatic privileges, they being as a matter of fact representatives of their state and engaged in the exercise of diplomatic functions." [3]

" At a Peace congress or conference, or at such an assembly for any other purpose, each Power represented may appoint as many plenipotentiaries as it may consider convenient to itself, who may be assisted by technical delegates, naval, military, economic and legal, and by secretaries. The members of the delegation will enjoy all the ordinary privileges and immunities usually accorded to diplomatists." [4]

The Pan-American Convention of February 20, 1928, signed at Havana, concerning diplomatic officers, contains the following articles :

" Art. 1.—States have the right of being represented before each other through diplomatic officers.

[1] Secretan, *Les Immunités Diplomatiques des Représentants des États Membres et des Agents de la Société des Nations*, 8.
[2] Oppenheim, i. § 363.
[3] Hall, 365. [4] Satow, *International Congresses*, 13.

Art. 2.—Diplomatic officers are classed as ordinary and extraordinary. Those who permanently represent the government of one state before that of another are ordinary. Those entrusted with a special mission or those who are accredited to represent the government in international conferences and congresses or other international bodies are extraordinary.

Art. 3.—Except as concerns precedence and etiquette, diplomatic officers, whatever their category, have the same rights, prerogatives and immunities. Etiquette depends upon diplomatic usages in general as well as upon the laws and regulations of the country to which the officers are accredited.

Art. 4.—In addition to the functions indicated in their credentials, ordinary officers possess the attributes which the laws and decrees of the respective countries may confer upon them. They should exercise their attributes without coming into conflict with the laws of the country to which they are accredited."

"Art. 9.—Extraordinary diplomatic officers enjoy the same prerogatives and immunities as ordinary ones."

§ 364. Within recent times diplomatic privileges and immunities have been extended by treaty provisions to certain officials and persons. Under Article 24 and Article 46 of the Hague Conventions for the Pacific Settlement of International Disputes, of 1899 and 1907 respectively, the members of arbitration tribunals constituted thereunder enjoy such privileges and immunities. Under Article 7 of the Covenant of the League of Nations representatives of the members of the League and officials of the League when engaged on the business of the League enjoyed them. Under Article 19 of the Statute of the International Court of Justice the members of that court, when engaged on the business of the court, are guaranteed similar rights. (See § 832.) The international commissions set up in the case of certain European rivers also enjoyed them. And the reparation articles of the treaties of peace provided for such rights being enjoyed by members of the reparation commissions set up thereunder.

§ 365. In an article on "Diplomatic Immunities, Modern Developments," [1] Sir C. Hurst, in commenting on such extensions, refers to the cases mentioned above in §§ 332 (4), (5) and 340, where the French, Belgian and British Governments successively intervened to safeguard the diplomatic privilege of the persons concerned, and observes :

"Developments are taking place as regards the tasks imposed upon diplomatic missions, and as regards the categories of persons engaged

[1] *British Year Book of International Law* (1929), 1.

upon international work, who should be free from subjection to the local jurisdiction. The final decision rests with the executive government, not with the courts, as to what individuals are entitled to the privilege, and this enables the adjustments in the application of the fundamental principles, which are necessary for meeting the new developments, to be made satisfactorily." [1]

§ 366. A case in the German courts may, however, be mentioned :

In 1926, in a case before the Oberlandesgericht at Darmstadt, concerning a person whom the German Foreign Office refused to recognise as a member of a foreign legation entitled to diplomatic privilege, the court held that according to German constitutional and administrative law, German courts are only in certain specific cases bound by the opinions of government authorities; the declaration of the Foreign Office on a question of exterritoriality does not formally bind the courts, and the Foreign Office has itself expressed the opinion that a declaration made by it was not binding on a German court.[2]

§ 367. But persons charged with particular functions of one kind or another, and not forming part of the personnel of a diplomatic mission, such as representatives at exhibitions, or who may be deputed to facilitate the application of tariffs in matters of trade, and in general non-official persons, cannot claim immunity as of right.[3] Such special facilities as may be accorded to them rest rather on a basis of courtesy, and this seems also the case where commissioners are appointed for the regulation of particular matters requiring adjustment which are outside the scope of the ordinary duties of the diplomatic representative. Of these Hall says [4] :

" Commissioners for special objects are not considered so to represent their government, or to be employed in such functions, as to acquire diplomatic immunities. They are, however, held to have a right to special protection, and courtesy may sometimes demand something more. It would probably not be incorrect to say that no very distinct practice has been formed as to their treatment, contentious cases not having sufficiently arisen."

§ 368. Under the former Trade Agreement of March 16, 1921, between Great Britain and the Russian Soviet Republic, immunity from search and arrest was provided for in the case of the official agents appointed thereunder, but not immunity from civil process. In the civil action *Fenton Textile Association* v. *Krassin and*

[1] *Ibid.*, 13. [2] *Annual Digest* (1925–6), Case No. 244.
[3] Hurst, *Immunités Diplomatiques*, ii. 155. [4] Hall, 371.

Others (1921), it was held by the Court of Appeal in London that as the defendant had not been recognised by any competent authority in England in any other capacity than that of official agent under the Trade Agreement, his status was insufficient to carry with it the immunity accorded to accredited and recognised representatives of foreign states. In the course of his judgment Lord Justice Scrutton observed :

" The question of the exact limits of diplomatic privilege is so important as to justify me in declining to lay down any general principle unless the facts of the case require it. It is sufficient to say that so long as our government negotiates with a person as representing a recognised foreign state about matters of concern as between nation and nation, without further definition of his position, I am inclined to think that such representative may be entitled to immunity though not accredited or received by the King. If the question in the present case had been the position of M. Krassin when he was as representing the Russian Soviet Government negotiating the Trade Agreement with His Majesty's Government, I should have been inclined to think that the view expressed by Lord Curzon in his letter of July 26, 1920, that M. Krassin should be exempted from the process of the court was correct. But as such representative he negotiated a Trade Agreement which authorised the appointment of official trade agents in this country by the Russian Government who should have certain specified and carefully defined privileges and immunities. These privileges and immunities do not include immunity from civil process." [1]

§ 369. The temporary Commercial Agreement between Great Britain and the Soviet Union, signed at London, April 16, 1930,[2] contained the following provisions :

" Art. 2.—(1) In view of the fact that, by virtue of the laws of the Union of Soviet Socialist Republics, the foreign trade of the Union is a state monopoly, His Majesty's Government in the United Kingdom agree to accord to the Government of the Union of Soviet Socialist Republics the right to establish in London a Trade Delegation, consisting of the Trade Representative of the Union of Soviet Socialist Republics and his two deputies, forming part of the Embassy of the Union of Soviet Socialist Republics.

(2) The head of the Trade Delegation shall be the Trade Representative of the Union of Soviet Socialist Republics in the United Kingdom. He and his two deputies shall, by virtue of paragraph 1 of the present Article, be accorded all diplomatic privileges and immunities, and immunity shall attach to the offices occupied by the

[1] 38 T. L. R. (1921), 259.
[2] *Treaty Series*, No. 19 (1930).

Trade Delegation (5th Floor, East Wing, Bush House, Aldwych, London) and used exclusively for the purpose defined in paragraph 3 of the present Article. No member of the staff of the Trade Delegation, other than the Trade Representative and his two deputies, shall enjoy any privileges or immunities other than those which are, or may be, enjoyed in the United Kingdom by officials of the state-controlled trading organisations of other countries."

" (6) Any questions which may arise in respect of commercial transactions entered into in the United Kingdom by the Trade Delegation shall be determined by the Courts of the United Kingdom in accordance with the laws thereof."

Additional Protocol.—" With reference to paragraph 6 of Article 2, it is understood that the privileges and immunities conferred on the head of the Trade Delegation and his two deputies by paragraph 2 of Article 2 of the present Agreement shall not be claimed in connection with any proceedings before the Courts of the United Kingdom arising out of commercial transactions entered into in the United Kingdom by the Trade Delegation of the Union of Soviet Socialist Republics."

CHAPTER XVII

IMMUNITIES OF THE RESIDENCE OF THE DIPLOMATIC AGENT

§ 370. IMMUNITY attaches to the house of the diplomatic agent and other premises devoted to diplomatic purposes, and to any building occupied by him with a view to the execution of his functions, whether the property of his government, or his own, or merely rented by him.[1] No officer of state, and in particular no police officer, tax-collector or officer of a court of law, can enter his residence, nor without consent discharge any function therein. The immunity extends to carriages (though not, of course, as regards compliance with the ordinary regulations governing control of traffic), and also to boats and aeroplanes.

The Pan-American Convention of February 20, 1928, signed at Havana, which in its preamble says that it incorporates the principles generally accepted by all nations, lays down for the signatory states the following rule: "Art. 16.—No judicial or administrative functionary or official of the state to which the diplomatic officer is accredited may enter the domicile of the latter, or of the mission, without his consent."

§ 371. The immunity of the agent's residence is so generally recognised that it is only necessary to mention briefly certain incidents of the past in which it was called in question.

In 1808 a servant of *Admiral Apodaca*, diplomatic agent of the Supreme Junta of Seville at London, being charged with a criminal offence, was arrested in the legation. Apodaca said that he had no objection to the servant being tried, and convicted if he were found guilty, but he protested against the violation of his diplomatic privilege in arresting a servant within his house without previous notice. In his subsequent report to his Government he stated that the servant had been released, and that he had declared himself satisfied.[2] It seems probable, therefore, that verbal explanations were made to him and some apology offered.

In 1827 the coachman of *Mr. Gallatin*, United States minister at London, was arrested in the stable of the legation, charged with assault.

[1] Hurst, *Les Immunités Diplomatiques*, Cours de La Haye (1926), ii. 131, 162.
[2] Villa-Urrutia, i. 304.

The correspondence shows that the British Government upheld the action taken, and that Mr. Gallatin, who had in the meantime dismissed the servant, dissented from the views expressed. As the outcome of this case, steps were taken by the British Government to ensure that no similar arrest of the servant of a foreign minister should in future take place without a previous communication being made to the minister, in order that his convenience might be consulted as to the method of putting the warrant into execution.

§ 372. But the immunity affords no justification for giving shelter to criminals, and, in such a case, a government would be justified in taking measures to compel the surrender of the criminal. They might surround the house by police, to prevent the escape of the fugitive, and complain to the government which had accredited the agent, and demand his recall. Neither can the carriage of the agent serve as a refuge.

§ 373. Hall [1] says that in Europe it has been completely established that the house of a diplomatic agent gives no protection either to ordinary criminals or to persons accused of crimes against the state.

"It is agreed that the house of a diplomatic agent is so far exempted from the operation of the territorial jurisdiction as is necessary to secure the free exercise of his functions. It is equally agreed that this immunity ceases to hold in those cases in which a government is justified in arresting an ambassador and in searching his papers: an immunity which exists for the purpose of securing the enjoyment of a privilege comes naturally to an end when a right of disregarding the privilege has arisen. Whether, except in this extreme case, the possibility of embarrassment to the minister is so jealously guarded against as to deprive the local authorities of all right of entry irrespective of his leave, or whether the right of entry exists whenever the occasion of it is so remote from diplomatic interests as to render it unlikely that they will be endangered, can hardly be looked upon as settled." [2]

§ 374. Oppenheim goes further:

"If an envoy abuses this immunity, the receiving Government need not bear it passively.... There is [therefore] no obligation on the part of the receiving State to grant an envoy the right of affording an asylum to criminals, or to other individuals not belonging to his suite. Of course an envoy need not deny entrance to criminals... desiring to take refuge in the embassy.... But he must surrender them to the prosecuting Government at its request; and, if he refuses, any measures may be taken to induce him to do so, short of such as would involve an attack on his person. Thus, the embassy may be surrounded by

[1] Hall, 233. [2] *Ibid.*, 231.

soldiers, and eventually the criminal may even forcibly be taken out of the embassy. But such measures of force are justifiable only if the case is an urgent one, and after the envoy has in vain been requested to surrender the criminal." [1]

§ 375. Against this may be set the view of Dr. Hannis Taylor, who, after stating that an envoy must not harbour criminals not of his suite, and discussing the right of asylum for political refugees in certain countries, proceeded thus to define the immunity of the agent's residence :

" Subject to the foregoing exceptions, the general statement may be made that, while the exact limits of the inviolability of the hotel are not perfectly defined, a fair result of reasoning on principle and of a comparison of authorities is that the residence of the minister should enjoy absolute immunity from the execution of all compulsory process within its limits, and from all forcible intrusions. ' If it can be rightfully entered at all without the consent of its occupant it can only be so entered in consequence of an order emanating from the supreme authority of the country in which the minister resides, and for which it will be held responsible by his government ' " (Mr. Buchanan, U.S. Secretary of State, to Mr. Shields, March 22, 1848).[2]

§ 376. Vattel says : " C'est donc au souverain de décider, dans l'occasion, jusqu'à quel point on doit respecter le droit d'asile qu'un ambassadeur attribue à son hôtel " [3] ; and it seems clear that, in any such eventuality, the action should only be taken with the express authorisation of the government, and on its direct responsibility.[4]

§ 377. In 1929 a serious dispute occurred between Nepal and Tibet, owing to the act of the Tibetan police at Lhasa in entering the Nepalese legation and forcibly removing a man, claiming to be a Nepalese, who, having been arrested for an offence against Tibetan laws, had escaped from gaol, and had taken refuge at the legation. The matter was eventually terminated by a letter of apology addressed by the Tibetan Government to the Nepalese Government, which was accepted by the latter.

§ 378. The immunity of the agent's dwelling extends to those of his official staff.[5]

" Pour donner à l'ambassadeur une complète liberté d'action dans l'État qui le reçoit, l'exterritorialité de sa personne seule ne suffit pas.

[1] Oppenheim, i. §§ 390 and 390*a*.
[2] *A Treatise on Public International Law*, § 313.
[3] *Droit des Gens*, iv., c. 9, § 118.
[4] Hurst, *Immunités Diplomatiques*, ii. 214.
[5] Nys, *Le Droit International*, ii. 387.

Sa charge et ses devoirs représentatifs le mettent en rapport direct avec son entourage, ensemble par le canal duquel le pouvoir étranger peut agir indirectement sur lui. C'est pourquoi l'exterritorialité de l'ambassadeur a été étendue à certaines personnes et à certaines choses, ayant toutes une relation intime avec l'exercice de ses fonctions. Pour cette cause les personnes qui jouissent de l'exterritorialité sont : l'épouse, les enfants, ainsi que les autres membres de la famille de l'ambassadeur ; son personnel de service, savoir—les secrétaires et les attachés d'ambassade, et le personnel de sa maison." [1]

The Pan-American Convention of February 20, 1928, referred to above in § 370, lays down for the signatory states the following rules : " Article 14.—Diplomatic officers shall be inviolate as to their persons, their residence, private or official, and their property. This inviolability covers : (*a*) all classes of diplomatic officers ; (*b*) the entire official personnel of the diplomatic mission ; (*c*) the members of the respective families living under the same roof ; (*d*) the papers, archives, and correspondence of the mission."

§ 379. Article 4 of a decree of the Soviet Union of January 14, 1927, framed on a basis of reciprocity, declares that the premises occupied by diplomatic missions, and also the premises in which the following persons and their families are living, viz. : counsellors (including commercial), first, second and third secretaries and attachés (including commercial, financial, military and naval), enjoy immunity. In these premises domiciliary search or seizure can only take place at the request of, or by agreement with, the diplomatic representative, provided that when the search or seizure is carried out, it takes place in the presence of a representative of the Procurator's department and of a representative of the People's Commissariat for Foreign Affairs if there should be one in the given locality. Such premises may not be sealed up. Entry into them may not take place otherwise than with the consent of the diplomatic representative. Nevertheless the immunity of these premises does not confer the right forcibly to detain any person whatsoever therein, nor does it confer the right to afford asylum to persons in regard to whom decisions have been taken by the organs of the Soviet Union and Allied Republics authorised thereto in regard to the arrest.

§ 380. If a crime is committed within the embassy or legation by a person from without, the offender should be handed over to the local authorities.

" Lorsque les sujets du pays, dans le sens restreint ou étendu, *subditi temporarii* ou *perpetui*, commettent un méfait dans un hôtel d'ambassade, la compétence des tribunaux locaux doit être absolument reconnue ; ce qui n'empêche pas que l'hôtel de l'ambassade soit

[1] Heyking, *L'Exterritorialité*, Cours de La Haye (1925), ii. 267.

exterritorial, dans le sens d'une exemption du pouvoir territorial de l'État, autant que cela paraîtrait nécessaire pour le libre exercice des fonctions de l'ambassadeur." [1]

The Pan-American Convention of February 20, 1928, referred to above, lays down for the signatory states the following rule : " Article 17.—Diplomatic officers are obliged to deliver to the competent local authority that requests it any person accused or condemned for ordinary crimes, who may have taken refuge in the mission." (See also § 394.)

In 1865 a Russian subject named *Mickilchenkoff* (or Nikitschenkow), having obtained admission into the Russian embassy at Paris, assaulted and wounded an attaché, and the police being applied to, entered the house and arrested him. The ambassador demanded that the man should be given up to him, to be sent to Russia for trial. The French Government refused, saying that the principle did not cover the case of a stranger entering the embassy and there committing a crime, but that, even if it did, the privilege had been waived by calling in the police. The Russian Government admitted the jurisdiction of the French court, and the prisoner was tried by the local law.[2]

In 1880 the tribunal at Berlin gave a decision in the same sense in the case of an offence committed in a foreign embassy at Berlin by a foreigner who formed no part of the personnel of the mission.[3]

In 1909 a similar attempt was made in the Bulgarian legation at Paris, against a member of the personnel, by a Bulgarian named *Trochanoff*, and the minister himself initiated criminal proceedings against the offender before the tribunal of the Seine. The court rejected the theory put forward in defence that the offence having been committed in the legation should be considered as having been committed in foreign territory ; so far as regards Trochanoff the legation formed part of the territory of France.[4]

Certain other cases in Germany, France and Italy, involving the exercise of the local criminal or civil jurisdiction in respect of events which had happened within a foreign embassy or legation, are referred to by Sir C. Hurst.[5] On the other hand :

In 1928, in a case before the Supreme Court of Hungary, concerning one Zoltán Sz., who had induced the passport authorities in the Hungarian legation at Vienna to issue a passport by fraudulent means, it was held that the premises, which enjoyed the privileges of exterritoriality, must be regarded as Hungarian territory, and that accordingly all acts committed therein must be judged according to the rules of Hungarian law.[6]

[1] *Ibid.*, 269.
[2] Wheaton, *International Law*, 339.
[3] Clunet (1882), 326.
[4] *Ibid.*, (1910), 551.
[5] *Immunités Diplomatiques*, ii. 147–9.
[6] *Annual Digest* (1927–8), Case No. 252.

§ 381. The enforced detention of a private person within a foreign embassy or legation would call for the intervention of the government concerned.

In 1896 *Sun Yat-Sen*, a Chinese national, and political refugee, was detained as a prisoner in the Chinese legation at London, with the apparent intention of transporting him to China. On the matter coming to light, his friends applied to the court for the issue of a writ of habeas corpus, but the court declined,[1] doubting the propriety of such action where a foreign legation was concerned, and considering the matter rather one for diplomatic proceedings. The Chinese minister was thereupon formally requested to release the man, whose detention was contrary to law, and an abuse of diplomatic privilege. He was released on the following day.

§ 382. A curious incident, reported in the Press of October 1929,[2] related to the counsellor of the Soviet embassy at Paris, who, having been ordered to return to Russia, escaped from the embassy, and complained to the police that his wife and child were detained within it. But, in the absence of the ambassador, he became temporarily the head of the mission, and in this capacity, with the assistance of the police, the release of the family was effected.

§ 383. The immunity of the residence extends also to all goods requisite for the fulfilment of the mission.

"Toutes les choses qui appartiennent à la personne du ministre, tout ce qui sert à son entretien et à celui de sa maison, tout cela a l'indépendence du ministre, et est absolument exempt de toute juridiction dans le pays." (Vattel.)[3]

§ 384. A case to the contrary, which is often mentioned, is that of Mr. Wheaton, United States minister at Berlin in 1839.

Under the Prussian civil law then in force, the proprietor of the house in which Mr. Wheaton resided claimed the right of detaining his goods found on the premises at the expiration of the lease, in order to secure payment of damages alleged to be due for injuries to the house during the contract. The Prussian Government decided that the general exemption, under the law of nations, of the personal property of foreign ministers from the local jurisdiction did not extend to the case where, it was contended, the right of detention was created by the contract itself, and by the legal effect given to it by the local law. The matter was argued between the Prussian and the United States govern-

[1] *Mew's Digest of English Law Cases*, ii. 306 ; Shortt and Mellor's *Practice of the Crown Office* (2nd ed.), 318.

[2] *The Times*, Oct. 4, 1929.

[3] *Droit des Gens*, iv. c. 8, § 113.

ments without their being able to come to an agreement on the point of law.[1]

§ 385. The view of the United States Government in such a matter was shown in the case of an attaché to the French legation at Washington, whose landlord sought to prevent his departure. The United States attorney-general said it was impossible to have recourse to force to seize the property of a public minister, whether personal or official, against his will, by process or otherwise; neither international law nor American law recognised any difference.[2]

§ 386. The inviolability of the agent's residence extends to goods therein, though not the property of a person having claim to diplomatic immunity; execution cannot therefore be levied on such goods without the agent's consent.[3]

§ 387. While it is generally recognised that a diplomatic agent preserves his immunity on the termination of his mission for such reasonable time as may be necessary to enable him to complete and dispose of the affairs of his mission, yet on his departure goods left by him become, in the event arising, subject to the local jurisdiction.[4]

§ 388. As regards inquests, in the case of deaths which may occur within an embassy or legation, see §§ 349–350.

Right of Asylum

§ 389. It is now an established doctrine in Europe that no right to give asylum to political refugees in the house of a diplomatic agent exists.[5] But formerly the practice was extensively exercised, *e.g.* in Spain during the civil war between Christinos and Carlists, and in 1848, and between 1865 and 1875. And at Constantinople in 1895 a former Turkish grand vizier took shelter at the British embassy there until an assurance was received that his life was in no danger.

§ 390. Among notable cases of the past are the following:

In 1726 the *Duke de Ripperda*, a Dutch officer, and minister of the States-General at Madrid, who afterwards became Spanish minister of finance and foreign affairs, fell into discredit, and, alarmed at the readiness with which his resignation was accepted, fled to the British embassy. The ambassador gave an assurance that he would not allow

[1] Wheaton, *op. cit.*, 347.
[2] 5 *Op. of Att.-Gen.*, 69; Deák, *Classification, etc., des Agents diplomatiques, Rev. de Dr. Int.* (1928), 536.
[3] Hurst, *op. cit.*, ii. 192. [4] *Ibid.*, 240. [5] Hall, 233.

Ripperda to leave until he had given up certain important papers of state said to be in his possession. Nevertheless, soldiers were posted in the vicinity of the embassy, with orders to examine all persons and carriages issuing from it, and the Spanish Council of Castile having been invoked, held that the Duke had been guilty of *lèse-majesté*, and that he could be taken by force from the embassy without infringing the privileges awarded to ambassadors or violating the law of nations. Ripperda was thereupon arrested within the embassy by armed force and his papers seized. In the correspondence which followed, the British Government protested that only an extreme necessity could justify the violation of the immunity of an ambassador's house, and expressed the hope that the Spanish King would see that it was to his own interest to make the necessary reparation. But on receiving the reply that the Spanish King saw no reason to concern himself further about the affair, the correspondence assumed a bitter tone. Hostilities having broken out in the following year, peace was not restored till the signature of the Treaty of Seville in 1729, in Article 1 of which it was stipulated that there should be "an oblivion of all that is past." [1]

§ 391. In 1747 one *Springer*, a Russian subject, domiciled at Stockholm, being accused of high treason against the King of Sweden, took refuge in the *hôtel* of the British minister at Stockholm. Under threats of compulsion, the minister consented to surrender the man, but protested against the violation of the law of nations and the privileges of diplomatists. On receiving his report, the British Government instructed him to address to the King of Sweden a memorial, in which it was laid down as an incontrovertible maxim that the residence of a foreign minister ought to enjoy the right of asylum, so long as the right was not abolished by mutual consent. In reply, the Swedish Government denied the assertions of the minister as to the treatment he had received, and sought to lay the whole blame on him for what had occurred. As a result, the minister was instructed to leave Stockholm as soon as possible, without taking leave of the King, and the Swedish minister in London received similar orders in consequence.[2]

§ 392. In Latin-American countries asylum has often been sought at foreign legations by political refugees on the occasion of revolutionary outbreaks, and the custom exists up to the present day. A report from *The Times* correspondent at Rio de Janeiro of November 15, 1930,[3] after civil disturbances in Brazil, said:

"The Secretary of the Cattete Palace [4] announces that political refugees in foreign embassies and legations will, in accordance with

[1] C. de Martens, *Causes célèbres, etc.*, i. 174; Jenkinson, ii. 307.
[2] C. de Martens, *op. cit.*, i. 326.
[3] *The Times*, Nov. 16, 1930.
[4] The official residence of the Federal President.

international law, be granted permission to leave for some place abroad, so long as they do not go to neighbouring countries. The Provisional Government is working with the embassies and legations concerned to settle the date of departure. When this has been accomplished, the refugees will leave by the first available steamers, without prejudice to the actions and trial which some of them will have to answer later for alleged offences committed against federal and state treasuries."

In 1932 General Menocal, former President of Cuba, was granted asylum in the Brazilian Legation at Havana. Attempts by the Legation to obtain a safe-conduct for him to leave the country encountered delay and opposition, to such an extent that the Brazilian Minister was actually instructed by his government to quit Havana in favour of another of the (adjacent) capitals in which he was also accredited. Before he could do so, however, the safe-conduct was granted and the incident closed. The issue was complicated by a claim on the part of the new Cuban President that General Menocal was a criminal and therefore ineligible for asylum.

In 1934 the Brazilian Government issued new regulations for their diplomatic service and included in them a number of instructions about the granting of asylum, notably that Heads of Missions may grant asylum but must immediately inform the local minister of foreign affairs and the local representative of the country of which the person granted asylum is a national. Asylum must not be granted to deserters or persons accused of crime and must be limited to the time necessary for the refugee to find security elsewhere.

§ 393. In 1889 a convention regarding international criminal law was concluded between the Argentine Republic, Bolivia, Paraguay, Peru and Uruguay, by Article 17 of which it was provided that asylum in a legation should be respected in the case of persons prosecuted for political offences, with the obligation for the head of the legation immediately to acquaint the government of the state to which he was accredited with the fact, which government could demand that the refugee should be sent out of the national territory with as little delay as possible. The head of the mission could, in his turn, demand the necessary guarantees for the fugitive being allowed to leave the territory without interference. The same principle was to be observed with respect to refugees who found asylum on board vessels of war lying within territorial waters. But this Article only applied as between the contracting parties.

Nevertheless, non-signatory Powers, such as the United States, the United Kingdom and France, besides others, have on various occasions granted diplomatic asylum to political refugees. During the civil war in Chile in 1891 as many as eighty were received in the United States legation, as many more in that of Spain, five in the French, two in the German and eight in the Brazilian legations.[1]

§ 394. At the Pan-American conference at Havana in 1928 a convention was signed between the American republics represented, with a view of fixing the rules to be observed in their mutual relations for the grant of asylum. This convention of February 20, 1928, provides :

"Art. 1.—It is not permissible for states to grant asylum in legations, warships, military camps or military aircraft, to persons accused or condemned for common crimes, or to deserters from the army or navy.

Persons accused of or condemned for common crimes taking refuge in any of the places mentioned in the preceding paragraph shall be surrendered upon request of the local government. . . .

Art. 2.—Asylum granted to political offenders in legations, warships, military camps or military aircraft, shall be respected to the extent to which allowed, as a right, or through humanitarian toleration, by the usages, the conventions, or the laws of the country in which granted, and in accordance with the following provisions :

(1) Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety ;
(2) Immediately upon granting asylum, the diplomatic agent commander of a warship or military camp or aircraft, shal report the fact to the minister of foreign relations of the state of the person who has secured asylum, or to the local administrative authority, if the act occurred outside the capital
(3) The government of the state may require that the refugee be sent out of the national territory within the shortest time possible ; and the diplomatic agent of the country who has granted asylum may in turn require the guarantees necessary for the departure of the refugee, with due regard to the inviolability of his person, from the country ;
(4) Refugees shall not be landed in any point of the nationa territory nor in any place too near thereto ;
(5) While enjoying asylum, refugees shall not be allowed to perform acts contrary to the public peace ;

[1] *Foreign Relations of the United States*, 1891.

(6) States are under no obligation to defray expenses incurred by one granting asylum.

. . . . . .

"The delegation of the United States of America in signing the present convention establishes an explicit reservation, placing on record that the United States does not recognise or subscribe to, as part of international law, the so-called doctrine of asylum."

§ 395. In matters of the kind the general recommendation would seem to be that the practice of affording asylum to political refugees in countries where this custom still exists should be confined within the narrowest limits, and that the persons concerned should not be allowed to communicate with partisans outside the legation, while their departure should be insisted on as soon as possible, or as soon as their departure from the country can be arranged with the consent of the local authorities. If compelled to receive persons of his own nationality exposed to acts of violence, the same principles should as far as possible be followed by the diplomatic agent.[1]

Franchise du Quartier

§ 396. This was an ancient custom in Europe which has but a historical interest. The expression covered two privileges formerly claimed by ambassadors in several countries, namely the right to prevent the arrest of persons dwelling in the vicinity of their embassy, and the exemption from octroi tax of supplies brought in nominally for their use. Sismondi says :

"Les ambassadeurs ne voulaient permettre l'entrée de ces quartiers à aucun officier des tribunaux et des finances du Pape. En conséquence, ils étaient devenus l'asile de tous les gens de mauvaise vie, de tous les scélérats du pays ; non seulement ils venaient s'y dérober aux recherches de la justice, ils en sortaient encore pour commettre des crimes dans le voisinage ; en même temps ils en faisaient un dépôt de contrebande pour toutes les marchandises sujettes à quelques taxes." [2]

§ 397. A case of the sort in which France was involved during the pontificate of Alexander VII may serve as an example :

In 1660 two or three constables went to arrest for debt a trader lodged near the palace of the Cardinal d'Este, who was *cardinal-comprotecteur des affaires de France*. In that character he claimed the *franchises du quartier*, together with the right of fixing its limits. Several of His Eminence's people tried to prevent the police from executing the warrant on the pretext of the franchises, and, on their persisting,

[1] Hurst, *Immunités Diplomatiques*, ii. 217. [2] *Histoire des Français*, xxv. 552.

the Cardinal's servants drew their swords and forced the officers to withdraw. Don Mario Chigi, brother of the Pope, and commander of the Papal troops, alleging that the principle of the Cardinal's palace did not extend so far as was asserted, ordered the Chief of Police to proceed to the trader's house with sufficient men to effect the arrest. On this becoming known to the Cardinal's people, they hastened to the spot in great force, attacked the Chief of Police, killed three of his men, wounded several others, and rescued the prisoner. The Cardinal, apprehensive of the consequences to himself, sent his chamberlain to Don Mario to offer an apology, alleging that he had had no share in what had passed. The apology was received very coldly, but the affair was hushed up, the Pope consenting to grant absolution for the offence.

§ 398. Pope Innocent XI induced the Emperor, the Kings of Spain (in 1683), Poland (in 1680), England (in 1686), and the Republic of Venice to agree to the abolition of the privileges claimed, but it was not till 1693 that the King of France formally consented to abandon them, when the question was finally laid to rest.[1]

§ 399. But in China, after the Boxer outrages of 1899, the final protocol of September 7, 1901, between the foreign Powers and that country, for the resumption of friendly relations, provided [2] :

"Art. 7.—Le Gouvernement Chinois a accepté que le quartier occupé par les légations fût considéré comme un quartier spécialement reservé à leur usage et placé sous leur police exclusive, où les Chinois n'auraient pas le droit de résider, et qui pourrait être mis en état de défense.

Les limites de ce quartier ont été ainsi fixées sur le plan ci-joint (Annexe No. 14). . . .

Par le Protocole annexé à la lettre du 16 janvier, 1901, la Chine a reconnu à chaque Puissance le droit d'entretenir une garde permanente dans le dit quartier pour la défense de sa légation."

§ 400. In 1927, when the Chinese Government sought to search certain premises of the Soviet embassy at Pekin, they asked and obtained permission of the diplomatic corps to enter the reserved quarter for the purpose ; but the troops employed having exceeded the terms of the permission, the Powers demanded that the offenders should be brought to trial, and the prefect of police gave an assurance to the doyen of the diplomatic corps that this would be done.[3]

[1] Flassan, iv. 97 ; Gerin, *Revue des questions historiques*, xvi. 3, 8.
[2] *Treaty Series*, No. 17 (1902).
[3] Yoshitomi, *Revue Générale de Droit International Public* (1928), 184.

Bast

§ 401. Within modern times a custom existed in Persia of taking "bast," or shelter, in a foreign legation as a means of asserting grievances, and the principles of courtesy prevailing in that country precluded the denial of hospitality in this way, whatever inconvenience might be caused.[1] The following account of an incident of the kind is quoted from *The Biography of Sir Mortimer Durand*, formerly British minister at Tehran[2]:

"One day a royal eunuch came galloping into the legation in great haste to see me on most important business. The message was that the Shah's wives had taken umbrage at his decision to marry a girl who was sister of one of his wives. The new favourite was a daughter of a gardener whom the uxorious monarch had seen in one of his many gardens and loved, to the great indignation of her sister, and against Persian custom.

The other wives took up the matter hotly, and issued an ultimatum that if the Shah would not forgo his purpose they would all leave the Palace, and take *bast* at the legation, which was, they declared, a place of refuge for slaves like themselves, and a sanctuary for the oppressed.

I expressed myself as being highly honoured at this proof of their confidence, and declared that the legation was at the service of the ladies. Upon enquiring the size of the party, I was somewhat staggered to learn that there would be about three hundred in all. I said that the legation would hardly hold so many, but with a sweep of his hand towards the lawn, the eunuch replied that a tent was all that was required, and, as for food, a few sheep and some bread would suffice.

The eunuch then galloped off, and returned two hours later, by which time tents had been pitched on the lawn, sheep had also been purchased, together with the entire contents of a baker's shop. He declared that the arrangements were excellent, that the Shah was furious, and that the ladies were getting into their carriages. He again galloped off, and we awaited the arrival of the refugees with keen interest, when the eunuch reappeared like a whirlwind, and shouted out, wild with excitement, 'The Shah has yielded, the ladies are getting out of their carriages, and send you their grateful thanks!'"

§ 402. On another occasion, in 1906, no fewer than fourteen thousand merchants and others took "bast" at the British legation, and remained there for over a week, as a method of asserting their demands for constitutional reforms on the part of the Persian Government.[3]

[1] Hurst, *Immunités Diplomatiques*, ii. 218.
[2] By Brig.-Genl. Sir P. Sykes, 233.
[3] Hurst, *Immunités Diplomatiques*, ii. 220.

Right of Chapel

§ 403. It is universally recognised that a diplomatic agent is entitled to have a chapel within his residence, wherein the rites of the religion which he professes may be celebrated by a priest or minister. Usually bells were not permitted,[1] and formerly, in Spain, it was required that the exterior of the building should not indicate the purpose to which it was devoted. The spread of religious toleration in modern times has rendered possible the erection of public places of worship other than that professed by the state, and in general the right of the agent to the free exercise of his religion is now unquestioned. But formerly it was hedged with certain restrictions, and is the subject of examination by writers on international law.

"Tous les Ambassadeurs, les Envoyez & les Residens ont droit de faire librement dans leurs maisons l'exercice de la Religion du Prince ou de l'État qu'ils servent, & d'y admettre tous les sujets du même Prince qui se trouvent dans le païs où ils resident." [2]

§ 404. Phillimore deduces this right of the agent as a corollary from the right to enjoy the most perfect and uncontrolled liberty of action within the precincts of his *hôtel* (which excluded the keeping of a gambling table in countries where gambling is prohibited, or of any kind of shop) :

"Strictly speaking, however, this privilege is confined to himself, his suite, his fellow-countrymen commorant in the foreign land ; for, although he cannot be prevented from receiving native subjects who come to his *hôtel*, yet it is competent to the state to prohibit them from going to the *hôtel* for this or any other purpose." [3]

§ 405. According to Wicquefort,[4] the state might require that the religious service be performed in the native language of the ambassador. But this does not seem tenable, for the sanctity of the *hôtel* must be violated in order to ascertain the language, and there never could have been any reason for preventing the ambassador or his chaplain from the use of the universal or Latin language in their devotions. The restraint must be placed by the state, if at all, on its own subjects.

"Since the period of the Reformation, general international usage has sanctioned the right of private domestic devotion by a chaplain in

[1] Calvo, *Le Droit international, etc.*, ii. 326 ; Ullmann, 189.
[2] Callières, 160.
[3] Phillimore, ii. 244. [4] i. 417.

the *hôtel*, which, so long as it is strictly private, seems to claim the protection of natural as well as conventional international law. Two conditions, however, have formerly accompanied the permission to exercise this right ; one, that it should be permitted to only one minister at a time from one and the same court ; another, that there should not be already a public or private exercise of the religion existing and sanctioned without the limits of the *hôtel*.

Having regard to this latter condition, the Emperor Joseph II, in 1781, having permitted to the Protestants of Vienna the liberty of meeting for the private exercise of their devotion, insisted on the chapels of the Protestant ambassadors being closed. The right to have places of worship was subject to certain restrictions, *e.g.* the ringing of a bell was prohibited.

There does not, however, seem to be any foundation in principle for this very arbitrary act ; more especially as Protestant is a mere term of negation, under which are included worshippers of very different tenets.

The only sound principle of law on this subject is that already mentioned, viz. : Religious rites privately exercised within the ambassadorial precincts, and for his suite and countrymen, ought not to be interfered with.

The erection of a chapel or church, the use of bells, and of any national symbol, is a matter entirely of permission and courtesy." [1]

The Papal Government informed the Prussian envoy, in 1846, that services in the Italian language in the chapel of the legation would not be tolerated. [2]

[1] Phillimore, ii. 244 ; Holtzendorff, iii. 659.
[2] Holtzendorff, iii. 659.

CHAPTER XVIII

EXEMPTION FROM TAXATION

§ 406. HALL says [1] :

"The person of a diplomatic agent, his personal effects, and the property belonging to him as representative of his sovereign, are not subject to taxation. Otherwise he enjoys no exemption from taxes or duties as of right. By courtesy, however, most, if not all, nations permit the entry free of duty of goods intended for his private use."

§ 407. And OPPENHEIM [2] :

"The fifth privilege of envoys in reference to their exterritoriality is exemption from taxes and the like. As an envoy, through his exterritoriality, is considered not to be subject to the territorial supremacy of the receiving State, he must be exempt from all direct personal taxation, and therefore need not pay income tax or any other direct taxes. As regards rates it is necessary to draw a distinction. Payment of rates imposed for local objects from which the envoy himself derives benefit, such as sewerage, lighting, water, night-watch and the like, can be required of the envoy, although often this is not done. Other rates, however, such as poor-rates and the like, he cannot be requested to pay. As regards customs duties International Law imposes no obligation of exemption therefrom. In practice, and by courtesy, however, the Municipal Laws of many States allow diplomatic envoys, within certain limits, to receive free of duty goods intended for their own private use. If the house of an envoy is the property of his home State, or his own property, the house need not be exempt from property tax, although it is often so exempted by the courtesy of the receiving state. Such property tax is not a personal and direct, but an indirect, tax."

§ 408. RIVIER observes [3] :

"En vertu d'une coutume qui varie, et qui est, en certains pays, consacrée par la loi, et à moins de suspicion motivée de fraude, on ne visite pas leurs effets à la douane.

"En revanche et sauf dispenses conventionnelles spéciales, ils payent comme tout le monde les impôts fonciers et autres charges

[1] Hall, 235. [2] Oppenheim, i. § 394. [3] *Principes du Droit des Gens*, i. 503.

réelles pour les immeubles qu'ils possèdent dans le pays ; les contributions municipales imposées à l'habitant comme tel ; les impôts indirects frappant les objets de consommation qu'ils achètent dans le pays ; les droits qui ont le caractère d'une rémunération due à l'État ou à la commune, ou à des particuliers, pour des objets à l'usage desquels l'agent participe ; péages de chaussées et de ponts, taxes télégraphiques, taxes de chemin de fer, port de lettres, etc. ; enfin, les droits qui sont exigés à l'occasion de certains actes ou transmissions, droit de mutation, d'enregistrement."

§ 409. M. Deák wrote in 1928 :

" L'exemption fiscale, bien qu'elle soit généralement admise en théorie, rencontre des difficultés dans la pratique et dans son application. Les opinions sont divergentes sur le point de savoir si la propriété privée d'un agent diplomatique doit être exempte d'impôts. Une autre difficulté surgit lorsque l'agent est un ressortissant du pays où il réside ; la discussion entre le Secrétariat de la Société des Nations et le Gouvernement suisse portait principalement sur ce point." [1]

The Pan-American Convention of February 20, 1928, lays down for the signatory states the following rules : " Article 18.—Diplomatic officers shall be exempt in the state to which they are accredited : (1) from all personal taxes, either national or local ; (2) from all land taxes on the building of the mission, when it belongs to the respective government ; (3) from customs duties on articles intended for the official use of the mission, or for the personal use of the diplomatic officer or of his family."

§ 410. That the privilege of free entry of goods, intended for the use of the envoy, was formerly much abused can well be believed. Callières said :

" Il y a plusieurs ministres qui abusent du droit de franchise qu'ils ont en divers pays touchant l'exemption des imposts sur les denrées & sur les marchandises nécessaires à l'usage de leur maison, & qui sous ce pretexte en font passer quantité d'autres pour des Marchands dont ils tirent des tributs en leur prêtant leur nom pour frauder les droits du Souverain. Ces sortes de profits sont indignes d'un Ministre public, & le rendent odieux à l'État qui en souffre du préjudice, ainsi que le Prince qui les autorise. Un sage Ministre doit se contenter de jouir des franchises qu'il trouve établies dans le païs où il est envoyé, sans jamais en abuser pour son profit particulier par des extensions injustes, ou en participant à des fraudes qui se font sous son nom.

" Le Conseil d'Espagne a été obligé depuis quelques années de règler ces droits de franchise pour tous les Ministres Étrangers qui resident à Madrid, moyennant une somme par an qu'on y donne à chacun d'eux

[1] *Classification, etc., des Agents diplomatiques*, Rev. de Dr. Int. (1928), 565.

à proportion de leur caractère, pour empêcher ces abus ; & la République de Genes en use de même à l'égard des Ministres des Couronnes qui résident chez elle." [1]

§ 411. Bismarck said one day, *à propos* of Morny :

" When he was appointed ambassador at Petersburg, he arrived with a whole string of fine, elegant carriages, and a host of trunks, boxes and chests, full of laces, silk-stuffs and ladies' dresses, for which as ambassador he had no duties to pay. Each servant had his own coach, each attaché or secretary two at least, and he himself quite five or six ; and, as he was there for a few days, he auctioned the lot—carriages and laces and wearing apparel. He must have made eight hundred thousand roubles. He was unscrupulous but amiable, he could really be most amiable." [2]

Let us hope this story is at least an exaggeration.

§ 412. *Exemptions accorded in the United Kingdom to diplomatic agents :*

Customs Duties : The privilege granted to heads of missions to receive free of duty articles imported for their private use is not held to be in the nature of a right, but is conceded as a matter of international courtesy. The ordinary scale is :

(*a*) On first arrival. Exemption from examination of their baggage and that of their wives and families.

(*b*) On subsequent arrivals. Exemption from examination on production of a baggage pass, which may be obtained by the head of the mission, on application to the Foreign Office, for his personal use on occasions when returning to the United Kingdom from abroad.

(*c*) Delivery duty free of imported packages for their personal use and that of their families.

An extension of (*a*) and (*c*) to counsellors, secretaries and attachés is permissible, but only on condition of reciprocity. While no restriction is placed on the amount of dutiable goods imported, it is expected that the privilege will not be abused. Articles such as official furniture, stationery, office supplies, etc., for use in the mission are at present admitted without examination.

Foreign Ministers of State, or members of special diplomatic missions, visiting or passing through the United Kingdom, are accorded every consideration and facility consistent with the Customs regulations.

In all the above cases except (*b*), where the exhibition of the baggage pass suffices, application must, in each instance, be addressed to the Foreign Office in a note bearing the personal signature of the head of

[1] Callières, 163.
[2] Busch, *Bismarck, Some Secret Pages*, etc., i. 503.

mission, giving all necessary details for identification of the goods, such as place and date of importation, name of ship, name of agents entrusted with clearance, etc. Arrangements for handling and removing the goods must be made by and at the expense of the importer. Packages arriving by post are handed to the postal officers for delivery as soon as the relevant application is received.

Packages addressed to heads of missions, bearing the seal of their Foreign Office, and claimed as despatches, are ordinarily passed without examination or other formality.

Foreign consular officers are also granted exemption from customs duties (1) at any time within three months of their first arrival, on personal and household effects, and (2) at any time within twelve months of their first arrival, on household furniture and on one motor car for office or personal use. Goods imported under this privilege are expected to be of a reasonable amount and for personal use only.

Motor Cars :—Cars for the personal use of heads of missions and their families are admitted free of Customs charges. Cars for the personal or family use of counsellors, secretaries or attachés, are also admitted free, either as a result of reciprocal arrangement or on undertakings signed by them that if the cars are sold in the United Kingdom, or retained there after their appointment in the mission terminates, the duty chargeable on importation will be paid. Cars which are the property of a foreign government, and intended for the official use of members of the mission are admitted free, provided reciprocal treatment is accorded, but subject to an undertaking, signed by the head of the mission, that if sold in the United Kingdom any charges payable will be paid. In such cases this is calculated on the sale value of the vehicle.

Income Tax :—(a) *Diplomatic Missions*

(1) The governing principle recognised in the administration of the Income-Tax Acts of the United Kingdom is that the Heads of Foreign Diplomatic Missions in the United Kingdom, and all persons, of whatever rank, on their staffs (*except British subjects*), are entitled to diplomatic privilege.

The immunities from income-tax, except for a special relief in favour of the Heads of Missions alone (*vide* paragraph (6)), rest not on income-tax law, but on considerations of international law.

A clerk or typist on the official staff at an Embassy or Legation, unless he is a British subject, is treated as entitled, so far as income-tax is concerned, to the same immunities as, *e.g.*, a counsellor, secretary or attaché.

Any member of the domestic staff, *e.g.*, a cook or butler, is treated as entitled to the same immunities, provided his nationality is other than British.

(N.B.—The foregoing statement is subject to possible exception in the case of any individual on the staff of a Mission personally engaged in trade or business. Consequently the following paragraphs cannot be taken as applying to such individuals.)

(2) *Income from Earnings.*—Diplomatic emoluments, or salary or wages paid to any member of the official or domestic staff (except a British subject) for his duties in connexion with the Mission, are treated as exempt from United Kingdom Income-tax.

No title to exemption is recognised in respect of any other earnings in this country, *e.g.*, fees from the directorship of a British company.

(3) *Income from Investments, &c.*—Income derived by any members of the official or domestic staff (except a British subject) from sources outside the United Kingdom, whether retained abroad or remitted to the United Kingdom, is treated as exempt from United Kingdom income-tax, and repayment is made in respect of any tax deducted before receipt of the income. The exemption extends to income from foreign or colonial investments, even when payable in the United Kingdom.

No title to exemption is recognised in respect of any income from investments, &c., in the United Kingdom (see, however, paragraph (6) for an isolated exception in favour of the Heads of Missions).

(4) *Income from House or Land Property.*—Where a property is occupied by an individual for diplomatic purposes, he is treated as exempt from any charge to Income-Tax Schedule (B) in respect of the profits of occupation, and also, if he owns the property, from Income-Tax Schedule (A) in respect of the profits of ownership.

No title to exemption is recognised in any other circumstances.

(5) When there is income liable to assessment, effect is given, in calculating any duty which may be payable, to the personal allowance and any other of the usual reliefs which may be applicable. These reliefs are given to the same extent as in the case of a United Kingdom resident, in spite of the fact that the diplomatic person is wholly relieved from tax in respect of income arising abroad (see paragraph (3)) in the same way as a person residing outside the United Kingdom.

After the appropriate reliefs have been allowed, an assessment is made in the ordinary way. In due course a notice of assessment is issued, and application is made for payment of the duty.

(6) *Exemption special to Heads of Missions.*—The Heads of Foreign Diplomatic Missions in the United Kingdom are, in virtue of a specific provision in the Income-Tax Acts, entitled to exemption from tax in respect of the interest or dividends of any British Government security.

(b) *Non-Diplomatic Representatives*

1. *Foreign Consuls* in the United Kingdom are not in any case entitled to diplomatic privilege, but they, and *official agents* are, so far as income tax is concerned, provided for under Section 462 of the Income Tax Act, 1952, as follows :

1. Income arising from any office or employment to which this section applies shall be exempt from income tax, and no account shall be taken of any such income in estimating the amount of income for any income tax purposes.

2. The offices and employment to which this section applies are the following, that is to say :

(*a*) the office of a consul in the United Kingdom in the service of any foreign State ; and

(*b*) the employment of an official agent in the United Kingdom for any foreign State, not being an employment exercised by a British subject or a citizen of the Republic of Ireland or exercised in connexion with any trade, business or other undertaking carried on for the purposes of profit.

3. In this section—

" Consul " means a person recognised by Her Majesty as being a consul-general, consul, vice-consul or consular agent : and

" Official Agent " means a person, not being a consul, who is employed on the staff of any consulate, official department or agency of a foreign State, not being a department or agency which carries on any trade, business or other undertaking for the purposes of profit.

Motor Car Licence Duty :—Exemption from payment is accorded to the heads of foreign missions in London and to the members of their staffs (except servants). Exempt licences are issued to members of the diplomatic body on application to the local authority concerned. Members of the diplomatic body are also exempted from payment of the fee normally chargeable on the issue of drivers' licences and from the requirement of passing a driving test. These exemptions are not extended to foreign consular officers, except in the cases of those countries with which Consular Conventions have been concluded.

Wireless Licences :—Heads of foreign missions and diplomatically privileged members of their staffs are exempted, subject to reciprocity, from the annual fee charged for the use of wireless receiving apparatus. So also are foreign consular officers *de carrière.*

Local Taxation Licences :—Members of the diplomatic body are accorded as an act of courtesy exemption from payment of duty on dog, gun and game licences.

Municipal Rates :—Under a reciprocal arrangement proposed to heads of foreign missions in 1892, heads of missions and the members of their diplomatic and official staffs are exempted from payment of municipal rates leviable on the premises occupied by them, in respect

of services not of direct benefit to them. Where this arrangement is accepted, the British Government undertakes (except in the case of honorary attachés and consular officers holding diplomatic rank) to bear the charges for :

Guardians of the poor, *i.e.* poor relief proper ;
Police rate ;
Baths and washhouses ;
Public libraries and museums ;
Burial board ;
Miscellaneous expenses, salaries, printing, etc. ;
Education ;

the following charges being recoverable from members of the mission, on application through the Foreign Office :

London County Council, *i.e.* main drainage, street improvements, fire brigade, etc.
Street lighting.
General rate for cleansing, maintaining and repairing the public streets, and general expenses under the Metropolitan Local Management Act.
Public sewers rate.

These arrangements do not apply to honorary attachés or to consular officers who happen to hold honorary diplomatic rank.

Immunities and Privileges of International Organisations

§ 413. The General Convention on the Privileges and Immunities of the United Nations was adopted on February 13th, 1946, by the General Assembly of the United Nations, which adopted also on November 21st, 1947, the International Convention on Privileges and Immunities for the Specialised Agencies of the United Nations.

By their accession to these Conventions Her Majesty's Government undertook to grant to the Organisations concerned and to their officials and to the representatives of Member States the privileges and immunities contemplated therein. Similar obligations, in varying degree, have been undertaken by Her Majesty's Government as parties to international agreements establishing a variety of international organisations which are not placed under the aegis of the United Nations.

The statutory power enabling Her Majesty's Government to discharge these obligations is contained in the International Organisations (Immunities and Privileges) Act 1950 (14 Geo. 6

Ch. 14) which consolidated earlier legislation. The provisions of the Act are applied to the individual organisations by Orders in Council, which must not be so framed as to confer a wider scale of immunities and privileges than is required by the terms of the relevant international agreement.

§ 414. Exemptions accorded to diplomatic agents in certain other countries, so far as ascertained, may be summarised as follows :

BELGIUM

Exemption is granted from the greater part of state taxation, on a basis of reciprocity, and if the persons concerned are *bonâ fide* members of the mission ; but not if, being resident in Belgium, their functions are merely auxiliary or provisional. The exemption extends to heads of missions, counsellors, secretaries, attachés, chancellors and chancery clerks, interpreters and dragomans, plenipotentiaries, military and commercial attachés, legal counsellors and attachés, chaplains and doctors.

Customs duties.—Heads of missions, on their entry into Belgium, and on making themselves known to the customs, are exempted from visit and payment of duty in respect of baggage and other articles accompanying them, belonging to and claimed by them ; and also, on a basis of reciprocity, from payment of duties on goods addressed to them. The privilege extends to chargés d'affaires. Except where there is reciprocity, counsellors, secretaries and attachés enjoy exemption only when acting *ad interim* as head of the mission ; but on first arrival their goods and effects are admitted free.

Property tax.—Exemption is accorded in respect of the tax on revenue from real property occupied by diplomatic agents, where such property belongs to the state represented and forms the seat of the mission ; but not as regards revenue derived from other real property in Belgium.

Income Tax.—Exemption is accorded in respect of income derived from abroad. In the case of income derived from investments in Belgium rebate may be accorded in certain instances if the investments are on the account of and to the profit of the government concerned. Exemption from supertax is accorded.

Exemption is also accorded from *Taxe de Luxe*, *Taxe de Transmission* and *Taxe de Facture*, and from taxes on motor cars, wireless sets, servants, horses and carriages, dogs, bicycles and sporting guns ; also from death duties in respect of diplomats dying in Belgium, except as regards real property situated in Belgium. On the other hand, " taxes de salubrité publique," " adresses télégraphiques " and " droits d'enregistrement et de transcription de mutation " are payable.

FRANCE

French regulations, as might be expected, are clear and concise but very elaborate, and it must suffice to give here only the main points : Heads of Missions are exempt from all import duties, from local taxes on alcohol and from the tax on petrol. Members of their diplomatic staffs are exempt from import duties on " première installation " and also from the petrol tax ; they are not exempt from subsequently incurred import duties except those on motor cars, aeroplanes, horses, and such domestic articles as frigidaires and plate. All privileges are, of course, on a reciprocal basis. There is no exemption from " rates " for street-cleaning and similar public services.

ITALY

Customs Duty (*Dazio Consumo*).—Goods for members of the diplomatic corps are exempted from payment of duty, on application made on special forms furnished by the ministry for foreign affairs ; such applications must be signed by the head of mission and indicate the name of the person to whom they are consigned. " The Customs will verify the contents of all packets in the presence of a representative of the Head of the Mission."

The amount of tobacco and petrol exempted from duty is rationed. So are the numbers of motor cars, heads of missions being allowed three, other members of the diplomatic staffs only one, free of duty.

The usual exemptions are granted in respect of municipal taxes, including purchase tax.

All privileges and exemptions are subject to reciprocity, as are those of career consuls, who, in respect of motor cars, petrol and municipal taxation, are treated, generally speaking, like diplomats other than heads of missions.

NETHERLANDS

Customs, Excise and Statistical [1] *Duties.*—Subject to reciprocal treatment, the following are exempt :

Diplomatic representatives of foreign countries and members of their diplomatic staffs. Exemption applies to articles imported at the time of arrival in the Netherlands as well as to goods imported later.

Similar treatment is accorded to representatives of the United Nations Organisation (*e.g.* the Registrar of the International Court of Justice and his staff, if not of Dutch nationality) ; and to members of the International Court of Justice of foreign nationality.

Though heads of states and their suites, and foreigners of distinction, such as ministers of state, high officials, and members of temporary official missions, are not entitled to such treatment, the customs

[1] *i.e.* tax levied for the cost of keeping statistics.

authorities receive instructions to afford every possible facility to them.

Similarly diplomatic couriers, who are entitled to exemption from examination of packages closed by official seals, are usually accorded exemption in respect of their other baggage as well.

The families of diplomatic representatives and of their diplomatic staffs are entitled to the same customs privileges as the heads of those families.

Furniture, flags, and stationery intended for the official use of embassies and legations and the International Court of Justice are admitted free of import duty.

Direct State Taxes.—Heads of missions, members of their diplomatic and non-diplomatic staff, and servants residing in the houses of heads of missions are exempt from direct state taxes, subject to reciprocity, and provided they are of foreign nationality and do not exercise any business or trade in the Netherlands. In the cases of income tax and capital tax there are certain exceptions, which may be summarised as profits arising from landed property and capital invested in business enterprises in the Netherlands.

Motor Tax.—Diplomatic, consular, and other representatives of foreign states, members of their staffs, and servants residing in the houses of such representatives, if of foreign nationality, are exempt from the payment of road tax for motor vehicles.

Municipal Taxes.—Heads of missions, and members of their diplomatic and non-diplomatic staffs, if of foreign nationality and not exercising any business or trade in the Netherlands, are generally exempt. Municipal dog-licences are granted free of charge to diplomats.

SOVIET UNION

On the basis of the legislation of the U.S.S.R., diplomatic representatives and also all persons belonging to official diplomatic staffs on the territory of the U.S.S.R., who are foreign citizens, are exempt from all direct taxes, general state and local taxes, and also personal obligations either in kind or in money, on a basis of reciprocity.

Concerning the admission of packages accompanying foreign diplomatic and consular representatives and their employees, or addressed to them or to their premises :

1. Luggage belonging to diplomatic representatives accredited to the government of the U.S.S.R., and members of diplomatic missions of foreign governments in the territory of the U.S.S.R., which accompanies such persons as hand-luggage, or is in the luggage-van at the time of their passage through the customs establishments of the U.S.S.R., whether on arrival or departure, is, as a general rule, exempt from customs inspection.

Nevertheless in certain special cases the inspection of luggage of

such persons may be allowed, as an extraordinary measure, on each occasion by the order of the Chief Directorate of Customs. If so desired by the persons interested, the inspection may be carried out at the Moscow customs.

2. Packages and luggage addressed to diplomatic representatives accredited to the government of the Soviet Union and not accompanied by them, or addressed to the missions, are subject to examination, but are exempt from the payment of customs duties and excise within the limits laid down in para. 4 of these regulations.

3. Packages and luggage which are being sent to the address of persons other than diplomatic representatives, who are members of diplomatic missions of foreign governments, are subject to customs inspection and the payment of customs duties, excise and other taxes on the basis of general tariff laws and regulations.

4. The amount of the customs duties or excise remitted in respect of the packages and luggage referred to in para. 2 is fixed each year by a special decision of the Commissariat of Commerce. The admission of this property, in virtue of the above-mentioned exemption from customs and excise, is carried out by means of special booklets, in which are entered both the amounts of the taxes or excise which are remitted, together with the period of validity of the booklets.

(*Note.*—Packages and luggage which are admitted for diplomatic representatives without the payment of customs or excise are not subject to storage or poundage charges.)

5. The booklets are issued to diplomatic representatives by the Commissariat for Foreign Affairs ; a list of the books issued is communicated by the Protocol Department to the Chief Directorate of Customs at the People's Commissariat for Internal and External Trade. The booklets are valid within the limits of the periods indicated in them, without reference to the degree to which they have been utilised.

6. Stamps, seals, office stationery, official forms, signs and flags, which are essential for the official requirements of diplomatic representatives of foreign states, and also uniforms of diplomatic representatives, and of the members of diplomatic missions, are admitted free of duty over and above the limits laid down in para. 4 of these regulations.

7. Articles of the so-called " first installation " forwarded to the address of diplomatic missions and members of diplomatic missions on the first arrival of such persons in the U.S.S.R. for the fulfilment of their official duties, as for instance household furniture, cutlery and chinaware, table linen, etc., may be admitted duty free after inspection, though on each occasion with the special permission of the Chief Directorate of Customs.

8. Packages and luggage of diplomatic missions and members of diplomatic missions of foreign governments forwarded independently

when the owners leave for abroad are subject to inspection at the nearest customs house. On final departure abroad of the above-mentioned persons, packages and luggage which are forwarded independently can be passed through the customs establishments of the Union free of taxes and other charges mentioned in the note to para. 4 above, but only within a period of six months from the day of the actual departure of such persons out of Soviet territory.

9. In order to obtain permission under Nos. 1, 2, 3 and 8 of these regulations for the export and import of the prohibited articles, diplomatic missions must request in each particular case, through the intermediary of the Commissariat for Foreign Affairs, the prior authorisation of the Chief Directorate of Customs.

10. If, when on the inspection of luggage carried out in virtue of para. 2 of the first section of these regulations, articles the import and export of which are forbidden, or articles which, although their importation is not forbidden, are discovered in a quantity exceeding the personal needs of the diplomatic officer, the question of the admission of the articles, or of recovery in respect of them, will be settled in accordance with the existing laws and ordinances.

SPAIN

In general, heads of missions are exempt from all taxation of whatever nature, except in respect of private property which they may happen to hold in Spain. They must, however, pay customs duty on their motor cars at the time of sale.

As regards the treatment of officers other than heads of missions, the general practice is :

Customs Duties.—These are payable by all junior members of diplomatic staffs, except in the case of *première installation.* This phrase includes motor cars, which, on a reciprocal basis, are considered to form a *bonâ fide* part thereof, and are thus allowed to enter duty free. They may not be sold until three years after the date of entry, and duty must be paid if and when they are sold. Motor cars imported subsequently are liable to pay duty in the ordinary way.

Income Tax, Motor Taxation, Local Taxes and Municipal Rates.—In respect of these, complete exemption is granted on a reciprocal basis.

But, in the absence of reciprocal treatment, the above is subject to modification accordingly.

SWITZERLAND

In December, 1952, the *Département Politique* drew up a new statement regarding what it called " *Immunités et Privilèges Diplomatiques et Consulaires.*" It is very long and only a short summary of the most important points can be given here.

Diplomatic missions. The statement divides diplomatic staffs into two categories : the first category comprises heads of missions and members of their families living under the same roof, including parents and parents-in-law and private secretaries ; counsellors, secretaries and attachés, and their wives and families, though *not* the husband of a female diplomat ; the " *Chefs de chancellerie* " (in a British mission, the " archivists ") who, however, are assimilated to category 2 in the matter of customs privileges ; and the domestic staff of the head of mission, though these are not entitled to customs privileges at all.

The second category is made up of the remainder of the official staff and their wives and families living under the same roof.

Both categories are exempt from " direct and personal " taxes but not from " indirect " taxes such as luxury tax, alcohol tax, etc. Motor taxation is on a cantonal basis but at Berne the authorities waive, for both categories, the tax on motor cars, driving licences, etc., and also the driving test.

Subject to reciprocity, heads of missions may import free of duty anything intended for their own use and that of their families. On the same conditions other members of the diplomatic staff may claim the same privilege, save that imported furniture may not be disposed of within five years of entry. As in the case of Heads of Missions all these latter persons, subject again to reciprocity, may import a motor car free of duty for their personal use every three years, but no motor car may be sold, or given away, before it has been three years in the country.

Consuls. Career consuls are exempt from certain direct taxation, including the tax on motor cars. They may, within a year of their arrival, and subject to reciprocity, import free of duty a reasonable amount of furniture, provisions and liquor, and also a motor car, but the motor car may only be disposed of within five years against payment of import duty on a sliding scale based on the length of time it has been in the country.

The exemptions granted to official furniture and stores are almost identical for diplomatic missions and consulates and are in accordance with normal international usage.

UNITED STATES

Customs Duties. The privilege of free entry is extended to the baggage and other effects of the following officials, their families, suites, and servants :

Foreign ambassadors, ministers, chargés d'affaires.

Secretaries, counsellors and naval, military and other attachés at embassies and legations, high commissioners and consular officers accredited to the government of the United States, or *en route* to and from other countries to which accredited, and whose governments grant reciprocal facilities to American officials of like grade accredited there-

to. . . . Other high officials of foreign governments, and such distinguished foreign visitors as may be designated by the Department of State.

United States Customs Regulations, 1943, Articles 10.29 and 10.30, provide, in addition to what precedes, that " Foreign ambassadors, ministers, chargés d'affaires, secretaries, counsellors, and naval, military and other attachés of foreign embassies and legations shall not be detained or inconvenienced, and their baggage and effects shall remain inviolate. Every proper means shall be afforded them to facilitate their passage through ports of the United States."

Members and attachés of foreign embassies and legations [1] may receive free of duty articles imported for their personal or family use. Packages bearing the official seal of a foreign government, and certified as containing only official communications or documents may be admitted free of duty without Custom examination.

Federal Income Tax. Ambassadors and ministers accredited to the United States and the members of their households (including secretaries, attachés, and servants) who are not citizens of the United States, are exempt from payment of Federal Income Tax upon their salaries, fees or wages.

Federal Miscellaneous Taxes. Ambassadors and ministers of foreign governments accredited to the United States and their staffs are exempt from many federal excise taxes, notably those on a large number of important manufactured articles, but in these cases the articles in question must be purchased direct from the manufacturer or factory branch and not from a dealer.

Social Security. Diplomatic and consular officers and employees are exempt from Social Security taxes.

Federal Estate Tax. On the death of a foreign envoy the estate tax is not applied to personal property used for the purposes of his mission. Other personal property (*e.g.* stocks and shares) and all real property would be taxed.

Local Taxes in the District of Columbia. Ambassadors and ministers accredited to the United States and the members of their families and households are exempt in the district of Columbia from the tax upon personal property, but are not exempt from the tax upon real property.

Exemption from the district tax on gasoline is granted to members of diplomatic and consular offices, if the gasoline is purchased from a producer or importer.

[1] May be extended by reciprocal agreement to consular officers, who are in any case allowed free entry on " première installation."

CHAPTER XIX

POSITION OF DIPLOMATIC AGENT IN REGARD TO THIRD STATES

§ 415. In proceeding to his post, or in returning to report to his government, a diplomatic agent often has to traverse the territory of a third state, and questions have from time to time arisen as to his position therein.

Passage in Time of Peace

§ 416. Schmelzing laid it down that :

" Envoys enjoy the totality of diplomatic privileges only in the territory of the state to which they are sent and to which they are accredited. They cannot consequently claim the privileges of inviolability in a third country which they touch on their journey through, in going or returning, or in which they stay for a lengthened period, unless they deliver credentials to the sovereign. The diplomatist is only a private person when he traverses a third state, and as such he is not entitled to claim diplomatic privileges for himself, his suite or his property.

It is, however, the custom that in time of peace foreign envoys traverse the territory of a third state freely and without hindrance, and may pass a time there, and that certain privileges and marks of respect are accorded to them similar to those enjoyed by regularly accredited diplomatists. This political courtesy rests upon no legal obligation, and, consequently, in case of dispute with the state from which it is claimed, reliance will be had on the essential difference between an envoy formally accredited, and one who is not accredited." [1]

§ 417. Rivier, however, was of opinion that

" the agent passing through a third state when going to or returning from his post is more than a mere distinguished traveller. He is exercising his own state's right of legation in passing through under the circumstances indicated. By hindering or molesting him you interfere with the rights of both states. Consequently, as soon as his character is revealed the agent becomes entitled to claim for himself and his suite, in all matters involving the rights of those two states, respect and

[1] ii. 222.

complete security, *i.e.* inviolability. There is, however, no need to regard him as entitled to exterritoriality. If he stays in a third state, certain favours, such as the exemption from the payment of import duties and other taxes, may be accorded to him as an act of courtesy, without his having any right to demand it. The passage or stay of the agent will be allowed only if it is harmless, of which the state in whose territory he is can alone be the judge. That state will adopt such precautions as it may deem to be suitable. If passage is accorded, the state can impose a limit on its duration, fix the route to be taken, and prohibit the agent from stopping *en route*. . . . It is assumed that the agent is travelling or sojourning in the character of a public personage. If he is there solely for his own pleasure, or in pursuit of some merely private object, he is merely a distinguished personage, neither more nor less." [1]

§ 418. Halleck observes :

" He has a right of innocent passage through the dominions of all states friendly to his own country, and to the honours and protection which nations reciprocally owe to each other's diplomatic agents, according to the dignity of their rank and official character. If the state through which he proposes to pass has just reason to suspect his object to be unfriendly, or to apprehend that he will abuse this right by inciting its people to insurrection, furnishing intelligence to its enemies, or plotting against the safety of the government, it may very properly, and without just offence, refuse such innocent passage. But if an innocent passage is granted (and it is always presumed to be by a friendly Power, unless specially denied) he is entitled to respect and protection, and any insult or injury to him is regarded as an insult or injury both to the state which sends him and that to which he is sent." [2]

§ 419. At the present day it is so much to the interest of all nations that their diplomatic representatives should be allowed to pass freely and without hindrance through such countries as they may have to traverse in order to reach, or to return from, their posts, that it is usual to afford all reasonable facilities and courtesies for the purpose. The only precautions to be recommended are that the agent should provide himself with a passport, duly *visé* where necessary, in which his official character is fully detailed, and obtain from the diplomatic agent of the third state in his own country a *laisser-passer* to enable his baggage to pass through the customs of that state with the usual respect. When returning from the capital to which he is accredited, he will usually be able to obtain the same privilege from his colleague there.

[1] *Principes du Droit des Gens*, i. 508.

[2] *International Law*, i. 389.

§ 420. But, as regards the immunity of the diplomatic agent from the jurisdiction of a third state, writers differ, and it cannot be said that any well-established rule of international law exists.

§ 421. Baron Heyking writes :

" Le but de l'exterritorialité est de débarrasser les fonctions diplomatiques de tous les obstacles de la part du pouvoir de l'État étranger. Ce but ne peut être rempli que dans l'État qui reçoit l'ambassadeur et où les fonctions diplomatiques doivent être exercées. Il est clair par conséquent que les privilèges d'exterritorialité n'ont pas de raison d'être dans les États que l'ambassadeur ne fait que traverser. Ils ne peuvent être réclamés par lui que dans le cas où une loi spéciale existerait à ce sujet, loi établie par déférence, *motu proprio*, comme, par exemple, l'édit des Pays-Bas du 9 septembre 1679. En l'absence d'une disposition spéciale de ce genre, l'État qui sert de passage jouit à l'égard de l'ambassadeur de tous les droits qu'il peut avoir contre une personne privée ; il peut même, lorsqu'il il le soupçonne dangereux ou suspect, lui interdire le séjour dans les limites de ses frontières." [1]

§ 422. And M. Deák :

" Bien que le droit international n'impose pas aux États l'obligation d'accorder l'immunité diplomatique aux personnes qui traversent leur territoire, on peut considérer que c'est une coutume généralement admise de leur accorder une protection spéciale. Mais il n'existe pas de règles définies, et moins encore d'opinion unanime en droit international sur cette question, qui est devenue plus importante depuis l'établissement de la Société des Nations." [2]

§ 423. As shown too in the foregoing quotations, distinctions are drawn by writers between the case where the agent passes through the third country on his way to or from his post, and those in which he prolongs his stay, or is there merely for his own pleasure. In the latter case it is not apparent that he has immunity.

Nevertheless, the Pan-American Convention of February 20, 1928, the preamble of which says that it incorporates the principles generally accepted by all nations, lays down for the signatory states the following rules : " Article 23.—Persons belonging to the mission shall also enjoy the same immunities and prerogatives [3] in the states which they cross to arrive at their post or to return to their own country, or in a state where they may casually be during the exercise of their functions and to whose government they have made known their position."

[1] *L'Exterritorialité*, Cours de La Haye (1925), ii. 266.
[2] *Classification, etc., des Agents Diplomatiques*, Rev. de Dr. Int. (1928), 558.
[3] *Inter alia*, exemption from all civil and criminal jurisdiction (Art. 19).

§ 424. As regards other aspects, Halsbury's *Laws of England* states :

" Whether process issued by the courts of this country can be served in a foreign country upon a foreign minister accredited to and received at the court of such foreign country must be taken to be doubtful." [1]

§ 425. In France it has been held that the local courts have jurisdiction in the case of a foreign diplomatic officer who is accredited to another state in respect of an action against him relating to the building of a châlet within French territory [2] ; and in respect of proceedings in divorce instituted against him by his wife in France.[3]

§ 426. Certain incidents and cases are set out below, dating from ancient times up to the twentieth century.

In 1541 *Rincon* and *Fregoso*, French ambassadors to Turkey and Venice, while on their journey down the River Po, were seized by the Governor of Milan and murdered, and their papers seized.[4]

In 1572 *du Cros*, French envoy to Scotland, was arrested in England, at a time when the passage of Frenchmen through England to Scotland was forbidden. It was contended that he should have asked for a passport.[5]

On September 9, 1679, an ordinance of the States-General accorded inviolability to diplomatic agents passing through the United Provinces, just as if they were accredited there.

In 1793 the French revolutionary government sent *Marat* and *Semonville* on a mission to Switzerland. In passing through the territory of the Grisons they were arrested by order of the Austrian Government, stripped of their property, and confined in the citadel of Mantua.[6]

(1) In 1839, in the case *Holbrook* v. *Henderson*, before the Superior Court of New York, the minister of the republic of Texas in France and England, while returning to his own country, was arrested in the United States for debt. The court held that the privilege of an ambassador extended to immunity against all civil suits sought to be instituted against him in the courts of the country to which he was accredited as well as in those of a friendly country through which he was passing on the way to his post, and that he was entitled to this as representative of his sovereign, and also because it was necessary for the free and unimpeded exercise of his diplomatic duties.[7]

[1] vi. 431.
[2] *Leon* c. *Diaz*, Clunet (1892), 1137 ; Hurst, *Les Immunités Diplomatiques*, Cours de La Haye (1926), ii. 228.
[3] *Stoiesco* c. *Stoiesco*, Clunet (1918), 656 ; Hurst, *Immunités Diplomatiques*, ii. 229.
[4] Flassan, iii. 9.
[5] Ward, *Law of Nations*, 560.
[6] Sorel, *L'Europe et la Révolution Française*, iii. 431.
[7] 4 N. Y. Super. Ct. 619 ; Hudson, *Cases on International Law*, 854.

(2) In 1840 *Mr. Beylen*, United States consul, who was employed by his government as a courier to Genoa, was, while crossing France, cited for recovery of debts. The Civil Tribunal of the Seine held that he was exempt from French jurisdiction under the decree 13 ventôse, an II, which, in consecrating the inviolability of diplomatic agents, made no distinction between those accredited to France and those traversing France in order to reach their posts elsewhere.[1]

(3) In 1854 the French Government refused to *Mr. Soulé*, United States minister at Madrid (of French origin, but naturalised in the United States, and said to have been "of a fiery temperament") permission to stay in France on his way to his post, on the ground that his antecedents had attracted the attention of the authorities charged with public order; they had no objection to his merely passing through, but as he had not been authorised to represent his adopted country in his native land, he was for the French Government merely a private person, and as such subject to the ordinary law.[2]

(4) In 1888, in the case *New Chile Gold Mining Co.* v. *Blanco and another*, in the English courts, an action was begun against M. Blanco, Venezuelan minister at Paris, and an order for the service of the writ out of the jurisdiction having been made, an application was made to the Court of Queen's Bench to set the order aside. In the result, and although the general question was not decided, the court set aside the order, and held that as a matter of discretion it would not allow service of a writ out of England on the minister of a friendly Power accredited to a foreign state.[3]

(5) In 1889, in the case *Wilson* v. *Blanco* in the United States, M. Blanco, Venezuelan minister at Paris, was served, while passing through, on his way to his post, with process in connection with a civil claim against him, and in default of appearance judgment was given against him for the sum of $2,194,535·34. On a motion to set aside the judgment and vacate the summons, the Superior Court of New York, in referring to the case of *Holbrook* v. *Henderson* in the same court, and to the views of numerous jurists of recognised authority, as set forth in Wheaton, granted the application to vacate the judgment and set aside the summons upon him.[4]

(6) In 1900 the French Minister for Foreign Affairs, in answer to an enquiry addressed to him by the Spanish ambassador, concerning the *Duc de Veragua*, said: "L'agent diplomatique, ou même la personne chargée temporairement d'une mission diplomatique qui traverse la territoire française pour accomplir sa mission à l'étranger ou retourne pour rendre compte à son gouvernement, doit être assimilé à l'agent

[1] Hurst, *Immunités Diplomatiques*, ii. 223.
[2] de Martens-Geffcken, i. 119; Foster, *Practice of Diplomacy*, 53.
[3] 4 T. L. R. (1888), 346.
[4] Scott, *Cases on International Law*, 293.

diplomatique accrédité, et par suite doit être exempté de la juridiction locale." [1]

(7) In 1910, in the case *Sickles* v. *Sickles*, at Paris, concerning divorce proceedings instituted against the secretary of the United States legation at Brussels, the Civil Tribunal of the Seine declared itself incompetent, as the defendant had never been domiciled in France. But on the general question of his liability to the local jurisdiction in the circumstances of his stay in Paris for non-official reasons, they observed : " Que si ces prérogatives (immunités diplomatiques) doivent être étendues au cas où ces agents traversent un autre pays pour l'accomplissement de leur mission, ou après son exécution, ces envoyés ne peuvent réclamer les mêmes immunités lorsqu'ils se trouvent sur un territoire étranger sans être appelés pour des affaires se rattachant à leurs fonctions ; que les raisons supérieures et d'ordre public qui justifient ces immunités diplomatiques ne se rencontrent pas dans cette dernière hypothèse." [2]

(8) In 1924, in the case *Carbone* v. *Carbone*, in the United States, an action was brought against an attaché of the legation of Panama in Italy in respect of proceedings in divorce. The court held that there was a marked difference between immunity from civil proceedings and immunity from arrest. A country which a diplomatic agent crosses in going to or coming from the country to which he is accredited, owes to him only that it shall not hinder the fulfilment of his mission by restraining his personal liberty. The warrant of arrest against him was therefore annulled, but not the writ to enter appearance.[3]

(9) In 1926 *Madame Kollontai*, who had been appointed by the Soviet Government as minister at Mexico, was refused permission to pass through the United States (which was not in diplomatic relations with that government) on her way to her post.

§ 427. The treaty concluded between Italy and the Holy See on February 11, 1929, provides as follows :

Article 12.—Italy recognises the right of the Holy See to active and passive legation in accordance with the general rules of international law. Envoys of foreign governments to the Holy See shall continue to enjoy in the Kingdom all the privileges and immunities appertaining to diplomatic agents in virtue of international law, and their headquarters may remain in Italian territory and shall enjoy all the immunities due to them in accordance with international law, even if the states to which they belong maintain no diplomatic relations with Italy. It is understood that Italy undertakes always and in every case to leave free the correspondence from all states, including belligerents, to the Holy See, and *vice versa*. . . . In virtue of the sovereignty recog-

[1] Clunet (1901), 342 ; Hurst, *Immunités Diplomatiques*, ii. 225.
[2] Clunet (1910), 529.
[3] 206 N. Y. Super. Ct. 40 (1924) ; Deák, *op. cit.*, 530.

nised, and without prejudice to the provisions of Article 19 below, diplomatists of the Supreme Pontiff shall enjoy in Italian territory, even in time of war, the treatment due to diplomatists and carriers of despatches of other foreign governments, in accordance with the rules of international law.

Article 19.—Diplomatic officers and envoys of the Holy See, diplomatic officers and envoys of foreign governments accredited to the Holy See . . . possessing passports issued by their state of origin and *visés* by Papal representatives abroad, shall be admitted without further formality to the City across Italian territory. The same shall apply to the above-mentioned persons, who, being furnished with regular Papal passports, are proceeding abroad from the Vatican City.

Passage in Time of War

§ 428. *(a) When the state by which the agent is accredited is at war with the third state.*

A Power which during war arrests the envoy of a hostile state who is found within its territory, and treats him as a prisoner of war, commits thereby no breach of international law.[1] As Rivier says : " If the two states are at war, the agent may in default of a safe-conduct be made prisoner." [2] If he travels on board a neutral ship, the vessel may be seized and brought in for adjudication in the prize court.[3]

(1) In 1744 France declared war against the King of England, Elector of Hanover, and Hanover was consequently enemy territory for France. *Marshal Belleisle*, then at Frankfort as French ambassador to the Emperor Charles VII (Elector of Bavaria), was ordered to proceed to Berlin as minister. In crossing Hanover, he and his brother were made prisoners of war. Orders were sent from London to remove them to England, where they were retained for several months, until released conditionally.[4]

(2) In 1744 *Holdernesse*, ambassador of Great Britain to Venice, was arrested near Nuremberg by order of the Emperor Charles VII. Since, as late as January 1745, the latter had a minister in London, there was no justification for this arrest, and on learning of it, the Bavarian commander-in-chief ordered his release and proffered an apology.[5]

(3) In 1915 *Dr. C. Dumba*, Austrian ambassador at Washington, on his recall, and *Captains Boy-Ed* and *Von Papen*, German naval and military attachés, on their recall, owing to the dissatisfaction of the United States Government with their proceedings, were, at the request of that government, granted safe-conducts by the Allied Powers for their return journeys to Europe.

[1] Hall, 365. [2] *Op. cit.*, 509. [3] Hurst, *Immunités Diplomatiques*, ii. 235.
[4] Ch. de Martens, *Causes célèbres, etc.*, i. 285. [5] *Ibid.*, 300 *n.*

(4) In 1917, on the entry of the United States into the war, *Count Bernstorff*, German ambassador at Washington, was, at the request of the United States Government, granted safe-conduct by the Allied Powers to enable him to return to Germany.

(5) In 1917 *Herr von Heinrichs*, former secretary to the German embassy at Madrid, while on his way to Mexico to take up another appointment, was made prisoner on landing in Cuba, then at war with Germany.[1]

(6) In 1918 *Captain von Krohn*, naval attaché to the German embassy at Madrid, was, at the request of the Spanish Government granted safe-conduct by the French Government, to permit of his return to Germany through France, a prescribed route being enjoined.[2]

§ 429. When Italy declared war against Austria-Hungary in 1915, the diplomatic representatives of the Central Powers accredited to the Pope, who resided outside the exempted buildings occupied by His Holiness, avoided all difficulty by retiring beyond the Italian frontier. The Law of Guarantees of May 13, 1871 (now abrogated by the Treaty of February 11, 1929), however, provided (Article 11) as follows[3]:

The envoys of foreign governments accredited to His Holiness will enjoy in the Kingdom all the prerogatives and immunities appertaining to diplomatic agents, in accordance with international law.

The penal sanction for offences against such representatives shall be the same as that which would be applied in respect of foreign envoys accredited to the Italian Government.

The envoys of His Holiness to foreign governments shall possess within the territory of the Kingdom the usual prerogatives and immunities, in accordance with the same law, both in going to their posts and in returning.[4]

But in 1940 the Allies' representatives at the Vatican were compelled by the Italian government to leave Italian for Vatican territory.

§ 430. (*b*) *When the state to which the agent is accredited is at war with the third state.*

An old case of 1702 is recorded, when, during the war between Sweden and Poland, the *Marquis de Bonnac*, French envoy to Sweden, was arrested in passing through Polish territory. In reply to the serious

[1] Oppenheim, i. § 398.
[2] Genet, *Traité de Diplomatie*, etc., i. 596.
[3] For certain provisions of the treaty of February 11, 1929, between Italy and the Holy See, see § 427.
[4] de Castro y Casaleiz, ii. 456.

representations of the French Government, it was said in extenuation that he should have provided himself with a passport.[1]

§ 431. If the state to which the agent is accredited is invaded by the armed forces of the third state, various questions may arise.

(*a*) If the government of the invaded state is transferred from the capital to a town in the country (as when in 1914 the French Government transferred its seat from Paris to Bordeaux), the question whether the diplomatic agent should also transfer his residence to that town, or continue to reside at the capital, is one for himself and his government to decide.[2]

(*b*) If the state to which the agent is accredited is occupied by the military forces of the third state, the obligation of withdrawal naturally falls upon diplomatic agents of states who may be in alliance with the former. The representatives of neutral states might also be required to withdraw, unless charged by their governments with special functions with the consent of the occupying state.[3]

In 1914, on the occupation of Luxemburg by German forces, the German Government insisted on the withdrawal of the French and Belgian ministers accredited to Luxemburg.[4]

In 1914, on the occupation of the greater part of Belgium by German forces, the Belgian Government transferred its seat to French territory, whither most of the diplomatic agents accredited to Belgium followed it. The Spanish and United States ministers, being charged with special functions, were, with some others, allowed by the German Government to remain in Brussels, in the enjoyment of diplomatic privilege. The United States minister withdrew shortly before the entry of the United States into the war.[5]

In 1916, on the invasion of Roumania, and its occupation in great part by the Central Powers, the latter insisted on the representatives of neutral states leaving Bucharest, and on January 13, 1917, they left on a special train placed at their disposal for the purpose.[6]

(*c*) *If the seat of government is besieged by the military forces of the third state.*

Siege of Cadiz, 1823.—During the French invasion of Spain, the Cortes retired to Cadiz, and the King went with them. The French forces laid siege to the city. The instructions to the British minister, as given in a despatch from Canning of September 18, 1823, were [7]:

"You have judged wisely in declining their (the Spanish Government's) solicitation to repair under the present circumstances to Cadiz.

[1] Flassan, iv. 239. [2] Hurst, *Immunités Diplomatiques*, ii. 233. [3] *Ibid.*, 232.
[4] *Ibid.*, 231. [5] *Ibid.*, 232. [6] *Ibid.*, 232.
[7] Quoted in Stapleton's *Political Life of the Rt. Hon. George Canning*, i. 465.

It is obvious that one object at least (if not the single object) of that solicitation is to produce a state of things fertile in sources of misunderstanding with the blockading belligerent; and of questions which, as it would be difficult to solve, it would be most inconvenient unnecessarily to stir: questions, of which the usually admitted authorities in matters of international law have not even contemplated the occurrence; and for the decision of which history affords no practical example. Who has laid down, and, in the absence of authority and precedent, who shall lay down what are the rights and privileges of the minister of a neutral Power in a town besieged and blockaded by sea and land? Has he a right of unlimited communication with his Court? Is he to direct the vessel which he may employ to submit to search, or to resist it in the execution of this object? These and a hundred other questions of the like difficulty must arise in a situation so new and anomalous; and questions between nations which are not referable to preconcerted agreements, or to settled principles and acknowledged law, what power is to decide but the sword? If we had been disposed to go to war with France, and in behalf of Spain, we would have done so openly, and either on the merits of the case, or in vindication of some intelligible interest. But after professing and maintaining a perfect and scrupulous neutrality throughout the contest, to be betrayed at this stage of it into hostilities with France through an uncalled for and unprofitable discussion upon abstract points of international jurisprudence, would be a weakness unworthy of any government, and such as must make us the laughing stock of Europe. Your presence at Gibraltar places you quite as much within the reach of the Spanish Government for all purpose of active friendship and utility (as indeed the late transaction has shown) as if you were shut up within the walls of Cadiz and exposed (gratuitously as must be admitted) to the dangers and sufferings of a siege."

Siege of Paris, 1870–1.—During the siege of Paris by the German forces certain diplomatic agents remained in the city. Among these were the nuncio, and the United States, Swiss, Swedish, Danish, Belgian and Netherlands ministers. Having requested permission to send out a diplomatic courier through the German lines, they were informed that letters would be allowed to pass if unclosed, provided they contained nothing objectionable from a military point of view. On a further representation that the condition of sending open despatches would render official relations with their governments impossible, Count Bismarck's reply, addressed to the nuncio, observed, " Il a été créé à Paris un état de choses auquel l'histoire moderne, sous le point de vue du droit international, n'offre aucune analogie précise. Un gouvernement en guerre avec une Puissance qui ne l'a pas encore reconnu, s'est enfermé dans une forteresse assiégée, et s'y trouve entouré d'une partie des diplomates qui étaient accrédités auprès du gouvernement à la place

duquel s'est mis le Gouvernement de la Défense Nationale. En face d'une situation aussi irrégulière, il sera difficile d'établir sur la base du droit des gens des règles exemptes de controverse sous tous les points de vue."

The United States minister alone, who had charge of the protection of German nationals, was on this ground allowed the privilege of despatching and receiving closed bags once a week.

The United States Secretary of State [1] appears in the meantime to have claimed for the representatives of neutral states in Paris the right of free intercourse with their governments on the ground that such intercourse is in itself one of the privileges of envoys. Count Bismarck replied:

"The right of unhindered written intercourse between a government and its diplomatic representative, especially so far as concerns the government to which he is accredited, is in itself undisputed. But this right may come in conflict with rights which of themselves are also beyond dispute, as, for instance, in the case where a state, to guard against contagious disease, subjects travellers and papers to a quarantine. So too in war. The universal and imperative right of self-protection, of which war is itself the expression, may come in conflict with the diplomatic privileges which, just because privileges, are, in doubtful case, subject not to an enlarging, but to a contracting interpretation. . . . If the writers on public law concede to the diplomatic representatives of neutral states rights as against a belligerent Power, they do so only while, at the same time, coupling therewith the right to regulate the correspondence of such persons with a besieged town, according to military exigencies. Vattel says:

"'Elle (la guerre) permet d'ôter à l'ennemi toutes ses ressources, d'empêcher qu'il ne puisse envoyer ses ministres pour solliciter des secours. Il est même des occasions où l'on peut refuser le passage aux ministres des nations neutres qui voudraient aller chez l'ennemi. On n'est point obligé de souffrir qu'ils lui portent peut-être des avis salutaires, qu'ils aillent concerter avec lui les moyens de l'assister, etc. Cela ne souffre nul doute, par exemple, dans le cas d'une ville assiégée. *Aucun droit ne peut autoriser le ministre d'une puissance neutre ni qui que ce soit à y entrer malgré l'assiégeant*, mais pour ne point offenser les souverains, il faut leur donner de bonnes raisons du refus que l'on fait de laisser passer leurs ministres, et ils doivent s'en contenter s'ils prétendent demeurer neutres.'

"What is true of ministers will be all the more so of messengers and despatches. . . . The military necessity of cutting off a besieged town from outside intelligence appears a sufficient ground for subjecting to control, from a military point of view, the correspondence of diplomatic persons remaining in the town in its passage through territory occupied by the besiegers, and temporarily subject to their war sovereignty. It is not perceived that these persons are thereby treated as enemies, nor

[1] *Foreign Relations of the United States* (1871).

that they are thereby prevented from continuing neutral, or that wars are thereby indefinitely prolonged. On the contrary, the end of a war is all the sooner to be expected the more strictly the isolation of the hostile capital is carried out."[1]

In General

§ 432.] The diplomatic agent accredited to a state, and in the absence of a mission or permission of his government, is in no way authorised to interpose in the differences which that state may have with another. If he interferes, the state to which he is accredited or the other, or both, may complain to his own government. Either government entitled to complain may take such measures as it may judge to be appropriate, within the limits imposed by diplomatic privileges and immunities.[2]/

In 1733 the *Marquis de Monti*, French envoy in Poland, took an active part, after the death of Augustus II, in supporting the election of Leczinski, and when the latter was driven from Warsaw by Russian and Saxon troops, followed him to Danzig, which was besieged, whereupon Monti surrendered to the Russian commander. To intercessions made on his behalf by France, Great Britain and Holland, the Russian reply was that only those ministers who do not transgress the limits of their functions can claim inviolability, and that only at the hands of the court to which they are accredited, and where they have been received and recognised as ministers. Monti had taken part in hostilities against the Russian forces ; his powers expired with the death of Augustus II, and so it was doubtful if he was entitled to be regarded as an ambassador after that event ; and, lastly, he had surrendered to the Russian commander, ready, as he said, to undergo all the misfortunes that might await him.[3]

In 1746 *Van Hoey*, envoy of the United Provinces at Paris, wrote to the Duke of Newcastle, then Secretary of State, after the battle of Culloden, asking that the Pretender's life should be spared if he was captured. This interference was much resented by the British Government, who complained to the States-General, demanding public satisfaction proportioned to the scandal caused by this proceeding to every friend of the honour, religion and liberty of the two Powers. The States-General administered a severe rebuke to Van Hoey, whom they ordered to write a polite and proper letter to the Duke of Newcastle, to acknowledge his own imprudence and the fault of which he had been guilty, and to promise to conduct himself more prudently for the future.[4]

[1] Translation from the German.
[2] Rivier, *op. cit.*, ii. 511.
[3] Ch. de Martens, *op. cit.*, i. 210 ; Flassan, v. 72.
[4] Rivier, *op. cit.*, i. 512 ; Ch. de Martens, *op. cit.*, i. 312–25.

CHAPTER XX

THE DIPLOMATIC BODY

§ 433. The Diplomatic Body comprises all the heads of missions, counsellors, secretaries and *attachés*, both paid and honorary, including military, naval, air and commercial *attachés*, chaplains and all other members who are on the diplomatic establishment of their respective countries. At many capitals a list of the diplomatic body, compiled from lists furnished by each mission, is published from time to time. This generally includes the wives and adult daughters of the members of the missions.

§ 434. The *doyen* is the senior diplomatic representative of the highest category. His functions are of a limited character in most countries, and are chiefly of a ceremonial description. He is the mouthpiece of his colleagues on public occasions. He is the defender of the privileges and immunities of the diplomatic body from injuries or encroachments on the part of the government to which they are accredited. He is sometimes used as a channel for communication on ceremonial matters to the other heads of missions: indeed he can usefully be employed, whether by the court or by the ministry for foreign affairs, to convey to his colleagues information or guidance of an informal character. Whatever records belong to the body as a whole are in his keeping. But he is in no case entitled to write or speak on behalf of his colleagues without having previously consulted them and obtained their approval of the step which it is proposed to take, and of the wording of any written or spoken representations on their behalf. No head of a mission will take part with his colleagues in a joint representation to the government of the country without special authorisation from home, or accept a summons from the *doyen* to attend a meeting for the discussion of international matters unless he has received instructions to take joint action. At Washington such joint *démarches* of the diplomatic body have been generally declined by the Department of State; an apparent exception occurred just before the outbreak of the war with Spain in 1898, when the European ambassadors were

received by the President to make a joint representation in favour of peace.[1]

§ 435. The wife of the senior diplomatic representative of the highest category is called the *doyenne*. Her functions are mainly limited to presenting at court ladies of the diplomatic body who have no one else to perform this office for them, *i.e.* if the head of the mission to which their husbands belong is unmarried. At courts where the diplomatic body is numerous and where it is the custom for the *doyenne* to name each lady to the sovereign, this may be no inconsiderable task. In the Netherlands she is also expected to accompany newly-arrived wives of heads of missions on their first calls on the ladies of the court and the wife of the Minister for Foreign Affairs, and also to their first audience with the Queen.

Precedence among Heads of Missions

§ 436. In each category of diplomatic agents seniority depends on the date of official notification of arrival at the capital. This is the rule laid down in the *Règlement de Vienne* (§ 277). Some authors say that it depends on the date of the presentation of credentials.[2]

§ 437. Owing to the necessity of obtaining new credentials on the occasion of the death of either the accrediting sovereign or of the sovereign to whom the head of a mission is accredited, differences of opinion sometimes arose as to the necessity of a change of precedence among diplomatists, consequent on the difference of date on which the new credentials came into their hands, which, of course, might affect the order in which they were enabled to give official notification to the minister for foreign affairs. In March 1818 a controversy occurred at Copenhagen in the following circumstances: The envoy of a certain Power was the *doyen* of the diplomatic body at the Danish court. In consequence of changes at his own court, he received new credentials. Some of his colleagues maintained that he had thereby lost his seniority and must take rank after the others. The majority, however, took the opposite view.[3] In 1830 it was agreed among the heads of missions at Paris that, notwithstanding the date of delivery of their new credentials, they should continue to rank among themselves as before. The same arrangement was maintained in 1848, on the establishment of the second Republic, and in 1852, on the assump-

[1] Foster, *Practice of Diplomacy*, 124.
[2] *Ibid.*, 70; de Martens-Geffcken, i. 53; García de la Vega, 209, 422.
[3] Schmelzing, ii. 128.

tion of the title of Emperor by Prince Louis Napoleon. Similarly in Belgium, on the accession of King Leopold II, in consequence of the death of Leopold I on December 10, 1865; and the Belgian diplomatic representatives in foreign countries also preserved their former relative seniority.[1] At the accession of King Alfonso of Spain, in 1875, the British minister had been *doyen*, but the ministers of Portugal and Russia, having presented their new credentials before he did, claimed precedence. After much discussion it was decided that the previous order of precedence should prevail.[2]

§ 438. It seems obvious that whatever arrangements the heads of missions may make among themselves, these cannot affect the rules of precedence at court which are adopted by the sovereign to whom they are accredited, or, in the case of republics, by those similarly adopted. Where there is any doubt as to the rules of precedence, the regulations of the particular court or state are decisive on the point. And while in some places it is held that the date of presentation of credentials regulates the rank in each category, this cannot very well happen in countries which were parties to the *Règlement de Vienne.*

§ 439. It has sometimes been said that chargés d'affaires accredited to the minister for foreign affairs rank among themselves according to the date of the presentation of their letters of credence (which is contrary to the *Règlement de Vienne*), and that it is for this reason that a chargé d'affaires *ad interim*, acting in the absence of the head of the mission, ranks after those belonging to the permanent category. But this can hardly be the reason, for occasionally a chargé d'affaires *ad interim* may bear a letter of credence as such. The existence of chargés d'affaires *ad interim* cannot be said to have been taken into account at Vienna in 1815. The distinction is now, however, generally recognised. (See § 295.)

§ 440. It was formerly usual to confer the rank of minister plenipotentiary on the counsellor to the British embassy at Paris in the absence of the ambassador, and up to 1906, whenever the ambassador first went on leave, the counsellor presented his credentials as such to the French Government. But in 1906 the counsellor of the British embassy at Paris was definitely appointed as minister plenipotentiary, and in 1929 as envoy extraordinary and minister plenipotentiary, a course which had previously been

[1] Pradier-Fodéré, i. 290; García de la Vega, 210.
[2] *Foreign Relations of the United States*, cited by Foster, *op. cit.*, 71.

adopted in 1924 in the case of the counsellor to the British embassy at Washington, and has now been extended to certain other of the more important embassies. But such officers are no longer given personal credentials.

§ 441. *Wives* of diplomatists enjoy the same privileges, honours, precedence and title as their husbands. The wife of an envoy consequently is entitled to :

1. A higher degree of protection than what is assured to her in virtue of her birth and sex.

2. The same personal exemptions as belong to her husband.

She accords to ladies of position at the court equality in matters of ceremony, only if her own husband accords equal rank to the husbands of those ladies.

She claims precedence and preference in respect of presentation, reception at court, visits and return visits, over other ladies, only if her husband enjoys precedence over the husbands of those other ladies.[1]

§ 442. The rules as to presentations at court and to members of reigning families, or in a republic to the head of the state, as well as to official visits which diplomatic representatives should pay, and visits to which they are entitled, are laid down with much precision at every capital, and can be learnt by inquiry in the proper official quarter.

§ 443. Ambassadors and other heads of missions, when invited to national or court festivities, are entitled to a place of honour among the persons invited, which is fixed by local regulation or usage. Neglect of this ceremonial obligation, in itself of minor importance, in the past sometimes led to strained relations. In 1750 the Russian envoy at Berlin was omitted from the list of persons invited to a certain court festivity, because he was supposed to be absent from the capital. The incident led to a strong protest from his court, and diplomatic relations between the two states were consequently suspended for a long period.[2]

§ 444. In monarchical countries the diplomatic body come after the members of the reigning family. In republics their precedence is not uniformly settled. In the United Kingdom foreign ambassadors enjoy a common precedence with the High Commissioners of Commonwealth countries and the combined group of ambassadors and high commissioners is placed in a position immediately following the Lord Privy Seal in the General Scale of Social

[1] Schmelzing, ii. 159.
[2] *Ibid.*, ii. 126.

Precedence. Ambassadresses are usually given a similar position. Foreign envoys and ministers are by courtesy given precedence after dukes and before marquesses, and their wives after duchesses and before marchionesses. The precedence of chargés d'affaires is not officially laid down and rests upon courtesy.

The *décanat* of the Corps is reserved for the senior foreign ambassador.

In France the diplomatic body come after the Presidents of the Senate and Chamber of Deputies ; at Washington after the Vice-President. In South American republics it is believed they take rank after the members of the cabinet and the presidents of the legislative chambers.

§ 445. In the United Kingdom since the 1939–45 war, the formalities of Levées and Courts have diminished both in number and character. Levées have not yet been revived and Courts are supplemented by Evening Parties at which the wearing of uniform, though encouraged, is optional. When worn, members of diplomatic missions naturally wear the normal uniform of their native country.

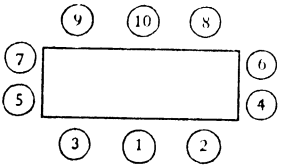
§ 446. Political significance has sometimes been attached to the absence of an envoy from a state ceremony. In 1818 the omission of the Prussian envoy to attend the diplomatic circle on the French King's birthday gave rise to public comment, and the inference was drawn that the two governments had been unable to come to an agreement about certain claims advanced by one of them. The allusions to these claims in both legislative chambers, combined with a new law of recruiting, excited a hope in the minds of certain hotheads that the claims would be referred to the arbitrament of arms. " Payez les étrangers du fer " was a common expression used in certain circles.[1] In 1823 Canning forbade the British ambassador in Paris to be present at any rejoicings given in celebration of the French successes in the Peninsula.[2]

§ 447. *Order of Precedence on the Occasion of Personal Meetings.* If the ceremony is one at which the diplomatic body has to take what may be termed an *active* part, its members, ranged according to the order of precedence prescribed by the *Règlement de Vienne*, are placed on the right of the *centre* or post of honour occupied by the most eminent person present, *i.e.* usually the head of the state. If, however, the part taken by the diplomatic body is merely *passive*, *i.e.* that of spectators, a special place is set apart for it, such

[1] Schmelzing, ii. 227.
[2] Stapleton, *Political Life of the Rt. Hon. George Canning*, i. 482.

as a *tribune* in a church, boxes at a theatre for a *gala* performance, etc.[1] :—

As regards *seats*, the place of honour and consequently the precedence attributed to the persons forming the company :—At a four-cornered table of which all four sides are occupied, or at a round or oval table, the first place is usually considered to be facing the entrance, and the last place is that nearest to it. At a mixed party the hostess sits, normally, opposite the host, and as she is, at least at a formal party, the last to leave the drawing-room with her partner, who is of course the principal male guest, it is more convenient for her to sit at the side, or end, of the table nearest the entrance. Counting from the first place, the order of seats is from right to left, and so on.



In standing, sitting or walking, the place of honour is at the right, *i.e.* when the person entitled thereto stands or walks at the right. Precedence is when the person entitled goes a step before the other, who is at his left side, as in ascending a flight of stairs or entering a room.

Amongst the Turks, and also at Catholic religious ceremonies, the left hand has often been regarded as the place of honour, so also among the Chinese.

In a lateral arrangement, *i.e.* when the persons present stand side by side in a straight line, the outside place on the right, or the central place, is the first according to circumstances. When there are only two persons, the right hand is the first (②①) ; if there are three, the middle place is the first (③①②), the right hand the second, the left hand the third. If the number is four, the furthest to the right is the first place, the next is the second, the left of the latter is the third, and then the fourth (④③②①)[2] Of five persons, the first is in the middle, immediately to the right is the second, to the left is the third, further to the right is the fourth, and the fifth is the furthest to the left (⑤③①②④). If six or more, the same principles are observed, according as the number is odd or even.

§ 448. According to long-established usage, Ambassadors pass immediately after the members of the Royal House in the country

[1] de Martens-Geffcken, i. 127.

[2] de Martens-Geffcken, i. 131, puts the order thus ④③①②.

where they are accredited. In Catholic countries they also pass after Cardinals.

In Republics it is usual for three or four high-ranking officials to be associated with the Head of State and to be given precedence above Ambassadors as representing in their persons the dignity of the Republic. These officials generally include the President of the Senate, the Prime Minister, and the Chief Justice.

In the United Kingdom however, it has become the rule in recent years to accord precedence to eight personages between the Royal Family and the Ambassadors. These are, in their order, the Archbishop of Canterbury, the Lord High Chancellor, the Archbishop of York, the Prime Minister, the Lord High Treasurer, the Lord President of the Privy Council, the Speaker of the House of Commons, and the Lord Privy Seal.

Both in diplomatic houses and in a house of an official or dignitary of the country, these persons, besides Princes of the Blood, would be given precedence over Ambassadors, and nowadays it would seem appropriate to place the Foreign Secretary (although he is not one of the eight individuals above-named) in front of all Ambassadors except the most senior among them. In a diplomatic house the host gives precedence to his foreign colleagues over his own countrymen, no matter what the rank of the latter. In cases of doubt, it may be prudent to consult the *Chef du Protocole* or his equivalent.

§ 449. Rules, as set forth in " Dress and Insignia worn at Her Majesty's Court," [1] specify occasions upon which orders, miniature decorations and medals are to be worn with evening dress, viz. " At all parties and dinners given in houses of Ambassadors and Ministers accredited to this Court, unless otherwise notified by the Ambassador or Minister concerned. (A decoration of the country concerned should be worn in preference to a British one, and if both are worn, the former should take precedence of the latter)." Although this is the rule, it is advisable, if there is any reason to suppose that the party is an informal one, to ascertain beforehand what is expected.

§ 450. In former times the question whether an ambassador, or other person of high rank, such as a cardinal, should give the seat of honour to a person of lower rank paying him an official visit was held to be one of vital importance. Thus, in the instructions given to the Hon. Henry Legge, when he was being despatched to

[1] Issued with the authority of the Lord Chamberlain, 151.

Berlin, in 1748, as envoy to the great Frederick, occurs the following passage :

Whereas Our Royal Predecessor King Charles the Second did, by his Order in Council, bearing date the 26th Day of August, 1668, direct, that his Ambassadors should not, for the future, give the Hand [*i.e.* the seat of honour] in their own Houses to Envoys, in pursuance of what is practised by the Ambassadors of other Princes, and did therefore think it reasonable, that His Envoys should not pretend to be treated differently from the Treatment He had directed his Ambassadors to give to the Envoys of other Princes ; We do accordingly, in pursuance of the said Order in Council, hereby direct you, not to insist to have the Hand from Any Ambassador, in his own House, who may happen to be in the Court where you reside.[1]

Callières, too, on this subject, says :

Les Ambassadeurs du Roy ont differens ceremoniaux selon les coûtumes établies dans les diverses Cours où ils se trouvent, l'Ambassadeur de France à Rome donne la main chez luy aux Ambassadeurs des Couronnes & de Venise, & ne la donne point aux Ambassadeurs des autres Souverains, ausquels les Ambassadeurs du Roy la donnent dans les autres Cours ; l'Ambassadeur de France a le premier rang sur tous les Ambassadeurs des autres Couronnes dans toutes les ceremonies qui se font à Rome, après l'Ambassadeur de l'Empereur. Ces deux Ambassadeurs y reçoivent en tout des traitemens égaux & se traitent entr'eux avec la même égalité.

Les Ambassadeurs des Couronnes à Rome sont assis et découverts durant les Audiances que le Pape leur donne.

Il y a plusieurs Cours où les Ambassadeurs du Roy donnent la main chez eux aux gens qualifiez des pays où ils se trouvent, comme à Madrid aux *Grands d'Espagne* & aux principaux Officiers, à Londres aux *Lords Pairs* du Royaume, en Suède & en Pologne aux *Senateurs*, & aux grands Officiers, & ils ne la donnent point en aucun pays aux Envoyez des autres Couronnes.

L'Empereur reçoit les Envoyez du Roy debout & couvert, & demeure en cet état durant toute l'Audiance, l'Envoyé étant seul[2] avec l'Empereur debout & découvert.

Les Electeurs Laïques les reçoivent & leur parlent debout & découverts durant les Audiances publiques qu'ils leur donnent, & ils sont assis & couverts lorsqu'ils ont Audiance des Electeurs Ecclesiastiques.

Les Souverains d'Italie se couvrent & les font couvrir, excepté le Duc de Savoye, qui ne les faisoit pas couvrir, avant même qu'il fût

[1] P.R.O., *King's Letters*, Prussia, 1737–1760, 2.
[2] This was formerly the rule at Vienna.

parvenu à la Couronne de Sicile, & qui leur parlait debout & couvert eux étant debout & découverts.[1]

Les Nonces du Pape en France, donnent la main chez eux au Secretaire d'État des affaires étrangeres, & en la donnent point aux Evêques ni aux Archevêques lorsqu'ils reçoivent leurs visites en ceremonie.[2]

Ils donnent la main chez eux aux Ambassadeurs des Couronnes & à celuy de la Republique de Venise qui sont dans la même Cour, et tous les Ambassadeurs leur cedent la main en lieu tiers, excepté ceux des Roys Protestans, qui n'ont point de commerce public avec eux ; on leur donne le titre de *Seigneurie Illustrissime*, en leur parlant, & en leur écrivant, il y en a qui leur donnent le titre d'*Excellence*, comme aux Ambassadeurs, & ils le reçoivent d'ordinaire assez volontiers quoyque ce soit un titre Laïque.[3]

Les Envoyez se rendent entr'eux les mêmes civilitez que les Ambassadeurs à leur arrivée à l'egard des complimens des visites, les Envoyez de France & des autres Couronnes donnent la main chez eux dans toutes les Cours à tous les Envoyez des autres Souverains.[4]

§ 451. And the instructions given to the Marquis d'Hautefort in 1750, on his appointment by the King of France to represent him at Vienna, stated that :

Le sieur Morosini, ambassadeur de la république de Venise auprès du Roi, a refusé de visiter le Cardinal Tencin,[5] sous le prétexte que ce prélat ne voulait pas lui donner la main chez lui. Ce refus a paru d'autant plus singulier de la part de ce ministre que ses deux prédecesseurs immédiats n'avoient fait nulle difficulté de remplir ce devoir de politesse envers cette éminence. Comme le Comte de Kaunitz [6] voudra vraisemblablement suivre l'exemple du sieur Morosini, l'intention du Roi est que le marquis de Hautefort ne fasse point de visite aux cardinaux allemands, à moins que ceux-ci ne lui donnent la main chez eux ou qu'il soit bien assuré que le comte de Kaunitz aura reçu l'ordre de sa cour de se conformer en France au cérémonial observé jusqu'à présent par rapport aux cardinaux.[7]

It is to be hoped that such pretensions on the part of cardinals and ambassadors have not survived to the twentieth century.

Conduct of Diplomatic Representatives of Belligerents towards each other during War-time

§ 452. Les Ministres des Princes qui sont en guerre & qui se trouvent dans une même Cour ne se visitent point tant que la guerre dure, mais ils se font des civilitez reciproques en lieu tiers lorsqu'ils se rencontrent,

[1] Callières, 107. [2] *Ibid.*, 131. [3] *Ibid.*, 132. [4] *Ibid.*, 193.
[5] Who was also Foreign Minister. [6] Appointed ambassador at Paris in 1750.
[7] *Recueils des Instructions*, etc., Austria, i. 326.

la guerre ne détruit point le règles de l'honnêteté ny celles de la generosité, elle donne même souvent occasion de les pratiquer avec plus de gloire pour le Ministre qui les met en usage, & pour le Prince qui les approuve.[1]

The custom seems to be that diplomatic agents of belligerent states accredited to neutral countries ignore each other, unless circumstances compel them to meet. During the 1914–18 war the German ambassador at Washington is said to have ignored the British ambassador, while conceding to the French ambassador such courtesy as the latter was entitled to as *doyen* of the diplomatic corps. In fact no hard and fast rule can be laid down. If personal friendship has previously existed between the representatives of belligerent countries, it would be uncouth, and unprofitable, to ignore each other completely. In the Hague in 1939 at the request of the German minister, the Swiss minister arranged a secret meeting between the former and his British colleague at the Swiss Legation. Such meetings are presumably most exceptional, and nothing came of this one.

Callières relates the story of the Sieur de Gremonville, French representative at Rome during hostilities between France and Spain, who, learning of a plot to kill the Spanish ambassador, warned the latter, and earned much praise for this action. The story recalls the incident of Fox communicating to Talleyrand, in 1806, information regarding a scheme for the assassination of Napoleon, disclosed to him by a Frenchman.[2]

Visits. Flags

§ 453. At some capitals it was formerly, and may still be in some cases, the usage for diplomatists to visit each other and offer congratulations on their respective national fête-days, such as July 14 for France, July 4 for the United States. Where diplomatic houses have a flagstaff on the roof or in the grounds, the national flag is flown as a compliment to the other friendly Power, and it will also be hoisted on the national fête-day of the country represented.

§ 454. The flag flown by British diplomatic missions abroad is the Union Flag, with the Royal Arms in the centre on a white shield, surrounded by a green garland, and is flown either over the house of the mission, or at the appropriate place in the boat

[1] Callières, 194.
[2] *Cambridge Modern History*, ix. 269 ; Holland Rose, *Life of Napoleon I.*, ii. 70.

or other vessel, if Her Majesty's representative is afloat. It is customarily flown on the Queen's birthday, actual and official, and on such other days on which flags are flown on public buildings in London, of which there are now no fewer than sixteen ; on the occasion of the accession or on the birthday of the sovereign to whom the mission is accredited, and on the national holiday of the country in which the mission resides ; and it is flown at half-mast on the occasion of the deaths of members of the British Royal family, or the death of the sovereign or head of state to whom the mission is accredited, as well as on certain other occasions, as laid down by the Ministry of Works, by Her Majesty's command.

Signing Treaties and other Documents

§ 455. If the treaty is a bilateral one, prepared in duplicate, each country has precedence in the preamble of the original to be retained by it, and in its signature. A usual method, where there are two texts, is to give each country precedence in the preamble of its own text, and then, to avoid further change, give priority to each of the two countries in turn by printing its text in the left-hand column or, when the texts are arranged on facing pages, on the left-hand page of the original to be retained by it. If the treaty is a multilateral one between heads of states, the latter are mentioned in the preamble in the alphabetical order of the states over which they preside ; if between governments, the contracting countries may be ranged in alphabetical order in the preamble. Signatures are appended in the same order. See, however, §§ 567–576, where the matter is gone into more fully.

§ 456. Rules of the past, which have largely fallen into desuetude, are said to have been as follows :

> The first named in the text, especially in the preamble, has the first place in signing, the second named the second, and so on. When the signatures are appended in two columns, the first place is at the top of the left-hand column, the second at the top of the right-hand column, and so on. But when resident ambassadors sign a protocol, they sign in the order of their local seniority, and not according to the alphabetical order of the French names of the country they represent. If the minister for foreign affairs also signs, his signature takes the first place. But cases exist where plenipotentiaries have disregarded all these rules, and have appended their signatures *pêle-mêle.*

§ 457. *The title of "Excellency"* is given to Ambassadors orally as well as in written communications in virtue of their diplomatic rank.

The title came into general use after the Peace of Westphalia. It is said to have been adopted by the French plenipotentiaries d'Avaux and Servien, in order to mark the difference between the ambassadors of crowned heads and those of lesser potentates.[1] After the Congress of Vienna it became general at all European courts. Of course, an ambassador of princely rank is addressed by the corresponding title he bears ; if he is a cardinal by that of " Eminence ".

§ 458. English usage does not accord it to Secretaries of State.[2] Her Majesty's ambassadors and Governors-General are officially addressed as " Excellency." The Governors of Her Majesty's colonies receive the title by courtesy locally.

In French practice it is accorded to ambassadors, presidents of foreign republics, and in general to foreign great dignitaries, officers and ministers of state.

In the United Kingdom it was decided at the end of 1939 to address, from January 1, 1940, foreign ministers as well as ambassadors as " Excellency ". It has long been the practice to accord the title to ministers of foreign affairs.

The title is also accorded, orally and in private correspondence, to the wives of ambassadors and ministers.

§ 459. Callières says :

" On donne le titre d'*Excellence* aux Ambassadeurs extraordinaires et ordinaires, & on ne le donne point aux Envoyez, à moins qu'ils ne le prétendent par quelqu'autre qualité, comme celle de Ministre d'État, de Senateur ou de Grand Officier d'une Couronne. Ce titre d'*Excellence* n'est point en usage à la Cour de France, comme il est en Espagne, en Italie, en Allemagne & dans les Royaumes du Nord, & il n'y a que les Étrangers qui le donnent en France aux Ministres & aux Officiers de la Couronne, & qui le reçoivent d'eux, lorsqu'ils ont des titres, ou des qualités qui leur donnent droit de la prétendre." [3]

§ 460. With respect to envoys extraordinary and ministers plenipotentiary, Rivier says : " Ce n'est que par courtoisie qu'on leur donne, ainsi qu'à leurs femmes, le titre d'Excellence." [4] García de la Vega said that it was not due to any person in Belgium, but that the minister for foreign affairs accorded it to the ministers for foreign affairs of crowned heads, to ambassadors and

[1] Flassan, iii. 93.
[2] See letter of C. Amyand to Colonel Yorke of July 4, 1751 (S. P. France, 242, P.R.O.).
[3] 125.
[4] *Principes du Droit des Gens*, i. 450.

to foreign envoys of the second category. Ministers and the foreign diplomatic body gave it to the king's ministers.[1]

§ 461. In Spain " Excellency " has been given to ministers of the crown, councillors of state, the Archbishop of Toledo, to Knights of the Golden Fleece, Collar Knights and Knights Grand Cross of the Order of Carlos III, to Knights Grand Cross of several other orders, and to a host of other personages, including Spanish and foreign ambassadors and ministers plenipotentiary of the first class. *Señoría ilustrísima* was given to third-class functionaries of the diplomatic body, and *Señoría* to the fourth and fifth classes of the same.[2]

§ 462. The Peruvian *règlement* of November 19, 1892, for the reception of foreign ministers and cognate matters, gave directions to address an envoy extraordinary and minister plenipotentiary as *Vuestra Excelencia*, a minister resident as *Vuestra Señoría Honorable*, a chargé d'affaires *en titre* or *ad interim* as *Vuestra Señoría*.

Uniforms. British Practice

§ 463. The Queen recently approved new designs of ordinary (blue) and tropical (white) uniform to be worn by members of Her Majesty's Foreign Service. It is worn only during tenure of office, or on retirement by special permission of the sovereign. The classes are the following :

First Class.—Grades A1 and, in certain circumstances, A2.
Second Class.—Grades A2, A3 and A4.
Third Class.—Grades A5, A6, and B1, B1A.
Fourth Class.—Grades A7, and B2, B3 ; also The Queen's Foreign Service Messengers.
Fifth Class.—Grades A8, A9 and B4.

Members of the Foreign Service who are Privy Counsellors, notwithstanding these changes, will still wear Privy Counsellor's uniform.

§ 464. *Evening Dress.*—Evening dress coat of blue cloth with black velvet collar (the collar cut with notched ends), black silk linings ; four buttons on each front, two at the waist behind, and one on each tail ; also two small buttons on a 3-inch cuff, and one above. The facings are of the same material as the body of the coat. Buttons : gilt, mounted, the Royal Arms with supporters.

[1] *Guide Pratique*, 243.
[2] de Castro y Casaleiz, i. 360.

Dress waistcoat: single-breasted, of white marcella, with small gilt buttons to match. Trousers: plain black evening dress material.

This dress is worn abroad by members of Her Majesty's diplomatic missions abroad, at the discretion of the ambassador or minister, at official dinners and parties (*a*) in the presence of members of the British Royal Family who are Royal Highnesses, and (*b*), if in accordance with local custom, in the presence of members of the Royal Family of the country in which the ambassador or minister is accredited. It is never worn in Great Britain.

§ 465. *Dress to be worn by Her Majesty's Representatives on Official Naval Visits.* (*a*) When calling officially on a flag officer or on officers commanding Her Majesty's ships, blue uniform should be worn by Her Majesty's representatives, or alternatively white uniform in countries where such uniform is worn in lieu of the blue. On receiving visits from flag officers or officers commanding Her Majesty's ships, however, Her Majesty's representatives may use their discretion as to the dress to be worn, but if they do not wear uniform they should wear a morning coat, with star in cases where the representative has received the first or second class of one of the British orders of knighthood.

(*b*) An ambassador or minister accompanying a naval commander-in-chief on a visit to pay his respects to the head of a state should wear the blue uniform, or, if appropriate to local conditions, the white.

§ 466. *Precedence of members of Her Majesty's missions abroad.* At British missions abroad precedence as between members of the foreign service and other members of the staff is regulated as follows:

1. Officers of Her Majesty's Foreign Service will take precedence *inter se* according to their grade in the Service.

2. Officers of the same grade will take precedence according to the dates of their respective appointments to the grade.

3. For the purposes of the local Diplomatic List the order of seniority derived from the application of the general principle referred to in paragraphs 1 and 2 will be followed.

4. The officer normally designated to act as Chargé d'Affaires in the absence of the Head of the Mission will be the senior officer handling political work.

5. Service Attachés at Diplomatic Missions will rank with but after the Foreign Service officer normally designated to act as Chargé d'Affaires in the absence of the Head of the Mission and other career

members of the Foreign Service of the same grade as that officer; except that Foreign Service officers of Grade 5 holding the rank of Minister will in all cases take precedence before Service Attachés.

6. Assistant Service Attachés will rank with but after Foreign Service officers of Grade 8 (Second Secretaries): except at posts where such Assistant Service Attachés are the only resident Service Representatives, when they will take the precedence indicated in the preceding paragraph.

7. Non-Service specialist Attachés will rank with but after Service Attachés; Assistant specialist Attachés will rank with but after Assistant Service Attachés, but will in no case take precedence before Foreign Service officers of Grade 8 (Second Secretaries). As between themselves non-Service specialist Attachés and Assistant Attachés will rank in order of their date of appointment, regardless of personal rank.

The foregoing does not apply to Labour Attachés whose position is as stated in para. 9 below.

8. Officers of Her Majesty's Foreign Service holding local or acting rank will take precedence according to that rank, but below officers holding the same substantive rank.

9. The diplomatic rank accorded to Labour Attachés will be equated to the appropriate Foreign Service grade at the post where they are attached; this rank shall not be higher than that of Counsellor nor than that of the Chargé d'Affaires designate. For formal purposes they will be referred to as "Counsellor (Labour)", "First Secretary (Labour)" or "Second Secretary (Labour)". They should be shown as such on the local Diplomatic List, and be placed, not with the other Attachés but after the members of the Foreign Service of the same grade.

10. When Foreign Service officers (and certain temporary officers) who are junior to a third secretary are included in the local Diplomatic List, they will be given the diplomatic rank of junior attaché. This title is to be used in order to avoid confusion between the old use of the word "attaché" which described the status of persons now to be styled "junior attachés" and the new meaning the word has come to bear, namely, the status of a member of a Government Department other than the Foreign Office, who, by virtue of his position as a representative in a diplomatic mission of that Department, ranks immediately after the Service Attachés.

§ 467. In the case of other countries it is not apparent how relative precedence is regulated. In the diplomatic lists of the *personnel* of the foreign missions accredited in Great Britain, no universal system can be discerned.

§ 468. *Decorations and Presents.* In former days when a diplomatist left the court at which he had represented his sovereign, either on a per-

manent or temporary mission, he usually received a decoration. A gold snuff-box set with brilliants was a very usual gift.

§ 469. Queen Elizabeth I objected to her subjects wearing foreign *insignia* of knighthood. Two young Englishmen, Nicolas Clifford and Antony Shirley, had been admitted by Henri IV to the Order of St. Michael as a reward for their services. On their return to England they appeared at court displaying the *insignia* of the order, which provoked the Queen's anger, because the French king, without consulting her, had allowed these her subjects to take the oath to him on their admittance, and she threw them into prison. Nevertheless, she was too merciful to put the law in force against them, seeing that they were ignorant youths, and also because she entertained a special goodwill towards the King of France, who had conferred so great an honour upon them. She therefore ordered that they should return the *insignia* and take care to have their names removed from the register of the Order. Henri IV is said to have wittily replied : " I wish the Queen would do me a corresponding favour in return. I should like her to appoint to the Order of King Arthur's Round Table any aspiring Frenchman whom she might see in England." That Order, so celebrated in fable, disappeared long ago, just as that of St. Michael, in consequence of the disturbed state of affairs, had sunk so low, that a French nobleman said : " The chain of St. Michael, which was formerly a distinction for very noble personages, is now a collar for every kind of animal."

In 1596, when the title of Count of the Holy Roman Empire was conferred on Thomas Arundel of Wardour, with remainder to all his male and female descendants, it was argued in the House of Lords that an action for theft would lie against any one who branded with his mark the sheep of another, and an action of deceit against any one who by scattering food before the sheep of another enticed them into his own flocks.[1] Queen Elizabeth is reported by Camden to have said, in connection with this case : " There is a close bond of affection between princes and their subjects. As it is not proper for a modest woman to cast her eyes on any other man than her husband, so neither ought subjects to look at any other prince than the one whom God has given them. I would not have my sheep branded with any other mark than my own, or follow the whistle of a strange shepherd." [2]

§ 470. During the lifetime of Queen Victoria diplomatic servants of the crown were not allowed to accept foreign decorations, except in the case of special complimentary missions to foreign sovereigns. In all such cases the Queen's permission to accept and wear had to be obtained ; the intention to confer had to be notified to the Secretary

[1] Camden, *Annales Rer. Angl.* Ludg., Batav., 1639, 734.

[2] The story is reproduced by Wicquefort in *L'Ambassadeur*, nouv. édit., augm., 1730, v. ii. 33, and Bk. ii. 99.

of State through the British Minister accredited at the court of the foreign sovereign or through his minister accredited at the court of Her Majesty. By an order of 1898 permission could only be obtained by the chief of a complimentary mission from Her Majesty, or by a military or naval attaché on the termination of his appointment.[1] In 1911 the regulation was relaxed in so far that private permission might be given to accept and wear on certain specified occasions, in a case where the decoration was more or less of a complimentary character. The rules of 1914 stated that permission in such cases would only be given on exceptional occasions, when in the public interest it was deemed expedient that acceptance should not be declined.

§ 471. The rules since 1930, however, have been more stringent, and members of the British Foreign Service cannot ordinarily expect to be allowed to accept and wear the decorations of foreign orders. The only exceptions which the rules allow are for the grant of unrestricted permission in the case of decorations conferred for distinguished services in the saving of life ; and for the grant of restricted permission, enabling the decorations to be worn only on certain specified occasions, in the case of foreign honours conferred upon (1) British ambassadors or ministers and their staffs, when the sovereign pays a state visit to the country to which they are accredited ; (2) members of special missions when the sovereign is represented at a foreign coronation, wedding, funeral or similar occasion ; or (3) any diplomatic representative when specially accredited to represent Her Majesty on such occasions (but not on the members of his staff). Permission is no longer granted to British ambassadors or ministers abroad to accept decorations when leaving their posts on final retirement.

On various occasions when a foreign Sovereign has made a general distribution among members of the local Diplomatic Corps of medals commemorating his coronation or jubilee or similar personal event, members of Her Majesty's Embassy, in order to avoid any appearance of discourtesy, have been given restricted permission to wear them.

It is not customary in England to offer a decoration to a foreign ambassador or other diplomatic agent on quitting his post.

§ 472. The Constitution of the United States prohibits persons holding any office of profit or trust under them from accepting,

[1] There is a well-known story that when Castlereagh, at Vienna in 1814, appeared in his ordinary dress-coat with only the riband of the Garter among a crowd of foreign ambassadors in full uniform and covered with orders, Talleyrand exclaimed, "*Ma foi! C'est distingué!*" Croker, *Correspondence and Diaries*, iii. 191, puts the scene at Châtillon.

without the consent of Congress, any presents, emoluments, office or title of any kind whatever from any king, prince or foreign state. The printed instructions of the Department of State are that the offer of presents, orders or testimonials shall be respectfully but decisively declined.[1]

§ 473. In 1834 a rule was made in the United Kingdom prohibiting all persons in H.M. employment, in diplomatic, consular, naval or military capacities, from receiving from a foreign Government any presents, whatever might be the occasion on which presents might be offered. This rule has occasionally been relaxed by special permission of the Secretary of State. But in the "good old times" presents in money to members of the Foreign Office were usually made on the occasion of the exchange of ratifications of an important treaty. Thus, in 1786, in connection with the commercial treaty between Great Britain and France, 500 guineas were given by the French Government, of which six-tenths went to the under-secretaries, one-tenth to the chief clerk, and three-tenths to the junior clerks. In 1793 the Russian Government made a present of £1000 in connection with conventions relating to commerce and to the war with France, of which the two under-secretaries received each £300, and the remainder was shared among ten other clerks. In the same year £500 were presented by the Sardinian chancery to the under-secretaries and clerks for the ratification of a treaty between King George III and the King of Sardinia, and similar sums were received from the German Emperor and the Spanish, Prussian and Sicilian chanceries, which were divided in the same proportions. Thus each under-secretary received in that year £900 from this source, in addition to his salary. Similar presents were made by the British Government to foreign chanceries in the King's name. The usual present to an ambassador on his retirement was of the value of £1000, and to an envoy of £500.[2]

§ 474. From this usage the transition to gifts intended to influence the course of politics in any particular country was easy. In 1727 the four Swedish commissioners who signed the Swedish accession to the Treaty of Hanover received 40,000 thalers from the English and French Courts.[3] This was probably in excess of the usual scale of such presents. Between 1765–6 England, France and Russia spent huge sums in endeavouring to influence the Swedish Diet. France alone, in eight months, distributed among its members nearly 1,830,000 *livres*, of which Denmark provided 100,000, but nevertheless France did not succeed in obtaining a majority in her favour.[4]

[1] Foster, *op. cit.*, 144, 150.
[2] J. Q. Adams, *Memoirs*, iii. 527, cited by Foster, *op. cit.*, 147.
[3] Miruss, *Europäisches Gesandschaftsrecht*, 200.
[4] Flassan, vi. 560.

The practice of giving presents of this character upon the exchange of the ratifications of treaties and conventions, or to ambassadors or ministers of foreign courts sent to the King of England on missions of congratulations or condolence, or to the permanent representatives of foreign Powers on their taking leave on the termination of their appointments, was abolished in 1831 by a circular from Lord Palmerston.[1]

The United States, for a short period, from 1790 to 1793, adopted the practice of giving a gold chain to a foreign diplomatic agent on the termination of his appointment.[2]

§ 475. At the Congress of Vienna it was agreed that the plenipotentiaries should receive neither presents nor decorations, but each of the Powers concerned gave presents to Gentz, the principal secretary, and to others who had helped in drawing up the protocols. On the proposal of the British it was decided to present Gentz with a snuff-box and 800 gold ducats, to four of his assistants snuff-boxes and 500 ducats each, and to two more each 100 ducats, or 3000 ducats in all. This sum would come to over £1200. When the ratifications were exchanged of the treaty of peace of July 20, 1814, between France and Spain, presents, consisting of a gold snuff-box with a portrait of Louis XVIII, worth 15,000 francs, were provided for Labrador, the Spanish plenipotentiary, and a similar one, with the portrait of Ferdinand VII, for Talleyrand, besides £1000 (90,000 reals) for the clerks of the French and Spanish ministries for foreign affairs. On June 8, 9 and 10, 1817, a treaty was signed between Spain and the five Great Powers with respect to the succession to Parma on the death of the ex-Empress Marie-Louise, followed by the accession of Spain to the treaties of Vienna and Paris (of 1815). On this occasion the Spanish Minister of State received five gold snuff-boxes with portraits of the respective sovereigns, and Fernan Nuñez, the ambassador in London, received the same number. To the clerks of the Spanish Ministry of State a sum of 450,000 reals (10,000 ducats) was given for the treaty of June 10 (Parma succession). Besides these gifts, various decorations of the order of Carlos III were distributed. As the English Foreign Office neither gave nor received decorations, a sum of £1000 was given by the British embassy to the secretaries of the Spanish embassy, a corresponding amount being assigned to the secretaries of the British embassy. Presents to the amount of 90,000 reals (£1000) were also given to the chanceries of the five Great Powers. Care was taken that the decorations given on both sides to the chancery clerks should be of corresponding class, a matter always considered to be of the highest importance even in modern days, when such trinkets are exchanged.[3] At the end of 1817 the amounts of the gifts in money bestowed by the

[1] Hertslet, *Old Foreign Office*, 174–6.
[2] Foster, *op. cit.*, 143.
[3] Villa-Urrutia, iii. 381, 382, *n.*; 448, 483.

contracting parties on the occasion of the conclusion of treaties, of royal marriages, of congresses and other conventions, and since then instead of jewellers' gold and silver work, mutually fixed in money, were divided among the officials of the state chancery at Vienna. The sum accumulated up to that date was estimated at 28,000 ducats.[1]

§ 476. At the Congress of Teschen, in 1779, Repnin and Breteuil, the representatives of the two mediating Powers, each received a portrait of Maria Theresa set in diamonds. Frederick gave to Repnin his portrait, set in diamonds, estimated at 20,000 thalers, and a very fine snuff-box to Breteuil, but of less value.[2] Schmelzing states that Metternich, in November 1818, received the Grand Cross of the Netherlands Lion from the hands of the King of Holland. This was the twenty-fifth order with which His Highness was decorated.

[1] Schmelzing, ii. 208.
[2] Temperley, *Frederick the Great, etc.*, 203.

CHAPTER XXI

TERMINATION OF A MISSION

§ 477. The mission of a diplomatic agent may come to an end during his lifetime in any one of the following ways :

(1) By the expiration of the period for which he has been appointed, as, for instance, to a congress or a conference, when that comes to an end ; or, if he has been appointed *ad interim*, by the return of the minister *en titre*. A formal recall is in these cases unnecessary.

(2) When the object of the mission has been attained, as in the case of a ceremonial mission ; or by the completion or failure of a negotiation for which he has been specially appointed. A formal recall is in this case unnecessary.

(3) By his recall on his appointment elsewhere, or by his resignation and its acceptance by his own government. By British rules the head of a mission is appointed only for five years, and his appointment ceases at the end of that time, unless it be specially continued. It is also a rule that every member of the diplomatic service must retire on attaining the age limit, though exceptions have occasionally been made to this rule.

(4) By his recall, owing to the dissatisfaction of his own government, or at the request of the government to which he is accredited. To avoid scandal, gossip or loss of reputation to the official who has been so unfortunate as to incur the displeasure of his official chief, it is usual to intimate to him that he may come away on leave of absence, or that his presence is desired at home in order that he may be consulted.

(5) By the decease of his own sovereign or of the sovereign to whom he is accredited. The death of a president of a republic does not produce this effect, nor does the expiration of the term of office of a president.[1] In either of the two former cases fresh credentials are necessary, unless the letter of the minister's new sovereign notifying his accession expressly states that the minister

[1] But when the French President, M. Thiers, resigned in 1873, and was succeeded by President MacMahon, the German Government insisted on new credentials, and its example was followed by Austria, Italy and Russia (Valfrey, *La diplomatie française*, ii. 190). Great Britain and other countries did not.

is to be continued. During the interval which may elapse the minister's ordinary relations with the authorities of the country go on as usual, and if he is engaged on some particular negotiation he can continue to carry it on *sub spe rati*. As a chargé d'affaires is accredited only to the minister for foreign affairs, the death of a sovereign does not affect his position. Neither does the retirement of a minister for foreign affairs, and the appointment of a new one, in either country.

(6) If for some violation of international law with regard to himself, or on account of some unexpected incident of serious gravity, the agent assumes the responsibility of breaking off relations. At the present day, when all capitals where diplomatists reside are connected by telegraph, such a case can hardly occur.

(7) When the government to which he is accredited, for any reason, sends him his passports without waiting for his recall. This may happen either when, in consequence of actions committed by him, the government to which he is accredited no longer regards him as *persona grata*, or when in consequence of offence given by his own government the other resolves to break off relations. Such a rupture of relations is not necessarily followed by war. If a war has become inevitable, the accredited minister of one or the other party is more often instructed, after presenting an *ultimatum*, to ask for his passports. The minister of the other party is usually instructed to take the same step, if his passports have not already been sent to him.

(8) By a change in the rank of the minister. This more often occurs by way of an increase of rank, as when an envoy is promoted to be ambassador, a minister resident to be envoy, or a chargé d'affaires *en titre* to be minister resident. This increase of rank may be permanent; on the other hand, it may only be temporary, as, for instance, when an envoy is raised to the rank of ambassador for the purpose of investing the sovereign with the insignia of a high order, or to attend such ceremonies as those of a coronation, Royal marriage, funeral, or some important national celebration. In the latter cases, once the event is over, the diplomatic agent simply reverts to his original rank.

(9) By the outbreak of war between the two states.

(10) By the deposition or abdication of the sovereign of either state.

(11) By the replacement of a monarchy by a republic, or a republic by a monarchy, in either state.

(12) By the extinction of either state.

§ 478. Whatever may be the causes that lead to the termination of a mission, the minister remains in possession of the immunities and privileges attached to his public character until he leaves the country to which he has been accredited within such reasonable time as may be necessary to complete and dispose of the affairs of his mission. (See §§ 318, 333.)

The Pan-American Convention concerning diplomatic officers, signed at Havana, February 20, 1928, lays down for the signatory states the following rules :

" Art. 25.—The mission of the diplomatic officer ends—

(1) By the official notification of the officer's government to the other government that the officer has terminated his functions ;

(2) By the expiration of the period fixed for the completion of the mission ;

(3) By the solution of the matter, if the mission had been created for a particular question ;

(4) By the delivery of passports to the officer by the government to which he is accredited ;

(5) By the request for his passports made by the diplomatic officer to the government to which he is accredited.

In the above-mentioned cases, a reasonable period shall be given the diplomatic officer, the official personnel of the mission, and their respective families, to quit the territory of the state ; and it shall be the duty of the government to which the officer was accredited to see that during this time none of them is molested nor injured in his person or property.

Neither the death or resignation of the head of the state, nor the change of government or political regime of either of the two countries shall terminate the mission of the diplomatic officers."

§ 479. When an ambassador is about to quit his post, whether on account of his being transferred elsewhere, or because he is being retired on account of age, or at his own request, he asks for a farewell audience in order to present his letters of recall. This is done through the minister for foreign affairs, by a note enclosing a copy of the letter of recall. Occasionally the farewell audience is arranged spontaneously without any formal request from the ambassador—for instance if he has become a familiar character in the country concerned and the imminence of his departure is common knowledge. The audience is usually a private one. But at distant posts, and if he is being transferred elsewhere, he may have to take his departure before the letter of recall can reach him. In this case it will be a matter within his own discretion whether

to ask for a farewell audience. Unless his new appointment has been already gazetted at home it may be better not to mention the probability of his not returning. In such circumstances his letter of recall will be delivered by his successor at the same time as the latter presents his own credentials. The same course will be followed when he has been recalled in consequence of the dissatisfaction of his own government.

§ 480. On receiving the letter of recall, the sovereign or president of republic to whom he has been accredited customarily addresses to the agent's own sovereign or president what is termed a recredential, expressing his satisfaction with the agent's conduct and regret at his departure. (See § 127.)

The agent does not ask for a farewell audience if he breaks off relations himself, or if his own government resolves on a rupture of diplomatic intercourse. If the latter is the cause of his return home, it may happen that he is instructed to come away without taking leave.

§ 481. If the mission terminates by the death of the minister at his post, and if he is to be buried in the country where he was accredited, it was formerly usual to offer a public funeral in his honour, the religious ceremony depending on local law and usage. At the present day all ceremonial marks of respect befitting the representative character of the deceased would doubtless be shown on such an occasion. An exceptional mark of respect has sometimes been paid by conveying the body of the deceased to his own country on a warship, or by a state procession starting from the mission of which the deceased was chief (see the end of this section for the ceremonial observed for the funeral of the Netherlands ambassador in London in 1952).

If his family desire to remove the corpse for interment elsewhere, their wishes must be respected, but in such a case they should be made known without delay, before temporary interment has taken place on the spot, as the laws of most countries render it difficult and troublesome to obtain an order for exhumation.

The senior surviving member of the mission will at once become chargé d'affaires, and it will be his duty to ensure that no political documents or cyphers are left with the private papers of the deceased, which latter devolve on his legal representatives. It is by no means desirable to admit the intervention of a colleague of the deceased, even though he be the representative of a friendly or allied Power, as seems to be assumed by many writers will be

done. The representative of another Power has no such right. Nor has the local authority any right to meddle with the papers.

Questions regarding the succession to the personal property of the deceased must be regulated by the laws of his own country. It may be prudent for a diplomatist to make one of his staff an executor of his will in respect of his personal property in the country. His movable property can be re-exported without the payment of customs duties, or what are known in some countries as *droits d'extraction*. These rules, of course, do not apply when the deceased was a subject or citizen of the country where he was accredited. The succession to any real property which the deceased may have possessed there, and any legal formalities are, of course, regulated by the *lex loci rei sitæ*.

It is customary to accord to the widow and family of the deceased minister, for a reasonable time, the immunities which they enjoyed during his lifetime.[1]

The Pan-American Convention concerning diplomatic officers, signed at Havana, February 20, 1928, lays down for the signatory states the following rule: "Article 24.—In case of death of the diplomatic officer, his family shall continue to enjoy the immunities for a reasonable term, until they may leave the state."

Ceremonial observed on the occasion of the funeral of the Netherlands Ambassador in London, Baron Edgar Michiels van Verduynen, on May 16, 1952

§ 482. The troops in the Procession assembled in the neighbourhood of the Netherlands Embassy in Portman Square. The Bearer Party, consisting of one officer and eight other ranks of the Second Battalion Scots Guards, arrived at the Embassy at 2.30 P.M. to carry the coffin from the Embassy to the gun-carriage awaiting it.

At 3 P.M. the Procession moved off in the following order:

Two companies of the Second Battalion Scots Guards.
Regimental Band of the Scots Guards.
The Drums and Pipes of the Second Battalion Scots Guards.
Gun Carriage, the coffin covered with the Netherlands National Flag, with Bearer Party and Pall Bearers.
Mourners on foot.
One Division of the Life Guards.

[1] The substance of these paragraphs is largely taken from de Martens-Geffcken, chap. ix.

The Gun Carriage was provided by the King's Troop, Royal Horse Artillery, who also fired a salute of nineteen guns in Hyde Park, beginning as the Procession left the Embassy.

The route followed was Portman Square, Upper Berkeley Street, Great Cumberland Place, Marble Arch, East Carriage Road, South Carriage Road, Knightsbridge Barracks. At Knightsbridge Barracks there was a Guard of Honour of two officers and fifty rank and file from the First Battalion Grenadier Guards, together with the Regimental Colour and the Band of the Regiment and the corps of Drums of the Battalion. The coffin was transferred by the Bearer Party from the Gun Carriage to a motor-hearse for conveyance to Northolt Airport and the Netherlands National Anthem was played as it moved off.

Persona non grata

§ 483. Numerous instances of a diplomatic agent becoming *persona non grata* are recorded in the books, and others are known to have occurred without being made public. In European countries such matters have often been covered up with official secrecy. In the present chapter the term is used to denote cases in which a diplomatic agent, after having been accepted and having entered upon his functions, has in some way given offence to the government to which he is accredited, so as to induce them to ask for his recall. In some instances the request has been granted, with more or less readiness; in others it has been declined. In the latter case it has usually happened that the offended government has informed the agent that no further official intercourse would be held with him and has sent him his passports.

Request for Recall

§ 484. The following are instances in which a request for the recall of a diplomatic agent having been made, the request was complied with:

In 1792 *M. E. C. Genest* was appointed French minister to the United States. On his arrival, and before presenting his credentials, he began to fit out privateers to prey on British commerce, in violation of United States neutrality. French consuls, sitting as courts of admiralty, condemned prizes, some of them being captured in United States waters. When remonstrated with, he expressed contempt for the opinions of the President and questioned his authority. Mr. Morris, the United States represen-

tative in Paris, was instructed to ask for Genest's recall, which was immediately granted.[1] The French Republican Government took advantage of the occasion to ask for the withdrawal of *Mr. Morris*, who had taken part in the effort to effect the escape of Louis XVI from Paris. This was at once conceded.[2]

§ 485. In 1804 the Spanish Government asked for the recall of *Mr. C. Pinckney*, the United States minister at Madrid. The reason assigned was a threatening note which he had addressed to the Spanish Minister of State. This note contained an intimation that he would inform American consuls of the critical state of the relations between the two countries, and direct them to notify American citizens to be ready to withdraw with their property. Mr. Pinckney was instructed to come away on leave of absence.[3]

§ 486. In 1809 *Mr. E. J. Jackson*, British minister at Washington, in a correspondence with the Department of State, respecting the repudiation by the British Government of an arrangement entered into by his predecessor, Mr. Erskine, for the settlement of the *Chesapeake* case and the withdrawal of the Orders in Council, intimated that when the agreement was concluded the United States Government were fully aware that Mr. Erskine had exceeded his instructions. The Secretary of State had already protested against this insinuation, and, on its being renewed, wrote to Mr. Jackson that no further communication would be received from him. Shortly afterwards the United States minister in London was instructed to ask for Mr. Jackson's recall. This was consented to by the Secretary of State for Foreign Affairs, who, however, maintained that Mr. Jackson did not appear to have committed any intentional offence agianst the United States Government.[4]

§ 487. In 1829 the United States Government had come to the conclusion that the prejudices entertained by a portion of the inhabitants of Mexico against their envoy, *Mr. Poinsett*, had greatly diminished his usefulness, and had decided to authorise his return home, if it appeared to him expedient. But before instructions to this effect could be despatched, the Mexican chargé d'affaires presented a request for his recall, which was promptly granted, and a chargé d'affaires was appointed to Mexico in place of a minister.[5]

§ 488. In 1846 *Mr. Jewett*, the United States chargé d'affaires

[1] Moore, iv. 485. [2] *Ibid.*, iv. 489. [3] *Ibid.*, iv. 490.
[4] *Ibid.*, iv. 514. [5] *Ibid.*, iv. 491.

at Lima, became involved in a dispute with the Peruvian Minister for Foreign Affairs, in the course of which he characterised a decree which had been officially communicated to him as "a compound of legal and moral deformities presenting to the vision no commendable lineament, but only gross and perverse obliquities." He also omitted to address the minister as "Excellency" or "Honourable" in his written communications. He was recalled in consequence of a reiterated request from the Peruvian Government. In the despatch to Mr. Jewett, the Secretary of State laid it down that "if diplomatic agents render themselves so unacceptable as to produce a request for their recall from the government to which they are accredited, the instances must be rare indeed in which such a request ought not to be granted. To refuse it would be to defeat the very purpose for which they are sent abroad, that of cultivating friendly relations between independent nations. Perhaps no circumstances would justify such a refusal unless the national honour were involved." [1]

§ 489. In 1863 *M. H. Segur*, minister of Salvador at Washington, was alleged to have attempted to violate the neutrality laws of the United States during a conflict between Salvador and two other Central American republics. Without stating their grounds of objection, the United States Government, through their minister to the Central American States, intimated that it would be agreeable if M. Segur could be relieved of his official functions and an unobjectionable person appointed in his place. The minister, encountering some unwillingness on the part of the Salvadorean President, said that matters had come to the knowledge of the United States President which rendered M. Segur's recall "necessary in the highest degree." The Foreign Minister of Salvador thereupon replied that "the presence of M. Segur being required" in Salvador, the President had been pleased to authorise his recall in order that he might "render important services." [2]

§ 490. In 1871 Mr. Fish, the United States Secretary of State, informed the United States minister at St. Petersburg that the conduct of *M. Catacazy*, Russian minister at Washington, both officially and personally, had for some time past been such as "materially to impair his usefulness to his own government and to render intercourse with him, for either business or social purposes, highly disagreeable"; that in these circumstances the President was of opinion that the interests of both countries would be promoted if the head of the Russian legation were changed;

[1] *Ibid.*, iv. 492. [2] *Ibid.*, iv. 500.

and it was hoped that an intimation to this effect would be sufficient. The President eventually consented to tolerate M. Catacazy until after the intended visit of the Grand Duke Alexis to the United States. On this occasion the Secretary of State reaffirmed the United States view that an official statement that a diplomatic agent had ceased to be *persona grata* is sufficient for the purpose of obtaining his recall. " The declaration of the authorised representative of the Power to which an offending minister is accredited is all that can properly be asked, and all that a self-respecting Power can give." Finally, M. Catacazy wrote to the Secretary of State that he had received orders to sail for Russia immediately after the end of the Grand Duke's tour. Mr. Fish replied that this was understood to be a practical compliance with the request for his recall.[1]

§ 491. In 1898 a translation of a private letter from *Señor Dupuy de Lôme*, the Spanish minister at Washington, to a Spanish journalist friend in Cuba, which had been abstracted from the mails at Havana, was published in a New York paper.[2] The letter described President McKinley as " weak and a bidder for the admiration of the crowd, besides being a would-be politician (*politicastro*) who tries to leave open a door behind himself while keeping on good terms with the jingoes of his party," and it intimated that it would be a good thing for Spain " to take up, even if only for effect, the question of commercial relations." The United States minister at Madrid was instructed to ask for his immediate recall, on the ground that the letter contained " expressions concerning the President of the United States of such a character as to end the minister's utility as a medium for frank and sincere intercourse between this country and Spain." The minister sought an interview with the Minister of State, who replied that the Spanish Government sincerely regretted the indiscretion of their representative, who had already offered his resignation. The United States minister subsequently addressed a note to the Minister of State, reminding him that he had not yet had the satisfaction of receiving any formal indication that the Spanish Government regretted and disavowed the language and sentiments employed. The Minister of State replied that at the interview referred to he had stated that the Spanish Government sincerely regretted the incident, adding that " the Spanish ministry, in accepting the resignation of a functionary whose

[1] Foster, *A Century of American Diplomacy*, 433.
[2] Johnson, *America's Foreign Relations*, ii. 249.

services they had been utilising and valuing up to that time, left it perfectly well established that they did not share, and rather, on the contrary, disauthorised, the criticisms tending to offend or censure the chief of a friendly state, although such criticisms had been written within the field of personal friendship, and had reached publicity by artful and criminal means." Two days later the Spanish Government appointed a new minister.[1]

§ 492. In 1915 the United States Government requested the recall of *Dr. Constantin Dumba*, the Austro-Hungarian ambassador at Washington, who admitted that he had proposed to his government plans for instigating strikes in American munition factories. This information had reached the United States Government through a copy of a letter borne by a United States citizen, and a further charge against the ambassador was that he was employing a United States citizen, protected by a United States passport, as a secret bearer of official despatches through the lines of the enemy of Austria-Hungary. Dr. Dumba was therefore no longer acceptable to the United States Government, who had no alternative but to ask for his recall on account of his improper conduct, which they did with deep regret, while assuring the Austro-Hungarian Government that they sincerely desired to continue the existing cordial and friendly relations.[2] On his departure, Dr. Dumba was, at the request of the United States Government, granted safe conduct by the Allied Powers to enable him to return to his own country. (See § 428.)

§ 493. In 1927 the French Government addressed a protest to the Soviet Government against the action of *M. Rakovsky*, their ambassador at Paris, in signing a public declaration, which, in the event of any future war against the Soviet Union, incited the workers of capitalist countries to work for the defeat of their governments, and their soldiers to join the ranks of the Red Army. This action, the French Government alleged, was a flagrant violation of engagements undertaken by the Soviet Government at the time of their recognition in 1924. The Soviet Government having disavowed the action of M. Rakovsky, the latter afterwards made a communication to the Press with the evident intention of aligning particular interests against the policy of the French Government in regard to the settlement of Russian debts. The French Government thereupon deemed it impossible,

[1] Moore, iv. 507 ; *Foreign Relations of the United States*, 1898, 1007.
[2] *Diplomatic Correspondence between the United States and Belligerent Govts.—Neutral Rights and Commerce*, x. 361.

in the interests of the two governments and of the success of their negotiations, that M. Rakovsky should continue his ambassadorial functions at Paris, and as the Soviet Government declined to take the initiative in recalling him, they formally demanded his replacement by a more suitable representative. In complying with this request, the Soviet Government asked for the *agrément* of the French Government to the appointment of M. Dovgalevsky as his successor.[1]

§ 494. In a more recent case the Soviet Government objected, successfully, to the return to his post of the United States ambassador in Moscow, on the ground that he had made allegedly disparaging remarks about the Soviet Union publicly while on leave.

§ 495. The following are instances in which the recall of a diplomatic agent was asked for and refused, whereupon his dismissal followed or he was no longer received :

In 1804 the *Marqués de Casa Yrujo*, Spanish minister to the United States, proposed to the editor of an American newspaper to oppose certain measures and views of the government, and advocate those of Spain. The government censured his action, as constituting a violation of an Act of Congress known as the " Logan Statute." [2] He defended his conduct in a note, which he caused to be published in the newspapers. On the ground of this attempt to tamper with the Press his recall was asked for, through the United States minister at Madrid. The Spanish Government replied that he had asked leave of absence to return home at a season convenient for making the voyage, and the President acquiesced in their request to let the object sought be thus accomplished. The minister remained, however, in the United States, and even returned to Washington. He was, therefore, informed that his remaining was " dissatisfactory " to the President, who expected him to leave the country as soon as the season permitted. In reply he maintained that he was still in possession of all his rights and privileges, and stated that he intended to remain in Washington as long as it might suit " the interests of the King " and his own " personal convenience." He followed this up with a somewhat intemperate protest, which he communicated to his colleagues and also caused to be published in the Press. The United States Government sent printed copies, together with a statement of the facts, to their representative at Madrid, instruc-

[1] *Le Temps*, Oct. 15, 1927.

[2] The violation of the Logan Act was alleged to have been committed by certain American lawyers, who had furnished Yrujo with a legal opinion adverse to the view of the United States Government (H. Adams, *History of the United States*, ii. 259).

ting him to lay them before the Spanish Government. To their surprise, the Minister of State not only defended Casa Yrujo, but also declared that the communication of the papers without explanation was a disrespectful mode of addressing the Spanish Government. Yrujo's official relations with the Department of State ceased, and another Spanish diplomatist was received as chargé d'affaires.[1]

§ 496. In 1847 the Brazilian Government pressed for the recall of *Mr. Wise*, the United States minister at Rio. As this would, by implication at least, have involved a censure on his action in connexion with the imprisonment of a lieutenant and three sailors of the United States navy, the President declined to accede to the request. At the same time, the Brazilian diplomatic agent was informed that the United States minister having some time previously asked to be relieved, his request would be granted, and he would quit Rio during the following summer.[2]

§ 497. The Paris revolution of 1848 led in Spain to the adoption of reactionary measures by the government, and the reports received by Lord Palmerston from the British minister, *Mr. Bulwer*, induced him to recommend "earnestly to the Spanish Government the adoption of a legal and constitutional course of government." After holding up as a warning to the Spanish Cabinet the recent fall of the French king, he added, "It would then be wise for the Queen of Spain, in the present critical state of affairs, to strengthen the Executive by enlarging the basis upon which the administration is founded, and by calling to her councils some of those men who possess the confidence of the Liberal party." Mr. Bulwer addressed an official Note to the Duque de Sotomayor, Minister for Foreign Affairs, enclosing a copy of Palmerston's despatch, and advising the Spanish ministry "to return to the ordinary form of government established in Spain without delay." Sotomayor returned to him both documents, accompanied by a strongly worded note, expressing resentment at this interference in the domestic affairs of the country. He quoted also a paragraph which seemed to indicate that the contents of Bulwer's note were known outside, even before it reached the Minister of State. Bulwer replied, denying that the journal in question had any knowledge of his note, and justifying his own action. This drew from Sotomayor a further response, refusing to recognise him as competent to discuss subjects affecting the inter-

[1] Moore, iv. 508; H. Adams, *op. cit.*, ii. chaps. xi. and xvi.
[2] Moore, iv. 495.

nal policy of Spain. At the same time, he despatched instructions to the Spanish minister in London to ask for Bulwer's recall, which Palmerston refused. The minister repeated the request in writing, but withdrew it on the following day, in consequence of fresh instructions from Madrid. Shortly afterwards, a fresh insurrection broke out in Madrid, and Bulwer addressed another note to Sotomayor, justifying the original note that had given so much offence, and complaining of the hostile language of the government Press. Sotomayor sent him a private letter, suggesting that he should anticipate as much as possible the leave of absence which he was contemplating. Bulwer replied that he could not "hasten his departure in consequence of a system of slander and libel to which no British minister or gentleman could make the slightest concession." Thereupon Sotomayor sent him his passports, and despatched an agent to London to offer explanations to the British Government, but Palmerston declined to receive him, as he was not provided with any credentials and possessed no diplomatic character. Isturíz, the Spanish minister, then presented a formal note to Palmerston, enclosing copies of his instructions, and adding that the Spanish ministry were convinced that Bulwer had been making use of his official position in favour of a party which aimed at obtaining possession of power. This had led them to ask for his recall, but as that was refused, the dispute had ended by the delivery of his passports to the British minister. Palmerston replied, calling on him to present in writing forthwith a statement of the grounds on which the Spanish Government had proceeded. Two more argumentative notes were exchanged, in the last of which Isturíz was informed that it was impossible for the Queen to continue to receive him as the minister of the Queen of Spain, or for Her Majesty's Government to continue to hold official intercourse with him. Isturíz thereupon quitted England, and diplomatic intercourse between the two countries was interrupted until its renewal in the early part of 1850 at the request of the Spanish Government.[1]

§ 498. In 1849 *M. Poussin*, French minister at Washington, in the course of a correspondence respecting the detention by Commander Carpenter, U.S.N., of a French ship until his claim for her salvage was satisfied, asked that the United States Government should disavow his conduct and reprove him. The Secretary of State, in transmitting Commander Carpenter's explanations, declined to comply with this demand. On this M. Poussin wrote :

[1] Correspondence presented to Parliament, 1848.

" His [Comr. Carpenter's] opinions have little interest in our eyes, when we have to condemn his conduct. I called on the Cabinet of Washington, Mr. Secretary of State, in the name of the French Government, to address a severe reproof to that officer of the American Navy, in order that the error he has committed, on a point involving the dignity of your national marine, might not be repeated hereafter. From your answer, Mr. Secretary of State, I am unfortunately induced to believe that your government subscribes to the strange doctrines professed by Commander Carpenter . . . ; and I have only to protest, in the name of my government, against these doctrines."

The Secretary of State, in reply, acquainted him that the correspondence had been sent to the United States Minister in Paris, for submission to the French Government. As the latter did not consider that it furnished sufficient ground for M. Poussin's recall, the President caused him to be informed that the United States Government would hold no further correspondence with him as the minister of France, and that this decision had been made known to his government. M. de Tocqueville, the French minister for foreign affairs, who had conducted the correspondence with the Secretary of State in reference to this affair, shortly afterwards left office, and his successor dropped the matter. No interruption took place in the diplomatic intercourse of the two countries.[1]

§ 499. In 1852 the United States Government asked for the recall of *Señor Marcoleta*, the Nicaraguan minister, which was refused by that Republic. The Secretary of State then informed Señor Marcoleta that instructions had been sent to Mr. Kerr, the United States minister to Central America, to renew the request for his recall and the appointment of a successor, and that meanwhile no communication could be received from him in his official capacity. The charge against him was that he had communicated to the Press the contents of certain proposals in regard to an interoceanic canal, which had been shown to him unofficially and in confidence. He not only endeavoured to frustrate the negotiation, but also boasted of his influence with certain senators and threatened to use it. The Secretary of State wrote on this occasion to the United States minister at Nicaragua that " such a request can never be refused between governments that desire to preserve amicable relations with each other ; for a minister whose recall has been asked loses, by that fact alone, all capacity for usefulness. If previously unacceptable, he must become doubly so by being retained in office in opposition to a distinct wish expressed for his

[1] Moore, iv. 530.

recall. . . . The gravity of the step is a sufficient safeguard against its being rashly taken." Mr. Kerr was told that, without stating why the recall was asked for, he was at liberty to explain why such a statement could not be made with propriety. A year afterwards, however, a new President of the United States having been elected, Señor Marcoleta presented fresh credentials as minister from Nicaragua, and continued to hold that position until April 1856.[1]

§ 500. In 1855, during the Crimean War, the United States Government complained to the British Government that British officials and agents had organised and were carrying out in the United States an extensive plan for enlisting recruits for the British army, in violation of the neutrality laws and in infringement of the sovereign rights of the United States. The British Secretary of State disclaimed any intention of sanctioning a violation of the United States laws by British officials, but the correspondence shows that his views of what might legally be done in that way differed from those of the United States Government. Prosecutions begun against some persons alleged to be acting as agents produced a written confession by one of the accused, implicating the British minister, *Mr. Crampton*, and the British consuls at New York, Cincinnati and Philadelphia. The United States Secretary of State thereupon asked for the recall of the minister and the removal of the consuls. Lord Clarendon, in reply, communicated declarations of the officials concerned, denying that they had committed the acts attributed to them, and expressed the hope that this would satisfy the United States Government. The latter, being unable to accept this conclusion, discontinued further intercourse with Mr. Crampton and sent him his passports (the exequaturs of the three consuls were also revoked). Lord Clarendon subsequently replied that the British Government retained their high opinion of the zeal, ability and integrity of Mr. Crampton, and believed that in many important particulars the President had been misled by erroneous information, and by the testimony of witnesses unworthy of belief. Such a conflict of opinion on such a matter must necessarily be the subject of serious deliberation by both parties. If Her Majesty's Government had been convinced that Her Majesty's officers had in defiance of their instructions violated the laws of the United States, they would have removed these officers. In the present case Her Majesty's Government were bound to accept the formal and repeated declaration of the President of his belief that the British officials in

[1] *Ibid.*, iv. 497.

question had violated the laws of the Union, and were on that account unacceptable organs of communication, and " they could not deny to the United States a right similar to that which, in a parallel case, Her Majesty's Government would claim for themselves, the right, namely, of forming their own judgment as to the bearings of the laws of the Union upon transactions which have taken place within the Union." The British Government, " while regretting a proceeding on the part of the President of the United States, which cannot but be considered as of an unfriendly character," did not suspend relations with the United States minister in London, and in January 1857 Lord Napier was appointed to represent Great Britain at Washington.[1]

§ 501. In 1875 *Mr. Russell*, United States minister at Caracas, addressed a despatch to his government, in which he said : " I feel bound to add that there are, in my opinion, only two ways in which the payment of so large an amount can be obtained. The first is by sharing the proceeds with some of the chief officers of this government ; the second by a display, or at least a threat, of force. The first course, which has been pursued by one or more nations, will, of course, never be followed by the United States. The expediency of the second it is not in my province to discuss." This despatch having been published in a report to the House of Representatives, was resented by the Venezuelan Government, who thereupon sent Mr. Russell a note breaking off official relations with him, and informing him that the ground for this action was that in the despatch referred to " an opinion is advanced and statements are made which constitute a most violent attack, because they insult the administration most grievously, besides involving a falsehood." Mr. Russell's passports were sent to him a fortnight later. The Venezuelan Government did not at first offer any explanation to the United States of the step they had taken, and the Secretary of State, therefore, wrote to the Venezuelan minister at Washington, informing him that unless he should have been authorised to make one which might be regarded as satisfactory, the dignity of the United States Government would require that his relations with it should also terminate. The minister at first replied that he was instructed to offer the required explanation, but was unable to do so because of the loss of important papers by shipwreck. Three months later he wrote that he was instructed to withdraw and cancel the note to Mr. Russell breaking off relations with him. Later he communicated

[1] *Ibid.*, iv. 534 ; *Br. and For. State Papers*, xlvii. and xlviii.

instructions from his government, intimating that Mr. Russell would no longer be *persona grata*. The latter eventually resigned, but, having proceeded to Caracas, with the authorisation of the Department of State, to present his letters of recall, the Venezuelan minister for foreign affairs declined to receive him.[1]

§ 502. In 1888 *Lord Sackville*, British minister at Washington, received a letter purporting to come from a naturalised citizen of English birth, named Murchison, asking for advice as to the way he, and many other individuals in his position, should vote in the pending election of the President. Lord Sackville replied that "any political party which openly favoured the mother country at the present moment would lose popularity, and that the party in power was fully aware of the fact"; that with respect to the "questions with Canada, which have been unfortunately re-opened since the rejection of the [fisheries] treaty by the Republican majority in the Senate, and by the President's message alluded to [by the writer of the letter], allowance must be made for the political situation as regarded the presidential election," and he enclosed an extract from a newspaper in which electors were distinctly advised to vote for Mr. Cleveland. This letter of Lord Sackville found its way into the newspapers, and caused a lively discussion in the Press. The *New York Tribune* published a report of an interview with him, in which he was represented to have said said that "both the action of the Senate and the President's letter of retaliation were for political effect," but in a private note to Mr. Bayard, the United States Secretary of State, he said that his words were so turned as to impugn the action of the executive, and added: "I beg to emphasise that I had no thought or intention of doing so, and I most emphatically deny the language which is attributed to me by other papers of 'clap-trap' and 'trickery' as applied to the government to which I am accredited." Mr. Bayard telegraphed to the United States minister at London, complaining of the letter and of the language used at interviews with newspaper reporters, and suggested that Her Majesty's Government should take appropriate action without delay. Lord Salisbury declined to act until he should be in receipt of the precise language of Lord Sackville and his explanation. Lord Salisbury appears to have said also that the minister's recall would end his diplomatic career, which would not necessarily be the case if he were dismissed by the United States, for which there were precedents. Mr. Bayard thereupon addressed a note to Lord Sack-

[1] Moore, iv. 535.

ville, informing him, by the instructions of the President, that he was convinced that "it would be incompatible with the best interests and detrimental to the good relations of both governments that you should any longer hold your present official position in the United States," and enclosing a passport.[1]

§ 503. In 1905 *M. Taigny*, French minister at Caracas, in a note to the Venezuelan Government, protested against the act of the Venezuelan authorities in summarily closing, under a decree of September 4, 1905, the offices of the French cable company at Caracas and elsewhere, constituting, in the view of the French Government, a violation of the rights of the company. In their reply the Venezuelan Government asserted that the matter was one solely within the competence of the local authorities, and that to treat it through the diplomatic channel was derogatory to Venezuelan sovereignty; that the use of the diplomatic channel in such matters was only justified where there was denial of justice; this was not the case, a judicial decision had been rendered as the outcome of legal procedure. Further, the company had been the accomplice of those concerned in the last civil war; and in supporting the company the French Government appeared to assume the responsibilities incurred by the company. The note ended by saying that the Venezuelan Government would not treat further "des affaires d'un caractère diplomatique et de bonne amitié avec le gouvernement français par l'intermédiaire de son représentant actuel à Caracas, l'honorable M. Olivier Taigny, jusqu'à ce qu'il ait reçu les explications satisfaisantes qu'exige la bonne amitié entre les nations qui la cultivent avec respect et convenance mutuels." The French Government requested the withdrawal of the final part of this note, regarding the interruption of all negotiations until Venezuela had obtained satisfaction. The Venezuelan Government thereupon suggested the withdrawal of both notes, and this was agreed to by the French Government on condition that an agreement was come to between Venezuela and the company. But in declaring, through the intermediary of the United States minister, that its note would be withdrawn, the Venezuelan Government added that it was hoped that the French Government would send a representative with whom more agreeable relations could be entertained. M. Taigny, however, remained in charge; but on the occasion of the New Year official reception of the diplomatic corps by the President he was not invited to attend, and it

[1] *Papers relating to the Foreign Relations of the U.S.*, 1888, pt. ii.; *Br. and For. State Papers*, lxxxi. 479; Moore, iv. 536.

appeared that only on condition of his recall would the Venezuelan Government resume official relations. In the meantime the last remaining office of the company was closed. The French Government thereupon announced M. Taigny's recall, leaving their interests in charge of the United States minister. But on M. Taigny going on board the French s.s. *Martinique* to ascertain the instructions of his government he was refused permission to return on shore, and thus virtually expelled from the country. The diplomatic body protested against this act as contrary to diplomatic immunity, but the Venezuelan Government maintained that immunity had lapsed with his actual recall.

As a consequence, the French Government on January 18, 1906, notified the *Venezuelan chargé d'affaires* at Paris that his mission was regarded as terminated, and that he should leave French territory the same day; he departed that evening for Liége, being accompanied to the frontier by the head official of the French *Sûreté générale*.[1] Diplomatic relations between the two countries were suspended for several years.

§ 504. In 1921, during the acute civil disturbances in Guatemala, *Mr. H. Gaisford*, the British minister, took part in giving assistance to certain ex-ministers and functionaries of the former government who were imprisoned and whose lives were in danger, and afforded shelter in the legation to some persons who had sought refuge there. In 1922, on the expulsion of the Roman Catholic Archbishop, Mr. Gaisford, who was also of the Roman Catholic faith, called at the Episcopal Palace, but was refused admission by the police agent in charge of the building. The Guatemalan minister for foreign affairs, thereupon, on the strength of a report from the chief of police, addressed a note to him accusing him of having struck the policeman and of having used abusive language; it was added that the substance of the note had been communicated to the other diplomatic representatives for their information. The accusation was denied by Mr. Gaisford; and the diplomatic body protested against an act taken on the simple word of a police agent, and without asking the British minister for his version of the matter. The Guatemalan Government nevertheless requested the recall of Mr. Gaisford, alleging that besides the incident in question he had intervened in favour of Guatemalan citizens accused of conspiracy, and had afforded asylum to accused persons. Mr. Gaisford was instructed to come away on

[1] de Boeck, *L'Expulsion et les difficultés internationales qu'en soulève la pratique*. Cours de La Haye (1927), iii. 502.

leave of absence, and the legation remained closed until September 1, 1924 when Mr. W. E. O'Reilly was appointed minister.

§ 505. In 1924 the Mexican Government requested the recall of *Mr. H. A. C. Cummins*, who was in charge of the British legation (*Chargé des Archives*), and whose energetic efforts on behalf of British owners of property in Mexico during the civil disturbances then raging in that country had rendered him *persona non grata*. It was added that if he did not depart within ten days compulsion would be used. The British Government had already decided to accredit Sir T. Hohler to Mexico on a special mission, in order to be furnished with an independent report, so as to enable them to come to a decision as to recognising General Obregon's administration. The Mexican Government were so informed, but while welcoming this proposal, they professed to be unable to await his arrival, alleging that Mr. Cummins had shown discourtesy throughout in his communications with them. They urged as an elementary principle that a government had at any time the right to request, with or without explanation, the recall of any diplomatist or agent of another country, and that it was due to international courtesy then to withdraw him. In the meantime Mr. Cummins reported that no food or anything else was permitted to enter the legation, that telephonic communication had been cut, and that even members of the diplomatic corps were not allowed to enter. Matters having reached this pass, no alternative was possible but to instruct Mr. Cummins to withdraw, and the good offices of the United States Government were sought to convey an intimation to him to this effect, and to obtain facilities for him to do so. These were courteously afforded by the United States Government, and on Mr. Cummins' departure the archives and effects of the legation were taken charge of by the United States chargé d'affaires.[1] In August 1925 Mr. Norman King was appointed British chargé d'affaires at Mexico, and in December 1925 Mr. E. Ovey was appointed envoy.

§ 506. *The Times* of June 9, 1931, published the following message from its correspondent at Riga : " *Mgr. Riccardo Bartolini*, Titular Archbishop of Laodicea of Syria, and Papal nuncio, quitted Lithuania yesterday. Mgr. Bartolini had long ceased to be *persona grata* in Kovno owing to his alleged undue interference with the internal affairs of the country, and the Lithuanian Government had repeatedly intimated the desirability of his recall to the Vatican, but the nuncio remained until the Lithuanian

[1] *Parliamentary Paper, Mexico*, No. 1 (1924).

authorities unambiguously told him to go, threatening otherwise to restrict his movements or expel him."

Dismissal without Notice

§ 507. The following are instances of dismissal without notice :

In 1584 one Francis Throkmorton was arrested in England, in consequence of a letter he had written to Mary, Queen of Scots, which was intercepted, and the investigation showed that *Don Bernardino de Mendoza*, the Spanish ambassador, was party to a plot which aimed at the deposition of Queen Elizabeth I. Camden [1] relates that while Throkmorton was under examination " Don Bernadino de Mendoza, the Spaniards Embassadour in England, secretly crossed the seas into France, in a great rage and fury, as if hee had been thrust out of England with breach of the privilege of an Embassadour, whereas he himselfe being a man of a violent and turbulent spirit, abusing the sacred privilege of an Embassage to the committing of treason, was commanded to depart the land, whereas by the ancient severity, he was to be prosecuted (as many thought) with fire and sword. For he had his hand in those lewd practises with Throkmorton and others for bringing in of forreiners into England, and deposing the Queene. . . . But yet lest the Spaniard should thinke, that not Mendoza's crimes were punished, but the priviledges of his Embassadour violated, William Waad Clerke of the Councell, was sent into Spaine, to inform the Spaniard plainly how ill he had performed the office of his Embassie ; and withal to signifie (lest the Queene by sending him away might seeme to renounce the ancient amity betwixt both kingdomes) that all offices of kindnesses should be shewed, if he would send any other that were desirous to preserve amity, so as the same kindnesses might in like sort be shewed to her Embassadour in Spaine."

Waad, however, was refused an audience of the Spanish King and " returned home unheard."

§ 508. In 1587 *L'Aubespine*, the French ambassador in England, was alleged, on the confession of his secretary, to be implicated in an attempt on the life of Queen Elizabeth. Camden relates that he was a man wholly devoted to the Guisian faction, and that " supposing it best to provide for the captive Queene's safety, not by arguments, but by artificiall and bad practises, tampered first covertly for taking away Queene Elizabeths life with William

[1] Camden's *Annales Rerum Anglicarum et Hibernicarum, regnante Elizabetha ;* Translated into English by *R.N.*, Gent. London, 3rd edit., 1635, 263, 264.

Stafford, a young gentleman, and prone to apprehend new hopes, whose mother was one of the Queenes honorable Bed-Chamber, and his brother at that time Embassadour Legier in France ; and there he dealt with him more overtly by Trappy his secretary, who promised him, if he would effect it, not onely infinite glory and great store of mony, but also especiall favour with the Bishop of Rome, the Duke of Guise, and in generall with all the Catholicks. Stafford, as detesting the fact, refused to do it ; Yet commended one Moody, a notable hackster, a man forward of his hands, as one who for money would without doubt dispatch the matter resolutely." Stafford afterwards disclosed the plot, and L'Aubespine was sent for and confronted with the other parties to the conspiracy. His denials were unsatisfactory, and he affirmed that if he had been accessory yet he ought not to make discovery to any but the King his master. He was gravely admonished not to commit treason again, nor to forget the duty of an ambassador and the Queen's clemency, and told that he was not exempted from the guiltiness of the offence though he escaped punishment.[1]

(Though given as a case of dismissal without notice, it does not appear from this account as if dismissal actually followed. Oppenheim reads it that he was simply warned not to do it again.)

§ 509. In 1624 the *Marquesse de Inojosa* and *Don Carlos Coloma*, the two Spanish ambassadors then resident in England, informed James I that a dangerous conspiracy against his authority was being fomented by the Duke of Buckingham, whose influence, for political reasons, they wished to undermine. This accusation having, after investigation, proved entirely unfounded, they were called upon to furnish explanations and particulars, but failed to afford any. The King of Spain was thereupon informed, through the English ambassador at Madrid, of their grave offence, and was asked to punish them for it. It appears, however, from the narrative that the ambassadors quitted England after receiving intimation that the King would no longer hold intercourse with them ; and that " matters growing daily worse and worse betwixt the two Crownes, they were rather rewarded than reprehended, Inojosa being promoted to be Governour of Milan, while Coloma received additions of employment and honours in Flanders." [2]

§ 510. In 1654 *Le Bas* (called Baron de Baas in the French documents) was sent to England to assist the Président de Bordeaux, charged with a mission to re-establish friendly relations

[1] *Ibid.*, 337, 338.
[2] Sir John Finett, *Finetti Philoxonis : Som choice observations*, etc., London, 1656.

between France and England. In an interview with Naudin, a French doctor,[1] he proposed to the latter to foment " divisions and dissentions in this land," [2] and to procure funds for the purpose from France. Naudin gave information, and Cromwell sent for Le Bas, taxed him with his complicity in the plot, and ordered him to leave the country within three days. Bordeaux protested and told the Protector that His Highness should first complain to the King of France and ask for his recall. But Cromwell replied that Bas was more guilty than Bordeaux supposed, and that such a person could not be suffered to remain any longer in England.[3]

§ 511. In 1720 *Bestoujew-Rioumine*, the newly appointed Russian resident in London, was instructed by Peter the Great to deliver *mémoires*, recounting the wrongs the Tsar had suffered at the hands of the British Government. These were published simultaneously with their delivery. The King of England and his ministers naturally were profoundly irritated by this proceeding of the Tsar, and it was decided to suggest to Bestoujew that he should quit the country within a week. This he accordingly did, and diplomatic relations were not re-established until 1731, when Rondeau was appointed British resident at Petersburg.[4]

§ 512. In 1726 the following announcement was made in the *London Gazette* :

Whitehall, March 4th.

" This day Mr. Inglis Marshal and Assistant Master of the Ceremonies in the absence of Sir Clement Cotterel Master of the Ceremonies went by His Majesty's order to *M. de Palm* the Emperor's Resident, and acquainted him that he having in the audience he had of the King on Thursday last delivered into the Hands of His Majesty a Memorial highly injurious to His Majesty's Honour and the Dignity of his Crown ; in which Memorial he has forgot all Regard to Truth and the due Respect to His sacred Majesty ; and the said Memorial being also publickly dispers'd next Morning in Print together with a letter from the Count de Sinzendorff to him the said Palm still more insolent and more injurious than the Memorial if possible ; His Majesty had thereupon commanded him to declare to him the said Resident Palm that His Majesty looked upon him no longer as a public Minister and required him forthwith to depart out of this Kingdom."

The origin of this affair is to be found in the alleged secret treaty between the Emperor and the King of Spain for the restitu-

[1] Gardiner, *History of the Commonwealth*, etc., iii. 113, 121, 126, 151.
[2] Thurloe's *State Papers*, ii. 309, 351.
[3] Guizot, *Histoire de la République d'Angleterre*, etc., ii. 406, etc. ; Thurloe, *State Papers*, 406, etc.
[4] F. de Martens, *Recueil des Traités*, etc., ix. (x.) 52.

tion of Gibraltar and Minorca to the latter, and the re-establishment of the Stuart dynasty on the throne of Great Britain, which was disclosed by Ripperda (§ 390) to the British minister at Madrid.[1] Allusion was made to this secret treaty in the King's speech on the opening of Parliament, January 17, 1726–7.[2] Palm thereupon received instructions from Count Sinzendorf to present a memorial to the King, protesting against the statements contained in the King's speech, as "manifest falsehoods," and "insulting and injuring, in the most outrageous manner, the majesty of the two contracting Powers, who have a right to demand a signal reparation and satisfaction proportioned to the enormity of the affront."[3] The memorial[4] presented by M. de Palm declared the statements quoted to be founded on the falsest reports, and concluded by demanding on behalf of "his sacred Imperial Majesty" "that reparation which is due to him by all manner of right, for the great injuries which have been done to him by these many imputations." On the day following, printed copies of translations of both documents into English and French were sent by him to members of both Houses, aldermen of London and other persons.[5] Palm had been instructed to publish the memorial, but the whole proceeding was justly resented by the King, who requited the insult by expelling the Emperor's resident and thus breaking off diplomatic relations.

§ 513. In 1788 Gustavus III, King of Sweden, wishing to take his revenge for the intrigues carried on by Catherine II among the malcontent Swedish nobles, saw his opportunity when his enemy, engaged in war against Turkey, had equipped a fleet destined to proceed to the Mediterranean. He proceeded then to send his own fleet to sea and to despatch a considerable land force into Finland. On this, *Count Rasoumoffsky*, Russian envoy at Stockholm, by order of the Empress, addressed a note of protestation to the Chancellor Oxenstierna, in which he declared "to the minister of His Swedish Majesty, as well as to all those of the nation who had any share in the administration, that his mistress had no hostile intentions towards her neighbours." The King of Sweden, regarding the expression used in this note, in addressing it both to his ministry and "to all those of the nation who shared in the government," as a personal insult, and as intended to create

[1] Cobbett, *Parliamentary History*, viii. 505, 509.
[2] *Ibid.*, 524.
[3] *Ibid.*, 557, 558, 559 *n.*, and P.R.O., S.P. Foreign, Germany, vol. lx.
[4] *Ibid.*, 555–7 *n.*, and P.R.O., same vol.
[5] *Ibid.*, 554.

disunion between the government and the nation by recalling the anarchy to which the revolution of 1772 had put an end, caused the writer to be notified that he must quit the kingdom. The attempt was made to compel him to embark on board a Swedish yacht which would have transported him to St. Petersburg, but he refused, and remained at Stockholm for seven weeks. An answer to Rasoumoffsky's note was despatched to Nolcken, Swedish ambassador at St. Petersburg, for delivery to the Russian Government. But Nolcken had already been informed that the Empress would no longer recognise him, and he was ordered to leave in a week's time.[1]

§ 514. In 1814 a Spanish subject named Espoz y Mina, who had failed in an attempt to seize the fortress of Pampeluna, took refuge in France. The Spanish chargé d'affaires, *Conde de Casa Flórez*, having heard that he was staying at an hotel in Paris, proceeded to arrest him and some other Spanish subjects, who were probably his accomplices, with the aid of a commissaire de police, without applying first to the French Government. This gave great offence to the Government of Louis XVIII. Mina, having been set at liberty, was expelled from France, and Flórez' passports were sent to him, instead of asking for his withdrawal. A complicated negotiation followed to which an end was put by Napoleon's escape from Elba.[2]

§ 515. In 1895 the Italian Government published a protocol signed at Caracas some time previously by the *diplomatic representatives of Belgium, France, Germany and Italy*, which in the opinion of the Venezuelan Government contained " gratuitous and defamatory statements reflecting on the honour of the State and the integrity of the Executive." Without taking the preliminary step of asking for the withdrawal by their governments of the two out of the original four diplomatists who were still resident, the Venezuelan Government sent them their passports. Simultaneously an explanation was addressed to the two Powers concerned. France, which was one of these, broke off diplomatic relations, while Belgium, the other, refrained from accrediting any one in place of the minister who had been dismissed. Eventually Venezuela invoked the good offices of the United States to bring about the restoration of diplomatic relations, her government declaring that Venezuela had intended no affront to France or Belgium, whose flags she had conspicuously saluted on the same day that she dismissed their personally objectionable agents.[3]

[1] Ch. de Martens, *op. cit.*, ii 275. [2] Villa-Urrutia, iii. 407. [3] Moore, iv. 548.

§ 516. In 1916 illicit acts of espionage carried on from Greek territory, and communications with enemy submarines operating in Greek waters, to the detriment of Greek, Allied and neutral shipping, made it necessary to give notice to the *German, Austro-Hungarian, Bulgarian and Turkish ministers at Athens* to quit Greece and betake themselves, on November 22, with their staffs, on board a steamer which would convey them to a port whence they could return to their respective countries. This notification was conveyed to them by the French naval commander, the facts having been communicated to the Greek Government, and they departed from Greece accordingly.

§ 517. In 1917 the United States Government published certain intercepted telegrams, addressed by *Count Luxburg*, German minister at Buenos Aires, to the German Government, and transmitted by the Swedish legation there via the Swedish Government. These telegrams advocated the sinking of Argentine vessels then on their way to Europe, without leaving any trace ("*spurlos versenkt*"). The publication of these telegrams aroused intense indignation in the Argentine Republic, and the Argentine Government sent Count Luxburg his passports, informing him at the same time that he had ceased to be *persona grata*. Meanwhile the German Government expressed keen regret at the incident and their disapproval of the methods suggested, which, they said, were personal to Count Luxburg. The publication of further telegrams, however, revealed even more serious machinations, and Count Luxburg, who had endeavoured to escape into the interior of the country, was arrested and interned. Eventually, at the request of the Argentine Government, who were anxious to effect his speedy departure from the country, the British Government consented to grant him a safe-conduct to return to Germany, but his health having given way under the strain, he was admitted to a local German hospital suffering from mental and nervous breakdown.[1]

§ 518. Besides the incidents mentioned, references to others are found in various works, as follows :

In 1884 the Argentine Republic dismissed the Papal nuncio for opposing a law on education [2] ; in 1895 the Hawaiian agent in the United States was dismissed for criticism of United States policy [3] ; in 1906 the secretary left in charge of the nunciature of

[1] *Times History of the War*, xv. 20 ; *American Journal of International Law*, xii. (1918), 135–140.

[2] Calvo, *Le Droit International : Théorie et Pratique*, vol. iii, § 517.

[3] Hill, *American Journal of International Law* (1931), 257.

the Holy See at Paris was expelled for infringing laws concerning the activities of the clergy [1]; Rustem Bey, the Turkish ambassador to the United States, was sent home early in the 1914–18 war for publishing indiscreet newspaper and magazine articles [2]; Prince Henry of Reuss, German minister to Persia, who engaged in military activities in that country, was dismissed.[3]

§ 519. The recorded cases in which a diplomatic agent has either been dismissed or his recall demanded are of a wide variety, and while in some of these cases there can be no doubt that summary action was called for, in others there appears less justification for the steps taken.

On the general question Dr. Hannis Taylor has written [4]:

"when a sovereign dismisses an envoy without waiting for his recall, on the ground of his misconduct, not only the dignity of the envoy, but that of his state is so involved that justice and courtesy alike demand that reasons should be given sufficient to warrant a proceeding of such gravity. In justice to itself the dismissing state should formulate the grounds upon which its action is based—in justice to its agent the accrediting state should ascertain whether such grounds rest upon adequate proof. There is no reasonable foundation for the position assumed by Halleck,[5] and reproduced by Calvo,[6] that a state is in duty bound to recall an envoy who has become unacceptable to the government to which he is accredited simply upon its statement that he is so; and that such state has no right to ask for reasons to be assigned why such envoy has become unacceptable since his reception as *persona grata*. Dana also falls into obvious confusion when he assumes that a dismissal or demand for recall may be rested upon the identical grounds upon which a state may object to receive a particular person in the first instance.[7] After all special objections to the personality of an envoy have been waived by his reception, it is obviously unjust that he should be expelled and disgraced without a reasonable and provable cause. As Hall has fairly expressed it: 'Courtesy to a friendly state exacts that the representative of its sovereignty shall not be lightly or capriciously sent away; if no cause is assigned, or the cause given is inadequate, deficient regard is shown to the personal dignity of his state; if the cause is grossly inadequate or false, there may be ground for believing that a covert insult to it is intended. A country, therefore, need not recall its agent, or acquiesce in his dismissal, unless it is satis-

[1] de Boeck, *L'Expulsion*, etc., Cours de La Haye (1927), iii. 510.
[2] *Life and Letters of Walter H. Page*, ii. 49 *n.*
[3] Genet, *Traité de Diplomatie*, etc., i. 595.
[4] *A Treatise on International Public Law*, 350.
[5] *International Law*, i. 393.
[6] *Droit International*, § 1365.
[7] Dana's *Wheaton*, Note 137.

fied that the reasons alleged are of sufficient gravity in themselves.' [1] No more just or reasonable rule can be formulated as a standard by which the merits of particular cases of dismissal or forced recall, past or present, may be tested."

The author adds in a footnote :

" The government of the U.S. has, however, given its sanction to the view maintained by Halleck, Calvo and Dana : ' The official or authorised statement that a minister has made himself unacceptable, or even that he has ceased to be *persona grata*, to the government to which he is accredited, is sufficient to invoke the deference of a friendly Power and the observance of the courtesy and the practice regulating the diplomatic intercourse of the Powers of Christendom for the recall of an objectionable minister " (Mr. Fish, Secretary of State, to Mr. Curtin, November 16, 1871, with reference to the Catacazy case, § 490).

There appears, however, to be some inconsistency between the latter view and the action of the United States Government a few years later in the case mentioned in § 501.

§ 520. The Pan-American Convention of February 20, 1928, concerning the rights and duties of diplomatic officers, which in its preamble declares that it incorporates the principles generally accepted by all nations, says in Article 8 : " States may decline an officer from another or, having already accepted him, may request his recall, without being obliged to state the reasons for such a decision."

It can hardly be said, however, that the latter clause of this Article is in accordance with the principles generally accepted by all nations, or in accordance with their practice, since it can scarcely be imagined that in requesting the recall of an ambassador or minister, the government taking this step would omit the courtesy of informing the government of the state which had accredited him of their reasons for doing so.

On the whole, the conclusion to be drawn would seem to be that any government has the right of asking for the recall of a foreign diplomatic agent on the ground that his continuance at his post is not desired, and the government which has appointed him has an equal right of declining to withdraw him. In judging of any controversy that may arise regarding the demand and the refusal to comply, the grounds on which recall was asked for and those on which it was refused must be carefully weighed. If the government which asked for the recall is dissatisfied with the grounds of refusal, it can send the diplomatic agent his passports.

[1] Hall, 359.

As long as the diplomatic agent of the dismissing government has not rendered himself *persona ingrata* there is no reason for dismissing him. That would only be done if the dismissal was intended to wear the aspect of a national affront. But if the grounds of dismissal appear insufficient to the government which accredited the diplomatist, it can indicate its view by entrusting the mission for a while to a chargé d'affaires. In any case of the kind a government asked to recall its agent will naturally desire to ascertain whether he has exceeded or acted contrary to his instructions, and thereby rendered himself responsible for the offence he has given. If it finds that he has not, it cannot, out of self-respect, consent to the demand, and must leave it to the other government to dismiss him. It is a tenable opinion that the agent's government is entitled to satisfaction on this point. It may prove difficult for the historian, who has only official documents before him, to pronounce in each instance what was the determining factor in the decision to ask for a recall. Ostensibly taken on political grounds, it may also have been influenced in some cases by the general conduct of the agent.

BOOK III

INTERNATIONAL MEETINGS AND TRANSACTIONS

CHAPTER XXII

CONGRESSES AND CONFERENCES

§ 521. FROM the point of view of international law there is no essential difference between congresses and conferences. Both are meetings of plenipotentiaries for the discussion and settlement of international affairs ; both include meetings for the determination of political questions, and for the treatment of matters of a social or economic order. The term congress has in the past been more frequently applied to assemblies of plenipotentiaries for the conclusion of peace and the redistribution of territory which in most cases is one of the conditions of peace, as *e.g.*, the Congress of Vienna (1814–15) after the Napoleonic wars, the Congress of Paris (1856) after the Crimean war, and the Congress of Berlin (1878) for the settlement of affairs in the East, following the Russo-Turkish war ; but sometimes it has been conference, as, *e.g.*, the Conference of London (1830–3) after the revolt of Belgium, the Conferences of London (1912–13) to arrange terms of peace between Turkey and the Allied Balkan States, and the Paris Peace Conferences of 1919 and 1946–7. At the Congress of Paris (1856) the assemblage began by styling itself a conference, and then, apparently without discussion of its title, assumed the name of " congress ".

§ 522. In earlier times congresses were ordinarily held at a neutral spot, or at some place expressly neutralized for the purpose of the meeting. There were often mediators, who presided over the discussions, whether carried on orally or in writing. Before the dissolution of the Holy Roman Empire in 1806 the principal representative of the Emperor discharged the functions of president. In the nineteenth century congresses were mostly

held at the capital of one of the Powers concerned, and then the chancellor or minister for foreign affairs of that Power usually presided. On these occasions, besides the specially deputed plenipotentiaries, the local diplomatic representatives of the respective Powers were also appointed.

§ 523. The first international gathering to which the name of conference was given was that on the affairs of Greece, held at London in 1827–32. Conferences were usually held at the capital of one of the Powers taking part, the presidency being nearly always offered to the minister for foreign affairs of that Power, the other members being ordinarily the local diplomatic representatives of the other Powers.

§ 524. The statement is ascribed to Canning in 1824 that the plenipotentiaries at a congress are arbiters, and at a conference advisers only. The Duke of Argyll said of a congress that it was essentially a court of conciliation—an assembly in which an endeavour is made to settle high matters in dispute by discussion and mutual conciliation.[1] At the present day the term "conference" is habitually used to describe all international assemblages in which matters come under discussion with a view to settlement. The treaties of peace concluded after the First World War resulted from the deliberations of the Peace Conference of Paris, 1919. After the Second World War the gatherings in Paris (1946–7) and in San Francisco (1951), at which peace was made with some of the defeated countries, were also called conferences. The Universal Postal Convention, however, continues to be revised periodically at *congresses* of the States forming the Universal Postal Union.

§ 525. The place of meeting of an international conference may be determined in various ways. Sometimes it is the capital of the state which proposes this means of adjusting the questions at issue; or, it may be, that of the state most concerned in their settlement. Sometimes it is chosen as a convenient centre for all parties to meet; or to enable discussions to be carried on in a neutral atmosphere. In the case of a multilateral treaty about to undergo revision, it may be determined by the place of the former meeting, by a provision in the treaty itself, or by an understanding reached at the previous conference.

Instances may be found in the Conference of London (1850–2), Great Britain acting as mediator in the pending dispute between Denmark and Prussia over Schleswig and Holstein; in the Con-

[1] *The Eastern Question from 1856*, ii. 97.

gress of Paris (1856), the French Emperor having taken a prominent part in the peace preliminaries after the Crimean war ; in the Hague Peace Conference (1899), the Emperor of Russia, at whose initiative the conference was summoned, having proposed this meeting-place in view of its detachment from localities where political interests might supervene ; in the Conference of Algeciras (1906), in view of its proximity to Morocco, the subject of the discussions ; in the London Naval Conference (1908–9), having regard to the predominant naval position of Great Britain ; and in the Conference of Locarno (1925), chosen, with the concurrence of the Swiss Government, in virtue of its being in neutral territory.

The Geneva Conference of 1864, for the amelioration of the condition of the wounded in armies in the field, was convened by the Swiss Government, and the subsequent conferences of 1868, 1906, 1929 and 1949, for the successive revisions of the Red Cross Convention, took place also at Geneva ; on the last occasion the work of the conference was extended to the revision of the convention for the treatment of prisoners of war, concluded at Geneva in 1929, and the establishment of a convention relative to the protection of civilian persons in time of war. The Second Peace Conference of 1907, for the revision of the conventions concluded at the former Hague Conference of 1899 and their amplification, similarly met also at The Hague. In the case of the Universal Postal Convention and the Telecommunication Convention, which are subject to periodical revision, the place of the next meeting is on each occasion determined by agreement at the conference.

Invitations to a Conference

§ 526. Invitations to a conference are usually preceded by an exchange of views between the governments concerned, or at any rate those chiefly affected ; and in the case of a conference for the conclusion of peace, normally by the conclusion of preliminaries of peace or an armistice between the belligerents. It is always desirable, wherever possible, that the scope of the intended conference should be determined beforehand, so as to provide a definite basis for the discussions. Failure to reach an agreement has sometimes resulted from want of due initial preparation, and a preliminary step should be the formulation of a programme of the matters which are to be brought under discussion with a view of arriving to a settlement. As the Duke of Argyll observed :

" It was reasonable too, as it always must be, not to go into Congress without some previous understanding with the Powers to be there assembled. Every man conversant with the conduct of affairs knows very well that public and formal discussions cannot be conducted with any hope of a successful issue unless such preliminary understandings have been arrived at." [1]

§ 527. Ordinarily the invitations to a conference are issued by the government of the state wherein it is to be held, but cases may, of course, occur in which another government does so, after the consent of the former has been given to the conference being held in its territory. In the case of the Peace Conference of 1899 at The Hague, the proposals were made by the Emperor of Russia, but the invitations were issued by the Netherlands Government, which took part in the conference. In the case of the Algeciras Conference of 1906, an invitation was addressed to the Powers by the Sultan of Morocco, but the meeting took place in Spain which was a party to the conference. In the case of the Locarno Conference of 1925, the concurrence of the Swiss Government, which was not a party to the conference, was a necessary preliminary to the meeting being held in Swiss territory. In the case of the conference for the Codification of International Law held at The Hague in March–April, 1930, the invitations were issued by the Council of the League of Nations, and the conference was held in the territory of the Netherlands, one of the members of the League. Conferences may be convened by the General Assembly, the Economic and Social Council or the Specialised Agencies of the United Nations and such conferences may meet at the headquarters of the organisation or elsewhere. The conference on the status of refugees and stateless persons, convened in accordance with a General Assembly resolution, met in Geneva from July 2–25, 1951. The International Health Conference, called by the Economic and Social Council, to draft the constitution of the World Health Organisation, met in New York from June 19 to July 22, 1946. The first plenipotentiary conference on private air law after the Second World War took place under the auspices of the International Civil Aviation Organisation, one of the Specialised Agencies, having its headquarters in Montreal, and the conference was held in Rome from September 9 to October 6, 1952. These are only a few examples of many conferences convened by the United Nations Organisation or one of its Specialised Agencies.

[1] *Op. cit.*, ii. 128.

§ 528. On important occasions congresses or conferences have often been attended by Prime Ministers or other high personages of the states concerned. Lord Beaconsfield, when Prime Minister, with Lord Salisbury, Secretary of State for Foreign Affairs, attended the Congress of Berlin, 1878, which was presided over by Prince von Bismarck, German Chancellor. The Paris Peace Conference, 1919, was attended by the President of the United States, the Prime Ministers of Great Britain, Australia, New Zealand and the Union of South Africa, the French President of the Council, etc. The Locarno Conference of 1925 was attended by the Italian (on one occasion) and the Polish Prime Ministers, the German Chancellor, and the British, French, German, Belgian and Czechoslovak Ministers for Foreign Affairs. The Geneva Conference of 1954 was attended by the Foreign Ministers of the United Kingdom, France, the People's Republic of China, the Soviet Union and the United States, as well as several other ministers.

Representatives

§ 529. But more often, and normally in the case of the numerous conferences of non-political or semi-political character held in modern times, diplomatic representatives are appointed as chief plenipotentiaries, assisted sometimes by others ; or the plenipotentiaries may be officials or persons having special knowledge of the subject or subjects to be discussed. The importance of the occasion will determine the numbers of their suites, which often include officials or persons having necessary legal or technical qualifications, secretaries, translators, etc.

§ 530. The plenipotentiary (or plenipotentiaries) of each state, with his (or their) staff, constitute what is called the delegation of that state to the conference ; if there is more than one plenipotentiary for a state, the senior is usually designated as first plenipotentiary, and he and the others will sit together as a group. If the agenda range over a wide field, the staff may amount to a considerable number of persons, more especially on the part of the receiving state. At the Washington Conference of 1921–2 on the Limitation of Armament and Pacific and Far Eastern questions, the four plenipotentiaries of the United States were assisted by an advisory committee of twenty-one persons : a secretariat of sixteen persons ; for ceremonial, protocol, etc. five persons. There was a technical staff for the limitation of armament of twenty ; a staff on chemical warfare, consisting of a professor of chemistry

and officers of the army and navy ; a staff of sixteen on Pacific and Far Eastern questions ; a staff of four for legal questions ; a staff of two on economic questions and merchant marine ; a staff on communications of four civilians and officers of the army and navy ; two cartographers ; two officers for Press work ; one for archives ; one disbursing officer ; and two editors.

§ 531. The plenipotentiaries at an international conference are, as their name implies, furnished with full powers from the head of the state or the government they represent, empowering them to take part in the negotiations, and to conclude, subject if necessary to ratification, any treaty instrument which may result from the deliberations. (See § 135.) Where a state appoints more than one plenipotentiary, full powers may be issued to each, or, on the other hand, their names may be included in a single document, authorising them to act jointly or severally. As regards diplomatic privileges, see § 363. The names of the plenipotentiaries should be communicated in advance to the government of the state wherein the conference is to be held. If they have to traverse a third state on their journey thither, it is well also to advise the government of that state of their intended mission.

Languages at Conferences

§ 532. Before the First World War, the language employed at an international conference was usually French, but, between the two world wars, there was a growing tendency to use English also. At the Paris Peace Conference of 1919 and the Washington Conference of 1921–2, both English and French were officially used. At League of Nations conferences both French and English had equal validity. Where but a limited number of states take part the language of one or other of them is sometimes adopted as the official language, but several languages may be used. At Brest-Litovsk, in the peace negotiations of 1917–18 between Russia and the Central Powers, the German, French, Russian, Turkish and Bulgarian languages appear to have been from time to time employed. The current tendency at conferences, which are not limited to one region, is for English to be the most widely used language, but normally at least one other language is also employed. The development of modern equipment providing simultaneous interpretation of speeches has made the use of two or more languages much easier. For meetings at United Nations Conferences, English, French, Spanish and Russian are normally used, and Chinese may be added if required : documents are

usually produced in English, French and Spanish and sometimes also in Russian. At the London Conference of 1954, which drafted a series of agreements to provide for the termination of the occupation of the Federal Republic of Germany and its rearmament, English, French and German were used. The language of Pan American Conferences is now apparently Spanish although documents are frequently produced in English, French and Spanish and sometimes Portuguese.

The President of a Conference

§ 533. The president of an international conference is usually, but not always, the principal representative of the country in which it is held, if that country is a participant. Often he is the Minister for Foreign Affairs. His election may be moved by the representative of the country which comes first in alphabetical order, or by the *doyen d'âge*, or sometimes by some other specially chosen for the occasion.

At the Congress of Vienna (1814–15) Count Metternich, Austrian Minister for Foreign Affairs, was elected president on the proposal of the French plenipotentiary. At the Congress of Paris, 1856, the French Minister for Foreign Affairs presided, on the motion of the Austrian plenipotentiary. At the Congress of Berlin, 1878, Prince von Bismarck was elected president on the proposal of the Austro-Hungarian plenipotentiary. At the Hague Peace Conferences of 1899 and 1907, the Netherlands Minister for Foreign Affairs proposed the election of the Russian first plenipotentiary, who on the first occasion (1899) proposed that the Netherlands first plenipotentiary should be honorary president; on the second occasion (1907) the Netherlands Minister for Foreign Affairs was appointed honorary president, the Netherlands first delegate being effective vice-president. At the Algeciras Conference of 1906, the Spanish Minister for Foreign Affairs was elected, on the proposal of the German first plenipotentiary. At the London Naval Conference of 1908, Lord Desart, the British first plenipotentiary, was elected on the proposal of the French plenipotentiary, the *doyen d'âge*. At the Peace Conference of Paris, 1919, M. Clemenceau, President of the Council and Minister for Foreign Affairs, naturally presided. Arrangements may be made for more than one person to preside in rotation, as was done at the Geneva Conference of 1954. Other instances will be found in the examples appended to the present chapter.

§ 534. The functions of the president of an international conference are to open the proceedings by a speech setting forth the purposes and objects of the conference ; to name the members of the secretariat, previously agreed to informally by the representatives in general ; to direct the course of the discussions throughout the continuance of the conference ; and ultimately to declare the conference closed. At the final meeting it is customary to propose a vote of thanks to him for his services.

Precedence

§ 535. Precedence among the plenipotentiaries is customarily determined by the alphabetical order in English of the states represented, unless some other order is agreed upon. Traditionally, the order in which they sat was alternately to the right and to the left of the president. (See § 447.) The seating, however, may vary as a result of a number of factors such as the accommodation available and the relations between the participants in the conference. It is common practice now for the seating to be arranged in alphabetical order, starting normally from the right of the President. Which delegation occupies the first place on the right of the President may be determined by arrangement or by lot. At a peace conference the representatives of the belligerent states may fall into two opposite groups.

Procedure

§ 536. The course of procedure at a conference varies with the importance or degree of complexity of the matters under discussion. Rules of procedure are framed at the outset for guidance. Where, as often happens, committees are set up to discuss particular items on the agenda, these in turn appoint a chairman, frame if necessary rules of procedure, and in addition to a secretary or secretaries, often appoint a " rapporteur," to prepare the report to be furnished to the plenary body. Sub-committees may be formed from the members of a committee to deal with special points arising, and these in turn report to the committee. Apart from the main work of discussion, a small committee to examine the full powers of the representatives is desirable, and a drafting committee to prepare the text of the treaty instrument resulting from the work of the conference is nearly always necessary.

§ 537. When a " rapporteur" is appointed by a committee which has been charged with the discussion of a particular subject, he may

or may not be also the chairman of the committee ; and his functions as " rapporteur " are to summarise the discussions in the form of a report, showing the conclusions arrived at by the committee in the matter. This report, which is first submitted to the members of the committee, is then communicated by him to the plenary body, and he is the mouthpiece of the committee in placing their decision before that body. And similarly in the case of a sub-committee which has been appointed to report to the committee itself.

§ 538. Plenary meetings of the whole body of representatives take place from time to time as the work proceeds. The first plenary meeting is of an introductory character, for the election of president, naming of the secretariat, framing of the lines on which the conference is to be organised, the appointment of committees, etc. Thereafter plenary meetings are held, as may be required, to receive and consider the reports of the committees. In a typical case, where the results of the discussions are embodied in a treaty, and where the issues involved are free from special difficulties, the successive stages might, for instance, be—a first reading of the draft treaty prepared ; followed by a further reading, should modifications have been proposed and referred back to the committees ; and then a final reading of a formal character, at which the finished result would be submitted for the signatures of the plenipotentiaries.

§ 539. At all important conferences care should be devoted to the preparation of a record of the proceedings. It used to be the practice for a *procès-verbal* to be prepared by the secretary or secretaries on the occasion of each sitting, setting forth the date, hour and place of meeting, the names of the plenipotentiaries and their staffs, and the states represented. This would be followed by a statement of the deliberations carried on and the conclusions reached, and the hour at which the sitting closed. There would also be attached any draft projects which might have come under consideration, declarations made, etc. The *procès-verbal* would be signed by all the plenipotentiaries present, and usually by the president and secretary-general or secretaries. Sometimes it was read at the following sitting and adopted, but it was more usual first to submit proofs to the plenipotentiaries for any necessary amendments, in which case, the president would state the fact of agreement at the next sitting and pronounce its adoption, whereupon it would be signed. The original would be preserved by the government of the state in which the conference was held, which

would supply copies to the representatives of the others.[1] In recent years, practice has become both less regular and less formal. Adoption of records by the conference and their signature by the president are unusual, although they are normally submitted to plenipotentiaries before being drawn up in final form by the secretary-general or secretaries, whose signatures may then be added. Drafts, declarations, etc. are often circulated as conference documents and are not always appended to the daily record of proceedings.

§ 540. In modern practice, the signatures to a treaty, drawn up at the conclusion of a conference as the outcome of its deliberations, are appended, in the case of a compact between heads of states, in the alphabetical order of the states over which they preside ; in the case of a compact between governments, in the alphabetical order of the states represented. But in the case of a treaty of peace the signatories on each side may be classed separately, as in the Treaty of Versailles and other treaties of peace resulting from the Paris Peace Conference of 1919. At the conclusion of the Second World War a different order was followed. For example, the Peace Treaty with Italy was signed first by the five Great Powers, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America, China and France (in that order), then by the other Allied and Associated Powers, in English alphabetical order, starting with Australia and ending with Yugoslavia, and finally by Italy.

§ 541. In the past a great deal of the work of a congress or conference might relate to the nice adjustment of matters of ceremonial and precedence, the due observance of the *alternat* (see § 41) and other points of strict etiquette, such as whether negotiations should be carried on by means of written *pro-memoriâ* or *viva voce*, whether certain Powers should be admitted or not, the wording of safe-conducts and full powers, the use of the distinction " Excellency ", and the recognition of titles assumed by certain sovereigns. At the Congress of Nijmegen (1676–9) it is recorded that on the signature of the treaty of peace between France and Spain, two copies of the treaty having been prepared, one in French and the other in Spanish, and laid on the table at which sat the English mediators, the three French plenipotentiaries entered by one door at the same moment as the three Spanish plenipotentiaries entered at the other ; they sat down simul-

[1] Basdevant, *La Conclusion et la Rédaction des Traités*, Cours de la Haye (1926), v. 629.

taneously in exactly similar armchairs, and signed both copies respectively at the same instant.

§ 542. The question what states shall be admitted to take part in a conference is, however, one that may arise. Of the Paris Peace Conference, 1919, Professor Temperley says :

"The first question was to decide what Powers were to be represented at the conference, and what number of plenipotentiaries were to be allowed to each. It was finally determined to admit all those who had declared war on, or had broken off relations with, Germany, though the neutrals were to be allowed to take part in discussions which affected their special interests." [1]

Since the Second World War, the question of the composition of a conference is one that has frequently arisen. For example, in the Berlin Communiqué of February 18, 1954, detailed provisions were made for the composition of the Geneva Conference (see § 550, below).

The Secretary

§ 543. The principal secretary at a conference is usually an official of the country in which it is held, if that country is a participant, and the other members of the secretariat are also often furnished by it, supplemented, it may be, by others drawn from among the suites of the various representatives. The secretariat comes under the control and authority of the president of the conference, and while its main duties are the preparation of the official records of the conference, they comprise also the arrangement of all matters of routine, and such other duties as may be assigned to it. Translations of speeches and documents are often required, and communications may have to be issued to the Press. In the case of conferences held under the auspices of the United Nations or one of its Specialised Agencies, the necessary services are normally provided by the secretariat of the United Nations or the Specialised Agency. The bureau in which these activities are carried on is placed under the guidance of the president and vice-presidents, assisted by the secretary-general of the conference.

§ 544. The proceedings of the conference, and the results arrived at, are on important occasions sometimes recorded in a Final Act, more especially when these results are embodied in a number of treaty instruments, the titles of which are set out, with,

[1] *History of the Peace Conference of Paris*, i. 247.

it may be, certain " voeux " or recommendations, in the Final Act, which is presented for signature by the plenipotentiaries at the last meeting of the conference. (See § 617.)

§ 545. As regards conferences held under the auspices of the United Nations, no general rules of procedure have been framed applicable to all such conferences. There does not seem to be any regular practice with respect to the adoption and publication of rules of procedure at these conferences. The Rules of Procedure of the General Assembly of the United Nations itself are shown in § 743.

§ 546. Lists of the more important congresses and conferences from the middle of the seventeenth century onwards were given in the second edition of this work ; and in his further treatise, *International Congresses*, from which many of the details in the present chapter have been drawn, the late Sir E. Satow dealt more fully with those held since the beginning of last century. Following the example of the third edition,[1] it is not proposed in the present edition to recount these former proceedings, which in many cases have now but a historical value, but rather to give, by way of illustration, a few of the more important of the numerous conferences held within recent years.

Peace Conferences after the Second World War

§ 547. In view of the details as to the mechanics of international conferences given elsewhere, it is not proposed to describe the administrative arrangements in connexion with these two conferences, but merely to mention certain peculiarities with regard to the way in which the respective Peace Treaties were negotiated and drawn up, which probably makes them unique in the annals of the Peace Treaty-making process.

Paris Peace Conference, 1946

§ 548. *Peace Treaties with Italy, Roumania, Bulgaria, Hungary and Finland.* In the conditions that obtained after the cessation of hostilities in Europe, it became evident that the conclusion of any Peace Treaty by the ordinary process of calling a full-scale Peace Conference, to be attended by all the Allied countries, with such representation of the enemy countries as might be decided on, was

[1] The illustrations given in the third edition were the Paris Peace Conference, 1919, the Washington Conference, 1921–2, the Genoa Conference, 1922, the Locarno Conference, 1925, and the Geneva Red Cross Conference, 1929.

likely to prove unduly difficult and long drawn out, and that it would be necessary to adopt some procedure directed to " predigesting " the material to go into the proposed Peace Treaty before this actually got to a Peace Conference. It was accordingly decided to make use of the machinery of the Council of Foreign Ministers established by the Potsdam Conference in 1945 (the Council consisting for this purpose of the Foreign Ministers of France, the Soviet Union, the United Kingdom and the United States). The Council of Foreign Ministers, so composed, accordingly met in Paris at the Palais du Luxembourg in April, 1946. Each Foreign Minister was attended by a Deputy, and the process was for the Deputies to meet in the mornings and the Foreign Ministers in the afternoons. There were, of course, also established various Committees of Experts, military, economic and legal, etc. There was a double process by which questions were considered in these Committees and then passed up through the Deputies to the Foreign Ministers ; or, alternatively, by which questions were first considered by the Foreign Ministers or the Deputies and then passed down, to come up again later. The Deputies may be said to have acted as the central clearing house of the process. Anything which they were able to agree upon normally stood agreed : what they could not agree upon would either be reserved for consideration by the Foreign Ministers or else sent back to the appropriate Committee.

The first meeting of the Council lasted for about a month, and was followed by a second meeting—in June and part of July. Opportunity was afforded to the enemy countries to express their views, and in some cases their representatives were heard at the Council table. In this way, the complete drafts of Peace Treaties with each of the five countries were drawn up. The remaining Allied Powers were then invited to a full-scale conference, also at the Luxembourg, which started early in August and went on until late in October. However, this conference was not empowered to take any final decisions : according to the Rules of Procedure which it adopted as its opening act, it could only proceed on the basis of the texts already drawn up by the Council of Foreign Ministers, though of course it was open to any Delegation to propose amendments, which would then be carried or rejected by a majority vote. But even where carried, these amendments did not of themselves cause the text as drawn up by the Council of Foreign Ministers to be altered. Their status was simply that of *proposals* for amendment made by the conference to the Council.

The upshot was that at the end of the Peace Conference in October, a considerable part of the original texts as drawn up by the Council stood approved by the conference, while in respect of the rest, the conference had adopted a series of proposed amendments which the Council would now have to consider.

The Peace Conference then came to an end and never reconvened, and the remainder of the work was done by the Council of Foreign Ministers, meeting for this purpose in New York from early November until January, the Foreign Ministers themselves leaving about half way through December. The meetings took place in one of the Tower Rooms of the Waldorf Astoria Hotel. At these meetings, the Foreign Ministers examined one by one the proposals for amendment to the original text adopted by the Peace Conference and either approved the amendment or rejected it, or possibly adopted some amendment of their own, using the same apparatus of Deputies and Committees, etc. By the time the Foreign Ministers themselves left, complete and final texts had been drawn up, subject to a comparison of the texts in the different languages (French, English and Russian), in the course of which some further purely drafting alterations were made.

These final texts were then thrown open for signature in Paris. A short signature ceremony took place then on February 10, 1947, and the texts were signed by all the Allied Powers that had actually been at war with the five countries concerned.

Japanese Peace Conference, 1951

§ 549. *The Japanese Peace Treaty.* The procedure adopted for the conclusion of this Treaty was of an even more unorthodox kind than in the cases just considered. Some of the preparatory work was done by a body sitting in Washington, consisting of representatives of the principal countries that had been at war with Japan, and called the Far Eastern Commission. The actual *raison d'être* of this body, however, was not the conclusion of a Peace Treaty, but the political supervision of the administration of Japan during the occupation period. The first actual drafts of a Peace Treaty were got out by diplomatic correspondence between the United States and United Kingdom Governments during the latter part of 1950 and the early part of 1951. There then followed a series of meetings between officials and Ministers of these two countries, some of which took place in Washington and some in London, between April and August 1951, at which progressive agreement was reached on the text of the Peace Treaty. Contact with other

prospective signatories was maintained, partly by diplomatic correspondence conducted mainly through the State Department in Washington ; partly by meetings between the State Department and the Embassies of such countries in Washington ; and partly by means of similar meetings between these Embassies and the British Embassy in Washington. In this way, the views of the different countries on the proposed text were ascertained, and progressive alterations were made in the texts to take account of these views. At no stage of the proceedings, however, was there any general negotiating conference at which views could be exchanged across the table between all concerned.

Eventually, in August, final texts of a Treaty and various ancillary instruments were circulated to all the prospective signatories, and they were invited to attend a meeting at San Francisco which, it was emphasised, would be for the purpose of signing the Peace Treaty and other instruments and of hearing any accompanying declarations or speeches, but which was not intended to be a forum for any negotiations or for proposing alterations in the existing texts.

The San Francisco meeting was duly held in the first part of September, 1951, in the same buildings that had been utilized for the drafting of the United Nations Charter. Objections to the procedure adopted were voiced by certain countries which did not sign the Treaty. Apart from that, the Treaty and ancillary instruments, as presented, were found to be acceptable, and were signed on the 8th September by 26 Allied Powers that had been at war with Japan, and by Japan.

This affords a unique example of a peace treaty concluded entirely by correspondence, by informal contacts, and by meetings between representatives of one or more interested countries without any general conference other than a meeting for the purpose of signature.

Geneva Conference, 1954

§ 550. This Conference originated in a communiqué [1] of February 18, 1954, issued at the conclusion of a meeting in Berlin of the Foreign Ministers of the United States (Mr. John Foster Dulles), France (M. Georges Bidault), the United Kingdom (Mr., now Sir, Anthony Eden), and the Soviet Union (M. Vyacheslav Molotov). The relevant part of the communiqué read as follows :

[1] *Documents relating to the meeting of Foreign Ministers, Berlin, January 25–February 18, 1954*, Cmd. 9080, p. 180.

Considering that the establishment, by peaceful means, of a united and independent Korea would be an important factor in reducing international tension and in restoring peace in other parts of Asia,

Propose that a conference of representatives of the United States, France, the United Kingdom, the Union of Soviet Socialist Republics, the Chinese People's Republic, the Republic of Korea, the People's Democratic Republic of Korea and the other countries the armed forces of which participated in the hostilities in Korea, and which desire to attend, shall meet in Geneva on April 26th for the purpose of reaching a peaceful settlement of the Korean question,

Agree that the problem of restoring peace in Indo-China will also be discussed at the conference, to which representatives of the United States, France, the United Kingdom, the Union of Soviet Socialist Republics, the Chinese People's Republic and other interested States will be invited.

It is understood that neither the invitation to, nor the holding of, the above-mentioned Conference shall be deemed to imply diplomatic recognition in any case where it has not already been accorded.

The Conference was held in the Palais des Nations from April 26 to July 21, 1954.[1] It virtually became two conferences—one for the Korean question and one for the problem of restoring peace in Indo-China. This division was natural because, apart from the concern of the Four Powers and the People's Republic of China in both problems, they were entirely separate and distinct.

On the conclusion of hostilities in 1945, Korea had been temporarily divided along the 38th parallel. In the following years, vain attempts were made by the United Nations to bring about the unification of Korea by democratic means, but on June 25, 1950, North Korean troops attacked South Korea. They were opposed by United Nations forces, and in spite of the support of very large numbers of Chinese communist troops were in the end able to bring about no significant change in the division of Korea at the 38th parallel. Hostilities were ended by the Korean Armistice Agreement signed at Panmunjom on July 27, 1953. The result was a deadlock which neither the United Nations General Assembly nor, in the event, the Geneva Conference was able to break. At the conclusion of the Korean Section of the Conference on June 15, 1954, the representatives of the sixteen nations who contributed military forces to the United Nations Command in Korea made a declaration including a statement of the following two fundamental principles :

[1] See generally *Documents relating to the discussion of Korea and Indo-China at the Geneva Conference* (Cmd. 9186).

1. The United Nations, under its Charter, is fully and rightfully empowered to take collective action to repel aggression, to restore peace and security, and to extend its good offices to seeking a peaceful settlement in Korea.

2. In order to establish a unified, independent and democratic Korea, genuinely free elections should be held under United Nations supervision, for representatives in the National Assembly, in which representation shall be in direct proportion to the indigenous population in Korea.

The Indo-China phase of the Conference opened on May 8, 1954, a short time after the French garrison at Dien Bien Phu fell to the onslaught of the Viet Minh forces. The battle was the culmination of a nationalist and communist struggle to wrest the Associate States of Viet-Nam, Laos and Cambodia from the status of protection which France had tried to re-establish after the Second World War. At the time of the Conference, France had, in principle, recognised the independence of the Associate States and the primary task of the Conference was to put an end to hostilities so as to make possible a stable political settlement. The result was the signature of three Agreements on the cessation of hostilities in Cambodia, Laos and Viet-Nam, respectively signed in each case by the appropriate military authorities. The Conference contented itself with a declaration which, *inter alia*, took note of the three Agreements. Separate declarations were also made by the representatives of the United States, Cambodia, Laos and France.[1]

The following were the principal representatives[2] at the Conference :

United Kingdom : Right Hon. Anthony Eden, Principal Secretary of State for Foreign Affairs ; The Marquess of Reading, Minister of State, Foreign Office.

Commonwealth of Australia : The Right Hon. R. G. Casey, Minister for External Affairs.

Belgium : M. Paul-Henri Spaak, Minister for Foreign Affairs.

Canada : The Hon. Lester B. Pearson, Minister for External Affairs.

Colombia : Señor Doctor Eduardo Zuleta Angel, Ambassador Extraordinary and Plenipotentiary of the Republic in Washington.

[1] For the text of the Agreements and declarations see *Further Documents relating to the discussion of Indo-China at the Geneva Conference, June 16–July 21, 1954* (Cmd. 9239).

[2] The titles are those employed by the respective delegations at the Conference.

Cambodia : H. E. Tep Phan, Minister for Foreign Affairs and Conferences.

Democratic Republic of Viet-Nam : H. E. Pham-Van-Dong, Vice-President of the Council of Ministers and Minister for Foreign Affairs *ad interim*.

Democratic People's Republic of Korea : Nam Il, Minister for Foreign Affairs.

Ethiopia : H. E. Ato Zaude Gabre Heywot, Ambassador, Permanent Representative of Ethiopia to the United Nations.

French Republic : M. Georges Bidault, Minister for Foreign Affairs ; M. Mendès-France (from June 18), President of the Council of Ministers and Minister for Foreign Affairs.

Greece : H. E. M. Stefanos Stephanopoulos, Minister for Foreign Affairs.

Laos : H. E. Phoui Sananikone, Vice-President of the Council, Minister of the Interior and for Foreign Affairs.

Luxembourg : H. E. M. Joseph Bech, Prime Minister, Minister for Foreign Affairs.

Netherlands : H. E. Dr. J. M. A. H. Luns, Minister for Foreign Affairs.

New Zealand : The Hon. T. Clifton Webb, Minister for External Affairs.

People's Republic of China : Chou En-Lai, Minister for Foreign Affairs, latterly Li Ke-nung, Vice-Minister for Foreign Affairs.

Philippines : The Hon. Carlos P. Garcia, Vice-President and Secretary for Foreign Affairs.

Republic of Korea : Dr. Y. T. Pyun, Minister for Foreign Affairs.

State of Viet-Nam : H. E. Nguyen Trung Vinh, Vice-President of the Council of Ministers, and latterly H. E. Nguyen-Quoc-Dinh, Minister for Foreign Affairs, succeeded by H. E. Tran-Van-Du.

Thailand : H. R. H. Prince Wan Waithayakon, Minister for Foreign Affairs.

Turkey : Mr. Cevat Acikalin, Ambassador, Secretary-General of the Ministry of Foreign Affairs.

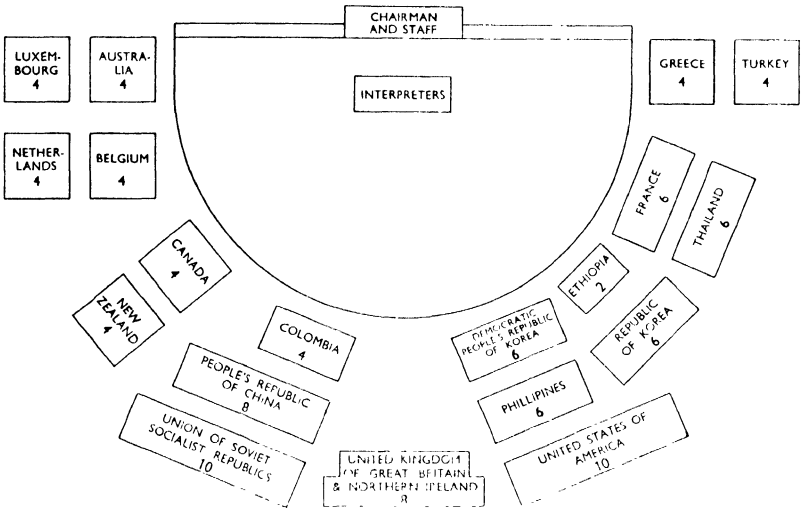
United States of America : Mr. John Foster Dulles, Secretary of State ; General Walter Bedell Smith (from May 3), Under Secretary of State.

Union of Soviet Socialist Republics : M. V. M. Molotov, Minister for Foreign Affairs.

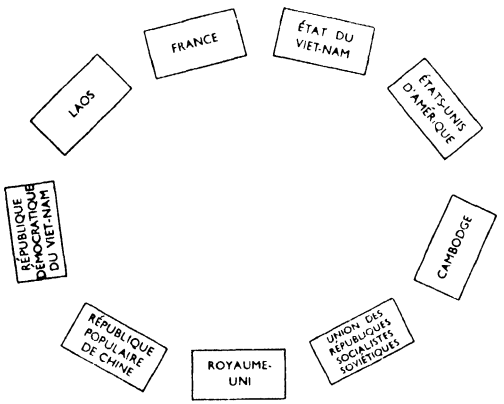
The relations between the various Governments and the non-recognition of some by others made the seating at the Conference both difficult and interesting. Ostensibly, the seating for the Korean phase followed the English alphabetical order and for the Indo-China phase the French alphabetical order, but the practical

convenience of the arrangement in both cases is apparent from the seating plans set out below :

(*a*) *The Korean Phase* [1]



(*b*) *The Indo-China Phase* [2]



In addition to the number of seats shown on Plan A, the delegations of Australia, Canada, the Democratic People's Republic of Korea, France, New Zealand, the People's Republic

[1] The numbers on the plan indicate the number of seats assigned to each delegation.

[2] During the later meetings on Indo-China, tables were arranged to form a continuous hollow square, but the retention of the same order of seating enabled any embarrassing proximities to be avoided.

of China, the Republic of Korea, the Soviet Union, the United Kingdom and the United States had places for their advisers on benches at the back along the walls of the League of Nations Council Chamber where the meetings were held. For the Indo-China phase of the Conference each delegation had a separate table with three places, but there were also chairs behind for a limited number of advisers.

There was no Secretariat for the Conference as a whole, but the sixteen nations who had contributed military forces to the United Nations Command in Korea formed their own Secretariat for the Korean phase of the Conference. A Secretariat on a reduced scale was also maintained, on behalf of the Western Powers and their Indo-Chinese associates, by France and the United Kingdom during the Indo-Chinese phase of the Conference. In both cases, almost all the staff were provided by the United Nations Organisation and their services were used to some extent by other Delegations as well.

The Procedure for both phases of the Conference was very informal. There was no voting. The most significant features of the procedure were the provisions relating to languages and the rotation of the Chairmanship. For the Korean phase Prince Wan, M. Molotov and Sir Anthony Eden were the Chairmen. For the Indo-China Phase Sir Anthony Eden and M. Molotov were the Chairmen, although at some meetings their places were taken by their deputies.

At the first Plenary Meeting on Korea, Prince Wan made the usual polite introductory remarks, read a telegram of greetings from the President of the Swiss Confederation, and made the following announcements from the chair, which in fact governed the procedure of the Conference :

1. The Conference will meet daily at 3 p.m. except on Sundays.

2. Delegates wishing to speak should inscribe their name with the Chairman, who will call them in the order in which their names are received. The speakers' list will be carried on from day to day.

3. The official languages of the Conference will be French, Russian, English, Chinese and Korean. Each language will be used for a day at a time in the above order. Speeches will be interpreted into the language of the day on the floor of the Conference and concurrently into the other four official languages.

4. No observers or spectators will be permitted, and the Press will be excluded except as the Conference itself decides. (On the first day Press photographers were admitted for the first ten minutes.)

5. Each Delegation is free to conduct its own relations with the Press and official communiqués will only be issued if the Conference so decides.

At the first Plenary Meeting on Indo-China on May 8, 1954, Sir Anthony Eden made the following brief statement from the chair which again in practice governed the procedure of this phase of the Conference :

There are one or two points of procedure which I should like to make sure are generally agreed. First, I think it is agreed that we should use French, Russian, English and Chinese languages in that order. Second, I take it that these discussions will be private with no observers as in the case of Korea. And, third, I assume, also that the press arrangements will be the same as for Korea ; that is to say, the communiqués will be issued only if the conference so decides, and each delegation will conduct its own relations with the press.

The pattern of the Geneva Conference was reminiscent of many conferences of the eighteenth and nineteenth centuries. It had a character and dignity of its own, which, except during the final week, were unruffled by the pressure of drafting treaty texts and voting on numerous clauses and amendments which is typical of conferences in recent times. It aimed at a political settlement not by the production of a single treaty to which all participants might adhere, but by the formal statement of policies and views, the pronouncement of declarations and the encouragement of agreement between the parties most directly concerned.

CHAPTER XXIII

TREATIES AND OTHER INTERNATIONAL COMPACTS

Treaty, Convention, Declaration, Agreement, Protocol, Exchange of Notes

§ 551. In the Advisory Opinion concerning the *Customs Régime between Germany and Austria* the Permanent Court of International Justice said : " From the standpoint of the obligatory character of international engagements, it is well known that such engagements may be taken in the form of treaties, conventions, declarations, agreements, protocols or exchanges of notes." [1] This passage suggests that, first, a basic distinction must be drawn between international agreements intended to have an " obligatory character " and those not intended to have this character ; and, secondly, that, so far as international agreements intended to have an " obligatory character " are concerned, there are a number of ways in which such agreements can be entered into. Moreover, referring to the above passage, Professor Hudson has pointed out that " this list was not intended to be exhaustive and that the name chosen for an instrument, frequently due to political or casual considerations, is seldom of juridical significance." [2] It is, however, convenient to treat in this chapter the six types of engagement referred to by the Court, and in subsequent chapters (Chapters XXIV and XXV) various other types of engagements not expressly mentioned by the Court (*e.g.* Concordat, Additional Articles, Final Act, General Act, Procès-Verbal, Modus Vivendi, Compromis d'Arbitrage and Réversales).

§ 552. Not all international agreements are intended to have an " obligatory character ". For instance no legal obligations were incurred as the result of the Atlantic Charter of August 14, 1941,[3] in which the President of the United States (Mr. Franklin D. Roosevelt) and the Prime Minister (Mr. Winston Churchill), representing His Majesty's Government in the United Kingdom,

[1] Series A/B, No. 41, p. 47.
[2] Permanent Court of International Justice, 1920–1942 (1943 edn.), p. 632.
[3] *Yearbook of the United Nations* 1946–47, p. 2.

issued a Joint Declaration stating that " being met together " they deemed it right " to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world ". Similarly no legal obligations were incurred under the Washington Declaration (Potomac Charter) of June 29, 1954,[1] in which the President of the United States (Mr. Dwight D. Eisenhower) and the Prime Minister (Sir Winston Churchill) said : " As we terminate our conversations on subjects of mutual and world interest, we again declare that : 1. In intimate comradeship, we will continue our efforts to obtain world peace based upon the principles of the Atlantic Charter, which we reaffirm . . . " (the declaration running to six paragraphs in all).

It was also made clear, when the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on December 10, 1948 that those countries voting in favour of the Declaration would assume no legal obligations thereby.

Treaties and Conventions

§ 553. Of those international agreements which are intended to have an " obligatory character " the most important are " treaties ", the word " treaty " being derived from *traiter*, which means to negotiate. The Comment to Article 1 of the Harvard Draft Convention on the Law of Treaties states that " in the literature of diplomacy and international law the term ' treaty ' is employed in both a general and a restricted sense ". In the general sense, it " embraces a great variety of instruments to many of which other names than ' treaty ' are given, although there is seldom if ever any juridical distinction between them." Thus employed—as it often is—in the general sense, the term " treaty " has come to denote any international agreement intended to have an obligatory character. For example, in the case concerning the *Free Zones of Upper Savoy and the District of Gex (Second Phase)*,[2] the Permanent Court of International Justice held that a Manifesto of the Royal Sardinian Court of Accounts, recording the assent of the King of Sardinia to the claim of the Canton of Valais that the Sardinian Customs line should be withdrawn, has " the character of a *treaty* stipulation ", which France, the successor to Sardinia as sovereign over the territory concerned

[1] *The Times*, June 30, 1954.
[2] Series A, No. 24, p. 17.

was " *bound* to respect ". This example is particularly striking because the agreement between Sardinia and the Canton of Valais was a purely implicit one, not recorded in any instrument signed by both parties.

§ 554. Article 1 of the Harvard Draft Convention, however, defines " treaty " in the restricted sense as " a formal instrument of agreement by which two or more States establish or seek to establish a relation under international law between themselves ". The view here expressed that it is the " formal instrument ", rather than the agreement which it records, which is the " treaty " is controversial. But this view appears to be correct, at any rate when the word " treaty " is being used in the restricted sense. The question of formality is particularly important because, having regard to the great number of terms which are now used to describe binding international agreements—*i.e.* " treaties " in the general sense—it seems appropriate that the word " treaty " should be used to-day principally in connexion with agreements of a particularly solemn character, *e.g.* Peace Treaties.

§ 555. The next most solemn type of international agreement is the " convention ", derived from the Latin word *conventio* meaning agreement. This term is frequently, though not necessarily, employed in connexion with agreements to which a large number of countries are parties, and especially to agreements of the law-making type.

§ 556. Within modern times a great number of multilateral conventions have been concluded on such matters as the protection of literary and industrial property ; pollution of the sea by oil ; collisions at sea and salvage ; agriculture ; sanitary régime ; motor traffic ; freedom of transit ; civil aviation ; telecommunications ; safety of life at sea ; international exhibitions ; whaling ; fisheries ; load-line certificates ; customs tariffs ; broadcasting, etc. ; to say nothing of conventions aimed at the definition of rules of international law, like those of the Hague Peace Conferences of 1899 and 1907 and the Geneva Conventions of 1949. Conventions of a similar wide variety have been concluded, with the same diversity of form, under the auspices of the United Nations.

§ 557. Because the terms " treaty " and " convention " both suggest a certain degree of solemnity, it is convenient to consider them together. It is not, however, possible to frame definitions of the two terms in such a way as to indicate any real or substantial distinction between them, and in the paragraphs which follow

" treaty " must be read as covering " convention " also. Moreover, in these paragraphs the term " treaty " must be understood in the restricted rather than in the general sense.

§ 558. The fact that treaties in the restricted sense are " formal instruments ", drawn up in circumstances of a certain solemnity, must not, however, be allowed to obscure the legal rule that it is possible for binding international obligations to be incurred in circumstances of little formality and little solemnity. There can be no doubt, for example, that a statement made by an Agent before the International Court of Justice in the course of the proceedings is binding upon the government concerned ;[1] and also that a statement made by a Minister for Foreign Affairs in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs.[2]

§ 559. Formerly, treaties were always concluded between Heads of States. In modern times, however, it has come to be the practice for some treaties and conventions even, and certainly the less formal types of international agreement, to be concluded between States or between Governments rather than between Heads of States. For example, even such important agreements as the North Atlantic Treaty of April 4, 1949,[3] the Treaty of Peace with Italy of February 10, 1947,[4] the Treaty of Peace with Japan of September 8, 1951 [5] and the South-East Asia Collective Defence Treaty of September 8, 1954 [6] were all concluded between States rather than between Heads of States. The Convention for the Establishment of a European Organisation for Nuclear Research of July 1, 1953 [7] was also concluded between States, though the Statute of the Council of Europe of May 5, 1949 [8] was concluded between Governments. The Anglo-Nepalese Treaty of Friendship of October 30, 1950 [9] and the Anglo-Austrian Cultural Convention of December 12, 1952 [10] were also concluded between Governments.

§ 560. Treaties between Heads of States, however, still exist, *e.g.* the Anglo-Belgian Treaty of March 11, 1946,[11] regarding Privileges and Facilities for British Forces in Belgium in connexion with the Occupation of Germany and Austria ; the Treaty of

[1] The case concerning the *Free Zones of Upper Savoy and the District of Gex*, P.C.I.J., Series A/B, No. 46, p. 170.

[2] The case concerning *The Legal Status of Eastern Greenland*, P.C.I.J., Series A/B, No. 53, p. 71.

[3] Cmd. 7789. [4] Cmd. 7481. [5] Cmd. 8601. [6] Cmd. 9282. [7] Cmd. 9007.
[8] Cmd. 7778. [9] Cmd. 8271. [10] Cmd. 8821. [11] Cmd. 7624.

Alliance and Mutual Assistance between the United Kingdom and France concluded at Dunkirk on March 4, 1947 ;[1] the Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence concluded at Brussels on March 17, 1948 ;[2] the Treaty of Friendship, Commerce and Navigation between the United Kingdom and the Sultan of Muscat and Oman on December 20, 1951 ;[3] and the Anglo-Mexican Consular Convention of March 20, 1954,[4] all being in this form.

§ 561. A treaty concluded between Heads of States can be broken down into the following parts :

1. The preamble, beginning with (*a*) the names and titles of the high contracting parties ; (*b*) a summary of the objects contemplated, or, in other words, a statement of the purpose ; (*c*) the names and official designations of the plenipotentiaries appointed by the high contracting parties ; (*d*) a paragraph stating that the plenipotentiaries have produced their full powers, which were found to be in good and due form, and that they have agreed upon the following articles.

2. The various substantive articles of the treaty, usually beginning with the most general, next the particular ones, and finally the articles, if any, providing for the means of executing them.

3. An article (or articles) dealing with the extent of application of the treaty, including provisions for accession.

4. An article (or articles) dealing with ratification, entry into force and duration. The provision for ratification usually mentions the place for the exchange or deposit of ratifications, whilst the clause dealing with duration often takes the form of a provision that the treaty shall remain in force for a specified number of years, and that unless a year's notice (or less) of termination is given in advance by one or other party it shall thereafter continue in force pending such notice.

5. A clause stating " in witness whereof " (" *En foi de quoi* ") the respective plenipotentiaries have affixed their signatures and seals.

6. Locality and date (" Done at..... the ..... day of ....., 19... ").

7. Seals and signatures.

§ 562. Treaties between States are rather less formal. In place of the term " High Contracting Parties ", the expression " Contracting Parties "—sometimes simply " the Parties "—is used. The preamble is also often much reduced in length by the omission of one or other of the formal items usual in the preamble of a treaty concluded between Heads of States. Even in a treaty between States, however, it is usual to retain the statement of the purpose in the preamble.

[1] Cmd. 7217. [2] Cmd. 7599. [3] Cmd. 8633. [4] Cmd. 9162.

§ 563. Treaties between Governments are also less formal, the parties usually referring to themselves as " Contracting Parties " or " Contracting Governments ", though sometimes the expression " Signatory Governments " is used. It is usual, however, in such a treaty to include a statement of the purpose in the preamble.

§ 564. Usually a treaty is concluded, and the authenticity of its text established, by means of the signatures of the plenipotentiaries. It will depend on the circumstances whether signature alone is sufficient to bring the treaty into force or whether some further step, such as ratification, is necessary (see Chapter XXVI.)

§ 565. Sometimes, however, when an appreciable interval occurs between the conclusion of the negotiations and the signature of a treaty, the plenipotentiaries append to it their initials *ne varietur* as a guarantee of the authenticity of the text. Also, even when it is intended to sign a treaty immediately upon the conclusion of negotiations, the separate pages of the text are sometimes initialled prior to its reproduction in a form suitable for signature. This practice applies to bilateral rather than to multilateral instruments. Cases are even not unknown in which an agreement has been concluded by initialling only; *e.g.* The Memorandum of Understanding of May 9, 1952, between the governments of the United Kingdom, the United States of America and Italy about the administration of Zone A of the Free Territory of Trieste,[1] and the Memorandum of Understanding of October 5, 1954, between the governments of the United Kingdom, the United States of America, Italy and Yugoslavia about the Free Territory of Trieste.[2]

§ 566. If a treaty covers more than a single sheet of paper, the sheets are united by ribbon or fancy cord threaded through suitably spaced holes punched down the left-hand side, or through the spine or fold of the instrument, and so arranged and tied that both ends may be brought to a position adjacent to the signatures and there affixed to the paper by the personal seals of the plenipotentiaries. If a plenipotentiary has no seal bearing a crest or other special device, it is customary for him to use a seal bearing his initials.

§ 567. Treaties between two countries are as a rule drawn up in two texts, *viz.*, the languages of the respective countries, printed in parallel columns, and are prepared in duplicate, in order that each country may retain a signed original version of the treaty instrument. Each of the two countries is entitled to precedence in the

[1] Cmd. 8544 [2] Cmd. 9288.

original retained by it, *i.e.* its language appears in the first, or left-hand, column ; its sovereign or president (or it may be government) and its plenipotentiary are named first in the preamble ; and its plenipotentiary signs first, above the signature of the plenipotentiary of the other country ; or if the signatures are affixed on the same line, then on the left-hand side, which is the place of honour. But in ordinary practice the inconvenience of reprinting the preamble of a treaty for this purpose is avoided by giving each country precedence in its own language, and then, without further amendment, inverting the order of the two texts, as required, so that the language of each country appears in the left-hand column of the original retained by it.

§ 568. Sometimes a treaty between two countries is drawn up in one language only, and in this case changes in the preamble are necessary, so as to give the required precedence to each country in the original retained by it. This is ordinarily the case in treaties between countries who share a common language, *e.g.* the United Kingdom and the United States.

§ 569. Other cases occur in which a treaty may be drawn up in a language or languages which are not those of the contracting parties. The Treaty of Peace between Japan and Russia of August 23/September 5, 1905,[1] was drawn up in English and French.

§ 570. Where a treaty is drawn up in two or more languages, it may be presumed that much care is taken to effect the closest correspondence possible between the respective texts. But this may sometimes be difficult, more especially when the languages differ widely in character. In such cases it is desirable that it should be specified in the treaty which of the languages is to be regarded as authoritative, to provide for the possibility of a difference of opinion subsequently arising as to the precise meaning of a stipulation. Thus in the Treaty of Peace between Japan and Russia of August 23/September 5, 1905, which was drawn up in English and French texts, it was provided that " en cas de divergence d'interprétation, le texte Français fera foi ". In the case of the Treaty between Great Britain and Persia of May 10, 1928,[2] respecting Persian Tariff Autonomy (English and Persian texts), a French text was afterwards prepared and agreed to as an authoritative version.

§ 571. Generally, however, more than one text is declared authentic. In the case of the Treaty of Versailles of June 28,

[1] *Br. and For. State Papers*, 98, p. 735. [2] Cmd. 5054.

1919,[1] both the English and French texts were declared to be authentic. The Treaty of Peace with Austria concluded at Saint-Germain on September 10, 1919,[2] was drawn up in three texts (English, French and Italian). It was provided that " In case of divergence the French text shall prevail, except in Parts I (Covenant of the League of Nations) and XIII (Labour), where the French and English texts shall be of equal force ".

§ 572. Article 111 of the Charter of the United Nations [3] provides that " the Chinese, French, Russian, English and Spanish texts are equally authentic ". Nevertheless, since the working languages of the San Francisco Conference of 1945 were English and French, it is reasonable to assume that, in interpreting the Charter, more weight should be given to the texts in these languages than to the others. As between the English and French texts, the English is perhaps the more authoritative for the reason that the text of the Charter finally approved by the Co-ordination Committee—and the text from which the translations into the other languages were made—was in English.

§ 573. The Treaty of Peace with Italy, of February 10, 1947,[4] drawn up in English, French, Russian and Italian texts, provided that the English, French and Russian texts were authentic. The Treaty of Peace with Japan of September 8, 1951,[5] drawn up in English, French, Spanish and Japanese texts, provided that the English, French and Spanish texts were all equally authentic.

§ 574. It is a rule of interpretation that " where two versions possessing equal authority exist, one of which appears to have a wider bearing than the other," an international tribunal " is bound to adopt the more limited interpretation which can be made to harmonise with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties." [6]

§ 575. When a treaty is concluded between more than two countries there may be one counterpart for each, and in this event, the rules of the *alternat* would be followed and each country be given precedence in the original retained by it. But in modern times the ordinary practice, and that habitually followed when a treaty or convention is concluded between many heads of states, is to range their names and titles in the preamble in the alphabetical order of the countries over which they preside and to have a single signed original, to which the signatures of their pleni-

[1] *Br. and For. State Papers*, 112, p. 1. [2] *Ibid.*, 112, p. 317. [3] Cmd. 7015.
[4] Cmd. 7481. [5] Cmd. 8601.
[6] The case of *The Mavrommatis Palestine Concessions*, *P.C.I.J.* Series A, No. 2, p. 19.

potentiaries are appended in the same order, and which is then deposited in the treaty archives of the headquarters government, *viz.*, that of the country in which the treaty is signed, each of the other countries being furnished by that government with a copy of the treaty, certified by it as correct. In the case of conventions signed in New York under the auspices of the United Nations, a similar procedure is followed, the original treaty being deposited with the Secretariat of the United Nations.

§ 576. Formerly, multilateral treaties, conventions, etc. were usually signed in a single French text (*e.g.* the Convention for the Settlement of the Right of Protection in Morocco concluded at Madrid on July 3, 1880,[1] and the Convention for Regulating the Police of the North Sea Fisheries concluded at the Hague on May 6, 1882).[2] Although a single French text is still sometimes used (*e.g.* the Universal Postal Convention concluded at Brussels on July 11, 1952),[3] there is a tendency to-day to draw up multilateral conventions in two or more languages. Thus the Convention on the Privileges and Immunities of the United Nations of February 13, 1946,[4] has two official texts (English and French), whilst the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948,[5] has five texts (Chinese, English, French, Russian and Spanish), all of which are equally authentic.

Declarations

§ 577. According to Oppenheim the term "declaration" is used in three different meanings. The first meaning is indistinguishable, save in the term actually employed, from any other international agreement intended to have an obligatory character. Thus Oppenheim holds that the Declaration of Paris of 1856,[6] which aimed at defining the rules of international law relating to blockade and contraband, is "as binding as any agreement which goes under the name of 'treaty' or 'convention'." "The attempt", he continues, "to distinguish between a 'declaration' and a 'convention' by maintaining that, whereas a 'convention' creates rules of particular International Law between the contracting States only, a 'declaration' contains the recognition, on the part of the best qualified and most interested Powers, of rules of universal International Law, does not stand the test of criticism." [7] (At the time of its promulgation the Declaration of Paris

[1] *Br. and For. State Papers*, 71, p. 639.
[2] *Ibid.*, 73, p. 39.
[3] Cmd. 8998.
[4] *U.N.T.S.*, 1, p. 15.
[5] *U.N.T.S.*, 78, p. 277.
[6] *Br. and For. State Papers*, 46, p. 63.
[7] Vol. 1, 8th ed. (1955), p. 899, f.n.

had not been agreed to by the United States of America and by many other States.) Other law-making Declarations were the Declarations of St. Petersburg, 1868 [1] (explosive bullets) and of London, 1909 [2] (blockade and contraband). Nor are Declarations confined to law-making treaties. The agreement of April 8, 1904, between the British and French Governments, which constituted the foundation of the " Entente Cordiale ", was entitled " Declaration between the United Kingdom and France respecting Egypt and Morocco ".[3] Other important declarations were the " Declaration between Great Britain, France, and Russia, engaging not to conclude Peace separately during the present European War " signed in London on September 5, 1914 ;[4] the Declaration by United Nations signed at Washington on January 1, 1942 ;[5] and the Declaration of Four Nations on General Security signed at Moscow on October 30, 1943.[6]

§ 578. Secondly, according to Oppenheim, " there are unilateral declarations which create rights and duties for other States." Among these are to be included " declarations of war, declarations on the part of belligerents concerning the goods they will condemn as contraband, declarations at the outbreak of war on the part of third States that they will remain neutral, and others." [7] And thirdly the term " declaration " is used to describe the action taken " when States communicate to other States, or *urbi et orbi*, an explanation and justification of a line of conduct pursued by them in the past, or an explanation of views and intentions concerning certain matters." [8] Declarations of the second and third types, however, have in no way the character of treaties.

§ 579. Although declarations in the first of the three senses mentioned above (*i.e.* legally binding agreements) are sometimes important international agreements in themselves (*e.g.* the " Entente Cordiale " declaration of 1904), they are more often appended to a treaty or convention to form a subsidiary compact, or to place on record some understanding reached, or some explanation given. Thus the Treaty of Peace with Turkey, signed at Lausanne on July 24, 1923,[9] was supplemented by four

[1] *Br. and For. State Papers*, 58, p. 16.
[2] *Ibid.*, 104, p. 242.
[3] *Ibid.*, 97, p. 39.
[4] *Ibid.*, 108, p. 365.
[5] *Y.U.N.*, 1946–47, p. 1.
[6] *Ibid.*, 1946–47, p. 3.
[7] *Op. cit.*, § 487.
[8] *Ibid.* Declarations of this type may be made by two or more States jointly : *e.g.* the Washington Declaration of June 29, 1954.
[9] *Br. and For. State Papers*, 117, p. 543.

Declarations, relating respectively to amnesties, Moslem properties in Greece, sanitary matters and administration of justice, in addition to a number of conventions and protocols on other matters.

§ 580. The following Declaration was annexed to the Treaty of Commerce and Navigation between Great Britain and Greece signed at London on July 16, 1926: [1]

" It is well understood that the Treaty of Commerce and Navigation between Great Britain and Greece of to-day's date does not prejudice claims on behalf of private persons based on the provisions of the Anglo-Greek Commercial Treaty of 1886, and that any differences which may arise between our two Governments as to the validity of such claims shall, at the request of either Government, be referred to arbitration in accordance with the provisions of the Protocol of November 10, 1886, annexed to the said treaty.

Done at London, the 16th July, 1926.

[Signatures] "

§ 581. In the *Ambatielos* case,[2] the International Court of Justice held that the above Declaration was a " provision " of the Treaty to which it was annexed, within the meaning of Article 29 of the Treaty which stated that any disputes that might arise between the parties " as to the proper interpretation or application of any of the *provisions* of the present Treaty " should be referred to the Court at the request of either party. Consequently, the Court found that it had jurisdiction to determine a dispute, relating to the interpretation of the Declaration, despite an objection to the jurisdiction lodged by the United Kingdom. One of the reasons why the Court came to this conclusion was that, when the instruments of ratification of the Treaty were exchanged, the Declaration was included, together with the Treaty, in the instrument prepared by the United Kingdom Government, between the words " which Treaty is, word for word, as follows " and the words " We, having seen and considered the Treaty as aforesaid, have approved, accepted and confirmed the same in all and every one of its articles and clauses " (see instrument of ratification in § 652). Further reasons for the Court's decision were that the plenipotentiaries had included the Treaty and the Declaration in a single document; that the United Kingdom Government had issued as *Treaty Series* No. 2 (1927) a single document entitled " Treaty of Commerce and Navigation

[1] *Ibid.*, 123, p. 500. [2] *International Court of Justice Reports 1952*, p. 28.

between the United Kingdom and Greece and accompanying Declaration ", and that the Foreign Offices of both countries had communicated official texts to the League of Nations at Geneva for registration, which led to their inclusion in the *League of Nations Treaty Series* under a single number, as " No. 1425. Treaty of Commerce and Navigation between the United Kingdom and Greece and accompanying Declaration signed at London, July 16, 1926."

§ 582. The title " Declaration " is also frequently given to agreements between Governments regarding some minor matter, and has been used in this way for a considerable number of agreements on such subjects as modification of a former convention, execution of letters of request, recognition of tonnage certificates, fishery regulations, etc. These may or may not provide for ratification. The Anglo-Greek Declaration of 1926, referred to above, did not provide for ratification, although Sir Arnold McNair in his dissenting opinion in the *Ambatielos* case held (i) that, " according to the practice of the United Kingdom, the Declaration did not require ratification " and was apparently binding even if unratified ; and (ii) that " the fact that the United Kingdom Government handed to the Hellenic Government, by way of exchange, an instrument of Ratification duly sealed and embodying the text of the Treaty, the Schedule and the accompanying Declaration, makes it necessary to hold that the Declaration was ratified at the same time, and by the same instrument, as the Treaty with its Schedule ".[1]

§ 583. A good example of a Declaration in modern times is the Declaration on the Construction of Main International Traffic Arteries of September 16, 1950.[2]

Agreement

§ 584. The term " agreement ", like the term " treaty " itself, is used in a number of senses. In a generic sense, it covers any meeting of minds—in this case the minds of two or more international persons. As was stated above, however, a distinction must always be drawn between agreements intended to have an

[1] *Ibid.*, p. 60. Sir Arnold McNair thought, however, that the " global ratification " thus effected did not have the effect of making the Declaration a part of the Treaty. See also McNair, *The Law of Treaties* (1938), p. 51, where reference is made to a Report of the Law Officers of the Crown of September 28, 1853, which is " based on the view that unratified Declarations signed by duly authorized Ministers have the same effect in creating an international obligation binding their States as a formal and ratified treaty ".

[2] Cmd. 8490.

obligatory character (*i.e.* the assumption of legal rights and duties) and agreements not intended to have such a character. In a restricted sense the term "agreement" means an agreement intended to have an obligatory character but usually of a less formal nature than a treaty. Like treaties, agreements in this restricted sense may be concluded between Heads of States, between States or between Governments.

§ 585. As an example of an Agreement between Heads of States may be cited the "Agreement regarding co-operation between the United Kingdom and the European Defence Community of April 13, 1954".[1] This Agreement was concluded between the United Kingdom and the six States who had signed the European Defence Community Treaty of May 27, 1952,[2] which was itself a Treaty between Heads of States. However, neither the Treaty of May 27, 1952, nor the Agreement of April 13, 1954, was ratified.

§ 586. The "Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty" of June 19, 1951 [3] was an agreement between States; whilst the Anglo-French Agreement of January 30, 1951, "regarding Rights of Fishery in areas of the Ecrehos and Minquiers" [4] was an Agreement between Governments.

§ 587. The understanding between the United Kingdom and Egyptian Governments concerning Self-Government and Self-Determination for the Sudan, signed in Cairo on February 12, 1953 [5] was in the form of an Agreement with four Annexes, two Agreed Minutes, two Exchanges of Notes and a Self-Government Statute. Article 15 of the Agreement stated: "This Agreement together with its attachments shall come into force upon signature." Agreements are, however, frequently made subject to ratification.

§ 588. No doubt because of its general and relatively innocuous meaning, "agreement" is the term invariably used to describe understandings intended to have an obligatory character [6] concluded (*a*) between the United Nations and the specialized agencies (including the "relationship agreements" covered by Articles 57 and 63 of the Charter) and (*b*) between the specialized agencies themselves ("inter-agency agreements"). "Agreement" is

[1] Cmd. 9126. [2] Cmd. 9127. [3] Cmd. 9363.
[4] Cmd. 8444. [5] Cmd. 8904.
[6] The use of the word "treaty" and "convention" might create the impression that the United Nations and the specialized agencies were claiming the prerogatives of States.

also the term normally used to describe understandings intended to have an obligatory character concluded between States and either (*a*) the United Nations, or (*b*) the specialized agencies, although the understanding between the United Nations and its Members on the subject of privileges and immunities was entitled " Convention on the Privileges and Immunities of the United Nations ".[1]

§ 589. As examples of such " Agreements " may be cited the Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization which came into force on December 14, 1946 (*U.N.T.S.*, 1, p. 238) ; the Agreement between the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization which came into force on December 15, 1947 (*U.N.T.S.*, 18, p. 345) ; the Agreement between the United States of America and the United Nations which came into force on November 21, 1947 (*U.N.T.S.*, 11, p. 11) ; and the Agreement between Switzerland and the World Health Organization which came into force on August 21, 1948 (*U.N.T.S.*, 26, p. 331).

§ 590. A term substantially equivalent to " agreement " (*accord*) is " arrangement " (*arrangement*). " Agreement " is, however, sometimes rendered in French as " *arrangement* ". The view that an " agreement " implies an undertaking somewhat more definite than an " arrangement " is not believed to be correct. Other terms sometimes used instead of " agreement ", though believed to be substantially similar, are

(*a*) memorandum of understanding constituting an agreement (*U.N.T.S.*, 84, p. 59).
(*b*) understanding (*ibid.*, p. 79).
(*c*) agreed combined statement (*ibid.*, p. 93).
(*d*) memorandum constituting an agreement (*ibid.*, p. 113).
(*e*) joint declaration constituting an agreement (*ibid.*, p. 185).

§ 591. Sometimes agreements are concluded between a Government Department in one country and a Government Department in another. It depends on the circumstances whether such " inter-departmental agreements " (*arrangements administratifs*) are binding under international law or whether they are merely private law contracts. In some countries the constitution may authorize Government Departments to enter into international

[1] *U.N.T.S.*, 1, p. 15. This Convention, however, possesses certain multilateral attributes in addition to its character as an understanding between the United Nations on the one hand and those Members who accede to it on the other hand.

agreements, but usually the competence of an organ of the State (except, of course, the Foreign Secretary or some other duly authorized plenipotentiary) to bind the State under international law derives from a parent treaty or convention.

§ 592. Thus the Anglo-French Postal Convention of September 24, 1856, itself concluded between Heads of States, provided that " the British Post Office and the French Post Office shall determine, by mutual consent, the conditions upon which shall be exchanged in open mails between the respective Offices of exchange, letters and printed papers of every kind " and that the two Post Offices should " nominate, by mutual consent the Offices through which the exchange of correspondence shall respectively take place ".[1] Accordingly, the Postmaster-General of the United Kingdom and the Director-General of the French Post Office concluded in the same year an inter-departmental agreement entitled " Detailed Regulations arranged between the Post Office of Great Britain and the Post Office of France for the execution of the Postal Convention of September 24, 1856 ".[2] Inter-departmental agreements of this type have remained a feature of international postal arrangements, though they are not confined to postal matters.

§ 593. Article 22 of the Convention of the Universal Postal Union of July 11, 1952 (Cmd. 8998) itself an inter-state convention, provides that " The Administrations of member-countries draw up by common consent, in the Detailed Regulations, the detailed rules and procedures necessary for the implementation of the Convention " and the related Agreements. Thus " inter-departmental agreements " may be said to be the equivalent in the international sphere of " delegated legislation " in the national sphere.

Protocol

§ 594. The word Protocol is derived from the Low-Latin *protocollum*, Greek *Πρωτόκολλον* the " first glued-in " to the book ; originally a register in which public documents were stuck. It then came to mean the form used in drawing up such documents, and in diplomacy the register in which the minutes of a conference are kept. It is also employed to signify the forms to be observed in the official correspondence of the minister for foreign affairs, and in the drafting of diplomatic documents, such as treaties, conventions, declarations, full powers, ratifications, letters of

[1] *Br. and For. State Papers*, 46, p. 195. See Articles 31 and 36 of the Convention.
[2] *Ibid.*, 52, p. 1123.

credence and other letters addressed by one head of state to another. In France *le bureau du protocole* is the sub-department charged with the preparation of such papers and the regulation of ceremonial in all such matters. In Great Britain this work is shared between the Protocol and the Treaty and Nationality Departments of the Foreign Office.

§ 595. Used to denote the form taken by an international agreement, the word Protocol is usually regarded as describing the record of an agreement less formal than a treaty or convention.

§ 596. But in present practice international agreements of the highest importance may be cast in this form, *e.g.* the Protocol of December 16, 1920, establishing the Permanent Court of International Justice [1] or the Protocol of the Proceedings of the Berlin Conference dated August 2, 1945.[2]

§ 597. It may happen that, on the conclusion of a multilateral treaty or convention, it is found desirable to supply simultaneously observations, declarations and agreements elucidatory of the text, and that these are recorded in a Final Protocol (*Protocol Final, Schluss-Protokoll*, or *Protocole de Clôture*) which becomes part of the compact.

§ 598. Protocols are also frequently used to amend multilateral international agreements (*e.g.* Protocol of November 12, 1947,[3] amending the Convention of September 12, 1923, for the suppression of the Circulation of and Traffic in Obscene Publications) ; [4] or to prolong their existence (*e.g.* Protocol of August 30, 1952,[5] for the Prolongation of the International Agreement of May 6, 1937, regarding the Regulation of Production and Marketing of Sugar.)[6] The Covenant of the League of Nations was amended in various articles by a series of protocols, in which " the undersigned, being duly authorized, declare that they accept, on behalf of the Members of the League which they represent, the above amendment."

§ 599. Similarly, in the case of a bilateral treaty, protocols are often attached, supplementing, amending or qualifying the treaty. (*E.g.* Protocol attached to Anglo-Swiss Convention on Social Insurance of January 16, 1953.)[7]

§ 600. Alternatively such protocols may be added later (*e.g.* the Protocol of April 23, 1951,[8] supplementing the Agreement on Trade and Payments between the Government of the United

[1] Cmd. 1981.
[2] Cmd. 7087.
[3] Cmd. 8438.
[4] Cmd. 2575.
[5] Cmd. 8437.
[6] Cmd. 5461.
[7] Cmd. 9157.
[8] Cmd. 8268.

Kingdom and the Government of the Argentine Republic of June 27, 1949,[1] and the Further Protocol of December 31, 1952,[2] supplementing the same Agreement).

§ 601. Protocols relating to subsidiary matters are also often attached to treaties. To the Treaty of Peace with Turkey, signed at Lausanne on July 24, 1923,[3] were appended six protocols on various matters, as well as a number of conventions, declarations, etc., concluded at the same time as the main instrument.

§ 602. Understandings between two or more governments in regard to some particular matter are sometimes styled "protocols", though differing in no other respect from other agreements. The form has been used to conclude an armistice (Protocol between the United States and Spain, August 12, 1898;[4] between Poland and Lithuania, November 29, 1920);[5] to interpret the provisions of a former treaty (Protocol between the Argentine Republic and Brazil, October 22, 1878;[6] between the United States and Venezuela, February 27, 1915);[7] to provide for the delimitation of a boundary (Protocol between Germany and Belgium—Congo—German East Africa—June 25, 1911);[8] to record the work of a Boundary Commission (Protocol of August 5, 1924[9]—Tanganyika—Ruanda Urundi—approved by exchange of notes between Great Britain and Belgium, May 17, 1926);[10] to re-establish diplomatic relations (Protocol between the Netherlands and Venezuela, August 20, 1894);[11] to prolong an alliance (Protocol between Germany and Austria, June 1, 1902);[12] to regulate the status of international military headquarters (Protocol of August 28, 1952,[13] between the parties to the North Atlantic Treaty); and to regulate the exercise of criminal jurisdiction over foreign armed forces (Protocol of October 26, 1953,[14] between Japan, the United States of America, Australia, Canada and the United Kingdom).

Exchange of Notes

§ 603. Agreements are frequently concluded by means of formal notes exchanged between the minister for foreign affairs, acting on behalf of his government, and the resident diplomatic agent of the other country, similarly authorized. In the years

[1] Cmd. 8079.
[2] Cmd. 8744.
[3] *Br. and For. State Papers*, 117, p. 543.
[4] *Ibid.*, 90, p. 1049.
[5] *Ibid.*, 114, p. 875.
[6] *Ibid.*, 70, p. 1302.
[7] *Ibid.*, 113, p. 1201.
[8] *Ibid.*, 104, p. 820.
[9] *Ibid.*, 123, p. 462.
[10] *Ibid.*, 123, p. 467.
[11] *Ibid.*, 86, p. 543.
[12] *Ibid.*, 121, p. 1017.
[13] Cmd. 8687.
[14] Cmd. 9071.

1951–52, about one half of the instruments published in the *United Kingdom Treaty Series* were concluded in this form.

§ 604. It is not usual to exhibit full powers for exchanges of notes. Nor are exchanges of notes usually subject to ratification, although in some cases they may be. [Thus the exchange of notes between Germany and Spain of January 15, 1923,[1] was subject to ratification by both parties. The exchange of notes between the United Kingdom and Denmark of December 10, 1948,[2] was subject to the approval of the Danish Parliament.]

§ 605. Exchanges of notes generally result from oral discussion of the subject matter, but are sometimes the outcome of a correspondence in which the proposal has been put forward and discussed in advance. Usually the notes exchanged recording the agreement bear the same date, in which case, unless they provide otherwise, the agreement has effect from that date. If they bear different dates, that of the last note, or at any rate the date of its receipt, is the governing date (unless it is otherwise provided), since the agreement cannot be regarded as completed until it is plain that it has been accepted on both sides. To avoid the possibility of several notes passing and the exchange thus developing into a correspondence, it is nowadays considered desirable to reach agreement on the terms of the two notes to be exchanged before proceeding to the exchange.

§ 606. Agreements concluded in the form of an exchange of notes range over a great variety of matters, such as the amendment or prolongation of Trade and Payments Agreements, the renewal of arbitration or other conventions, the confirmation of the work of a boundary commission, the recognition of tonnage certificates, exemption from double taxation, recognition of trade marks, and many other matters.

§ 607. It is no longer true, however, that exchanges of notes are confined to relatively minor matters. The following major questions were regulated by exchanges of notes, *e.g.* Limitation of Naval Armaments (Exchange of Notes between the Governments of the United Kingdom and Germany of June 18, 1935—Treaty Series No. 22 (1935)) ; settlement of boundary disputes (Exchange of Notes between the Governments of the United Kingdom and Brazil of March 15, 1940,[3] and between the Governments of the United Kingdom and China of June 18, 1941) ;[4] and diplomatic

[1] *League of Nations Treaty Series*, vol. 26, p. 455.
[2] *U.N.T.S.*, vol. 45, p. 320.
[3] *U.N.T.S.*, vol. 5, p. 71.
[4] *U.N.T.S.*, vol. 10, p. 227.

and consular representation, juridical protection, and commerce and navigation (Exchange of Notes between the U.S.A. and Nepal of April 25, 1947).[1]

§ 608. Other examples of matters dealt with recently by exchanges of notes are the following :

(*a*) Exchange of Notes between the Government of the United Kingdom and the Government of the French Republic regarding the Exchange of Official Publications of April 7–13, 1953.[2]

(*b*) Exchange of Notes between the Government of the United Kingdom on behalf of the Government of Southern Rhodesia and the Italian Government regarding reciprocal payment of compensation in respect of injuries sustained during the Second World War of April 13, 1953.[3]

(*c*) Exchange of Notes between the Government of the United Kingdom and the Government of Israel regarding the conversion into sterling of the earnings of B.O.A.C. and Cyprus Airways of May 13, 1953 ;[4] and

(*d*) Exchange of Notes between the Government of the United Kingdom and the Government of the French Republic regarding the transit of British and French merchant seamen through France and the United Kingdom respectively of October 8–14, 1953.[5]

[1] *U.N.T.S.*, vol. 16, p. 97.
[2] Cmd. 8859.
[3] Cmd. 8891.
[4] Cmd. 8950.
[5] Cmd. 9027.

CHAPTER XXIV

TREATIES AND OTHER INTERNATIONAL COMPACTS (*CONTINUED*)

CONCORDAT, ADDITIONAL ARTICLES, FINAL ACT, GENERAL ACT, PROCÈS-VERBAL

CONCORDAT

§ 609. A concordat is an agreement between the Pope and the Head of a State, which has for its purpose to safeguard the interests of the Roman Catholic Church in the State concerned.

§ 610. Not to be confused with a concordat, however, is the Lateran Treaty between the Holy See and Italy, concluded at Rome on February 11, 1929,[1] which established the Vatican City and which, as its preamble made clear, had for its purpose the settlement of the " Roman question ".

§ 611. The juridical nature of concordats is controversial. According to Fauchille, the following views may be distinguished : (1) " Les concordats n'ont pas le caractère juridique des traités internationaux, mais constituent simplement des actes publics de la souveraineté interne établis d'accord avec le Saint-Siège ; " and (2) " Les concordats sont bien des traités internationaux, mais ils sont des traités internationaux d'une classe à part." Fauchille's own view is that " il paraît difficile de ne pas placer les concordats dans une classe tout à fait spéciale ". Concordats, he says, resemble treaties as to form, but differ from them as to their object. Thus,

" Deux puissances, l'une temporelle, l'Etat, l'autre, spirituelle, le Pape, indépendantes l'une de l'autre, toutes deux personnes internationales, souveraines l'une et l'autre dans l'ordre d'intérêts qu'elles ont à régir et à sauvegarder, se heurtant sur les limites de leurs domaines respectifs, s'accordent ensemble : voilà en quoi un concordat ressemble à un traité international.

" Mais la différence est dans le fond.—L'objet des concordats n'est pas matière de droit international.—C'est matière de droit public interne. Il s'agit de combiner le libre exercice d'un culte avec le main-

[1] *American Journal of International Law*, 23 (1929), Supplement, p. 187.

tien de l'ordre public et des principes fondamentaux d'une constitution et d'un état social déterminés." [1]

§ 612. There can be no doubt, however, that the Lateran Treaty of February 11, 1929 (see § 205) had the character of an international treaty, since its purpose was to regulate and clarify the international status of the Holy See and of the Vatican City—matters clearly within the sphere of international law.

Additional Articles

§ 613. Additional Articles are articles appended to an international agreement in relation to some subsidiary matter, or in qualification of a provision in the main instrument, and signed at the same time as the latter. Thus, simultaneously with the signature at Paris on May 30, 1814, of the Definitive Treaty of Peace and Amity between His Britannic Majesty and His Most Christian Majesty (*i.e.* the King of France)—which paved the way for the Congress of Vienna—there were signed, and by the same plenipotentiaries, Additional Articles between France and Great Britain relating to steps to be taken for the abolition of the slave trade, the liquidation of accounts of expenses incurred through the maintenance of prisoners of war and other matters. It was stated that "The present Additional Articles shall have the same force and validity as if they were inserted word for word in the Treaty Patent of this day. They shall be ratified, and the Ratifications shall be exchanged at the same time." [2]

§ 614. Similarly, the United States and Venezuela added the following Additional Article to their Extradition Treaty of January 19, 1922, *e.g.*

> The undersigned (names of plenipotentiaries) have agreed upon the following additional Article to the Treaty of Extradition signed by the aforesaid on the 19th instant :—
>
> It is agreed that all differences between the Contracting Parties relating to the interpretation or execution of this Treaty shall be decided by arbitration.
>
> In witness whereof they have signed the above Article, and have hereunto affixed their seals.
>
> Done in duplicate, in Caracas, this 21st day of January, 1922.[3]

§ 615. Sometimes an Additional Article is to be found styled as "Annex", but this is unusual, for most annexes to an inter-

[1] P. Fauchille, *Traité de Droit International Public*, vol. 1, part 3 (8th ed., by H. Bonfils, 1926), p. 442.

[2] *Br. and For. State Papers*, 1, 172. [3] *Ibid.*, 118, 1141.

national agreement are referred to in the body of the agreement itself, and are attached to it in virtue of such reference.

§ 616. Additional Articles are sometimes concluded at a later date, as agreements between Governments, and occasionally styled Additional Act, in amplification or modification of the provisions of a former treaty ; in this event they may or may not provide for ratification. More often, however, these objects are accomplished by means of supplementary conventions, agreements or protocols, though in the case of postal, telegraphic or monetary Agreements, when these are modified, the term Additional Articles is frequently applied.

Final Act

§ 617. Final Act (*Acte Final*) is usually a formal statement or summary of the proceedings of a congress or conference, enumerating the treaties or conventions drawn up as the result of its deliberations, with, it may be, certain recommendations, or "vœux", deemed to be desirable. The signature of an instrument of this kind does not in itself entail acceptance of the treaties or conventions so enumerated, which require separate signature, as, *e.g.*, the *Acte Final* of the Lausanne Conference concerning the Turkish Peace Settlement, signed at Lausanne, July 24, 1923. At the Hague Peace Conference of 1899 it was debated whether the instrument in which the results were to be summed up should be styled *Acte*, *Protocole*, or *Procès-Verbal Final ;* the phrase *Acte Final* was eventually preferred.

§ 618. *Final Act of the First International Peace Conference held at The Hague, 1899.*

(The Preamble relates how the Conference was invited, and how it met.)

Then follow the names of the delegates representing each Power taking part.

Enumeration of the Conventions and Declarations annexed, which remained open for signature until December 31, 1899.

Resolution adopted : That the Conference considered the limitation of the charges which lay heavy on the world greatly to be desired for the increase of the material and moral welfare of humanity.

Six recommendations (*vœux*).

En foi de quoi, les Plénipotentiaires ont signé le présent Acte, et y ont apposé leurs cachets.

Fait à La Haye le 29 juillet, 1899, en un seul exemplaire, qui sera déposé au Ministère des Affaires Etrangères, et dont des copies, certi-

fiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.

§ 619. The Final Act of the Second Peace Conference at The Hague in 1907 was drawn up in precisely the same form.

§ 620. *Final Act of the Conference for the Revision of the Geneva Convention of 27th July, 1929, for the Relief of the Wounded and Sick in Armies in the Field, of the Xth Hague Convention of 18th October, 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906 and of the Convention concluded at Geneva on 27th July, 1929, relative to the Treatment of Prisoners of War; and for the Establishment of a Convention relative to the Protection of Civilian Persons in time of War.*

Geneva, 21st April to 12th August, 1949.

FINAL ACT OF CONFERENCE

The Conference convened by the Swiss Federal Council for the purpose of revising

the Geneva Convention of 27th July, 1929,[1] for the Relief of the Wounded and Sick in Armies in the Field,

the Xth Hague Convention of 18th October, 1907,[2] for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906,[3]

the Geneva Convention of 27th July, 1929,[4] relative to the Treatment of Prisoners of War, and

to establish a Convention for the Protection of Civilian Persons in Time of War, deliberated from 21st April to 12th August, 1949, at Geneva, on the basis of the four Draft Conventions examined and approved by the XVIIth International Red Cross Conference held at Stockholm.

The Conference established the texts of the following Conventions :

I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

II. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked members of Armed Forces at Sea.

III. Geneva Convention relative to the Treatment of Prisoners of War.

IV. Geneva Convention relative to the Protection of Civilian Persons in Time of War.

These Conventions, the text of which has been established in the English and French languages, are attached to the present

[1] Cmd. 3940. [2] Cmd. 4175. [3] Cmd. 3502. [4] Cmd. 3941.

Act. The official translation of the same Conventions into Russian and Spanish will be made through the good offices of the Swiss Federal Council.

The Conference further adopted 11 resolutions which are also attached to the present Act :

In witness whereof, the undersigned, duly authorized by their respective Governments, have signed this present Final Act.

Done at Geneva, this twelfth day of August, 1949, in the English and French languages. The original and the documents accompanying it shall be deposited in the Archives of the Swiss Confederation.

[There followed the signatures of the representatives.]

General Act

§ 621. But sometimes, as in the case of the *Acte Final* of the Congress of Vienna, 1815,[1] the instrument may itself become a treaty by declaring that the separate treaties and conventions, which are annexed, have the same force as if they were textually included. Or, as in the *Acte Général* of the Berlin Conference of 1885,[2] concerning African matters (spoken of as the *Acte Final*, until in the course of the ninth protocol its designation was changed), the various declarations, etc., are incorporated in a single instrument and styled " General Act ". Such a General Act does not differ essentially from a treaty or convention.

§ 622. Further instances of the use of the term are the General Act of the Brussels Conference of 1890 relative to the African Slave Trade ; [3] the General Act of the Algeciras Conference of 1906 relative to the Affairs of Morocco ; [4] the General Act for the Pacific Settlement of International Disputes of September 26, 1928,[5] prepared under the auspices of the League of Nations, and providing, not for signature by plenipotentiaries, but for accessions thereto, to the extents set out therein, and subject, if necessary, to certain specified reservations ; and the Revised General Act for the Pacific Settlement of International Disputes of April 28, 1949,[6] prepared under the auspices of the United Nations.

Procès-Verbal

§ 623. This term is applied to a formal record of proceedings. During a congress or conference the minutes of meetings of pleni-

[1] *Br. and For. State Papers*, 2, p. 3.
[2] *Ibid.*, 76, p. 4.
[3] *Ibid.*, 82, p. 55.
[4] *Ibid.*, 99, p. 141.,
[5] *Ibid.*, 130, p. 878.
[6] *U.N.T.S.*, vol. 71, p. 101.

potentiaries are sometimes styled protocol or *procès-verbal* indifferently ; the latter is the more suitable term for this purpose.

§ 624. When a treaty or convention is signed between a number of states, or when ratifications are deposited, a formal record of the proceedings is often prepared and signed. For such a record as a simple statement of fact, the term *procès-verbal* is appropriate, but if it embodies provisions or conditions which constitute a further agreement between the parties, it becomes a subsidiary compact, and would better be styled protocol. It cannot be said, however, that the distinction is closely observed in practice.

Example

CONSEIL DE L'EUROPE COUNCIL OF EUROPE

Procès-verbal of deposit
on behalf of the Government of the United
Kingdom of Great Britain and Northern Ireland
of the instruments of ratification of the
Agreements, Convention and Protocols
enumerated below,
signed at Paris on the 11th December, 1953 ;

(*a*) European Interim Agreement on social security schemes relating to old age, invalidity and survivors, and Protocol thereto ;

(*b*) European Interim Agreement on social security other than schemes for old age, invalidity and survivors, and Protocol thereto ;

(*c*) European Convention on Social and Medical Assistance, and Protocol thereto ;

At 12.30 p.m. on seventh September nineteen hundred and fifty-four, at the seat of the Council of Europe in Strasbourg, Mr. PETER W. SCARLETT, Permanent Representative of the United Kingdom Government, deposited with the Secretary-General the instruments of ratification of the above Agreements, Convention and Protocols.

In witness whereof this procès-verbal has been drawn up in duplicate and signed by Mr. PETER W. SCARLETT, and by Monsieur L. MARCHAL, Secretary-General of the Council of Europe, one copy being deposited in the archives of the Secretariat-General.

(*Signature*)
PETER W. SCARLETT
Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the Council of Europe.

(*Signature*)
L. MARCHAL
Secretary-General of the Council of Europe.

CHAPTER XXV

TREATIES AND OTHER INTERNATIONAL COMPACTS (*CONTINUED*)

MODUS VIVENDI, COMPROMIS D'ARBITRAGE, RÉVERSALES

MODUS VIVENDI

§ 625. THIS is the title given to a temporary and provisional agreement, usually intended to be replaced later on, whenever it may prove feasible, by one of a more permanent and detailed character; or, it may be, pending a reference to arbitration. It is not, however, always so designated in the document by which it is established. This sometimes consists of an agreement, signed by both parties, or even of a convention, but more often of an exchange of notes.

§ 626. *Temporary Commercial Agreement between Great Britain and the Union of Soviet Socialist Republics. London, April 16, 1930.*[1]

His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, being mutually desirous to conclude as soon as possible a formal Treaty of Commerce and Navigation between the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, have meanwhile agreed upon the following temporary Agreement to serve as a *modus vivendi* pending the conclusion of such a Treaty.

(Arts. 1 to 6 respecting most-favoured-nation treatment, functions of Soviet Trade delegation, shipping, extension to British Dominions, colonies, etc.)

Art. 7.—The present Agreement comes into force on this day and shall remain in force until the coming into force of a commercial treaty between the United Kingdom and the Union of Soviet Socialist Republics, subject, however, to the right of either Party at any time to give notice to the other to terminate the Agreement, which shall then remain in force until the expiration of six months from the date on which such notice is given.

So far as concerns any of His Majesty's self-governing Dominions, India or any colony, possession, protectorate or mandated territory in

[1] Cmd. 3552.

respect of which notes have been exchanged in virtue of Article 4 above or in respect of which notice of the application of this Agreement has been given in virtue of Article 5 above, the Agreement may be terminated separately by either Party at the end of the sixth month or at any time subsequently on six months' notice to that effect being given either by or to His Majesty's Ambassador at Moscow or, in his absence, by or to His Majesty's Chargé d'Affaires.

In witness whereof the undersigned, duly authorized for that purpose, have signed the present Agreement, and have affixed thereto their seals.

Done in duplicate at London in the English language the 16th day of April, 1930.

A translation shall be made into the Russian language as soon as possible and agreed upon between the Contracting Parties.

Both texts shall then be considered authentic for all purposes.

[Seals and signatures.]

Compromis d'Arbitrage

§ 627. This term denotes an agreement to refer to arbitration or to judicial settlement some matter or matters in dispute. The English equivalent of the term is "special agreement" and in French it is customary to use only the single word "*compromis*". Thus Article 40(1) of the Statute of the International Court of Justice reads: "Cases are brought before the Court, as the case may be, either by the notification of the special agreement (*compromis*) or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated."

§ 628. Article 52 of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on October 18, 1907,[1] reads as follows:

> The powers who have recourse to arbitration sign a *compromis* in which are set forth the subject of the difference, the period for the appointment of the arbitrators, the form, order, and periods within which the communication referred to in article 63 [2] must be made, and the amount of money which each party must deposit in advance to cover expenses.
>
> The *compromis* shall also, if there is occasion, determine the manner of appointment of the arbitrators, all special powers which the tribunal may have, its seat, the language which it will use, and those whose use will be authorized before it, and, in general, all the conditions which the parties have agreed upon.

[1] *American Journal of International Law*, 2 (1908), Supplement, p. 65.

[2] The communication referred to here is the written pleadings of the respective parties.

§ 629. Basing itself on these authorities the International Law Commission makes the following recommendations with regard to the *compromis* in Article 9 of its Draft Convention on Arbitral Procedure, 1953.

" Unless there are prior agreements which suffice for the purpose, the parties having recourse to arbitration shall conclude a *compromis* which shall specify :

(*a*) The subject matter of the dispute ;
(*b*) The method of constituting the tribunal and the number of arbitrators ;
(*c*) The place where the tribunal shall meet.

In addition to any other provisions deemed desirable by the parties, the *compromis* may also specify the following :

(1) The law to be applied by the tribunal, and the power, if any, to adjudicate *ex aequo et bono ;*
(2) The power, if any, of the tribunal to make recommendations to the parties ;
(3) The procedure to be followed by the tribunal ;
(4) The number of members constituting a quorum for the conduct of the proceedings ;
(5) The majority required for the award ;
(6) The time limit within which the award shall be rendered ;
(7) The right of members of the tribunal to attach dissenting opinions to the award ;
(8) The appointment of agents and counsel ;
(9) The languages to be employed in the proceedings before the tribunal ; and
(10) The manner in which the costs and expenses shall be divided." [1]

§ 630. *Special Agreement for Submission to the International Court of Justice of Differences between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning Sovereignty over the Minquiers and Ecrehos Islets.*

London, December 29, 1950.[2]

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic ;

Considering that differences have arisen between them as a result of claims by each of them to sovereignty over the islets and rocks in the Minquiers and Ecrehos groups ;

Desiring that these differences should be settled by a decision of the

[1] Report of the International Law Commission covering the Work of its fifth session, June 1–August 14, 1953. (U.N. Document A/2456.)
[2] Cmd. 8422.

International Court of Justice determining their respective rights as regards sovereignty over those islets and rocks ;

Desiring to define the issues to be submitted to the International Court of Justice ;

Have agreed as follows :—

ARTICLE I

The Court is requested to determine whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Ecrehos groups respectively belongs to the United Kingdom or the French Republic.

ARTICLE II

Without prejudice to any question as to the burden of proof, the Contracting Parties agree, having regard to Article 37 of the Rules of Court, that the written proceedings should consist of—

(1) a United Kingdom memorial to be submitted within three months of the notification of the present Agreement to the Court in pursuance of Article III below ;

(2) a French counter-memorial to be submitted within three months of delivery of the United Kingdom memorial ;

(3) a United Kingdom reply followed by a French rejoinder to be delivered within such times as the Court may order.

ARTICLE III

Upon the entry into force of the present Agreement, it may be notified to the Court under Article 40 of the Statute of the Court by either of the Contracting Parties.

ARTICLE IV

(*a*) The present Agreement shall be subject to ratification.

(*b*) The instruments of ratification shall be exchanged as soon as possible in Paris and the present Agreement shall enter into force immediately upon the exchange of ratifications.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement and have affixed thereto their seals.

Done in duplicate in London, the 29th day of December, 1950, in English and French, both texts being equally authoritative.

(L.S.) W. E. BECKETT
(L.S.) ANDRÉ GROS.

§ 631. Other good examples of agreements submitting a dispute to arbitration are the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Greek Government regarding the Submission to Arbitration of

the *Ambatielos* Claim,[1] and the Arbitration Agreement between the Government of the United Kingdom (Acting on behalf of the Ruler of Abu Dhabi and His Highness The Sultan Said Bin Taimur) and the Government of Saudi Arabia.[2] These agreements were concluded, respectively, on February 24, 1955, and on July 30, 1954.

RÉVERSALES

§ 632. Calvo, *Dictionnaire de Droit International*,[3] defines *Réversales* or *Lettres Réversales* as

> Déclaration par laquelle un Etat s'engage à ne pas contrevenir à des arrangements convenus antérieurement, ou à un usage établi ; ou acte par lequel un Etat fait une concession en retour d'une autre.

§ 633. The terms thus defined have a wide and general meaning. They have also a more specialized meaning in relation to ceremonial. Thus, Calvo continues the above definition as follows :— " Ordinairement par les *lettres réversales* une cour reconnaît qu'une concession spéciale qui lui est faite par une autre cour, ne devra préjudicier en rien aux droits et aux prérogatives antérieurs de chacune d'elles."

§ 634. An example occurred in 1745, when the following *réversales* were given by Russia to France on the recognition by the latter of the imperial titles of Tsar and Tsaritza of Russia [4] :-

> " Sa majesté le roi de France, par amitié et une attention toute particulière pour sa majesté impériale de toutes les Russies, ayant condescendu à la reconnaissance *du titre impérial*, ainsi que d'autres puissances le lui ont déjà concédé ; et voulant que ledit titre soit toujours donné, et à l'avenir, tant dans son royaume que dans toutes les autres occasions ; sa majesté impériale de toutes les Russies a ordonné, qu'en vertu de la présente, il soit déclaré et assuré que, comme cette complaisance du roi lui est très agréable ; *ainsi cette même reconnaissance du titre impérial ne devra porter aucun préjudice au cérémonial usité entre les deux cours de sa majesté le roi de France, et de sa majesté impériale de toutes les Russies.* Fait à St.-Péterbourg, le 16 de mars 1745. Signé, Alexis, comte de Bestucheff, et Rumin Mich, comte de Woronzow."

[1] Cmd. 9425. [2] Cmd. 9272.
[3] Vol. 2, p. 175.
[4] M. de Flassan, *Histoire Générale et Raisonnée de la Diplomatie Française*, vol. 5, p. 218.

CHAPTER XXVI

TREATIES AND OTHER INTERNATIONAL COMPACTS (*CONTINUED*)

RATIFICATION

§ 635. RATIFICATION is, from the point of view of form, a solemn act on the part of a sovereign or by the president of a republic, by which he declares that a treaty, convention or other international compact has been submitted to him, and that after examining it he has given his approval thereto, and undertakes its complete and faithful observance. The whole text of the treaty, etc., should be reproduced in the instrument, which is signed by him and sealed with the seal of state.

§ 636. In the case of a bilateral treaty the instrument of ratification is exchanged for a similar one given by the other party to the treaty, and the fact of exchange is recorded in a certificate of exchange, which is ordinarily drawn up in the respective languages of the two parties, and signed in duplicate, each party retaining an original, in which it is given the customary precedence. As a rule the exchange is effected by the head of the department concerned with treaty formalities in the Ministry of Foreign Affairs of the one country and the diplomatic agent of the other, or a member of his staff. The issue of full powers for such a purpose is unnecessary, unless, as has occasionally happened, one of the parties should insist on this additional formality. The production of the instruments of ratification by the officials undertaking the exchange is normally regarded as sufficient evidence that they are authorized to proceed to the exchange.

§ 637. The form of certificate of exchange used in the United Kingdom in respect of treaties between Heads of State is as follows :

> The Undersigned having met together for the purpose of exchanging the Ratifications of a Consular Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth, in respect of the United Kingdom of Great Britain and Northern Ireland, and His Majesty the King

of the Hellenes, which was signed at Athens on the 17th day of April, 1953 ; and the respective Ratifications of the said Convention having been found in good and due form, the said exchange took place this day.

In witness whereof the Undersigned have signed the present Certificate.

Done in duplicate at London the 15th day of January, 1954.

(*Signed*) H. WARD.
(*Signed*) A. PILAVACHI.

§ 638. The form of certificate of exchange used in the United Kingdom in respect of treaties between Governments is as follows :

The Undersigned having met together for the purpose of exchanging the Ratifications of a Convention relating to payment of compensation or benefit in respect of industrial injuries (including occupational diseases) which was signed at London on the 15th day of December, 1953, by representatives of the Government of the United Kingdom of Great Britain and Northern Ireland and of the Government of Denmark ; and the respective Ratifications of the said Convention having been found in good and due form, the said exchange took place this day.

In witness whereof the Undersigned have signed the present Certificate.

Done in duplicate at London the 26th day of April, 1954.

(*Signed*) H. WARD.
(*Signed*) STEENSEN-LETH.

If the treaty is between states the certificate is modified accordingly.

§ 639. When there are more than two contracting parties, it is customary to have but one original text of the treaty, which is signed by the plenipotentiaries and deposited in the archives of the state wherein it was signed, each of the other parties being furnished by that state with a copy of the treaty as signed, certified by it as correct. The instruments of ratification are then as a rule deposited with the government of that state, which, on the occasion of each successive deposit, delivers a formal acknowledgment, *acte d'acceptation* or *procès-verbal de dépôt* to the state concerned, and at the same time notifies the fact of such deposit to all the other signatory states. The procedure to be followed in these cases is, however, ordinarily laid down in the treaty itself, and may sometimes entail a meeting of representatives of the signatory states for the purpose of depositing ratifications, and the signature

of a *procès-verbal de dépôt*, of record of the proceedings, specifying the ratifications deposited, and any declarations, reservations, etc., made, a certified copy of such *procès-verbal* being communicated to each of the contracting states.

§ 640. While as a matter of strict procedure the text of the treaty should, as mentioned above, be reproduced in the instrument of ratification, the non-observance of this rule does not necessarily invalidate the ratification, provided the intention to confirm and ratify the treaty is fully expressed. On this point Oppenheim observes :

" Occasionally the whole of the treaty is recited *verbatim* in the ratifying documents, but sometimes only the title, preamble, date of the treaty, and the names of the signatory representatives are cited. As ratification is only the confirmation of an already existing treaty, the essential requirement in a ratifying document is merely that it should refer clearly and unmistakably to the treaty to be ratified." [1]

But as there can be no difficulty in following the more exact procedure, it is better to do so in all cases.

§ 641. In the United Kingdom the treaty-making power is vested in the sovereign, and the ratification of a treaty signed as between Heads of States is effected by means of an instrument signed by the sovereign and sealed with the Great Seal. In practice the sovereign acts on the advice of his responsible ministers, and where the execution of the treaty involves a grant of the national funds, or a cession of territory, the approval of Parliament is first sought. If legislation is required to carry out the provisions of the treaty, the passing of such legislation is a preliminary. According to present practice, it is usual for the texts of all treaty instruments requiring ratification to lie on the Table of the House for twenty-one days before being ratified.

§ 642. The provisions of the Constitution of the French Republic of September 28, 1946, concerning treaties are as follows :

Art. 26. Diplomatic treaties duly ratified and published shall have the force of law even when they are contrary to internal French legislation ; they shall require for their application no legislative acts other than those necessary to ensure their ratification.
Art. 27. Treaties relative to international organisation, peace treaties, commercial treaties, treaties that involve national finances, treaties relative to the personal status and property rights of French citizens abroad, those that modify French internal legislation, as well as those

[1] *International Law*, vol. 1 (8th ed., 1955), § 515.

that involve the cession, exchange, or addition of territories, shall not become final until they have been ratified by an act of the legislature.

No cession, no exchange, and no addition of territory shall be valid without the consent of the populations concerned.

Art. 28. Since diplomatic treaties duly ratified and published have authority superior to that of French internal legislation, their provisions shall not be abrogated, modified, or suspended without previous formal denunciation through diplomatic channels. Whenever a treaty such as those mentioned in Article 27 is concerned, such denunciation must be approved by the National Assembly, except in the case of commercial treaties.

§ 643. In the United States, Article II(2) of the Constitution of September 17, 1787, gives power to the President, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

§ 644. As a result of the constitutional requirements outlined above, and of similar provisions in the constitutions of most countries, ratification has come to acquire an importance that is far more than formal. This is especially true of countries such as France and the United States, where the ratifying authorities are distinct from the executive departments responsible for the conduct of foreign affairs.

§ 645. A number of legal points arise in connexion with ratification. The first concerns the question which types of international agreement require ratification and which do not. The second concerns the question whether, assuming the agreement to be one which requires ratification, there is any duty to ratify. In other words does failure to ratify amount to a breach of obligation?

§ 646. According to the older view, all treaties required ratification in order to become valid and binding. As an example of this view may be cited the following extract from the judgment of Sir William Scott in *The Eliza Ann* : [1]

The question, therefore, comes to this, whether a ratification is or is not necessary to give effect and validity to a treaty signed by plenipotentiaries. Upon abstract principles we know that, either in public or private transactions, the acts of those who are vested with a plenary power are binding upon the principal. But, as this rule was in many cases found to be attended with inconvenience, the later usage of States has been to require a ratification, although the treaty may have been signed by plenipotentiaries. According to the practice now prevailing, a subsequent ratification is essentially necessary ; and a strong con-

[1] (1813) 1 Dods. 244, 248.

firmation of the truth of this position is, that there is hardly a modern treaty in which it is not expressly so stipulated ; and therefore it is now to be presumed, that the powers of plenipotentiaries are limited by the condition of a subsequent ratification. The ratification may be a form, but it is an essential form ; for the instrument, in point of legal efficacy, is imperfect without it. I need not add that a ratification by one power alone is insufficient ; that, if necessary at all, it must be mutual ; and that the treaty is incomplete till it has been reciprocally ratified.

§ 647. That there is still some force in this view is illustrated by the judgment of the Permanent Court of International Justice in the case relating to *The Territorial Jurisdiction of the International Commission of the River Oder* to the effect that " conventions, save in certain exceptional cases, are binding only by virtue of their ratification ".[1] According, however, to Sir Arnold McNair, the position is now so changed that it is no longer the practice of the United Kingdom Government to ratify any treaty which does not contain a clause expressly providing that it shall be ratified. On this view treaties not containing such a clause (usually known as a " ratification clause ") come into force without the necessity for ratification.[2]

Since, however, the position is open to doubt, it is the wiser course—if it is intended that a treaty should come into force without the necessity for ratification—to insert a clause providing that the treaty shall enter into force upon signature or on a specified date. Thus it was expressly provided that the Agreement of February 12, 1953, between the United Kingdom and Egyptian Governments concerning Self-Government and Self-Determination for the Sudan [3] would " come into force upon signature ".

§ 648. The most conspicuous modern examples of international agreements not requiring ratification are exchanges of notes though they are occasionally made subject to that formality. It is still, however, usual for important treaties between Heads of States (*e.g.* the Brussels Treaty of 1948), between States (*e.g.* the North Atlantic Treaty of 1949) or between Governments, (*e.g.* the Statute of the Council of Europe of 1949), to be made expressly subject to ratification.

§ 649. It used to be thought that Heads of States were under a binding legal duty to ratify treaties entered into by plenipotentiaries appointed by them, save in those exceptional cases where

[1] *P.C.I.J.*, Series A, No. 23, p. 20.
[2] *The Law of Treaties* (1938), p. 85.
[3] Cmd. 8904.

the plenipotentiaries had exceeded the instructions contained in their full powers. This view is, however, no longer held. As Judge Moore said in the case of *The Mavrommatis Palestine Concessions*, "The doctrine that governments are bound to ratify whatever their plenipotentiaries, acting within the limits of their instructions, may sign, and that treaties may therefore be regarded as legally operative and enforceable before they have been ratified, is obsolete, and lingers only as an echo from the past." [1]

§ 650. In former times it was not the practice to make a reserve of ratification in the full power, no doubt because there was conceived to be a duty to ratify the work of plenipotentiaries carried out within the limits of their instructions. Thus, in the ancient form of British full power, there was a promise to hold as *grata, rata et accepta* in the fullest manner, the work of the plenipotentiaries, and not to suffer anything to be done, in whole or in part, that was contrary thereto. French, Spanish and Dutch full powers of those times were to the same effect. Nevertheless, it was from an early time customary, and was recognised by Bynkershoek as forming an established usage, to look upon ratification by the sovereign as necessary to impart validity to a treaty concluded by his plenipotentiary, and full powers were interpreted as conferring a general power of negotiating, subject to instructions received from time to time, and of concluding agreements, subject to the ultimate approval or otherwise of the sovereign.

§ 651. The practice of reserving the ratification of the sovereign had formerly its use when the plenipotentiary of one of the high contracting parties was negotiating at such a distance that he might perhaps not have time to refer the text of the instrument agreed upon to his government before signing. In modern times, when all the capitals of the civilised world are in telegraphic communication, it is the usual practice for plenipotentiaries to submit the precise wording of the proposed treaty to their governments for approval before signature, so that to withhold ratification cannot be so easily justified, except perhaps where the ratifying authorities constitute a separate organ of government distinct from the authorities responsible for the day-to-day conduct of foreign policy. At the present day the inclusion of a statement in the full powers given to plenipotentiaries that the acceptance of the treaty they may sign is "subject if necessary to ratification" is, however, of common occurrence, though the same fact is as a rule expressed in the treaty itself, or can be if desired.

[1] *P.C.I.J.*, Series A, No. 2, p. 57.

§ 652. Nevertheless, even at the present day, failure to ratify a treaty is a serious matter. As the Comment to Article 9 of the Harvard Draft Convention states :

It is believed that when a duly authorized plenipotentiary signs a treaty on behalf of his State, the signature is not a simple formality devoid of all juridical effect and involving no obligation whatever, moral or legal, on the part of the State whose signature the treaty bears. It would seem that not only the treaty-making organ itself but also the other organs of the State which are competent to act for it, once a treaty has been signed on its behalf, are not, if they observe good faith, entirely free to act as if the treaty had never been signed. It would seem also that one signatory State has a right to assume that the other will regard its signature as having been seriously given, that ordinarily it will proceed to ratification, and that in the meantime it will not adopt a policy which would render ratification useless or which would place obstacles in the way of the execution of the provisions of the treaty, once its ratification has been given.

The view expressed above derives some support, by analogy, from the judgment of the Permanent Court of International Justice in the *Case of Certain German Interests in Polish Upper Silesia*, where it was held that, although Germany (who under the Treaty of Versailles had renounced in favour of Poland sovereignty over a portion of Upper Silesia and had agreed to the holding of a plebiscite in another portion of that territory) " undoubtedly retained until the actual transfer of sovereignty the right to dispose " of State property in the area concerned, " a misuse of this right could endow an act of alienation with the character of a breach of the Treaty ".[1]

Examples

(*a*) *The form of ratification of a treaty between Heads of States given by Her Majesty in respect of the United Kingdom of Great Britain and Northern Ireland.*

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, etc., etc., etc. To all and singular to whom these Presents shall come, Greeting!

Whereas a Consular Convention between Us, in respect of Our United Kingdom of Great Britain and Northern Ireland, and Our Good Friend the President of the United Mexican States, was concluded and signed at Mexico City on the Twentieth day of March in

[1] *P.C.I.J.*, Series A, No. 7, p. 30.

the year of Our Lord One thousand Nine hundred and Fifty-four by the Plenipotentiaries of Us and of Our said Good Friend duly and respectively authorized for that purpose, which Convention is, word for word, as follows :—

(Texts)

We, having seen and considered the Convention aforesaid, have approved, accepted and confirmed the same in all and every one of its Articles and Clauses, as We do by these Presents approve, accept, confirm and ratify it, in respect of Our United Kingdom of Great Britain and Northern Ireland, for Ourselves, Our Heirs and Successors ; engaging and promising upon Our Royal Word that We will sincerely and faithfully perform and observe all and singular the things which are contained and expressed in the Convention aforesaid, and that We will never suffer the same to be violated by any one, or transgressed in any manner, as far as it lies in Our power. For the greater testimony and validity of all which, We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the Tenth day of January in the Year of Our Lord One thousand Nine hundred and Fifty-five and in the Third year of Our Reign.

(*Seal*) (*Signed*) ELIZABETH R.

(*b*) *The form of ratification of a treaty between States given by Her Majesty in respect of the United Kingdom of Great Britain and Northern Ireland.*

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, etc., etc., etc. To all and singular to whom these Presents shall come, Greeting!

Whereas a Treaty between Our United Kingdom of Great Britain and Northern Ireland, and other Powers and States relative to the collective defence of South-East Asia and of the South-West Pacific area was concluded and signed at Manila on the Eighth day of September in the year of Our Lord One thousand Nine hundred and Fifty-four by the Plenipotentiaries of Our United Kingdom of Great Britain and Northern Ireland and of other Powers and States duly and respectively authorized for that purpose, which Treaty is, word for word, as follows :

(Texts)

We, having seen and considered the Treaty aforesaid, have approved, accepted and confirmed the same in all and every one of its Articles and Clauses, as We do by these Presents approve, accept, confirm and ratify it, in respect of Our United Kingdom of Great Britain and Northern Ireland, for Ourselves, Our Heirs and Successors ; engaging

and promising upon Our Royal Word that We will sincerely and faithfully perform and observe all and singular the things which are contained and expressed in the Treaty aforesaid, and that We will never suffer the same to be violated by any one, or transgressed in any manner, as far as it lies in Our power. For the greater testimony and validity of all which, We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the Twenty-sixth day of January in the Year of Our Lord One thousand Nine hundred and Fifty-five and in the Third year of Our Reign.

(*Seal*) (*Signed*) ELIZABETH R.

(*c*) *Governmental ratification*

WHEREAS an Agreement for the establishment of a European Payments Union and a Protocol of Provisional Application of the said Agreement were signed at Paris on the Nineteenth day of September, One Thousand Nine hundred and Fifty, by representatives of the Government of the United Kingdom of Great Britain and Northern Ireland and of the Governments of other Powers and States ;

AND WHEREAS Supplementary Protocols No. 2, No. 3, No. 4 and No. 5 amending the said Agreement were signed at Paris on the Fourth day of August, One Thousand Nine hundred and Fifty-one, the Eleventh day of July, One thousand Nine Hundred and Fifty-two, the Thirtieth day of June, One Thousand Nine hundred and Fifty-three and the Thirtieth day of June, One Thousand Nine hundred and Fifty-four, respectively, by representatives of the Government of the United Kingdom of Great Britain and Northern Ireland and of the Governments of other Powers and States, which Agreement and Protocols are, word for word, as follows :—

(Texts)

The Government of the United Kingdom of Great Britain and Northern Ireland, having considered the Agreement and Protocols aforesaid, hereby confirm and ratify the same and undertake faithfully to perform and carry out all the stipulations therein contained.

In witness whereof this Instrument of Ratification is signed and sealed by Her Majesty's Principal Secretary of State for Foreign Affairs.

Done at London, the Tenth day of December, One Thousand Nine hundred and Fifty-four.

(*Seal*) (*Signed*) ANTHONY EDEN.

(*d*) *A French example*

René Coty
Président de la République Française,
Président de l'Union Française,
A tous ceux qui ces présentes Lettres verront,
Salut :

Un Accord International sur le sucre ayant été signé à Londres le 26 octobre 1953, Accord dont la teneur suit :

(Text)

AYANT vu et examiné le dit Accord Nous l'avons approuvé et approuvons en toutes et chacune de ses parties, en vertu des dispositions qui y sont contenues et conformément à l'article 31 de la Constitution.

DECLARONS qu'il est accepté, ratifié et confirmé et PROMETTONS qu'il sera inviolablement observé.

EN FOI DE QUOI, Nous avons donné les présentes, revêtues du Sceau de la République.

A Paris, le 8 Septembre 1954.

(*Seal*) (*Signed*) R. COTY

Par le Président de la République,

Le Président du Conseil des Ministres
(*Signed*) MENDÈS-FRANCE.

Le Ministre des Affaires Étrangères
(*Signed*) MENDÈS-FRANCE.

(*e*) *A United States example*

DWIGHT D. EISENHOWER

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING :

KNOW YE That, whereas there was signed at Washington on May 25, 1954 the supplementary protocol between the United States of America and the United Kingdom of Great Britain and Northern Ireland amending the convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on April 16, 1945, as modified by the supplementary protocol signed at Washington on June 6, 1946 ;

AND WHEREAS the original of the said supplementary protocol of May 25, 1954 is word for word as follows :

(Here follow the words of the Supplementary Protocol)

AND WHEREAS the Senate of the United States of America by their resolution of August 20, 1954, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said supplementary protocol of May 25, 1954 ;

NOW, THEREFORE, be it known that I DWIGHT D. EISENHOWER, President of the United States of America, having seen and considered the said supplementary protocol of May 25, 1954, do hereby, in pursuance of the aforesaid advice and consent of the Senate of the United States of America, ratify and confirm the said supplementary protocol of May 25, 1954 and every article and clause thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-second day of September in the year of our Lord one thousand nine hundred and fifty-four and of the Independence of the United States of America the one hundred seventy-ninth.

(*Signed*) By the President :
DWIGHT D. EISENHOWER.

(*Seal*) (*Signed*) WALTER BEDELL SMITH,
Acting Secretary of State.

CHAPTER XXVII

TREATIES AND OTHER INTERNATIONAL COMPACTS (*CONTINUED*)

ACCESSION, ACCEPTANCE AND APPROVAL, RESERVATION, NOTICE OF TERMINATION, REGISTRATION

ACCESSION

§ 653. " Accession " is the term given to the long-recognised practice whereby a state which has not signed a treaty may subsequently become a party to it (see, however, § 740). The French equivalent of the term is " *adhésion* ". The English words " adherence " and " adhesion " are also sometimes used, but the correct English term is " accession ". At one time it was thought that " accession " bound a party more closely to the conditions of the original treaty than did the other expressions, but to-day there is believed to be no distinction between the various terms.

§ 654. States not parties to a treaty have no right of accession unless the treaty so provides.[1] Sometimes the treaty provides that accession shall only be possible as a result of an invitation from all the original contracting parties. Thus Article 10 of the North Atlantic Treaty of April 4, 1949[2] provides that :

> The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty. Any State so invited may become a party to the Treaty by depositing its instrument of accession with the Government of the United States of America. The Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession.

In a Protocol dated October 17, 1951,[3] the parties concerned gave their unanimous consent to the dispatch of an invitation to Greece and Turkey to accede to the North Atlantic Treaty. Article I of this Protocol provided as follows :

[1] The case of *Certain German Interests in Polish Upper Silesia*, P.C.I.J., Series A, No. 7 pp. 28–9. [2] Cmd. 7789. [3] Cmd. 8489.

Upon the entry into force of this Protocol, the Government of the United States of America shall, on behalf of all the Parties, communicate to the Government of the Kingdom of Greece and the Government of the Republic of Turkey an invitation to accede to the North Atlantic Treaty, as it may be modified by Article II of the present Protocol.[1] Thereafter the Kingdom of Greece and the Republic of Turkey shall each become a Party on the date when it deposits its instrument of accession with the Government of the United States of America in accordance with Article 10 of the Treaty.

§ 655. Sometimes, however, accession is possible without either an invitation or the unanimous consent of the other contracting parties. In the case of the United Nations Organisation, accession to the Charter is governed by Article 4 which reads as follows :

1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organisation, are able and willing to carry out these obligations.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

The decision of the General Assembly in such a case is required by Article 18(2) of the Charter to be taken by a two-thirds majority of the members present and voting, whilst the recommendation of the Security Council must be in favour of admission and made under Article 27(3) (" by an affirmative vote of seven members including the concurring votes of the permanent members ").[2]

§ 656. As an example of accession to the Charter may be cited the instrument of accession deposited by Sweden on November 19, 1946,[3] which was in the following form :

The Government of the Kingdom of Sweden having received from the Secretary-General of the United Nations the information that the General Assembly of the United Nations has approved the application for membership of Sweden hereby presents to the Secretary-General this instrument of adherence, in accordance with rule 116 of the provisional rules of procedure for the General Assembly.

The Government of the Kingdom of Sweden hereby states that it accepts the obligations contained in the Charter of the United Nations.

(*Signed*) OESTEN UNDEN.

[1] The Protocol entered into force on February 15, 1952, and invitations were sent to the Greek and Turkish Governments on February 16, 1952.

[2] The Advisory Opinion concerning *Competence of the General Assembly for the Admission of a State to the United Nations* (I.C.J. Reports 1950, p. 4).

[3] *U.N.T.S.*, 1, p. 43.

§ 657. Article 3 of the Universal Postal Convention of July 11, 1952,[1] states that " any sovereign country may apply for admission as a member of the Universal Postal Union ", and that " the country concerned is considered to be admitted as a member if its application is approved by two-thirds at least of the member countries of the Union ", whilst the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949,[2] provides, in Article 139, that " from the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed to accede to this Convention." But, unless the contrary is provided, the unanimous consent of all the parties to the treaty is required before an accession can take place.

§ 658. In some treaties the parties delegate to another body the right to declare states eligible for accession. Thus, Article 27 of the Convention on Road Traffic of September 19, 1949,[3] provided that the Convention should be open for accession by certain designated states which had not signed the Convention and also " by any other State which the Economic and Social Council may by resolution declare to be eligible ".

§ 659. Normally, any state exercising the right of accession given to it in a treaty becomes a party to the treaty on the same conditions—*i.e.* subject to the same rights and duties—as the other contracting parties, whether original signatories or states who have subsequently acceded. Accession may, however, be rendered possible on terms which put the acceding state in a different position from the other contracting parties. Thus, Article 33 of the General Agreement on Tariffs and Trade of October 30, 1947,[4] provides that accession may take place by " a government not party to this Agreement . . . on terms to be agreed between such government and the contracting parties." In such cases it will depend upon the provisions of the original treaty whether the consent of all, or only a proportion of, the other contracting parties is required. In the absence of any provision to the contrary, unanimous consent is required.

§ 660. Normally, the right of accession to a treaty is granted only to states who have not signed the treaty in question, the presumption being that the states who have signed it are either bound already or—in those cases where ratification is necessary—will proceed to ratification in the normal way. Thus Article 17 of the International Telecommunications Convention of October 2, 1947[5] provides that " the Government of a country, not a

[1] Cmd. 8998. [2] Cmd. 8033. [3] Cmd. 7997. [4] Cmd. 7258. [5] Cmd. 8124.

signatory of this Convention, may accede thereto at any time. . . ." Some treaties, however, permit signatories to accede. Thus Article 18 of the General Treaty of Peace and Amity of February 7, 1923 (A.J.I.L. 17 (1923), Supplement, p. 117), concluded by the Central American Republics, provides that " Any of the republics of Central America which should fail to ratify this treaty shall have the right to adhere to it while it is in force." Provisions of this kind seem superfluous and inappropriate except in cases where a time limit has been fixed for the deposit of ratifications and yet where it is desired to leave it open to a state, which may have signed the treaty but not ratified it in time, subsequently to accede to it. Such would appear to be the intention—though somewhat ambiguously expressed—of Article XI of the Convention on the Prevention and Punishment of the Crime of Genocide approved by the General Assembly on December 9, 1948,[1] which reads as follows:

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

§ 661. Unless otherwise provided in the relevant Article of the treaty, accession may take place at any time after the text of the treaty has been established. It used to be thought that accession could take place only after the treaty had entered into force, but it is certain that to-day there is no such rule. Indeed, in the case of some multilateral conventions, accession is the only possible means through which the convention can come into force at all. Thus, Article 44(1) of the Revised General Act for the Pacific Settlement of International Disputes [2] provides:

The present General Act shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of the accession of not less than two Contracting Parties.

§ 662. Similarly, the Final Article of the Convention on the Privileges and Immunities of the United Nations [3] as follows:

[1] *U.N.T.S.*, 78, p. 277. [2] *U.N.T.S.*, 71, p. 101. [3] *U.N.T.S.*, 1, p. 15.

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

§ 663. The United Kingdom was the first country to accede to this Convention, its instrument of accession being deposited on 17th September, 1946, and being in the following terms :

WHEREAS a General Convention on the Privileges and Immunities of the United Nations, was adopted by the General Assembly of the United Nations on the Thirteenth day of February, One thousand nine hundred and forty-six, and is open to accession by each Member of the United Nations :

AND WHEREAS, it is provided in Section 32 of the Final Article of the said General Convention that accession thereto shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the Convention shall come into force as regards each Member on the date of deposit of each instrument of accession :

NOW THEREFORE, the undersigned, His Majesty's Principal Secretary of State for Foreign Affairs, hereby notifies the accession of the Government of the United Kingdom of Great Britain and Northern Ireland to the said General Convention.

GIVEN at the Foreign Office, London, this Fourteenth day of August, One thousand nine hundred and Forty-six.

(*Seal*) (*Signed*) ERNEST BEVIN.

§ 664. Commenting upon the practice of some States in acceding to multipartite treaties " subject to ratification ", Sir Arnold

McNair refers to a resolution (from which the United Kingdom representative did not dissent) adopted by the Assembly of the League of Nations in 1927, which reads as follows :

The procedure of accession to international agreements given subject to ratification is an admissible one which the League should neither discourage nor encourage. Nevertheless, if a State gives its accession, it should know that, if it does not expressly mention that this accession is subject to ratification, it shall be deemed to have undertaken a final obligation. If it desires to prevent this consequence, it must expressly declare at the time of accession that the accession is given subject to ratification.[1]

Acceptance and Approval

§ 665. More recent than accession is the practice of entering into international engagements by means of "acceptance" or "approval". Thus Article 15 of the Constitution of U.N.E.S.C.O.[2] provides as follows :

1. This Constitution shall be subject to acceptance. The instruments of acceptance shall be deposited with the Government of the United Kingdom.
2. This Constitution shall remain open for signature in the archives of the Government of the United Kingdom. Signature may take place either before or after the deposit of the instrument of acceptance. No acceptance shall be valid unless preceded or followed by signature.
3. This Constitution shall come into force when it has been accepted by twenty of its signatories. Subsequent acceptances shall take effect immediately.
4. The Government of the United Kingdom will inform all members of the United Nations of the receipt of all instruments of acceptance and of the date on which the Constitution comes into force in accordance with the preceding paragraph.

§ 666. A formula much used for multilateral conventions in recent years is the following, according to which States may become parties to the convention by :

(*a*) Signature without reservation as to acceptance ;
(*b*) Signature with reservation as to acceptance, followed by acceptance ; and
(*c*) Acceptance ; [3]

[1] *The Law of Treaties* (1938), p. 98.
[2] Cmd. 6963.
[3] See note entitled "The use of the term 'acceptance' in United Nations Treaty Practice" by Yuen-li Liang in 44 *A.J.I.L.* (1950), p. 342.

It would appear that, when this formula is used, " acceptance " in (*a*) and (*b*) is equivalent to ratification,[1] while in (*c*) " acceptance " is equivalent to accession.

§ 667. A variation of the above formula is sometimes used, as for instance in Article 79 of the Constitution of the World Health Organisation [2] which provides as follows :

(*a*) States may become parties to this Constitution by :
  (i) signature without reservation as to approval ;
  (ii) signature subject to approval followed by acceptance ; or
  (iii) acceptance.

(*b*) Acceptance shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

In this formula " approval " is apparently " used to indicate the approbation, by the process of municipal law, of the terms of a treaty, as contradistinguished from ' acceptance ', which is used to indicate the formal act evidencing the actual acceptance of the treaty by the state." [3]

Reservation

§ 668. The purpose of reservations is made clear in the following passage from Sir Arnold McNair's work, *The Law of Treaties*.[4]

" A State which, while wishing to become a party to a treaty, considers that it can only do so if it can exclude the application to itself of one or more of its particular provisions, can achieve this object in one of the following ways :

(1) By inducing the other party or parties to insert an express term to this effect ; for instance, Article 287 of the Peace Treaty of Versailles or Article 98 of the Treaty of Lausanne ; this is not really a reservation at all, but it is the best way of doing what at a later stage can only be done by means of a reservation :
(2) By a reservation attached to the signature of a treaty by its representatives and duly recorded in a *procès-verbal* or protocol of signature :
(3) By a reservation attached to the ratification and duly recorded :
(4) In the case of a treaty left open for accession by other States, by a reservation attached to its accession and duly recorded.

[1] More precisely, " acceptance " as used here is intended to have the effect of ratification in the international sense without obliging the " accepting " state to subject the convention to the process of ratification according to its own municipal law.
[2] Cmd. 7458.
[3] Yuen-li Liang, *op. cit.*, p. 346.
[4] 1938 edn., p. 105.

But in the last three cases it is essential that all other parties to the treaty should assent to the making of the reservation."

Except for the last sentence, which is controversial, the above statement is believed to be an accurate description not only of the purpose of reservations, but also of the various methods of making them.

§ 669. As to whether it is necessary that all other parties to the treaty should assent to the making of the reservation, the following are among the views held :

(1) *The traditional view.* This is the view expressed by Sir Arnold McNair above. A full formulation of this view is to be found in the Joint Dissenting Opinion of four judges (including Sir Arnold McNair) in the case concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*,[1] from which the following extract may be quoted.

We are of the opinion :

(*a*) that the existing rule of international law, and the current practice of the United Nations, are to the effect that, without the consent of all the parties, a reservation proposed in relation to a multilateral convention cannot become effective and the reserving State cannot become a party thereto ;

(*b*) that the States negotiating a convention are free to modify both the rule and the practice by making the necessary express provision in the conventions and frequently do so ;

(*c*) that the States negotiating the Genocide Convention did not do so ;

(*d*) that therefore they contracted on the basis that the existing law and the current practice would apply in the usual way to any reservations that might be proposed.[2]

These judges therefore concluded that those states which had made reservations to the Genocide Convention, to which one or more of the other parties to the Convention had objected, could not be regarded as being parties to the Convention. It may be noted that this traditional view corresponded with the practice of the League of Nations. On June 17, 1927, the Council of the League adopted a report of a legal sub-committee which contained these words :

In order that any reservation whatever may be validly made in regard to a clause of the treaty, it is essential that this reservation should be accepted by all the contracting parties, as would have been the case if it had been put forward in the course of the negotiations.

[1] *I.C.J. Reports 1951*, p. 15, at pp. 31–48. [2] *Ibid.*, pp. 41–3.

(2) *The view adopted by the International Court of Justice in the Genocide Convention case.*

The Court held by a majority (7 votes to 5) in this case :

that a State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention ; otherwise, that State cannot be regarded as being a party to the Convention.

The Court also held (by 7 votes to 5) :

(*a*) that if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention ;

(*b*) that if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the Convention.

The Court further held (again by 7 votes to 5) that an objection to a reservation made by a signatory State which had not yet ratified the Convention could have no legal effect at all, beyond serving as a notice to the other State of the eventual attitude of the signatory State ; and that an objection to a reservation made by a State, which is entitled to sign or accede but has not yet done so, is without legal effect. The question which arises is whether the view expressed above must be considered as having overruled the traditional view. While an advisory opinion of the Court has no binding force, it is clearly of great importance. Nevertheless, there seem good reasons for not regarding as applicable to all multilateral conventions the principles laid down by the Court in regard to the Genocide Convention. In the first place, the Court found (contrary to the minority) that " an understanding was reached within the General Assembly on the faculty to make reservations to the Genocide Convention and that it is permitted to conclude therefrom that States becoming parties to the Convention gave their assent thereto ".[1] Secondly, the Court stressed the " humanitarian and civilizing purpose " of the Convention and said that its object and purpose were such as to imply " that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate ".[2]

[1] *Ibid.*, pp. 22–3. [2] *Ibid.*, pp. 23–4.

" In such a convention," the Court said, " the contracting States do not have any interests of their own ; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties." [1]

It is reasonable to infer from the above passage that only in the case of multilateral conventions of a very exceptional character is it permissible to depart from the traditional view. Certainly, the fewer the number of parties, the more difficult is it to justify any departure from the traditional rule, which has as its basis the contractual balance between treaty rights and treaty obligations. The International Law Commission has expressed the view that " the criterion of the compatibility of a reservation with the object and purpose of a multilateral convention, applied by the International Court of Justice to the Convention on Genocide, is not suitable for application to multilateral conventions in general ", and that " It seems reasonable to assume that, ordinarily at least, the parties regard the provisions of a convention as an integral whole, and that a reservation to any of them may be deemed to impair its object and purpose." [2]

(3) *The Pan-American system*

The view just described resembles fairly closely, though not entirely, the practice adopted over a number of years in regard to Pan-American Conventions. Of this system, Sir Gerald Fitzmaurice writes :

" This system attempts to combine the process of facilitating maximum participation in multilateral Conventions with a recognition of the fact that reservations cannot be imposed on other parties against their will. Under this system, no attempt is made to distinguish between different classes or types of reservations according to their nature and character. All are treated alike. Any reservation can be made, and made as of right, and the State making it becomes automatically a party to the Convention, also as of right, and also with the benefit of the reservation, even if objection has been taken to it by other parties ; but in that event, the convention is deemed not be in force between the reserving State and the State which has objected to the reservation." [3]

[1] *Ibid.*, p. 23.
[2] Report of the International Law Commission covering the Work of its Third Session, May 16–July 27, 1951 (U.N. Document A/1858), paragraph 24).
[3] *The International and Comparative Law Quarterly*, January 1953, p. 1, at p. 13.

(4) *The sovereignty view.* The view is put forward by some states that every state has a sovereign right to make reservations at will and unilaterally, and to become a party to treaties subject to such reservations, even if they are objected to by the other contracting states. This view is believed to be without foundation.

§ 670. In view of the divergence of opinion on the subject of reservations it is desirable that, whenever reservations may be expected, the parties to a treaty should write into the treaty itself an article prescribing exactly what shall be the effect of such reservations and upon what conditions.

§ 671. The best known examples of reservations are those made to acceptances of the General Act (see § 814) or of the Optional Clause of the Statute of the International Court of Justice (or of its predecessor, the Permanent Court of International Justice).

Examples

(*a*) *Acceptance of the Optional Clause by the United Kingdom.* The original acceptance, dated September 19, 1929, was in the following form :

On behalf of His Majesty's Government in the United Kingdom and subject to ratification,[1] I accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the court in conformity with article 36, paragraph 2, of the statute of the court, for a period of ten years and thereafter until such time as notice may be given to terminate the acceptance, over all disputes arising after the ratification of the present declarations with regard to situation or facts subsequent to the said ratification, other than :—

> Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ; and
>
> Disputes with the Government of any other member of the league which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree ; and
>
> Disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom.

And subject to the condition that His Majesty's Government reserve the right to require that proceedings in the court shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the

[1] Cmd. 3421. Ratification was effected on February 5, 1930.

initiation of the proceedings in the court, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined by a decision of all the members of the Council other than the parties to the dispute.

Geneva, September 19, 1929. *Signed* ARTHUR HENDERSON.

On September 7, 1939, the following further reservation [1] was added :

I am directed by Viscount Halifax to inform you that His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland have found it necessary to consider the position, in existing circumstances, of their acceptance of the Optional Clause of the Statute of the Permanent Court of International Justice. Their acceptance of the Clause was for ten years from the date of ratification, which took place on February 5th, 1930.

2. The conditions under which His Majesty's Government gave their signature to the Optional Clause were described in a memorandum issued at the time, Miscellaneous No. 12 1929, a copy of which is enclosed for convenience of reference. Paragraphs 15–22 of that memorandum state the considerations which then satisfied His Majesty's Government that they could accept the Optional Clause without making a reservation (which they would have been fully entitled to make) as to disputes arising out of events occurring during a war in which they might be engaged. Those considerations were, in brief, that by the building up of a new international system based on the Covenant of the League of Nations and the Pact of Paris a fundamental change had been brought about in regard to the whole question of belligerent and neutral rights. In the only circumstances in which it was contemplated that His Majesty's Government could be involved in war, the other Members of the League, so far from being in the position of neutrals with a right to trade with our enemy, would be bound under Article 16 of the Covenant to sever all relations with him. The effect of this at the time of His Majesty's Government's signature was that conditions which might produce a justiciable dispute between the United Kingdom as a belligerent and another Member of the League as a neutral would not exist, since the other Members of the League would either fulfil their obligations under Article 16 of the Covenant, or, if they did not, would have no ground on which to protest against the measures which His Majesty's Government might take to prevent action on their part which was inconsistent with those obligations.

3. It has, however, now become evident that many of the Members of the League no longer consider themselves bound to take action of any kind under the Covenant against an aggressor State. At the League Assembly of September 1938 note was taken of this expression

[1] Cmd. 6108.

of opinion, and it became clear that sanctions against an aggressor under the terms of the Covenant could not be regarded as obligatory. There remained only a general understanding that Members should consult one another in the event of aggression against another Member, and that such aggression could not be treated with indifference.

4. In the present crisis it has not proved possible to give any practical effect even to so limited an understanding as that just described. No action has been taken under Articles 16 or 17 of the Covenant, or even under Article 11, and in advance of hostilities a number of States Members of the League have announced their intention of maintaining strict neutrality as between the two belligerents. His Majesty's Government are not making a complaint about this state of affairs, though they fully reserve their rights as a Member of the League. But the position to-day shows clearly that the Covenant has, in the present instance, completely broken down in practice, that the whole machinery for the preservation of peace has collapsed, and that the conditions in which His Majesty's Government accepted the Optional Clause no longer exist. This situation, so fundamentally changed from that which existed at the time of their signature of the Optional Clause, was mentioned as a possibility in paragraph 22 of the memorandum of 1929, and it was there stated that His Majesty's Government could not conceive that in the general collapse of the whole machinery for the preservation of peace, the one thing left standing should be the Optional Clause and the commitments of the signatories thereunder.

5. I am therefore directed to notify you that His Majesty's Government, believing themselves to be firmly defending the principles on which the Covenant was made, will not regard their acceptance of the Optional Clause as covering disputes arising out of events occurring during the present hostilities.

6. I am to request that this notification may be communicated to the governments of all States which have accepted the Optional Clause, and to the Registrar of the Permanent Court of International Justice.

I am Sir, etc.

(*Signed*) ALEXANDER CADOGAN.

On February 28, 1940, the original acceptance was replaced by a new acceptance [1] in the following form :

On behalf of His Majesty's Government in the United Kingdom I now declare that they accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the Court, in conformity with paragraph 2 of Article 36 of the Statute of the Court, for a period of five years from to-day's date and thereafter until such time as notice may be given to terminate the acceptance,

[1] Cmd. 6185.

over all disputes arising after February 5th, 1930, with regard to situations or facts subsequent to the same date; other than :

disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ;

disputes with the government of any other Member of the League which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the Parties have agreed or shall agree ;

disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom ; and disputes arising out of events occurring at a time when His Majesty's Government in the United Kingdom were involved in hostilities,

and subject to the condition that His Majesty's Government reserve the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the proceedings in the Court, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the Parties to the dispute or determined by a decision of all the Members of the Council other than the Parties to the dispute.

London, February 28th, 1940.

(*Signed*) HALIFAX.

The following further declaration [1] was made on February 13, 1946 :

I, Ernest Bevin, His Majesty's Principal Secretary of State for Foreign Affairs, declare on behalf of His Majesty's Government in the United Kingdom in accordance with paragraph 2 of Article 36 of the Statute of the International Court of Justice that for a period of five years from the date of this Declaration they accept as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras, and over any questions arising out of any conclusion which the Court may reach with regard to such treaty.

Given under my hand and seal, at the Foreign Office, London, this Thirteenth day of February, One Thousand Nine Hundred and Forty-six.

(*Signed*) ERNEST BEVIN.

[1] Cmd. 6934.

On June 1, 1955, the declaration of February 28, 1940, was withdrawn, being replaced by a new declaration the next day.[1] On October 31, 1955, the declaration of June 2, 1955, was withdrawn and replaced by yet another declaration,[2] this procedure being effected as follows :

Letters from the United Kingdom Permanent Representative to the United Nations to the Secretary-General of the United Nations Organisation

No. 1

United Kingdom Delegation
to the United Nations,
New York, October 31, 1955.

Your Excellency,

I have the honour, by direction of Her Majesty's Principal Secretary of State for Foreign Affairs, to give notice that the Declaration deposited with you on behalf of the Government of the United Kingdom on the 2nd of June, 1955, accepting as compulsory the jurisdiction of the International Court of Justice, subject to certain reservations and conditions, is hereby withdrawn and terminated.

The foregoing notice does not affect the Declaration made on the 13th of February, 1946, for an initial period of five years, and thereafter renewed for a further five-year period, expiring on the 13th of February, 1956, having reference to legal disputes concerning treaties relating to the boundaries of British Honduras.

I have, &c.
PIERSON DIXON.

No. 2

United Kingdom Delegation
to the United Nations,
New York, October 31, 1955.

Your Excellency,

I have the honour, by direction of Her Majesty's Principal Secretary of State for Foreign Affairs, to declare on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that they accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the 5th of February, 1930, with regard to situations or facts subsequent to the same date, other than :

(i) disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ;

[1] Cmd. 9517. [2] Cmd. 9719.

(ii) disputes with the Government of any other country which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the Parties have agreed or shall agree ;

(iii) disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom ;

(iv) disputes arising out of events occurring between the 3rd of September, 1939, and the 2nd of September, 1945 ;

(v) without prejudice to the operation of sub-paragraph (iv) above, disputes arising out of, or having reference to, any hostilities, war, state of war, or belligerent or military occupation in which the Government of the United Kingdom are or have been involved ;

(vi) disputes relating to any matter excluded from compulsory adjudication or arbitration under any treaty, convention or other international agreement or instrument to which the United Kingdom is a Party ; and

(vii) disputes in respect of which arbitral or judicial proceedings are taking, or have taken, place, with any State which, at the date of the commencement of the proceedings, had not itself accepted the compulsory jurisdiction of the International Court of Justice.

I have, &c.
PIERSON DIXON.

(*b*) *Acceptance of the Optional Clause by the French Republic* [1]

Paris, le 18 février, 1947.

Au nom du Gouvernement de la République française, et sous réserve de ratification, je déclare reconnaître comme obligatoire de plein droit et sans convention spéciale, à l'égard de tout autre Membre des Nations Unies acceptant la même obligation, c'est-à-dire sous condition de réciprocité, la juridiction de la Cour internationale de Justice, conformément à l'Article 36, paragraphe 2, du Statut de ladite Cour, pour tous les différends qui s'élèveraient au sujet de faits ou situations postérieurs à la ratification de la présente déclaration, à l'exception de ceux à propos desquels les Parties seraient convenues ou conviendraient d'avoir recours à un autre mode de règlement pacifique.

Cette déclaration ne s'applique pas aux différends relatifs à des affaires qui relèvent essentiellement de la compétence nationale telle qu'elle est entendue par le Gouvernement de la République française.

La présente déclaration est faite pour cinq ans à dater du dépôt de l'instrument de ratification. Elle continuera ensuite de produire effet jusqu'à notification contraire par le Gouvernement français.

(*Signé*) BIDAULT.

[1] *U.N.T.S.*, 26, p. 91. The instrument of ratification of the declaration was deposited with the Secretary-General of the United Nations on March 1, 1949.

(*c*) *Acceptance of the Optional Clause by the United States of America* [1]

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of August 2, 1946, of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising 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 ;

Provided, that this declaration shall not apply to

a. Disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future ; or
b. Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America ; or
c. Disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction ; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August 1946.

(*Signed*) HARRY S. TRUMAN.

NOTICE OF TERMINATION

§ 672. With regard to the question of termination Sir Arnold McNair writes as follows :

The normal basis of approach adopted in the United Kingdom towards a treaty is that it is intended to be of perpetual duration and incapable of unilateral termination, unless, expressly or by implication, the treaty contains a right of unilateral termination or some other provision for its coming to an end. There is nothing juridically impossible in the existence of a treaty creating obligations which are incapable of termination except by the agreement of all parties.

[1] *I.C.J. Yearbook*, 1946–47, p. 217.

There is thus, according to Sir Arnold McNair, a "general presumption against unilateral termination".[1]

§ 673. This principle has been formally recognised on a number of occasions. Thus the Protocol of January 17, 1871,[2] which preceded the Treaty of London of the same year[3] stated:

Les Plénipotentiaires de l'Allemagne du Nord, de l'Autriche-Hongrie, de la Grande-Bretagne, de l'Italie, de la Russie, et de la Turquie, réunis aujourd'hui en Conférence, reconnaissent que c'est un principe essentiel du droit des gens qu'aucune Puissance ne peut se délier des engagements d'un Traité, ni en modifier les stipulations, qu'à la suite de l'assentiment des Parties Contractantes, au moyen d'une entente amicale.

§ 674. When, in 1935, Germany enacted a law reintroducing military conscription in defiance of the terms of the Treaty of Versailles, the Governments of the United Kingdom, France and Italy submitted a resolution to the Council of the League of Nations, which was carried *nemine contradicente*, with Denmark abstaining. In the resolution the Council declared that "Germany has failed in the duty which lies upon all the members of the international community to respect the undertakings which they have contracted".

§ 675. A right of unilateral termination, however, may be derived either from an express term or from an implied term.

§ 676. With regard to express terms, it is often provided that the treaty shall remain in force for a specified period, and that, when that period is drawing to an end, notice of termination may be given by one party to the other: if, however, notice of termination is not given, the treaty remains in force. The following article (13) taken from the Treaty of Commerce and Navigation between the United Kingdom and Panama of September 25, 1928,[4] is a typical example.

The present Treaty shall be ratified and the ratifications shall be exchanged at Panama as soon as possible. It shall come into force immediately on ratification and shall be binding during a period of ten years from the date of its coming into force. In case neither of the High Contracting Parties shall have given notice to the other twelve months before the expiration of the said period of ten years of its intention to terminate the Treaty, it shall remain in force until the expiration of one year from the date of such notice.

[1] *The Law of Treaties* (1938), p. 351.
[2] *Br. and For. State Papers*, 61, p. 1198.
[3] *Ibid.*, 61, p. 11.
[4] Cmd. 3322.

§ 677. Alternatively, it is sometimes provided that the treaty shall remain in force indefinitely, though still subject to termination by notice. Thus Article 10 of the Treaty of October 30, 1950,[1] between the United Kingdom and Nepal provides : " The present Treaty shall remain in force indefinitely, but subject to termination by one year's notice in writing given by either Contracting Party to the other."

In the case of a bilateral treaty notice of termination usually takes the shape of a formal notification addressed to the other government through the diplomatic agent accredited to the latter. Occasionally, after notice of termination is given, the treaty may be maintained, on the basis of a *modus vivendi*, by means of an exchange of notes, pending its replacement by a new treaty. A notable example is the Convention of Commercial and Maritime Relations between the United Kingdom and France of February 28, 1882,[2] concerning which the French Government gave notice of termination on February 11, 1934, but which is maintained in force (save for certain provisions which lapsed on May 12, 1934) by an Anglo-French Exchange of Notes dated May 8, 1934.[3]

§ 678. In the case of a multilateral treaty, it is usually provided that the notice shall be addressed to the government of the state wherein the treaty was signed, who shall inform the other contracting governments. Thus Article 13 of the North Atlantic Treaty of April 4, 1949, provides that after the Treaty has been in force for twenty years, any Party may cease to be a party one year after its notice of denunciation has been given to the Government of the United States of America, which will inform the Governments of the other Parties of the deposit of each notice of denunciation.

§ 679. In the case of a convention signed under the auspices of the United Nations, it is usually provided that the notice shall be addressed to the Secretary-General. Thus Article 32 of the Convention on Road Traffic of September 19, 1949, provides that " This Convention may be denounced by means of one year's notice given to the Secretary-General of the United Nations, who shall notify each signatory or acceding State thereof. After the expiration of this period the Convention shall cease to be in force as regards the Contracting State which denounces it." [4]

§ 680. As an example of the notice of termination of a treaty given by the United Kingdom may be mentioned the notice of termination regarding Hague Convention (No. VI) of 1907 con-

[1] Cmd. 8271. [2] *Br. and For. State Papers*, 73, p. 22. [3] Cmd. 4590. [4] Cmd. 7997.

cerning the status of enemy merchant ships on the outbreak of hostilities. This notice was in the following form :

British Legation, The Hague,
November 14, 1925.

MONSIEUR LE MINISTRE,

I have the honour by the present note to give notice of the denunciation of Hague Convention No. VI of October 18, 1907, relative to the status of enemy merchant ships at the outbreak of hostilities, to take effect on the expiry of one year from the present date, as provided for in Article 10 of the convention.

I request Your Excellency to be good enough to communicate a duly certified copy of this notification to all the other Powers signatory to the convention.

I avail, etc.
(*Signed*) CHARLES M. MARLING.

His Excellency
JONKHEER VAN KARNEBEEK.

§ 681. When notice of termination of a treaty is given, the notice may or may not be accompanied by a statement of the reasons which render this step desirable or necessary.

§ 682. If the treaty contains no express provision as to termination, the question must be considered in the light of the " general presumption against unilateral termination " (see § 672). A right of unilateral termination is not easily to be implied. Moreover, according to Sir Arnold McNair, " there is little doubt that the express provision in a treaty of machinery for its termination would exclude any implied power to denounce." [1] Thus, Article 8 of the Locarno Treaty of Mutual Guarantee of October 16, 1925,[2] provided that the Treaty would remain in force " until the Council (*i.e.* of the League of Nations), acting on a request of one or other of the high contracting parties notified to the other signatory Powers three months in advance, and voting at least by a two-thirds majority, decides that the League of Nations ensures sufficient protection to the high contracting parties." Referring to this provision in the House of Commons, Sir John Simon (then Foreign Secretary) said :

the Treaty . . . cannot be denounced by us or by any other signatory by way of a unilateral act. It can be terminated only in the circumstances stated in Article 8.[3]

[1] *Op. cit.*, p. 363.
[2] Cmd. 2764.
[3] Hansard, *Commons*, 5th series, volume 281, col. 61.

§ 683. It is generally recognised that a right of unilateral denunciation is more easily implied in the case of commercial treaties than in the case of other treaties. Oppenheim, for instance, concludes that a commercial treaty " can always be dissolved after notice, although such notice be not expressly provided for ". And he also includes in this category " a treaty of alliance not concluded for a fixed period only ".[1] Sir Arnold McNair, however, is somewhat more cautious, observing in regard to commercial treaties as follows :

" It is believed that the view now held is that, in the case of a treaty embodying a purely commercial bargain between the parties, the existence of an implied right of denunciation upon giving reasonable notice can readily be inferred from the very nature of the treaty on the ground that it requires revision from time to time in order to bring it into harmony with changing conditions." [2]

And in regard to political treaties, such as treaties of alliance, Sir Arnold McNair observes that the obligations contained in these treaties are as legally binding as those contained in any other treaties, although " it is probably true to say that in the case of political treaties.... there is a greater disposition to go into conference at the request of a party with a view to a revision of the mutual obligations so as to bring them more into accord with modern conditions ".[3]

§ 684. Slightly different from the question whether there is an implied right of unilateral termination is the question whether the treaty is or is not terminated *ipso facto* through a change in conditions. It is generally agreed, for example, that a treaty relating to an island would no longer be operative if that island were to be submerged beneath the sea. Difficulties arise, however, when the changes of circumstances invoked are not physical changes, such as the one just referred to, but merely political ones.

§ 685. According to Oppenheim :

" Many writers defend the principle *conventio omnis intelligitur rebus sic stantibus*, and assert that all treaties are concluded under the tacit condition *rebus sic stantibus*." [4]

The doctrine of *rebus sic stantibus* must, however, be applied with extreme caution since it potentially clashes with the basic prin-

[1] Vol. 1, 8th ed. 1955, § 538.
[2] *The Law of Treaties* (1938), p. 367.
[3] *Ibid.*, p. 369.
[4] *Op cit.*, § 539.

ciple of international law, that treaty obligations must be observed —*pacta sunt servanda*.[1]

Registration

§ 686. Article 102 of the Charter of the United Nations provides as follows :

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

§ 687. At its 65th meeting the General Assembly adopted Regulations to give effect to Article 102. The most important provisions of those Regulations are the following :

Article 1.

1. Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after October 24, 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations.
2. Registration shall not take place until the treaty or international agreement has come into force between two or more of the parties thereto.
3. Such registration may be effected by any party or in accordance with article 4 of these regulations.
4. The Secretariat shall record the treaties and international agreements so registered in a Register established for that purpose.

[1] Few cases have come before international tribunals in which the doctrine of *rebus sic stantibus* has been expressly invoked. An indication of the caution with which it should be approached, however, may be gained from the *Case of the Free Zones of Upper Savoy and the District of Gex* between France and Switzerland in which the doctrine was invoked by France. The Court held that as the changes relied upon by France had " no bearing on the whole body of circumstances . . . which the High Contracting Parties had in mind at the time that the free zones were created " they could not be taken into consideration, and that : " As the French argument fails on the facts, it becomes unnecessary for the Court to consider any of the questions of principle which arise in connexion with the theory of the lapse of treaties by reason of change of circumstances, such as the extent to which the theory can be regarded as constituting a rule of international law, the occasions on which and the method by which effect can be given to the theory if recognised, and the question whether it would apply to treaties establishing rights such as that which Switzerland derived from the treaties of 1815 and 1816 " (Series A/B, No. 46, p. 158).

Article 3.

1. Registration by a party, in accordance with article 1 of these regulations, relieves all other parties of the obligation to register.
2. Registration effected in accordance with article 4 of these regulations relieves all parties of the obligation to register.

Article 4.

1. Every treaty or international agreement subject to article 1 of these regulations shall be registered *ex officio* by the United Nations in the following cases :
   (*a*) Where the United Nations is a party to the treaty or agreement ;
   (*b*) Where the United Nations has been authorized by the treaty or agreement to effect registration.
2. A treaty or international agreement subject to article 1 of these regulations may be registered with the Secretariat by a specialized agency in the following cases :
   (*a*) Where the constituent instrument of the specialized agency provides for such registration ;
   (*b*) Where the treaty or agreement has been registered with the specialized agency pursuant to the terms of its constituent instrument ;
   (*c*) Where the specialized agency has been authorized by the treaty or agreement to effect registration."

§ 688. The Regulations also provide that, in addition to keeping a Register of treaties and international agreements, entered into by one or more Members of the United Nations after October 24, 1945, the Secretariat shall " file and record " certain other treaties and international agreements. Thus Article 10 of the Regulations provides :

The Secretariat shall file and record treaties and international agreements, other than those subject to registration under article 1 of these regulations, if they fall in the following categories :

(*a*) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies ;
(*b*) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the Charter, but which were not included in the treaty series of the League of Nations ;
(*c*) Treaties or international agreements transmitted by a party not a Member of the United Nations which were entered into

> before or after the coming into force of the Charter which were not included in the treaty series of the League of Nations, provided, however, that this paragraph shall be applied with full regard to the provisions of the resolution of the General Assembly of 10 February 1946 set forth in the Annex to these regulations.

(In this it was stated that it was desirable " as a matter of practical convenience, that arrangements should be made for the publication of any treaties or international agreements which non-Member States may voluntarily transmit and which have not been included in the treaty series of the League of Nations ". But it was also provided that these arrangements should not extend to " treaties or international agreements transmitted by any non-member state such as Spain, the Government of which has been founded with the support of the Axis Powers and does not, in view of its origin, its nature, its record and its close association with the aggressor States, possess qualifications necessary to justify membership in the United Nations under the provisions of the Charter ". Spain, however, was subsequently admitted to membership of the United Nations.)

§ 689. Under Article 12 of the Regulations the Secretariat is obliged to " publish as soon as possible in a single series every treaty or international agreement which is registered, or filed and recorded, in the original language or languages, followed by a translation in English and in French." The Secretariat has given effect to this Article by publishing the *United Nations Treaty Series* in two Parts (Part I consisting of " treaties and international agreements registered " and Part II of " treaties and international agreements filed and recorded ").

§ 690. No binding definition exists of the words " treaty " and " international agreement " which appear both in Article 102 of the Charter and in Article 1 of the Regulations. However at the San Francisco Conference, Committee IV/2 expressed the view that " The word ' agreement ' must be understood as including unilateral engagements of an international character which have been accepted by the State in whose favour such an engagement has been entered into." Accordingly, the United Nations Secretariat has treated as registrable under Article 1 of the Regulations " both declarations of acceptance of the optional Clause of the Compulsory Jurisdiction of the International Court of Justice, made by States under Article 36, paragraph 2, of the Statute of the Court, and also instruments of adherence to the United Nations submitted by new Members, which involve their

acceptance of the obligations of the Charter." [1] The Secretariat has, moreover, registered *ex officio* under Article 4 of the Regulations agreements such as the trusteeship agreements, the Convention on the Privileges and Immunities of the United Nations, and the Convention on the Privileges and Immunities of the Specialized Agencies.

[1] Note by the Secretariat and Regulations to give effect to Article 102 of the Charter of the United Nations, adopted by the General Assembly on December 14, 1946 (*U.N.T.S.*, 1, p. xvi).

BOOK IV

THE BRITISH COMMONWEALTH OF NATIONS AND INTERNATIONAL ORGANISATIONS

CHAPTER XXVIII

THE BRITISH COMMONWEALTH OF NATIONS

§ 691. THE expression "The British Commonwealth of Nations," or in the abbreviated form "The Commonwealth," is ~~now~~ frequently used to describe what was formerly known as the British Empire. The Commonwealth extends over nearly a quarter of the land surface of the earth and comprises populations in every stage of development, governed under various forms.

From the constitutional point of view, they may be regarded as falling under three heads :

(1) The Members of the Commonwealth, viz., the United Kingdom of Great Britain and Northern Ireland, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, India, Pakistan and Ceylon. These are entirely responsible for their own external relations.

(2) The Federation of Rhodesia and Nyasaland and the Colony of Southern Rhodesia (one of the three Territories comprising the Federation). These, though in most respects fully self-governing, are in certain matters subject to a measure of control by the United Kingdom and therefore do not possess the status of full membership of the Commonwealth. Control of the external relations of the Federation and its Territories remains with the United Kingdom Government.

(3) The Colonies, Protectorates, Protected States and Trust Territories, which do not possess full responsible Government. Their external relations are controlled entirely by the United Kingdom Government.

The Australian States (Victoria, New South Wales, South Australia, Queensland, Western Australia and Tasmania) are fully self-governing within their own sphere, but their external relations are conducted by the Commonwealth of Australia and

certain other matters such as defence are entirely the responsibility of the Commonwealth. Accordingly they do not possess the status of full membership of the British Commonwealth.

§ 692. All the above countries, whether Members of the Commonwealth or not, can be regarded as "Commonwealth countries."

Eire (originally the Irish Free State and now the Republic of Ireland) was formerly a Member of the Commonwealth, but left the Commonwealth in 1949, though it was provided by United Kingdom legislation that the country should not in general be treated as a foreign country.

Newfoundland also was formerly a Member of the Commonwealth but in 1933 its self-governing status was, at its request, suspended and in 1949 it became a Province of Canada.

The present Chapter deals only with the countries specified under the first heading mentioned above (the Members of the Commonwealth) and, where necessary, those specified under the second heading. Those specified under the third heading (Colonies etc.) are from the international standpoint regarded as dependencies of a metropolitan country and not as possessing a separate international personality.

Intra-Commonwealth Relations

§ 693. *Status.* The Imperial Conference of 1926 defined the status of "the group of self-governing communities composed of Great Britain and the Dominions" in the following terms:

> They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

§ 694. A further pronouncement was made by the Prime Ministers' Meeting of 1949 which considered the constitutional implications of India's decision to become a Republic. In a Declaration issued at the conclusion of the Meeting it was stated that "The Government of India have informed the other Governments of the Commonwealth of the intention of the Indian people that under the new Constitution which is about to be adopted India shall become a sovereign independent Republic. The Government of India have, however, declared and approved India's desire to continue her full membership of the Commonwealth

of Nations and her acceptance of the King as the symbol of the free association of its independent member-nations and as such the Head of the Commonwealth. The Governments of the other countries of the Commonwealth, the basis of whose membership is not changed, accept and recognise India's continuing membership in accordance with the terms of that declaration."[1]

Accordingly in what follows references to the Members of the Commonwealth can be taken as including India equally with the other Members, except where the contrary is stated.

§ 695. *Royal Style and Titles.* As a result of legislation passed at various dates the Queen's Title on her Accession to the Throne, which was uniform throughout the Commonwealth, was "Elizabeth the Second, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas Queen, Defender of the Faith."

The form of the Royal Title was considered by the Prime Ministers and other representatives assembled in London in December, 1952. It was recognised that the existing Title was not in accord with current constitutional relations within the Commonwealth and that in the present stage of development of the Commonwealth relationship it would be in accord with the established constitutional position that each Member country should use for its own purposes a form of Title which suited its own particular circumstances but retained a substantial element common to all. The forms of Title agreed were as follows :

United Kingdom. Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

Canada. Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

Australia. Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

New Zealand. Elizabeth the Second, by the Grace of God of the United Kingdom, New Zealand and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

South Africa. Elizabeth the Second, Queen of South Africa and of Her other Realms and Territories, Head of the Commonwealth.

[1] Since this paragraph was written, a similar step has been taken by Pakistan; see final paragraph of this chapter.

Pakistan. Elizabeth the Second, Queen of the United Kingdom and of Her other Realms and Territories, Head of the Commonwealth.

Ceylon. Elizabeth the Second, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

After the passage of appropriate legislation in each of the above countries, except Pakistan where Parliamentary action was considered to be unnecessary, Proclamations establishing the new forms of Title were issued on May 28, 1953. The Proclamations were made by the Queen in the case of the United Kingdom, Canada, Australia, New Zealand and Ceylon and by the respective Governors-General in the case of South Africa and Pakistan.

§ 696. No question of use of the Royal Title arises in India as a Republic. The Title used in the Federation of Rhodesia and Nyasaland and in Southern Rhodesia is that authorised for use in the United Kingdom.

§ 697. *Governors-General.* In each of the Member-countries of the Commonwealth other than the United Kingdom (except India and Pakistan as Republics not owing any allegiance to the Crown) the Queen is represented by a Governor-General, who performs many, though not all, of the functions performed in this country by the Soveregin personally, such as the summoning, proroguing and dissolution of Parliament, the giving of the Royal Assent to Bills and the appointment of Cabinet Ministers and Judges. The Imperial Conference of 1926 placed it on record " that the Governor-General in a Dominion is the representative of the Crown holding in all essential respects the same position in relation to the administration of public affairs in a Dominion as is held by His Majesty the King in Great Britain and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government." At the Imperial Conference of 1930 it was agreed that a Governor-General should be appointed on the advice of Ministers of the Dominion concerned, and not, as heretofore, of United Kingdom Ministers. In India, as a Republic, there is no similar appointment and the Head of State is an elected President.

§ 698. The Sovereign is represented in the Federation of Rhodesia and Nyasaland by a Governor-General and in Southern Rhodesia and each of the Australian States by a Governor, whose functions are generally similar to those of a Governor-General as described above but who is appointed on the advice of United Kingdom Ministers and not Ministers of the country concerned.

§ 699. *Titles of Governments.* Until 1926 the only Common-

wealth Government formally styled " His Majesty's Government " was the Government in London. As a result of the declaration on equality of status quoted above, the practice was instituted of describing the Government of this country as " His (now Her) Majesty's Government in the United Kingdom " and the Governments of the other Member-countries as " His (now Her) Majesty's Government in (Canada) ", etc. Since India and Pakistan as Republics do not owe allegiance to the Crown, their correct style is " the Government of India " or " the Government of Pakistan." The Governments of the Federation of Rhodesia and Nyasaland, Southern Rhodesia and the Australian States are not described as " Her Majesty's Government in (the country) " but as " the Government of (the country)."

§ 700. *Legislative Powers.* By the Statute of Westminster, 1931, passed by the United Kingdom Parliament, certain existing restrictions on the powers of Dominion Parliaments were removed. The Statute provided, *inter alia*, as follows :

(1) That Dominion Parliaments had full power to make laws having extra territorial operation.
(2) That the Colonial Laws Validity Act, 1865, should not apply to any law made by a Dominion Parliament.
(3) That future laws made by a Dominion Parliament should not be void or inoperative on the ground of repugnancy to the law of England or of any Act of Parliament or any order, rule or regulation thereunder; and that Dominion Parliaments had power to repeal or amend any such Act, order or regulation in so far as it was part of the law of a Dominion.
(4) That no future Act of the United Kingdom Parliament should apply to a Dominion as part of its law unless it were declared in the Act that the Dominion had requested and consented to its enactment.

§ 701. These provisions applied *ab initio* to Canada, the Union of South Africa and the Irish Free State. They were not to apply to the Commonwealth of Australia, New Zealand or Newfoundland unless adopted by the country concerned. Australia adopted the provisions in 1942 and New Zealand in 1947.

Generally similar provisions were enacted in the Indian Independence Act, 1947, as regards India and Pakistan and in the Ceylon Independence Act, 1947, as regards Ceylon.

§ 702. *Access to the Sovereign.* It was originally held that, while Dominion Ministers could advise the Governor-General as the Sovereign's Representative, only United Kingdom Ministers

could advise the Sovereign personally. Since 1931 it has been recognised that Ministers of other Member-countries of the Commonwealth have the same right of direct access to the Sovereign as United Kingdom Ministers and it is now the normal practice of Ministers of those countries to tender advice to the Queen direct, usually through the Governor-General as Her Majesty's Representative, and without any intervention by United Kingdom Ministers.

§ 703. The Ministers of the Federation of Rhodesia and Nyasaland, Southern Rhodesia and the Australian States, however, have no similar right of direct access, and any advice to the Queen personally (as distinct from advice to the Governor-General or Governor) on matters affecting those countries can be tendered only by United Kingdom Ministers. In the case of India, naturally no question of advice to the Queen by Indian Ministers arises.

§ 704. *Countersignature of Instruments.* In the case of many formal documents signed by the Sovereign, countersignature by a responsible Minister is required. Originally all such documents were countersigned by a United Kingdom Minister, whatever the part of the Empire concerned. Now it is the regular practice that documents relating to a Member country of the Commonwealth alone are countersigned only by a Minister of the country concerned.

§ 705. Documents relating to the Federation of Rhodesia and Nyasaland, Southern Rhodesia and the Australian States, however, are still countersigned by a United Kingdom Minister.

§ 706. *Seals.* Most formal documents signed by the Sovereign, whether countersigned by a Minister or not, bear a Seal, which may be either the Great Seal of the Realm, which is in the custody of the Lord Chancellor, or the Signet, which is the Seal entrusted to United Kingdom Secretaries of State. In 1931 King George V approved a proposal by the Irish Free State Government that a new Great Seal of the Irish Free State and a new Signet should be instituted for sealing Royal documents relating solely to the Free State. In 1934 legislation was passed by the Parliament of the Union of South Africa instituting a Royal Great Seal of the Union and a Royal Signet. In 1939 Canada passed legislation providing that documents which would normally be sealed with the Great Seal of the Realm or the Signet might be sealed with the Great Seal of Canada, *i.e.*, the Seal in the custody of the Governor-General which is used for sealing documents signed by him.

§ 707. No similar action has yet been taken by Australia, New Zealand, Pakistan or Ceylon but, by special authority of the Queen, the Royal Proclamation establishing the new form of Royal Style and Titles for use in Australia was sealed with the Seal of the Governor-General of the Commonwealth of Australia.

§ 708. *Channels of Communications.* The official channels of communication between Commonwealth Governments are either direct from Government to Government (*i.e.*, so far as the United Kingdom is concerned, in practice between the Secretary of State for Commonwealth Relations and a Cabinet Minister of the other Government concerned), or through an official representative of the communicating Government, the High Commissioner (see below). The use of this direct channel differs from the procedure in the case of communications with foreign Governments, where the recognised channel is a diplomatic representative of one Government stationed in the capital of the other.

§ 709. In addition, there are often opportunities for personal discussion between Ministers of different Governments, either at formal Conferences or at more informal meetings. The oldest form was the Imperial Conference which was set up as a result of a Resolution of the Colonial Conference of 1907, "That it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years, at which questions of common interest may be discussed and considered as between His Majesty's Government and His Governments of the self-governing Dominions beyond the Seas. The Prime Minister of the United Kingdom will be *ex-officio* President, and the Prime Ministers of the self-governing Dominions *ex-officio* members of the Conference. The Secretary of State for the Colonies will be an *ex-officio* member of the Conference and will take the chair in the absence of the President. He will arrange for such Imperial Conferences after communication with the Prime Ministers of the respective Dominions." India was admitted as the result of a Resolution of the Imperial War Conference of 1917, and the Irish Free State was first represented at the Imperial Conference of 1923.

§ 710. Meetings of the Imperial Conference were held in 1911, in 1917 and 1918 (under the name of the Imperial War Conference), 1923, 1926, 1930, 1932 (at Ottawa for the discussion of economic questions) and 1937. At these Conferences a wide range of subjects was discussed and formal Reports and Summaries of Proceedings were published after the conclusion of the

Conference. In 1917 and 1918 there were separate meetings of what was described as the Imperial War Cabinet for discussions on vital aspects of Imperial policy in the prosecution of the war of 1914–1918 and the subsequent Peace Settlement. No formal Report of its proceedings was drawn up. In 1921 there was a meeting described as a "Conference of Prime Ministers and Representatives of the United Kingdom, the Dominions and India," some portion of whose proceedings was published. In 1935 there was a private and informal meeting of Prime Ministers who were attending the celebration of King George V's Silver Jubilee; no official statement of the course of discussions was published.

§ 711. Since the outbreak of war in 1939 no meetings of the Imperial Conference in its original form have been held. Its place has been taken by Meetings of Prime Ministers for informal discussion of questions of prime importance, chiefly in relation to foreign policy and defence, and *ad hoc* Conferences of Ministers or officials of the different Governments for consideration of particular subjects. Prime Ministers' Meetings were held in 1944, 1946, 1948, 1949 (for consideration of the future constitutional position of India), 1951, 1953 and 1956 and a Commonwealth Financial and Economic Conference attended by several Prime Ministers was held in 1952. No reports of these Meetings have been published, but an agreed communiqué summarising briefly the upshot of the proceedings has been issued on their conclusion. As regards other Conferences special mention may be made of the Canberra Conference of 1947, held as a preliminary to an International Conference on the Peace Settlement with Japan, the Foreign Ministers' Conference at Colombo in 1950 and Finance Ministers' Meetings in 1949, 1950 and 1952.

§ 712. There are also various standing bodies consisting of representatives of the several Governments which consider and report to the Governments on particular matters not of a political character. Occasionally also *ad hoc* bodies may be set up for consideration of particular questions. Thus in 1952 the Queen, on the advice of Her respective Governments, appointed a Coronation Commission consisting of representatives of the Member countries of the Commonwealth other than India to consider those aspects of the arrangements for Her Majesty's Coronation which were of common concern.

§ 713. *High Commissioners.* In the United Kingdom, all the other Members of the Commonwealth and Southern Rhodesia

have for many years been represented by officers styled High Commissioners, and the United Kingdom Government maintain similar officers in each of the countries concerned. (As a result of the establishment of the Federation of Rhodesia and Nyasaland, the Federation has taken the place of Southern Rhodesia in this respect.) The other Members of the Commonwealth are, with a few exceptions in particular cases, similarly represented at one another's capitals.

§ 714. In 1948 King George VI approved a proposal that High Commissioners representing Member-countries of the Commonwealth should have on all ceremonial occasions the same precedence as Ambassadors of foreign countries and should rank with Ambassadors according to the date of taking up duty. This applies both in London and in the capitals of the other countries. A Minister of the Crown from another Member-country visiting the United Kingdom normally takes precedence immediately before the High Commissioner concerned. It is not contemplated that in London a High Commissioner would become Doyen of the Diplomatic Corps but in Canada, Australia, India, Pakistan and Ceylon High Commissioners are regarded as eligible for that position.

§ 715. The High Commissioner for the Federation of Rhodesia and Nyasaland has precedence immediately after United Kingdom Secretaries of State.

Under the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, all High Commissioners in London as well as members of their families and their official and domestic staffs are accorded the same immunity from legal process as the diplomatic representatives of foreign States and their families and staffs. High Commissioners and certain members of their staffs are also accorded fiscal privileges, *e.g.* in the matter of taxation and payment of customs duties, similar to those accorded to foreign diplomats, either under specific legislation such as the Income Tax Act, 1952, or by administrative arrangement.

§ 716. The Australian States are represented in London, not by High Commissioners but by Agents-General, who are accorded immunities and privileges generally similar to those accorded to consular officers of foreign States. They are not entitled to any special precedence.

§ 717. *Commonwealth Tribunal.* When in 1929 the Members of the Commonwealth accepted the optional clause of the Statute of the Permanent Court of International Justice providing for com-

pulsory judicial settlement in certain classes of disputes, all of them except the Irish Free State made reservations excluding from the competence of the Court disputes with other Members.[1] The Imperial Conference of 1930 considered the possibility of establishing machinery for settling such disputes. The Conference did not recommend the setting up of a permanent Court but considered that a system of *ad hoc* arbitration proceedings on a voluntary basis for settlement of justiciable disputes between Governments would be preferable. The form of tribunal recommended was one of five members (one being Chairman) drawn from within the Commonwealth and to be selected as follows : one by each party to the dispute from Members of the Commonwealth other than those parties ; one by each party from any part of the Commonwealth ; and a Chairman selected by those four persons. No effect has been given to these recommendations in any case which has since arisen.

Relations with Foreign Countries

§ 718. *Membership of International Organisations.* Under the Covenant of the League of Nations all the Dominions then existing (except Newfoundland) and India became original Members of the League. The Irish Free State was admitted in 1923. In this capacity they were entitled to send separate delegations to the Assembly and were eligible for election to the non-permanent seats on the Council. Canada was elected in 1927, the Irish Free State in 1930, Australia in 1933 and New Zealand in 1936.

§ 719. At the present time all the Members of the Commonwealth are separate members of the United Nations. All the Members are separately represented on various other international organisations and are represented by separate delegations at international Conferences.

§ 720. Southern Rhodesia, though not a separate Member of the United Nations, has been admitted as a separate member of certain international organisations dealing with non-political matters such as the International Telecommunications Union and has also been separately represented at some non-political international conferences.

§ 721. *Diplomatic Representation in Foreign Countries.* Originally His Majesty's Ambassador or Minister in a foreign country repre-

[1] This reservation now applies to India (since 1929), Pakistan and Ceylon as well as to the Members who originally made it, viz., the United Kingdom, Canada, Australia, New Zealand and South Africa.

sented the whole Empire. The first appointment of a separate diplomatic representative in a foreign country of a Member of the Commonwealth other than the United Kingdom was that of an Irish Free State Minister at Washington which was made in 1924. This was followed by the appointment of a Canadian Minister at Washington in 1926, and numerous subsequent appointments have been made, with the result that all Members of the Commonwealth as well as the United Kingdom now have their own Ambassadors or Ministers at various foreign capitals. The extent of such separate representation varies in the different cases ; thus Canada at present has Ambassadors or Ministers accredited to over thirty foreign countries whereas in the case of Ceylon the number is four. Except in the case of India and Pakistan, the Ambassadors or Ministers are accredited by the Queen to the foreign country in respect of the Member of the Commonwealth concerned.

§ 722. In cases where such separate representatives have not been accredited, the existing United Kingdom diplomatic channels can, at the wish of the Commonwealth Government concerned, continue to be used in matters arising between that Government and a foreign Government. Where a note is addressed to a foreign Government by Her Majesty's United Kingdom Ambassador or Minister, at the instance of another Member of the Commonwealth, the note begins " at the instance of Her Majesty's Government in (name of country) and under instructions from Her Majesty's Principal Secretary of State for Foreign Affairs." In some cases the channel of communication is through a foreign diplomatic representative in London and High Commissioner for the Commonwealth country concerned.

§ 723. All the Members of the Commonwealth which are separate Members of the United Nations have Permanent Representatives at the seat of the United Nations.

§ 724. *Foreign Diplomatic Representation in Member-countries of the Commonwealth.* Foreign countries had for many years been represented in Dominions by Consular officers. The appointment of separate diplomatic representatives of Members of the Commonwealth has been followed by the appointment of separate diplomatic representatives (Ambassadors or Ministers) of foreign States in their countries. They are, except in the case of India and Pakistan, accredited to the Queen but their Letters of Credence are presented formally to the Governor-General of the country concerned who forwards them to Her Majesty.

§ 725. *Conduct of Foreign Policy.* The Imperial Conference of 1930, when reviewing the recommendations made by previous Conferences with regard to the communication of information and the system of consultation in relation to treaty procedure (as to which see below), summarised them as follows :

(*a*) Any of His Majesty's Governments conducting negotiations should inform the other Governments of His Majesty in case they should be interested and give them the opportunity of expressing their views, if they think that their interests may be affected ;

(*b*) Any of His Majesty's Governments on receiving such information should, if it desires to express any views, do so with reasonable promptitude ;

(*c*) None of His Majesty's Governments can take any steps which might involve the other Governments of His Majesty in any active obligations without their definite assent.

§ 726. The Imperial Conference emphasised that the application of (*a*) above was not confined to treaty negotiations and that the fullest possible interchange of information between His Majesty's Governments in relation to all aspects of foreign affairs was of the greatest value to all the Governments concerned.

§ 727. In pursuance of these general principles, there is now an extensive and elaborate system of communication, both by mail and by telegraph, between the United Kingdom Government and the Governments of the other Members of information on all aspects of foreign affairs. The other Governments are thus able to offer, and often in fact offer, their comments on any question of foreign policy with which the United Kingdom Government have to deal, and vice versa. In addition, as already stated, such questions are invariably discussed at Prime Ministers' Meetings and between the Governments and the representatives (High Commissioners) of the other Governments, both in London and in the capitals of the other countries. At some foreign capitals also meetings take place between the diplomatic representatives of the Members stationed there on matters of common concern.

Treaty Procedure

§ 728. The Imperial Conference of 1923 adopted a resolution recommending, for the acceptance of the Governments of the Empire, a specified procedure to be observed in the negotiation, signature and ratification of treaties. The Imperial Conference of 1926 made further recommendations, in the light of experience on

various points of procedure. These recommendations (apart from those dealing with the procedure for negotiation referred to above) and subsequent developments in relation to some of them may be summarised as follows :

(i) *Forms of preamble and signature.* It was recommended that, in the case of treaties between Heads of States, which were regarded as the form normally to be adopted, the Plenipotentiaries of all Members of the Commonwealth participating in the treaty should be grouped together under the King's Title, preceded in each instance by the words "For..... (name of country)," in the order of precedence normally followed in the case of Members of the Commonwealth (the United Kingdom, Canada, Australia, New Zealand, the Union of South Africa, the Irish Free State and India). Signatures would similarly be grouped in the same order.

The procedure in the case of agreements between governments was not discussed in detail at the Imperial Conference of 1926, and the practice adopted after that Conference was for the names of the British Commonwealth Governments in the preamble not to be grouped, as in the case of Heads of States Treaties, but to appear separately in their appropriate alphabetical places. The same practice was followed as regards order of signature.

Adoption of the 1926 forms led in some instances to difficulties with individual Dominions, notably at the Rome Copyright Conference in 1928. As a result, the tendency during recent years has been to avoid the Heads of States form of treaty entirely in the case of multilateral treaties and to adopt the governmental form instead. This was, for instance, the procedure in the case of the Charter of the United Nations in 1945 and the Paris Peace Treaties with various European States in 1946.

The Imperial Conference of 1926 recommended that in the case of Heads of States Treaties, the Plenipotentiaries for the various British units should have full powers, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they would sign. While this was already the practice in the case of full powers issued to Dominion and Indian plenipotentiaries, it marked a change in those issued to United Kingdom plenipotentiaries, which had hitherto not been limited geographically in any way.

By established custom Full Powers issued by the Sovereign are not countersigned by a Minister but bear the Great Seal of the

Realm (or in the cases mentioned in § 706 above the corresponding Seal of the Member of the Commonwealth concerned). The Full Powers issued to South African Plenipotentiaries have, however, been countersigned by a South African Minister, owing to the requirement of South African law that all instruments issued by the Sovereign must be so countersigned.

The Governor-General of Pakistan was authorised by the Queen to exercise in respect of Pakistan all powers and authorities lawfully belonging to Her Majesty in relation to the negotiation, conclusion and ratification of Treaties with Heads of foreign States. If, in pursuance of this authority, a treaty was concluded in the name of the Governor-General, no full power from Her Majesty was required.

Any Heads of States Treaty concluded by India or Pakistan would now, in view of their positions as Republics, be in the name of the President of India or of Pakistan and not of the Queen.

In the case of intergovernmental agreements, the full power is in the name of the Government concerned and is signed by the appropriate Minister of that Government and not by the Queen.

(ii) *Ratification.* The Imperial Conference of 1923 recommended that the existing practice in connection with the ratification of treaties should be maintained. This practice was described as follows :

(*a*) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the Government of that part :

(*b*) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the Governments of those parts of the Empire concerned. It is for each Government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that Government.

The original practice in ratifying a treaty concluded in respect of more than one Member of the Commonwealth was for a single instrument of ratification to be prepared covering all those Members. In the case of the Treaty for the Renunciation of War of 1928 (the Briand-Kellogg Pact) the procedure was instituted of preparing separate instruments of ratification in respect of the several Members participating in the treaty. This procedure has since been regularly followed.

Ratification of intergovernmental agreements is effected by an instrument signed by a Minister of the Government concerned. Ratification of a treaty concluded by the Governor-General of Pakistan was effected by the Governor-General and not by the Queen.

§ 729. *Position of Southern Rhodesia.* As a general rule, the participation of Southern Rhodesia in treaties concluded by the United Kingdom, whether bilateral or multilateral, has been effected under an Article in the treaty dealing with its application to Colonies of Metropolitan Countries. In a few instances, however, Southern Rhodesia has participated as a separate party. One such case was the International Telecommunications Convention of 1947. Signature in respect of Southern Rhodesia was effected under a full power in the name of the Southern Rhodesia Government signed by the Prime Minister of Southern Rhodesia. Ratification in respect of Southern Rhodesia was effected by a separate instrument in the name of the United Kingdom Government.

The Southern Rhodesia Government have also been given authority to conclude agreements with foreign Governments, falling within the categories of purely local agreements with foreign colonial territories in Africa, and trade agreements relating to the treatment of goods.

Southern Rhodesia has now become one of the three territories comprising the Federation of Rhodesia and Nyasaland. Its functions in relation to external affairs, and the obligations mentioned above have been inherited by the Federal Government.

§ 730. *Registration of intra-Commonwealth agreements with the United Nations.* The view formerly held by the United Kingdom Government, and accepted with isolated exceptions by the Dominion Governments, was that agreements between Members of the Commonwealth were not properly registrable with the League of Nations under Article 18 of the League Covenant. Since the establishment of the United Nations further consideration has been given to this question and it has been agreed by all the Members of the Commonwealth that agreements concluded since October 24, 1945, should be registered with the United Nations, except those which merely amend or modify agreements concluded before that date and consequently not registered, and certain other classes of agreement not regarded as registrable when concluded between foreign countries.

Issue of Exequaturs to Foreign Consuls

§ 731. Applications from foreign Governments for the issue of exequaturs to persons appointed as Consular Officers in Member-countries of the Commonwealth other than the United Kingdom are addressed to the Government concerned through the appropriate diplomatic channel. Exequaturs are signed by the Queen and countersigned by a Minister of the Commonwealth country concerned, except in India, where exequaturs are signed by the President of India, and in Canada and Pakistan, where the respective Governors-General have been authorised by the Queen to issue exequaturs on Her Majesty's behalf.

Declarations of War

§ 732. On receipt of information that a state of war existed between the United Kingdom and Germany as from 11 A.M. on September 3, 1939 the Governor-General of Australia, on the advice of the Federal Executive Council, issued a Proclamation of the existence of war. An announcement in similar terms was issued by the Governor-General of New Zealand.

§ 733. In South Africa the position was debated on September 4 in the Union House of Assembly. A motion by the Prime Minister (General Hertzog) advocating neutrality was defeated by 80 votes to 67 in favour of an amendment moved by the Deputy Prime Minister (General Smuts) proposing participation. General Hertzog resigned and General Smuts formed a Government. On September 6 the Governor-General issued a Proclamation declaring a state of war between the Union and Germany.

§ 734. In Canada, Parliament was summoned for September 7, and on September 9 adopted without a division a motion in favour of active participation in the war. The Prime Minister of Canada petitioned the King to declare a state of war between Canada and Germany from September 10 and, on receipt of His Majesty's approval, a Proclamation to this effect was published on that day.

§ 735. A special procedure was adopted when Australia de-declared war on Japan, Finland, Roumania and Hungary. On the advice of the Australian Government, the King signed an instrument, which was sealed with the Great Seal of the Realm and countersigned by an Australian Minister, authorising the Governor-General to issue a Proclamation declaring the existence of a state of war between Australia and the countries in question.

§ 736. Pakistan.—The following statement was issued from 10 Downing Street on Friday, February 4, 1955 :

The Commonwealth Prime Ministers, having taken note of forthcoming constitutional changes in Pakistan, have issued the following declaration :

The Government of Pakistan have informed the other Governments of the Commonwealth of the intention of the Pakistan people that under the new Constitution which is about to be adopted, Pakistan shall become a sovereign, independent Republic. The Government of Pakistan have, however, declared and affirmed Pakistan's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the Queen as the symbol of the free association of its independent member nations, and as such the Head of the Commonwealth.

The Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa and Ceylon, the basis of whose membership is not hereby changed, accept and recognize Pakistan's continuing membership in accordance with the terms of this declaration. The Government of India, the basis of whose membership is also unaltered, similarly recognize Pakistan's continuing membership.

In notifying the other Prime Ministers of Pakistan's intention, Mr. Mohammed Ali reaffirmed his country's steadfast adherence to the Commonwealth. The other Prime Ministers, in accepting this proposal, welcomed Pakistan's continued association and co-operation as a member of the Commonwealth and assured Mr. Mohammed Ali that the friendship and good will of their countries towards Pakistan would remain unaffected by this constitutional change.

Accordingly, the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare, as they did in 1949 when a similar decision was taken in respect of India, that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress.

CHAPTER XXIX

THE UNITED NATIONS ORGANISATION

§ 737. In the 1932 edition of this work more than 50 pages were devoted to the League of Nations, its constitution, its activities and kindred matters. Handicapped from its birth by the abstention of the U.S.A., and subsequently discredited by its failure to deal adequately with flagrant breaches of the peace by Italy in Albania and Abyssinia and by Japan in Manchuria and China, it received its death-blow in the outbreak of war in 1939, and, on the formation of the United Nations Organisation, it gracefully abolished itself on April 18, 1946, bequeathing certain of its less political responsibilities to the new body.

Although the chapters on the League in the last edition might be of interest to the student of history, there is ample material available for research to be found elsewhere, and to retain the account of the League and at the same time to include even a brief description of the U.N.O. would increase the size of this volume to an extent quite disproportionate to any advantage which might accrue. As, therefore, it is plainly in the sphere of the U.N.O. that practical guidance in Diplomatic Practice will be sought, if at all, today it seems best to jettison altogether the essays on the League of Nations and substitute for them some remarks on the U.N.O.

The United Nations

§ 738. The term " United Nations " derives from the " Declaration by United Nations " of January 1, 1942, in which the 26 nations then fighting against the Axis affirmed their resolve to co-operate in winning the war and their adherence to the Atlantic Charter. That Charter, proclaimed on August 14, 1941 by the President of the United States and the Prime Minister of the United Kingdom, looked forward to a peace affording to all peoples freedom and security from aggression.

§ 739. The first concrete step towards the creation of an organisation with these objectives was taken in the summer of 1944,

when discussions took place at Dumbarton Oaks between representatives of the U.S.A., U.K. and U.S.S.R., and subsequently with representatives of China. Further discussion took place at Yalta in February, 1945, resulting in agreed proposals on the crucial matter of voting in the Security Council (see § 745 below). The draft charter resulting from these discussions was then laid before the United Nations Conference on International Organisation, which met at San Francisco in April, 1945. Various modifications of the proposals of the Great Powers were then agreed, and the resulting Charter was signed on June 26 by representatives of all 51 nations present. Having received the requisite ratifications the Charter came into force on October 24, 1945.

§ 740. *Membership.* The following were the original members of the United Nations :

Argentina
Australia
Belgium
Bolivia
Brazil
Byelorussian S.S.R.
Canada
Chile
China
Colombia
Costa Rica
Cuba
Czechoslovakia
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
France
Greece
Guatemala
Haiti
Honduras
India
Iran
Iraq
Lebanon
Liberia
Luxembourg
Mexico
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay
Peru
Philippines
Poland
Saudi Arabia
Syria
Turkey
Ukrainian S.S.R.
Union of South Africa
U.S.S.R.
United Kingdom
United States
Uruguay
Venezuela
Yugoslavia

The following were subsequently admitted on the dates indicated :

Afghanistan	(November, 1946)
Burma	(April, 1948)
Iceland	(November, 1946)
Indonesia	(September, 1950)
Israel	(May, 1949)
Pakistan	(September, 1947)
Sweden	(November, 1946)
Thailand	(December, 1946)
Yemen	(September, 1947)

Under the Charter membership is open to peace-loving states which accept the obligations of the Charter and in the judgment of the Organisation are able and willing to carry out these obligations. Admission is effected by a decision of the General Assembly upon the recommendation of the Security Council.

§ 741. The Soviet Union has used its "veto" (see § 745 below) to prevent a Council recommendation for the admission of non-Soviet candidates so long as Soviet candidates are not accepted ; but such blocking has not always been the monopoly of the Soviet Union, who were not wholly responsible for the prolonged deadlock which occurred in the autumn of 1955. This was eventually resolved on December 14, 1955, and the following states were elected that night :

Albania	Italy
Austria	Jordan
Bulgaria	Laos
Cambodia	Libya
Ceylon	Nepal
Eire	Portugal
Finland	Roumania
Hungary	Spain

§ 742. The principal organs of the United Nations are : The General Assembly, The Security Council, The Economic and Social Council, The Trusteeship Council, The International Court of Justice, The Secretariat. The International Court of Justice is dealt with in a separate chapter. Comments on the operations of the other organs are given in the following paragraphs.

The General Assembly

§ 743. The General Assembly enjoys a central position in the Organisation. It is the only organ in which all members of the

United Nations are directly represented. The Assembly receives and considers reports from the Security Council and from the other organs of the United Nations. It is the Assembly that elects the non-permanent members of those and other bodies and it is the Assembly which approves the Budget of the Organisation. The Assembly's sphere of activity is as wide as the Charter itself. It may discuss and make recommendations on any matter within the scope of the Charter. However, while the Security Council is exercising its functions with respect to any dispute or situation the Assembly may not make any recommendation upon it except at the Council's request. Moreover, any question relating to the maintenance of international peace and security on which action is necessary must be referred to the Security Council by the General Assembly either before or after discussion. The Assembly's freedom of action is also subject to Article 2 (7) of the Charter, under which the United Nations are not authorised to intervene in matters which are essentially within the domestic jurisdiction of any state. The sole exception to this is that the application of enforcement measures, should the Security Council decide upon them with respect to some threat to the peace, breach of the peace or act of aggression, is not to be prejudiced by this principle.

Meetings. The Charter provides for the Assembly to have Regular Annual Sessions and Special Sessions on the request either of the Security Council or of a majority of members. The Annual Sessions should begin on the third Tuesday in September, and, unless otherwise decided, take place at the Headquarters of the Organisation. Special circumstances have, however, frequently arisen causing a postponement of the date and an alteration of the venue. Now that the Permanent Headquarters building in New York is in full use there should be less reason to incur the expense of meeting elsewhere, though this will no doubt be advisable from time to time.

Procedure. Proceedings at a Session of the Assembly open with the election of officers, *i.e.*, a President, seven Vice-Presidents (five of whom are in practice the representatives of the permanent members of the Security Council) and the Chairmen of Committees. Since the scope of the Assembly is so wide, its diverse business is divided among at least six and generally seven Committees as follows :

Committee I : Political and Security Committee (including the regulation of armaments) ;

Committee II : Economic and Financial Committee ;

Committee III : Social, Humanitarian and Cultural Committee ;
Committee IV : Trusteeship Council (including Non-Self-Governing Territories) ;
Committee V : Administrative and Budgetary Committee ;
Committee VI : Legal Committee ;

and an *ad hoc* Political Committee (which has proved necessary in view of the large volume of political questions that have arisen).

In addition, the General Committee consisting of the President, Vice-Presidents and Chairmen of the above Committees, considers and reports to the Assembly on the provisional agenda for the Session and during the Session meets from time to time to make recommendations about the arrangement of business. It does not itself decide any political questions.

Although items are sometimes discussed directly at a Plenary Session of the Assembly, they are usually first considered in a Committee. Each item then comes up subsequently at a Plenary Session where any resolutions proposed on the subject are finally voted upon, sometimes without discussion and generally after much briefer discussion than in the Committee. Important speeches are, however, made in Plenary Session during the General Debate, not related to any particular item on the agenda, which follows the election of officers at the opening of the Session.

Voting. Decisions are taken in Committees by a majority of those present and voting. The same rule applies in Plenary Sessions of the Assembly except in respect of " important questions," on which decisions are taken by a two-thirds majority of those present and voting. " Important questions " include recommendations concerning the maintenance of peace and security, elections to the Councils, admission, suspension and expulsion of members, questions relating to the Trusteeship Council system and budgetary questions. Other questions may be ruled to be " important " by a simple majority vote.

The Security Council

§ 744. The Security Council has the primary responsibility for the maintenance of international peace and security.

Membership. The Security Council has eleven members, five permanent and six non-permanent. The non-permanent members serve for two years, three being replaced each year. The permanent members are : The Republic of China, France, The U.S.S.R., The United Kingdom, The United States.

In the election of non-permanent members due regard is to be paid to the contribution of members to the maintenance of international peace and security, and to the other purposes of the Organisation, and also to equitable geographical distribution.

Procedure. The Security Council is organised so as to be able to function continuously. Every member of the Council has to be represented at all times at the seat of the Organisation. The position of President is held for a month at a time by each of its members, in the alphabetical order of their English names.

Functions. The functions of the Security Council fall broadly into two groups: the settlement of disputes and action with respect to threats to the peace. Under Chapter VI of the Charter, entitled the "Pacific Settlement of Disputes", the Council may call on the parties to a dispute to settle it by peaceful means; may investigate any dispute or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security; or, at any stage of such a dispute or situation, may recommend procedures or methods of adjustment. Any member of the United Nations may bring such a dispute or situation to the attention of the Council, or of the General Assembly. Any state not a member of the United Nations may bring to the attention of the same bodies any dispute to which it is a party, if it accepts for the purposes of the dispute the obligations of pacific settlement provided in the Charter.

Chapter VII of the Charter is entitled "Action with respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression." Under it the Council is given extensive powers, including the power to use armed force. Member-states are obliged to comply with decisions of the Security Council to take action under this Chapter (whereas resolutions of the Assembly have only the force of recommendations to member states), and moreover, subject to the conclusion of the agreements referred to in Article 43 of the Charter, to make available to the Security Council armed forces, assistance and facilities including rights of passage, necessary for the purpose of maintaining international peace and security. In making plans for the application of armed force the Security Council has the assistance of its Military Staff Committee, consisting of the Chiefs of Staff (or their representatives) of the permanent members of the Security Council.

While thus vesting primary responsibility for the maintenance of peace in the Security Council, the Charter also provides that

nothing contained in it shall impair the inherent right of individual or collective self-defence, if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. It is under this provision of the Charter that the establishment of the North Atlantic Treaty Organisation and of the South-East Asia Treaty Organisation is justified.

The Charter also allows (in Chapter VIII) for the establishment of regional arrangements for dealing with such matters relating to the maintenance of international peace and security as are appropriate for a regional action. But no enforcement action can be taken under regional arrangements or by regional agencies without the authorisation of the Security Council. (A temporary exception was made with regard to measures against an " enemy state " defined as any state which was during World War II an enemy of any signatory of the Charter.)

§ 745. *The Veto.* Decisions of the Security Council on procedural matters are made by an affirmative vote of seven members. Decisions on all other matters are made by an affirmative vote of seven members including the concurring votes of the permanent members, provided that any decisions under Chapter VI and under paragraph 3 of Article 52 (*i.e.*, when the Security Council promotes the settlement of a dispute by regional means) a party to a dispute shall abstain from voting.

This arrangement has been strongly attacked both at San Francisco and subsequently as conferring an undue prerogative on the Council's permanent members, and a feeling of frustration has been produced by the conduct of the U.S.S.R., which has employed this " veto "-power on over fifty occasions to prevent the Council from taking decisions, even where no vital interest of the U.S.S.R. has been seen. Numerous suggestions for obviating or modifying the veto have been put forward, but the sole modification of its application which has in practice come to be accepted is the practice of abstention, *i.e.*, a permanent member may let it be known that his failure to cast a concurring vote for a particular resolution is not to be regarded as a veto and the resolution if it receives the necessary number of votes is regarded as carried.

The veto may, however, be defended on the following lines, to quote the official United Kingdom commentary on the Charter (Cmd. 6666 Miscellaneous No. 9, 1945) :

Only when enforcement action is necessary is the complete unanimity of the Great Powers always required. At least two other states on the Security Council must then agree to action. It is imperative that the consent of the Great Powers should be necessary in cases in which they are not a party, since they will have the main responsibility for action. It is also clear that no enforcement action by the Organisation can be taken against a Great Power itself without a major war. If such a situation arises, the United Nations will have failed in its purpose and all members will have to act as seems best in the circumstances. . . . Thus the successful working of the United Nations depends on the preservation of the unanimity of the Great Powers, not of course on all the details of policy but on its broad principles.

§ 746. *Uniting for Peace.* It is a matter of history that this unanimity was not preserved. The United Nations has therefore had to adjust itself to circumstances in which the basic condition for its successful working had not been fulfilled. Such adjustment was made urgent by the Korean war. In that case the Soviet representative happened to be absent from the Security Council, since the U.S.S.R. was boycotting it and other organs of the United Nations at the time on the grounds that China was no longer correctly represented. The Security Council was thus able to condemn the aggression in Korea and promote the necessary action without being exposed to a Soviet veto. But it was generally recognised that if another case of aggression should occur the Soviet representative might well maintain his place and prevent the Council from taking action. To prevent the complete paralysis of the United Nations in such a case, the course adopted was to extend the activities of the General Assembly. The " Uniting for Peace " resolution adopted by the General Assembly on November 3, 1950, provided principally that, if the Security Council were prevented from taking action in a case of aggression by lack of unanimity among its permanent members, the Assembly might be called to meet in emergency special session within twenty-four hours at the request of seven members of the Security Council or of a majority of member-states, for the purpose of making recommendations for collective measures, including the use of force, to maintain or restore peace. The resolution also established a Peace Observation Commission of fourteen members which could observe and report on the situation in any area where international tension exists ; a Panel of Military Experts to be available to advise member-states on the formation of military

units which they were asked to keep ready for service upon the recommendation of the General Assembly or the Security Council ; and a Collective Measures Committee of fourteen members to study and report to the Security Council and the Assembly on methods of maintaining and strengthening international peace. In brief, the resolution provided the Assembly with something like a substitute for the Military Staff Committee of the Security Council which had failed to function usefully.

While the Peace Observation Commission and the Collective Measures Committee have been in operation, no action has yet been taken under the main provisions of the " Uniting for Peace " resolution. Any action to deal with aggression by the Assembly under this resolution would probably be less effective than the action which the Charter empowered the Security Council to take, since, among other reasons, the Assembly resolution would have only the force of a recommendation to member-states. It would, however, have great moral force.

The Economic and Social Council

§ 747. Under Article 55 of the Charter, the United Nations assumes the objective of promoting :

(*a*) Higher standards of living, full employment and conditions of economic and social progress and development ;

(*b*) Solutions of international economic, social, health and related problems, and international cultural and educational co-operation ;

(*c*) Universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Economic and Social Council has the purpose of implementing these provisions. It may make or initiate studies and reports on the matters referred to, and may make recommendations upon them to the General Assembly, to member-states, and to the Specialised Agencies concerned. It may prepare draft conventions for submission to the Assembly or call conferences on matters falling within its scope. It may also make arrangements for consultation with non-governmental organisations.

The Council enters into relationships with the Specialised Agencies (see Ch. XXX) by negotiating special agreements with each of them, subject to approval by the General Assembly.

The Council consists of eighteen members, of which one-third retire each year, but are eligible for immediate re-election.

Decisions of the Council are made by a majority of members present and voting, each member having one vote.

The Council itself usually meets twice a year in about April and July. The bulk of its work is carried out by nine Functional Commissions, and three Regional Economic Commissions.

The Trusteeship Council

§ 748. The Charter deals with dependent territories under two categories. The great majority of them come under the heading of Non-Self-Governing Territories. Chapter XI of the Charter entitled " Declaration regarding Non-Self-Governing Territories " sets forth the principles by which member-states, responsible for the administration of territories whose peoples have not yet attained a full measure of self-government, undertake to guide their policies. Administering powers recognise that the interests of the inhabitants of these territories are paramount, and they accept as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these territories. The only precise obligation which administering powers assume under this Chapter is to transmit regularly to the Secretary-General, for information purposes subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are responsible. Although the Charter provides no machinery for dealing with this information, the General Assembly has set up a Committee for Information from Non-Self-Governing territories, in whose existence the administering powers have acquiesced.

A much smaller group of territories comes under the international trusteeship system, under which are placed :

(*a*) Territories formerly held under mandate from the League of Nations ;
(*b*) Territories detached from enemy states as a result of the Second World War ;
(*c*) Territories which may voluntarily be placed under the system by states responsible for their administration.

The following are the territories now under trusteeship and the powers responsible for their administration :

Togoland under U.K. administration—U.K.
Cameroons under U.K. administration—U.K.
Tanganyika—U.K.

Togoland under French administration—France.
Cameroons under French administration—France.
Ruanda-Urundi—Belgium.
Somaliland under Italian administration—Italy.
New Guinea—Australia.
Nauru—administered by Australia for Australia, New Zealand and the U.K.
Western Samoa—New Zealand.
Pacific Islands—U.S.

Trust territories are administered under Trusteeship Agreements agreed upon by the states directly concerned and approved by the General Assembly. The Charter envisages that the Organisation itself might in some cases be the administering authority but this has not been attempted in practice. In any Trusteeship Agreement a " strategic area " may be designated and all functions of the United Nations relating to such areas are to be exercised by the Security Council. The former Japanese mandated islands in the Pacific now under United States Trusteeship constitute the only " strategic area " so far designated.

In respect of all other Trust Territories the General Assembly carries out the functions of the United Nations assisted by the Trusteeship Council. The Council consists of :

(*a*) Members administering Trust Territories ;
(*b*) Permanent members of the Security Council, if not already members in their capacity as administering powers.
(*c*) Other members elected for three-year terms to the total number necessary to ensure that the Council is composed equally of administering and non-administering powers.

The Council considers reports submitted by the administering authorities ; accepts petitions and examines them in consultation with the administering authorities ; and provides for periodic Visiting Missions to go to the territories at times agreed upon with the administering authorities. It also draws up questionnaires on the basis of which the administering powers make their reports.

The Council generally has two Sessions each year, normally at the Headquarters of the Organisation.

The International Court of Justice

§ 749. The International Court of Justice is the principal judicial organ of the United Nations. It functions in accordance with its statute which forms an integral part of the Charter. (See Chapter XXXII.)

The Secretariat

§ 750. The Secretariat comprises the Secretary-General and such staff as the Organisation may require.

The Secretary-General is the chief administrative officer of the Organisation. He is appointed by the General Assembly upon the recommendation of the Security Council. He acts as Secretary at meetings of the General Assembly and of the Councils, and performs such other functions as these organs entrust to him. The Secretary-General, in addition to these general duties, may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

The staff of the Secretariat is appointed by the Secretary-General under regulations established by the General Assembly. The paramount consideration in their employment and in the determination of their conditions of service is the necessity of securing the highest standards of efficiency, competence and integrity. Due regard is paid to recruiting the staff on as wide a geographical basis as possible. In the performance of their duties the Secretary-General and staff may not seek or receive instructions from any government or from any other authority external to the Organisation. They are to refrain from any action which might reflect on their position as international officials responsible only to the Organisation. Each member of the United Nations undertakes to respect the exclusive international character and responsibilities of the Secretary-General and staff and not to seek to influence them in the discharge of their responsibilities.

CHAPTER XXX

THE UNITED NATIONS: THE SPECIALISED AGENCIES

§ 751. It is laid down in Article 57 of the United Nations Charter that the various Specialised Agencies established by inter-governmental agreement shall be brought into relation with the United Nations through the intermediary of the Economic and Social Council, in accordance with the provisions of Article 63; such agreement to be subject to approval by the General Assembly

All the Specialised Agencies have now concluded relationship agreements.

International Labour Organisation

§ 752. The International Labour Organisation was created by the Versailles Peace Settlement and continued to function effectively through the Second World War. The first members were the original members of the League of Nations. There are now 66 members. Any member of the United Nations may become a member of the I.L.O. on acceptance of the obligations of the Constitution; States, not members of the United Nations, may be admitted by the decision of the Conference. The International Labour Organisation was the first inter-governmental agency to negotiate a relationship agreement with the United Nations (May 30, 1946, approved by the International Labour Conference and the Assembly of the United Nations in October, 1946).

§ 753. The aims of the International Labour Organisation are set out in the preamble to its Constitution and are stated at length in the Declaration concerning the aims and purposes of the Organisation adopted on May 10, 1944, at Philadelphia by the 26th Session of the International Labour Conference, the text of which is annexed to the Constitution (see Cmd. 7185, page 76). The fundamental aim of the Organisation is the promotion of social justice throughout the world by the establishment of humane conditions of labour. Employers' and workers' representatives enjoying full and independent voting rights share with govern-

ment representatives in the pursuit of this fundamental objective, thus giving the Organisation the " tripartite " character which is established by its Constitution and which is its unique feature among international organisations.

§ 754. *Constitution.*

The General Conference which normally meets once a year is composed of four representatives of each member-state, two representing the government, one the employers and one the workers, each delegate being accompanied by advisers.

The Governing Body, which is responsible for conducting the affairs of the Organisation between sessions of the Conference as well as for preparing the Agenda for Sessions of the Conference, is composed of sixteen Government representatives, eight employers' and eight workers' representatives. Eight of the Government representatives are nominated by the eight members of chief industrial importance, and eight from among the remaining member-states. The employers' and workers' groups select their own representatives.

The International Labour Office—the Secretariat—is controlled by a Director-General appointed by the Governing Body. The Office is in Geneva. There are Branch Offices in London, Washington, Ottawa, Paris, Rome and New Delhi and a Liaison Mission at the headquarters of the United Nations in New York. Operational Field Offices have been established in Asia, the Middle East and Latin-America. Correspondents are maintained in many countries.

§ 755. The measures adopted by International Labour Conferences are formulated in special international treaties called Conventions or in Recommendations, the latter being usually in more general terms than Conventions. Both Conventions and Recommendations require a two-thirds majority of the Conference for their adoption. Conventions and Recommendations adopted by the Conference do not automatically bind Members of the Organisation but their adoption places upon all the Members (whether they voted in favour of the Convention or Recommendations or not) the obligation to submit them to " the authority or authorities within whose competence the matter lies for the enactment of legislation or other action." The competent authority is normally the legislature of the country concerned. One hundred and three international labour Conventions and ninety-five Recommendations have been adopted by the International Labour

Conference since 1919. The Constitution provides for the rendering of reports by member-states upon the effect given to ratified Conventions and upon unratified Conventions and Recommendations. The Conference also adopts Resolutions which, while carrying no constitutional obligations, give expression to the views of the Conference.

There are also Regional Conferences of member-states of the Organisation from a particular area of the world to examine problems of common interest in greater detail than is possible at a full general Conference.

§ 756. The Organisation also gives direct advice and assistance to members. Recent years have seen an increasing development of the operational activities of the Organisation which is also a participant in the Expanded Programme of Technical Assistance.

§ 757. Tripartite industrial committees to give detailed attention to social and economic conditions in a number of industries of international importance have been established. Committees have ~~so far~~ been set up to deal with inland transport, textiles, coal-mining, iron and steel production, the metal trades, petroleum production and refining, building, civil engineering and public works and the chemical industry. Two similar committees have been set up, one to deal with plantations and the other with salaried employees and professional workers.

§ 758. The Organisation has also set up a large number of permanent committees and commissions to further particular aspects of its work, *e.g.* the Joint Maritime Commission, the Permanent Agricultural Committee, the Committee on Occupational Safety and Health, the Permanent Migration Committee, the Committee on Social Policy in non-Metropolitan Territories. It has also established on its own behalf and on behalf of the United Nations a Fact Finding and Conciliation Commission on Freedom of Association for the impartial examination of complaints alleging infringements of the exercise of trade union rights.

§ 759. The Ministry of Labour and National Service is the United Kingdom Department primarily responsible for dealing with matters related to I.L.O.

References :

Report on the 29th Session of the International Labour Conference (Cmd. 7185—July 1947).

Report on the 30th Session of the International Labour Conference 1947 (Cmd. 7437—July 1948).

The First, Second and Third reports of the I.L.O. to the United Nations published by the I.L.O. Geneva since 1947.

Food and Agriculture Organisation of The United Nations

§ 760. The Food and Agriculture Organisation was set up in 1945 as the result of the United Nations Food and Agriculture Conference at Hot Springs in 1943. Its object is to assist countries to raise the level of nutrition and standards of living of their peoples, to improve the efficiency of the production and distribution of all food, agricultural and forestry products, and to improve the condition of rural populations. An agreement bringing F.A.O. into relationship with the United Nations as a Specialised Agency was approved in December 1946.

§ 761. *Constitution.*

(*a*) *The Conference*, which is composed of one representative from each member-state, is the governing body. It normally meets every two years to determine the policy and approve the budget of F.A.O., and to review the world food and agricultural situation. It also appoints the Director-General.

(*b*) *The Council*, consisting of representatives of eighteen member-states elected by the Conference, acts as the executive body of F.A.O. between sessions of the Conference.

§ 762. The headquarters of F.A.O. is at Rome. The work is organised through two general service divisions (administrative and financial services, information and education services), an Expanded Technical Assistance Programme Division, and five technical divisions (Economics, Fisheries, Forestry, Agriculture and Nutrition). There is also a Near East Regional Office in Cairo, an Asia and Far East Regional Office in Bangkok, a Latin-America Regional Office in Rome, with sub-offices in Mexico City, Rio de Janeiro, Santiago and San José, and a North Americ Regional Office in Washington with a sub-office in New Yorl The F.A.O. also carries out certain projects in co-operation wit the regional economic commissions.

§ 763. F.A.O. has no power to take decisions binding on Governments. It functions in four main ways : it collects and publishes statistics and technical information, particularly on long-term problems ; it provides member-states on request with expert

assistance and expert missions on agriculture, forestry, fisheries, economics and nutrition ; it promotes international action through conferences and meetings of experts ; it administers those funds of the Expanded Technical Assistance Programme as are allocated to it by the Technical Assistance Board.

§ 764. *National Committees.*

The F.A.O. National Committee for the United Kingdom provides the normal channel of communication between the United Kingdom and F.A.O. It meets under the chairmanship of a representative of the Ministry of Food. Its terms of reference include the preparation of briefs on F.A.O. matters, the co-ordination of departmental action *vis-à-vis* F.A.O., the submission of advice to departments and collection from them of information for F.A.O. and generally rendering such assistance to F.A.O. as may be desirable.

The Ministry of Food and the Ministry of Agriculture and Fisheries jointly provide the Secretariat of the F.A.O. National Committee and are the United Kingdom Departments chiefly concerned with matters related to F.A.O.

References :

Final Act of United Nations Conference on Food and Agriculture, Hot Springs, 1943 (Cmd. 6451—June 1943).

Documents relating to the First Session of the Food and Agriculture Conference (Cmd. 6731—January 1946).

Report of Preparatory Commission on World Food Proposals (Cmd. 7031—January 1947).

United Nations Educational, Scientific and Cultural Organisation

§ 765. UNESCO was established as a Preparatory Commission by a Conference of members of the United Nations held in London in November, 1945. It formally became a Specialised Agency of the United Nations on November 4, 1946, when the instruments of acceptance of twenty signatories of the Constitution had been deposited. It has entered into a relationship agreement with the United Nations. Its seat is in Paris. States which are not members of the United Nations may join.

§ 766. The purpose of UNESCO is " to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human

rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations."

§ 767. *Constitution.*

The General Conference which consists of representatives of the Member States. It meets every two years and determines the policy and the main lines of work of the Organisation.

The Executive Board which consists of twenty members elected by the General Conference. It meets three or four times a year and is responsible for the execution of the programme adopted by the Conference. It has created several sub-Committees.

The Secretariat which consists of a Director-General, appointed by the Conference on the nomination of the Executive Board, with the necessary staff.

§ 768. The first General Conference of UNESCO held in Paris in November-December, 1946, approved a programme of work for the Organisation on reconstruction and rehabilitation, education, mass media (press, films, radio), libraries and cultural institutions, natural sciences, social sciences and humanities, arts and letters.

§ 769. The work and procedure of UNESCO have certain special features, *e.g.* the wide scope of its work which takes all human knowledge for its province and thereby involves relations with almost every other organ of the United Nations ; its predominantly non-political character ; its project of enlisting private non-governmental enthusiasm and support through the national bodies which member States are asked to set up ; its provision for co-operation on a wide scale with non-governmental international organisations ; its intention to hold its successive two-yearly General Conferences in a different country each time, as far as possible.

§ 770. *National Commissions.*

Article 7 of the UNESCO Constitution calls upon member-states to make such arrangements as suit their particular conditions for the purpose of associating their principal bodies interested in educational, scientific and cultural matters with the work of the Organisation, preferably by the formation of a National Commission, broadly representative of the government and such bodies.

In the United Kingdom the Minister of Education has built up twelve National Co-operating Bodies representative of organised national interests in the fields of Education, Museums, Libraries, Arts and Letters, Mass Communications, Philosophy and Humanities, Natural Sciences and Social Sciences. In addition to the representatives of institutions, a number of distinguished private experts are co-opted to these bodies whose total membership is now approximately 250.

The business of the National Co-operating bodies is to advise the Minister of Education and the Director-General of UNESCO on all matters falling within their special fields of competence and to pursue purposes approved by UNESCO in the United Kingdom.

In addition to the National Co-operating Bodies, the National Commission includes the United Kingdom Committee. This is a general purposes Committee under the chairmanship of the Minister of Education, which deals with broad questions of policy including the budget and other administrative matters which do not fall within the purview of the National Co-operating Bodies.

The Ministry of Education is the United Kingdom Department primarily responsible for dealing with matters related to UNESCO.

References :

Final Act and Constitution of UNESCO (Cmd. 6963—October 1946).

The First General Conference (Cmd. 7128—May 1947).

Reports have also been issued on each subsequent General Conference.

There are many UNESCO publications, notably the series of UNESCO Pamphlets and its Programme.

International Civil Aviation Organisation

§ 771. In November, 1944, on the invitation of the United States, representatives of 54 nations met at Chicago and prepared a draft International Convention on civil aviation. This Convention provided for a permanent Organisation (ICAO) which would be a central authority for the development and regulation of international air transport.

To complete the technical annexes to the Chicago Convention a Provisional International Civil Aviation Organisation was set up with Headquarters in Montreal, consisting of a General

Assembly of all ratifying States and an Interim Council of twenty-one members.

In March, 1947, the International Civil Aviation Convention adopted at Chicago was ratified and the permanent Organisation came into being on April 4, 1947. It has entered into a relationship agreement with the United Nations.

§ 772. The aims and objects of the organisation are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport, so as to ensure the safe and orderly growth of international civil aviation throughout the world.

§ 773. *Constitution.*

The Assembly, composed of delegates from all member-states, meets annually and is the legislative body of the Organisation.

The Council is a permanent executive body and derives its authority from the Assembly and from the Convention. It is composed of twenty-one member-states elected every three years by the Assembly, due consideration being given to the inclusion of all major geographical areas of the world, and of member-states of importance in air transport and in providing facilities for international civil air navigation. The Council's President is a salaried official and acts, without a vote, as the permanent representative of the Organisation.

§ 774. In addition to its Headquarters at Montreal, the Organisation has regional representatives at Paris (Europe/Africa), Cairo (Middle East), Lima (South America), Melbourne (Far East and Pacific) and Montreal (North America).

The Ministry of Civil Aviation is the United Kingdom Department primarily responsible for matters related to I.C.A.O.

Reference : International Civil Aviation Conference : Final Act (Cmd. 6614–1945).

International Monetary Fund

§ 775. The International Monetary Fund was established in Washington in December, 1945, in accordance with Articles drawn up at Bretton Woods in 1944. Its headquarters are in Washington. It has entered into a formal relationship agreement with the United Nations.

§ 776. The Fund's functions are :

(1) to promote exchange stability and to work for the elimination of exchange restrictions on current transactions and for the maintenance of orderly exchange arrangements amongst its members. To these ends members undertake to agree with the Fund on initial par values for their currencies and to consult it about any changes in those par values. Changes not exceeding 10 per cent (in the aggregate) of the agreed initial value may be made substantially at the discretion of the member, but the Fund has a right to object to larger variations. Members undertake to conform to rules for maintaining par values and freedom of current transactions and to avoid discriminatory exchange practices;

(2) to assist members in working towards the objective set out above by selling them, within limits, against payment in their own currencies, amounts of other members' currencies which they need for current transactions. These facilities, which are designed to give temporary assistance in financing balance of payments deficits on current account and to make possible orderly exchange adjustments, are intended to supplement the members' own exchange resources and are related to the size of their subscriptions. If the Fund runs short of a currency much in demand, it may declare the currency scarce. In that case all members may ration their use of that currency by import controls or otherwise.

§ 777. *Constitution.*

The Board of Governors, in which all powers of the Fund are vested, consists of one Governor and one alternate appointed by each member.

The Executive Directors, who are responsible for the conduct of the general operations of the Fund.

The Managing Director, selected by the Executive Directors, who conducts the ordinary business of the Fund.

The resources of the Fund, which amount to the equivalent of about $8·7 billion, are subscribed by the member-states principally in their own currencies, though up to a maximum of one quarter must be paid in gold, the actual amount depending on the member's net official holdings of gold or U.S. dollars.

The Fund began operations on March 1, 1947.

The Treasury is the United Kingdom Department primarily responsible for dealing with matters related to the International Monetary Fund.

Reference : United Nations Monetary and Financial Conference : Final Act (Cmd. 6546—August 1944).

International Bank for Reconstruction and Development

§ 778. The Bank, like the Fund, has its origin in the Bretton Woods Conference, and was similarly established in Washington in December, 1945. Its headquarters are in Washington. It has entered into a formal relationship agreement with the United Nations.

§ 779. The Bank's function is to provide or assist in providing funds for the reconstruction and development for productive purposes of the territories of members with particular reference to :

(*a*) the reconstruction of war-ravaged countries ; and
(*b*) the development of the resources of less developed member countries.

It is ancillary to, and not in substitution for, other institutions and organisations catering for those needs. Generally it is expected to make prudent loans for projects which after expert investigations have been found technically and commercially sound, but general reconstruction loans are also possible in special circumstances.

§ 780. *Constitution.*

The Board of Governors, in which all powers of the Bank are vested, consists of one Governor and one alternate appointed by each member.

The Executive Directors, who are responsible for the conduct of the general operations of the Bank.

The President who is selected by the Executive Directors and conducts the ordinary business of the Bank.

§ 781. The membership of the Bank is identical with that of the Fund but, though its members' subscriptions amount in the aggregate to much the same as those of the Fund, only one-fifth is normally called up and available for lending, the balance being available only if required to enable the Bank to honour its obligations in respect of guarantees, etc. Of the amount called up, one-tenth must be paid in gold or dollars and the balance is payable in local currency. For additional funds, the Bank can borrow in the

world's capital markets to the extent permitted by the governments concerned, and it can also guarantee loans made by private investors through the usual investment channels. The Bank began operations in June, 1946, and made its first loan in May, 1947.

The Treasury is the United Kingdom Department primarily responsible for dealing with matters related to the Bank.

Reference: United Nations Monetary and Finance Conference: Final Act (Cmd. 6546—August 1944).

International Telecommunication Union

§ 782. The International Telecommunication Union is the successor of an organisation consisting of parties to the former International Telegraph Convention and the International Radiotelegraph Convention. As such it dates back to 1865. These two Conventions were merged at Madrid in 1932 to form the International Telecommunication Convention. The Convention which is the basic instrument of the Union, was revised at Atlantic City in 1947, when an agreement, under which the Union became a Specialised Agency, was negotiated with the United Nations. A second revision took place in Buenos Aires in 1952. Membership of the Union is, in the main, restricted to recognised sovereign states. Other territories may apply for Associate membership.

§ 783. The 1952 Convention lays down general principles covering the whole field of international telegraph and telephone services, and all forms of telecommunication including the technical aspects of broadcasting. Regulations on Telegraphs, Telephones, and Radio complete the Convention. There is also provision for concluding special regional arrangements such as the European Regional Broadcasting convention and frequency plan.

§ 784. Plenipotentiary and Administrative Conferences of the Union are normally held every five years; Administrative Conferences may revise the Regulations but the revision of the Convention and the general review of the Union's Policy and activities are reserved to the Plenipotentiary Conferences. An Administrative Council of eighteen member-states, which normally meets once a year, is responsible for facilitating the implementation of the decisions of the Plenipotentiary Conference and of the Convention and Regulations, and for co-ordinating the work of the Union. There is a permanent Secretariat at Geneva.

§ 785. Three Consultative Committees carry out research and make recommendations on technical and other problems. They are the :

CCIT (International Telegraph Consultative Committee) ;
CCIF (International Telephone Consultative Committee) ;
CCIR (International Radio Consultative Committee).

The CCIT and the CCIF also study tariff questions and the CCIR deals with the technical aspects of broadcasting.

§ 786. The International Frequency Registration Board (IFRB) at Geneva examines and records radio frequency usage for publication by the Secretariat. The Board is available to investigate cases of alleged interference and advise Administrations on the best use of the radio frequency spectrum. It has also been given the specific task of preparing a draft frequency plan for high frequency broadcasting.

§ 787. International telecommunication services are operated both by Government organisations and by private operating agencies. The latter may be represented at Administrative Conferences and take part in discussions.

The General Post Office is the United Kingdom Department chiefly concerned in matters related to the I.T.U.

References :

International Telecommunication Convention and Related Documents (Cmd. 7466—July 1948).

International Telecommunication Convention, Buenos Aires, 1952 (obtainable from the Secretary-General of the International Telecommunication Union, Geneva).

International Radio Regulations, Atlantic City, 1947 (obtainable from Her Majesty's Stationery Office).

Universal Postal Union

§ 788. The Universal Postal Union came into being on July 1, 1875, under the terms of the General Postal Union Treaty of Berne, 1874, the need to unify international postal services having been previously discussed at a Paris Conference in 1863.

The objects of the Union are to ensure the organisation and improvement of the various international postal services, and to promote the development of international collaboration in that sphere.

§ 789. The Acts of the Union now comprise the Convention which deals with the constitution of the Union and the international letter post service—and a number of subsidiary Agree-

ments relating to insurance, parcels, cash on delivery, postal cheques, and other postal services. Participation in the Convention is obligatory ; participation in the Agreements is optional.

The Acts are revised at periodic Congresses of the Union normally held at five-year intervals. The Congress held at Paris in 1947, approved a relationship agreement with the United Nations establishing the Union as a Specialised Agency as from July 1, 1948, and also set up an Executive and Liaison Committee designed to ensure continuity in the work of the Union, and to ensure effective liaison with the United Nations, other Specialised Agencies and international organisations in the interval between Congresses.

§ 790. Any sovereign state may be admitted to membership of the Union with the approval of at least two-thirds of the members. A number of dependent territories, or groups of such territories, are considered as forming a single country or Administration of the Union as regards the right to vote and the obligation to contribute to the expenses of the International Bureau of the Union. There is no provision for associate membership.

§ 791. The Convention provides for the formation of restricted Unions, subject to the stipulation that the conditions adopted in any such Union are not less favourable to the public than those laid down in the Acts themselves. The most important of these restricted Unions is the Hispano-American Postal Union, but other smaller regional Unions have also been established.

§ 792. The International Bureau of the Union, which is located at Berne, is charged with the duty of collecting, collating, publishing and distributing to the member-states information concerning the international postal services ; the Bureau may be asked to give an opinion upon questions in dispute, but it has no executive functions.

The General Post Office is the United Kingdom Department chiefly concerned with matters relating to the U.P.U.

Reference : Universal Postal Convention and Regulations (Cmd. 7435—July 1948).

World Health Organisation

§ 793. The Constitution of the World Health Organisation, the objective of which is " the attainment by all people of the highest possible level of health," was drawn up at an International Health

Conference held at New York in June, 1946, and came into force when twenty-six Members of the United Nations had accepted it—on April 7, 1948. The organisation now has a total of sixty-nine active members and three associate members.

§ 794. Although W.H.O. is part of the United Nations system, it also has other antecedents, viz., the Health Organisation of the League of Nations and the *Office International d'Hygiène Publique* : and it is in continuation of the work of these two bodies that the Organisation has produced the W.H.O. Regulations No. 1 (dealing with Nomenclature of Diseases and Causes of Death) and No. 2 (the International Sanitary Regulations). W.H.O. assists national health administrations, on the request of the country concerned, both by sending visiting teams of experts or consultants to demonstrate up-to-date techniques, and by awarding fellowships : the fields covered include the control of communicable diseases, public health administration, nursing, maternal and child health, and environmental sanitation. Expert Committees, Panels and Seminars have been convened to exchange information and pool expert knowledge on specific problems. In addition to carrying out programmes within its own " Regular Budget," to which Members and Associate Members contribute according to a system of assessments similar to that used by the United Nations, W.H.O. also administers funds on behalf of the United Nations Technical Assistance Administration and the United Nations International Children's Emergency Fund.

§ 795. The organs of W.H.O. are the World Health Assembly, which meets annually at present, the Executive Board, which consists of eighteen members designated by member-states and meets at least twice a year, and Regional Committees, which meet annually. The Organisation has an international secretariat, the personnel of which is divided between the Headquarters in Geneva and the Regional Offices.

§ 796. The United Kingdom was re-elected in 1952 for three years as one of the countries entitled to designate a person to sit on the Executive Board of W.H.O.

The Ministry of Health, London, the Department of Health for Scotland and the Ministry of Health and Local Government, Northern Ireland, are the United Kingdom Departments primarily responsible for matters related to the World Health Organisation.

Reference : Final Act of the International Conference, Constitution, etc. (Cmd. 7458—July 1948).

International Trade Organisation

§ 797. The Charter for the International Trade Organisation was authenticated by the Final Act of the United Nations Conference on Trade and Employment which met in Havana, Cuba, from November 21, 1947, to March 24, 1948. The Havana Charter will come into force sixty days after the deposit of instruments of acceptance, *i.e.*, ratification, by twenty of the fifty-four signatories of the Final Act. No further action has, however, since been taken on the Charter and the idea of an International Trade Organisation has in effect been dropped.

International Refugee Organisation

§ 798. In December, 1946, the General Assembly of the United Nations approved the Constitution of the International Refugee Organisation.

The decision to set up this body was taken because of the political and social problems which had been caused by the displacement of millions of persons as a result of the war and of the political upheavals which both preceded and succeeded it. The task of I.R.O., which was not intended to be a permanent agency, was to bring about a solution of these problems by the repatriation or settlement of displaced persons and refugees, to provide them with legal and political protection and where necessary to care for them pending their final disposal.

§ 799. In view of the urgency of the problem, a Preparatory Commission for the International Refugee Organisation (on which all signatories of the Constitution were represented whether they had ratified or not) took over operational responsibility for displaced persons and refugees on July 1, 1947, when its predecessors UNRRA and the Inter-governmental Committee on Refugees came to an end.

The Preparatory Commission succeeded in setting up a world-wide administration with headquarters in Geneva. It was responsible for just under one million refugees, some two-thirds of whom received care and maintenance in camps and assembly centres in Germany, Austria, China, Italy and the Middle East. I.R.O.'s programme aimed at re-establishing all refugees in its charge by June 30, 1950. The Organisation went out of existence in February, 1952, and was finally liquidated in September, 1953.

The Foreign Office is the United Kingdom Department chiefly concerned with residual I.R.O. matters.

World Meteorological Organisation

§ 800. The International Meteorological Organisation was created at Utrecht in 1878 with a view to co-ordinating and improving meteorological activities.

The Organisation is composed of the Conference of Directors of meteorological services in ninety-three countries and colonies, meeting every six years, and the International Meteorological Committee which acts for the Conference of Directors and meets every two or three years.

Technical Commissions make recommendations to the Conference on matters concerning international co-operation in the various branches of applied meteorology, and Regional Commissions supervise and co-ordinate locally the application of the resolutions of the Conference and the Committee. The headquarters are in Lausanne, Switzerland.

§ 801. The W.M.O. formally came into being on April 4, 1951, and the agreement establishing the relationship between the U.N.O. and the W.M.O. came into force on December 20, 1951.

The Meteorological Office of the Air Ministry is the United Kingdom Department chiefly concerned with W.M.O.

Reference : Final Act of Conference and Convention (Cmd. 7427—June 1948).

Inter-Governmental Maritime Consultative Organisation

§ 802. Wartime experience pointed to the value of an international organisation dealing with merchant shipping, though there has not hitherto been a permanent organisation for this purpose between Governments. After some preliminary discussions, the Secretary-General of the United Nations convened an international maritime conference, which met in Geneva in February, 1948, and concluded a Convention designed to set up the Inter-governmental Maritime Consultative Organisation, to be the Specialised Agency of the United Nations on shipping.

§ 803. The main purposes of the Organisation, which will be consultative and advisory, are to facilitate co-operation among Governments on technical matters, with particular reference to safety at sea, and to discourage discriminatory action and unnecessary restrictions by Governments on international shipping. Provision is also made for dealing with unfair restrictive practices

by shipping concerns, if they cannot be settled through normal business channels.

§ 804. The Convention is to come into force when ratified by twenty-one States of which seven shall each have not less than 1,000,000 gross tons of shipping. The Organisation will consist of an Assembly, a Council, a Maritime Safety Committee, and a Secretariat with headquarters in London. Provisionally the Council will include the United Kingdom, the United States of America, the Netherlands, Sweden, Norway and Greece as the six principal maritime nations, Canada, Australia, India, France, Belgium and Argentine as six other nations with the largest interest in international seaborne trade, and four other elected members.

§ 805. A Preparatory Committee consisting of the twelve named members of the first Council met immediately after the conclusion of the Convention and again during 1948 to consider what should be done to bring the Organisation into being and to negotiate a relationship agreement with the United Nations, which was approved in 1949 by the Economic and Social Council and the General Assembly.

The Ministry of Transport is the United Kingdom Department primarily responsible for matters related to IMCO.

Reference : Final Act of Conference and Convention (Cmd. 7412—May 1948).

CHAPTER XXXI

THE UNITED NATIONS: NEGOTIATION, GOOD OFFICES, MEDIATION, ENQUIRY, CONCILIATION, ARBITRATION

§ 806. It is provided in Article 33(1) of the Charter of the United Nations that "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." "Judicial settlement" and "resort to regional agencies or arrangements" are considered respectively in Chapters XXXII and XXIX of this work.

§ 807. By *negotiation* is meant the conduct of direct talks between the parties to a dispute, aimed at settling the dispute. Under the Charter the obligation to seek a solution by negotiation only arises in the case of disputes the continuance of which is likely to endanger the maintenance of international peace and security. A somewhat similar obligation is also present in the Convention for the Pacific Settlement of International Disputes concluded at The Hague on July 29, 1899, where it is stated in Article 1 that:

> "With a view to obviating, as far as possible, recourse to force in the relations between States, the signatory Powers agree to use their best efforts to insure the pacific settlement of international differences."

This Convention was signed and ratified by twenty-seven States, including the United Kingdom, and there were seventeen adhesions. A further Convention, with the same title, was concluded at The Hague on October 18, 1907. The latter Convention was signed, but not ratified, by the United Kingdom. Article 1 of the 1907 Convention, which was ratified by over twenty States, was practically identical with Article 1 of the 1899 Convention.

§ 808. In connexion with "negotiation" may be mentioned *good offices* which, as defined by Oppenheim, "consist in various kinds of action tending to call negotiations between the

conflicting States into existence." [1] Such actions may be taken either by a third State, or by an international body, or by a private person.

§ 809. By *mediation* is meant " direct conduct of negotiation between the parties at issue on the basis of proposals made by the mediator." [2] Like " good offices," " mediation " may be offered either by a third State, or by an international body, or by a private person. Although the terms " good offices " and " mediation " are sometimes confused, the distinction between the two is that suggested in the definitions given above, namely, that, whereas in offering " good offices " the third party confines himself to calling negotiations between the conflicting States into existence, in " mediation " the third party goes further and not only brings negotiations into existence, but actually brings them into existence on the basis of proposals made by him.

§ 810. With regard to both " good offices " and " mediation " Oppenheim writes as follows :

" The Hague Convention for the Pacific Settlement of International Disputes [3] endeavoured (in Articles 2–8) to induce the signatory Powers to have recourse more frequently than heretofore to good offices and mediation.

(1) These Articles made it clear that States which are strangers to a dispute had a right to offer good offices or mediation, and that the exercise of this right must not be regarded as an unfriendly act.

(2) Good offices and mediation had exclusively the character of advice, and never had binding force (Article 6).

(3) The acceptance of mediation was not (Article 7) to have the effect of interrupting, delaying, or hindering mobilisation or other preparatory measures for war, or of interrupting military operations when war has broken out before the acceptance of mediation, unless there should be an agreement to the contrary." [4]

§ 811. *Enquiry* is a process of settling international disputes which also had its origin in the Hague Convention of 1899. Article 9 of this Convention stated the general principle as follows :

" In differences of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of

[1] Oppenheim, *International Law*, ii (7th Ed., by Lauterpacht, 1952), p. 10.
[2] *Ibid.*
[3] In respect of these matters the provisions of the Conventions of 1899 and 1907 are practically identical.
[4] *Op. cit.* ii, p. 12.

fact, the signatory Powers recommend that the parties, who have not been able to come to an agreement by means of diplomacy, should as far as circumstances allow, institute an international commission of enquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation."

Article 14 of the same Convention further provides :

" The report of the international commission of inquiry is limited to a statement of facts, and has in no way the character of an arbitral award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement. "

The 1907 Convention contains detailed provision concerning the establishment and working of the Enquiry Commissions. It is clear, however, that the main feature of Enquiry as a means of settling disputes is the production by an impartial body of a report limited to an elucidation of the facts and not binding upon the parties.

§ 812. *Conciliation* is defined by Oppenheim as " the process of settling a dispute by referring it to a commission of persons whose task it is to elucidate the facts and (usually after hearing the parties and endeavouring to bring them to an agreement) to make a report containing proposals for a settlement, but which does not have the binding character of an award or judgment." [1] By contrast, " International *arbitration* has for its object the settlement of differences between States by judges of their own choice and on the basis of respect for law. Recourse to arbitration implies an engagement to submit in good faith to the award." [2] Thus conciliation and arbitration both have as their object the actual settlement of international disputes rather than the bringing into existence or resumption of negotiations between the parties, such as is the object of good offices, mediation and even of enquiry.[3] But conciliation and arbitration differ in that (i) whereas the award of an arbitral tribunal is binding upon the parties, the report of a conciliation commission is not ; and (ii) whereas arbitration is " on the basis of respect for law," it is open to a conciliation commission to recommend a solution not based on existing law. Moreover, arbitration is similar to " judicial settlement " in that the latter, like the former, " has for its object the settlement of differences between States . . . on the basis of respect for law "

[1] *Ibid.*, ii, p. 12.
[2] This definition is taken from Article 37 of the Hague Convention of 1907.
[3] In the sense that the report of the Enquiry Commission, by elucidating the facts, is designed to assist negotiations between the parties.

and that a judicial decision is no less binding upon the parties than an arbitral award. But, whereas in an arbitration the award is given by judges or arbitrators selected either directly or indirectly by the parties themselves, in judicial settlement the decision is handed down by a court composed of judges chosen on a wider basis.[1]

§ 813. There was established under the Hague Convention of 1899 the Permanent Court of Arbitration. It was provided that the Court " shall be competent for all arbitration cases, unless the parties agree to institute a special tribunal " (Article 21) ; that " An International Bureau, established at The Hague, serves as record office for the Court " (Article 22) ; that " each signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation and disposed to accept the duties of arbitrators " and that these persons are the members of the Court [2] (Article 23) ; and that the International Bureau is under the direction and control of a " Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as president " (Article 28).[3] The 1899 Convention also contains a number of Articles on Arbitral Procedure which were further elaborated in the 1907 Convention.

§ 814. Many treaties have been concluded between States which provide for the settlement of international disputes by one or other of the methods described above, or by a combination of such methods. The most comprehensive is the General Act for the Pacific Settlement of International Disputes, concluded on September 26, 1928, of which the most important provisions are the following :

Chapter I (Conciliation)

Article 1. Disputes of every kind between two or more Parties to the present General Act which it has not been possible to settle by diplomacy shall, subject to such reservations as may be made under Article 39, be submitted, under the conditions laid down in the present Chapter, to the procedure of conciliation.

[1] In practice by " judicial settlement " is meant a decision of the International Court of Justice, although the possibility of establishing other such courts is not excluded. See Chapter XXXII, § 826.

[2] These persons are also the " national groups " referred to in Article 4 of the Statute of the International Court of Justice. See Chapter XXXII, § 832.

[3] In the absence of the Minister for Foreign Affairs the Chair at meetings of the Council is taken by the doyen of the diplomatic representatives.

Article 2. The disputes referred to in the preceding article shall be submitted to a permanent or special Conciliation Commission constituted by the parties to the dispute.

Article 12. In the absence of agreement to the contrary between the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 15. 1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the parties to an agreement. It may, after the case has been examined, inform the parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a *procès-verbal*, stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the *procès-verbal* of whether the Commission's decisions were taken unanimously or by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

Chapter II (*Judicial Settlement*)

Article 17. All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice.

Article 18. If the parties agree to submit the disputes mentioned in the preceding article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected, and the procedure to be followed. In the absence of sufficient particulars in the special agreement, the provisions of The Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Disputes shall apply so far as is necessary. If nothing is laid down in the special agreement as to the rules regarding the substance of the dispute to be followed by the arbitrators, the tribunal shall apply the substantive rules enumerated in Article 38 of the Statute of the Permanent Court of International Justice.

Article 19. If the parties fail to agree concerning the special agreement referred to in the preceding article, or fail to appoint arbitrators,

either party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 20. 1. Notwithstanding the provisions of Article 1, disputes of the kind referred to in Article 17 arising between parties who have acceded to the obligations contained in the present chapter shall only be subject to the procedure of conciliation if the parties so agree.

2. The obligation to resort to the procedure of conciliation remains applicable to disputes which are excluded from judicial settlement only by the operation of reservations under the provisions of Article 39.

3. In the event of recourse to and failure of conciliation, neither party may bring the dispute before the Permanent Court of International Justice or call for the constitution of the arbitral tribunal referred to in Article 18 before the expiration of one month from the termination of the proceedings of the Conciliation Commission.

Chapter III (Arbitration)

Article 21. Any dispute not of the kind referred to in Article 17 which does not, within the month following the termination of the work of the Conciliation Commission provided for in Chapter I, form the object of an agreement between the parties, shall, subject to such reservations as may be made under Article 39, be brought before an arbitral tribunal which, unless the parties otherwise agree, shall be constituted in the manner set out below. [1]

Article 22. The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of their Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the parties.

Article 25. The parties shall draw up a special agreement determining the subject of the dispute and the details of procedure.

Article 26. In the absence of sufficient particulars in the special agreement regarding the matters referred to in the preceding article, the provisions of The Hague Convention of the 18th October, 1907, for the Pacific Settlement of International Disputes shall apply so far as is necessary.

Article 27. Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was

[1] The provision that disputes "not of the kind referred to in Article 17" (*i.e.*, non-legal disputes) shall be brought before an arbitral tribunal seems to conflict with the conception of the Hague Conventions which state (Article 16 of the 1899 Convention and Article 38 of the 1907 Convention) that arbitration is "the most equitable means of settling disputes" which relate to "questions of a *legal* nature."

constituted, the dispute may be brought before the Tribunal by an application by one or other party.

Article 28. If nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall apply the rules in regard to the substance of the dispute enumerated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as there exists no such rule applicable to the dispute, the Tribunal shall decide *ex aequo et bono*.[1]

Chapter IV (General Provisions)

Article 38. Accessions to the present General Act may extend :

A. Either to all the provisions of the Act (Chapters I, II, III and IV) ;

B. Or to those provisions only which relate to conciliation and judicial settlement (Chapters I and II), together with the general provisions dealing with these procedures (Chapter IV) ;

C. Or to those provisions only which relate to conciliation (Chapter I), together with the general provisions concerning that procedure (Chapter IV).

The Contracting Parties may benefit by the accessions of other Parties only in so far as they have themselves assumed the same obligations.

Article 39. 1. In addition to the power given in the preceding article, a Party, in acceding to the present General Act, may make his acceptance conditional upon the reservations exhaustively enumerated in the following paragraph. These reservations must be indicated at the time of accession.

2. These reservations may be such as to exclude from the procedure described in the present Act :

(*a*) Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute ;

(*b*) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States ;

(*c*) Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories.

[1] Like Article 21, this Article also gives rise to difficulties. It is not clear how the Tribunal is to apply to *non-legal* disputes (see footnote 1, p. 442) " the rules in regard to the substance of the dispute enumerated in Article 38 of the Statute of the Permanent Court of International Justice," for the latter are essentially legal rules, *i.e.*, the rules of international law. Further there has been much criticism of the last sentence of the Article which implies that the rules enumerated in the Statute of the Court may be so lacking as to prevent the Court from giving a legal decision in certain cases. This interpretation is not confirmed by the Statute of the Court itself which clearly provided that the Court should only decide *ex aequo et bono* if the parties agree thereto.

3. If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party.

4. In the case of Parties who have acceded to the provisions of the present General Act relating to judicial settlement or to arbitration, such reservations as they may have made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.

The United Kingdom acceded to the General Act on May 21, 1931, subject to the following conditions :

(1) That the following disputes are excluded from the procedure described in the General Act, including the procedure of conciliation :—

(i) Disputes arising prior to the accession of His Majesty to the said General Act or relating to situations or facts prior to the said accession ;

(ii) Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement ;

(iii) Disputes between His Majesty's Government in the United Kingdom and the Government of any other Member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree ;

(iv) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States ; and

(v) Disputes with any party to the General Act who is not a Member of the League of Nations.

(2) That His Majesty reserved the right in relation to the disputes mentioned in Article 17 of the General Act to require that the procedure described in Chapter II of the said Act shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the procedure, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined by a decision of all the members of the Council other than the parties to the dispute.

(3) (i) That, in the case of a dispute, not being a dispute mentioned in Article 17 of the General Act, which is brought before the Council of the League of Nations in accordance with the provisions of the Covenant, the procedure described in Chapter I of the General Act shall not be applied, and, if already commenced, shall be suspended, unless the Council determines that the said procedure shall be adopted.

(ii) That in the case of such a dispute the procedure described in Chapter III of the General Act shall not be applied unless the Council has failed to effect a settlement of the dispute within twelve months from the date on which it was first submitted to the Council, or, in a case where the procedure prescribed in Chapter I has been adopted without producing an agreement between the parties, within six months from the termination of the work of the Conciliation Commission. The Council may extend either of the above periods by a decision of all its members other than the parties to the dispute.

§ 815. On April 28, 1949, the General Assembly adopted the Revised General Act for the Pacific Settlement of International Disputes which came into force on September 20, 1950. The Revised General Act, to which the United Kingdom has not acceded, is similar in substance to the General Act of 1928 but contains various verbal amendments (*e.g.* " United Nations " for " League of Nations," " International Court of Justice " for " Permanent Court of International Justice," etc.).

CHAPTER XXXII

THE UNITED NATIONS: THE INTERNATIONAL COURT OF JUSTICE

§ 816. ARTICLE 7(1) of the Charter lists among "the principal organs of the United Nations" an International Court of Justice. Chapter XIV of the Charter (Articles 92–96) contains provisions relating to the establishment of the Court and to its place in the scheme of international institutions envisaged by the Charter. It is important to remember, however, that, though located at The Hague, the International Court of Justice is just as much an organ of the United Nations as are the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council. The link between the League of Nations and the former Permanent Court of International Justice was far less close.

§ 817. Article 92 of the Charter actually states that "The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter." It is important to note that, although most of the detailed provisions relating to the functions and powers of the Court are to be found in the Statute rather than in the Charter, the Statute "forms an integral part of the present Charter". Moreover, although its Statute is "based upon the Statute of the Permanent Court of International Justice", there is no doubt that the International Court of Justice is a new Court. The Permanent Court of International Justice held its final session in October 1945 and was formally dissolved by a resolution of the Assembly of the League of Nations on April 18, 1946. The International Court of Justice held its first meeting on April 3, 1946, its judges having been elected in February 1946.[1] The reference to the Statute of the new Court being based upon the Statute of the old Court was inserted largely for jurisdictional reasons.[2]

[1] Goodrich and Hambro, *Charter of the United Nations*, 2nd ed., 1949 (Stevens), p. 478.

[2] See § 824 below.

§ 818. Article 93(1) of the Charter provides that " All Members of the United Nations are, *ipso facto*, parties to the Statute of the International Court of Justice ". Therefore it is impossible for a state to be a member of the United Nations without also being a party to the Statute of the International Court of Justice. This state of affairs is different from that which prevailed under the League, where it was possible for a state to be a member of the League of Nations without being a party to the Statute of the Permanent Court of International Justice. The U.S.S.R. was in this position from 1934 to 1940.

§ 819. Article 93(2) of the Charter provides that " A State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council ". On December 11, 1946 the General Assembly adopted—upon the recommendation of the Security Council—a resolution providing that Switzerland should become a party to the Statute on the following conditions :

(*a*) acceptance of the provisions of the Statute of the Court ;
(*b*) acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter ;
(*c*) an undertaking to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time after consultation with the Swiss Government.[1]

Switzerland accepted these conditions in an instrument deposited with the Secretariat of the United Nations on July 28, 1948.[2] Liechtenstein, Japan and San Marino became parties to the Statute on similar conditions by depositing the necessary declarations with the Secretariat on March 29, 1950,[3] April 2, 1954,[4] and February 18, 1954,[5] respectively.

§ 820. It has been shown that, according to Article 93(2) of the Charter, the conditions upon which a state which is not a member of the United Nations may become a party to the Statute of the Court are to be separately determined in *each case*, even though in practice, of course, the same conditions will tend to be determined in every case. However, Article 35(2) of the Statute of the Court contains a further provision enabling states which are not even parties to the Statute to appear before the Court upon certain conditions. Article 35 of the Statute reads in full as follows :

[1] *I.C.J. Yearbook*, 1947–1948, p. 30. [2] *Ibid.*, p. 31.
[3] *Ibid.*, 1949–1950, p. 32. [4] *Ibid.*, 1953–1954, p. 33. [5] *Ibid.*

1. The Court shall be open to the States parties to the present Statute.

2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a State which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

On October 15, 1946, the Security Council adopted the following resolution determining the conditions upon which the Court shall be open to states which are not parties to the Statute.

The Security Council of the United Nations, in virtue of the powers conferred upon it by Article 35, paragraph 2, of the Statute of the International Court of Justice, and subject to the provisions of that article, resolved that :

(1) The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely: that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter.

(2) Such declaration may be either particular or general. A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen. A general declaration is one accepting the jurisdiction generally in respect of all disputes or of a particular class or classes of disputes which have already arisen, or which may arise in the future.

A State, in making such a general declaration, may, in accordance with Article 36, paragraph 2, of the Statute, recognise as compulsory, *ipso facto*, and without special agreement, the jurisdiction of the Court, provided, however, that such acceptance may not, without explicit agreement, be relief upon vis-à-vis States parties to the Statute, which have made the declaration in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice.

(3) The original declarations made under the terms of this resolution shall be kept in the custody of the Registrar of the Court, in accordance with the practice of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all

States parties to the Statute of the International Court of Justice, and to such other States as shall have deposited a declaration under the terms of this resolution, and to the Secretary-General of the United Nations.

(4) The Security Council of the United Nations reserves the right to rescind or amend this resolution by a resolution which shall be communicated to the Court, and on receipt of such communication and to the extent determined by the new resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.

(5) All questions as to the validity or the effect of a declaration made under the terms of this resolution shall be decided by the Court.[1]

On November 24, 1951, Japan signed a declaration accepting the jurisdiction of the Court in respect of disputes concerning the interpretation or execution of the Peace Treaty concluded at San Francisco on September 8, 1951. Ceylon and Cambodia signed similar declarations on April 23, 1952, and July 17, 1952 respectively.[2]

§ 821. In the *Corfu Channel Case (Preliminary Objection)*,[3] the Court considered that a letter, dated July 23, 1947, from the Deputy-Minister of Foreign Affairs of Albania to the Deputy-Registrar of the Court accepting the jurisdiction of the Court constituted proof not only that Albania had accepted the Court's jurisdiction, but also that she had conformed to the conditions required for admission to appear before the Court.[4]

§ 822. The result of the provisions of the Security Council resolution of October 15, 1946, is therefore that, if a state deposits a declaration of the kind referred to in the second paragraph of the resolution, it obtains access to the Court on substantially the same terms as states which (whether members or non-members of the United Nations) are parties to the Statute.[5] The chief difference

[1] *I.C.J. Yearbook*, 1947–1948, p. 33.

[2] For the text of these declarations see *ibid.*, 1951–1952, pp. 213–14.

[3] *I.C.J. Reports*, 1948, p. 15.

[4] Article 36 of the Rules of Court provides that "When a State which is not a party to the Statute is admitted by the Security Council, in pursuance of Article 35 of the Statute, to appear before the Court, it shall satisfy the Court that it has complied with any conditions that may have been prescribed for its admission. . . ." In effect, therefore, the Court treated the letter of July 23, 1947, as a declaration within the meaning of the second paragraph of the Security Council resolution of October 15, 1946.

[5] While it would appear that there is no substantial difference between the position, on the one hand, of Members of the United Nations and, on the other hand, of non-Members of the United Nations who have access to the Court (either under Article 93(2) of the Charter or under Article 35(2) of the Statute), it may be that there is a difference in relation to the application of Article 94(2) of the Charter. See § 824, below.

is that, whereas members of the United Nations are obliged to contribute to the general expenses of the Court,[1] and whereas Switzerland, Liechtenstein, Japan and San Marino are obliged " to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time after consultation " with the state concerned, a state which obtains access to the Court under Article 35(2) of the Statute is not obliged to contribute to the expenses of the Court unless it is " a party to a case ". Then, as provided in Article 35(3) of the Statute, " the Court shall fix the amount which that party is to contribute towards the expenses of the Court ". Another difference is—as provided in the Security Council resolution of October 15, 1946—that, although a state (not a party to the Statute) which makes a general declaration accepting the jurisdiction of the Court may also make the further declaration referred to in Article 36(2) of the Statute (*i.e.* the " Optional Clause " declaration), if it does make this further declaration, it is not entitled, " without explicit agreement ", to rely upon it vis-à-vis States parties to the Statute which have also made the declaration under Article 36(2). Whereas, in similar circumstances, states which are parties to the Statute are entitled to rely upon each other's declarations under Article 36(2) of the Statute without the necessity for such " explicit agreement ".

§ 823. Article 94(1) of the Charter provides that " Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party ". This obligation was also covered in the conditions upon which Switzerland, Liechtenstein, Japan and San Marino were permitted to become parties to the Statute, and in the Security Council resolution of October 15, 1946, under which the Court is open to states not parties to the Statute. In any case, irrespective of those provisions, it is an established principle of general international law that the decision of an international tribunal is binding upon the parties.[2]

[1] Article 33 of the Statute of the Court states that " The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly ". There is, of course, also the general obligation contained in Article 17(2) of the Charter to the effect that " The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly ".

[2] Moreover the same principle is implied in the following provisions of the Statute, *e.g.* (i) Article 38(1) which states that it is the function of the Court to " decide " the disputes submitted to it ; (ii) Article 59 which states that " The decision of the Court has *no* binding force *except between the parties* and in respect of that particular case ", thus implying that it has binding force between the parties ; and (iii) Article 60 which states " The judgment is final and without appeal . . .".

§ 824. Article 94(2) of the Charter states that :

If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

The first question to which this most important provision gives rise is whether the right which it confers—*i.e.* the right to have recourse to the Security Council—applies only to members of the United Nations or to all states entitled to appear before the Court, whether as members of the United Nations (*i.e.* under Article 93(1) of the Charter), or as non-members under the provisions of Article 93(2) of the Charter or of Article 35(2) of the Statute. According to the normal rule of international law treaties cannot confer any rights upon states not parties to them (*pacta tertiis nec nocent nec prosunt*), and if this rule were applied literally, it is difficult to see how a state not a Member of the United Nations could acquire any right of recourse to the Security Council. The position would be different if either the conditions determined by the General Assembly for the purposes of Article 93(2) of the Charter or those determined by the Security Council for the purposes of Article 35(2) of the Statute had made express provisions concerning the application of Article 94(2) of the Charter to non-members of the United Nations. But in neither case was this done. On the contrary, whereas both the General Assembly and the Security Council insisted upon " acceptance of all the *obligations* of a Member of the United Nations under Article 94 of the Charter ", nothing was said as to the grant to non-members of any of the *rights* of members under that Article. Nevertheless there are exceptions to the rule *pacta tertiis nec nocent nec prosunt* and, having regard to the general intention of the Charter and the Statute to open the Court to non-members of the United Nations on substantially the same terms as members,[1] it seems that this case should be one of them and, therefore, that non-members should have, if necessary, a right of recourse to the Security Council under Article 94(2) of the Charter.

§ 825. The second question to which Article 94(2) of the Charter gives rise is the nature of the right conferred by the Article.

[1] Indeed Article 35(2) of the Statute, referring to the conditions under which the Court shall be open to States not parties to the Statute, expressly says that " in no case shall such conditions place the parties in a position of inequality before the Court ". Upon this whole question, see Kelsen, *The Law of the United Nations*, 1951 (Stevens), pp. 499–502.

Clearly, the right of recourse to the Security Council in the event of a failure to comply with a judgment of the Court implies no right to demand that the Security Council shall take steps to execute, or otherwise secure the enforcement of, the Court's judgment. Article 94(2) imposes no obligation upon the Security Council or upon the members of the United Nations. According to what is probably the better view, the Security Council, when seized of a case under Article 94(2), simply deals with a political situation arising out of the failure of a State to comply with the judgment of the Court. It also appears that Article 94(2) gives the Security Council power to substitute its own recommendations for the judgment of the Court, but it is not clear whether, before it decides upon "measures to be taken to give effect to the judgment"—if it should so decide—it must first determine the existence of a threat to the peace or a breach of the peace under Article 39 of the Charter or whether it is free to act independently of Article 39.[1]

§ 826. Article 95 of the Charter states that "Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future". This Article makes it quite clear that the establishment of the International Court of Justice under the Charter was in no way intended to limit the right of members of the United Nations to settle their disputes by other means. The express reference in Article 95 to "other tribunals" shows that the Charter permits the existence, alongside the International Court of Justice, of other courts (including, no doubt, even courts organised on a "permanent" as opposed to an *ad hoc* basis) with power to apply international law, while Article 33(1) of the Charter lays down the general principle that "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice". It would appear that by "judicial settlement" is meant essentially, though not exclusively, reference to the International Court of Justice.[2] The other means of settling disputes are discussed in Chapter X of this book.

[1] Goodrich and Hambro, *op. cit.*, pp. 485–7, and Kelsen *op. cit.*, pp. 539–44.
[2] See, however, Kelsen, *op. cit.*, pp. 463–4.

§ 827. Article 96 of the Charter reads as follows :

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.[1]

The matter of advisory opinions is also dealt with in Articles 65–68 of the Statute of the Court. While these Articles mostly cover questions of procedure, Article 65 repeats the general principle that " The Court *may* give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request ". It seems therefore that the Court is not obliged to give an opinion, if it should prefer not to do so.[2] Presumably also it would be acting *ultra vires* if it were to give an advisory opinion on a question that was not a legal question, although the point is largely theoretical since it would be for the Court to determine whether the question put to it by the organ concerned was " legal " or not. An important indication of the Court's approach to this matter was given in the Advisory Opinion concerning *Admission of a State to the United Nations*, where the Court said :

It has nevertheless been contended that the question put must be regarded as a political one and that, for this reason, it falls outside the jurisdiction of the Court. The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired this request, nor with the considerations which, in the concrete cases submitted for examination to the Security Council, formed the subject of the exchange of views which took place in that body. It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it ; nothing which is said in the present opinion refers, either directly or indirectly, to concrete cases or to particular circumstances.

[1] The following organs and agencies have been so authorised, I.L.O., U.N.E.S.C.O., F.A.O., I.C.A.O., I.B.R.D., I.M.F., I.T.U., W.H.O. and the Interim Committee of the General Assembly.

[2] As the Court stated in the *Interpretation of Peace Treaties* case (*I.C.J. Reports 1950*, p. 65 at p. 72), " Article 65 of the Statute is permissive. It gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request ".

It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise.

Lastly, it has also been maintained that the Court cannot reply to the question put because it involved an interpretation of the Charter. Nowhere is any provision to be found forbidding the Court, " the principal judicial organ of the United Nations ", to exercise in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers.

Accordingly, the Court holds that it is competent, on the basis of Article 96 of the Charter and Article 65 of the Statute, and considers that there are no reasons why it should decline to answer the question put to it.[1]

§ 828. It is also clear that the Court is not prevented from giving an advisory opinion by the mere fact that the question referred to it is a legal question pending between States not all of which have given their consent to the question being referred to the Court. As the Court said in the *Interpretation of Peace Treaties* case :

Another argument that has been invoked against the power of the Court to answer the Questions put to it in this case is based on the opposition of the Governments of Bulgaria, Hungary and Roumania to the advisory procedure. The Court cannot, it is said, give the Advisory Opinion requested without violating the well-established principle of international law according to which no judicial proceedings relating to a legal question pending between States can take place without their consent. This objection reveals a confusion between the principles governing contentious procedure and those which are applicable to Advisory Opinions.

The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings even where the Request for an Opinion relates to a legal question actually pending between States. The Court's reply is only of an advisory character : as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take. The Court's Opinion is given not to the States, but to the organ which is entitled to request it ; the reply of the Court, itself an " organ of the United Nations ", represents its participation in the activities of the Organisation, and, in principle, should not be refused.[2]

[1] *I.C.J. Reports 1948*, p. 57 at pp. 61–2. [2] *Loc. cit.*, p. 71.

§ 829. It seems, however, on the authority of the same case, that, if the question put to the Court " was directly related to the main point of a dispute actually pending between two States, so that answering the question would be substantially equivalent to deciding the dispute between the parties ", and if " at the same time it raised a question of fact which could not be elucidated without hearing both parties ", the Court would have good reason for not giving an opinion, and would possibly be obliged not to give one.[1]

§ 830. As the Court itself recognized in the *Interpretation of Peace Treaties* case, its advisory opinions have no binding force.[2] Nevertheless such opinions are " authoritative in the sense that their legal correctness cannot be officially or formally questioned by the organ to which they are rendered, acting in its corporate capacity ".[3] Also, since they emanate from " the principal judicial organ of the United Nations " and the highest international tribunal in the world, " whatever be their formal authority, their persuasive character and substantive authority must be great ".[4] Moreover, advisory opinions may in certain circumstances be negatively binding, in the sense that, if the Court were to indicate that a certain course of action would be definitely illegal or that, of various courses of action proposed only one would be legal, it would be difficult in practice for the organ requesting the opinion not to follow the course advocated by the Court. Finally, there is nothing to prevent advisory opinions being given binding force by agreement.[5]

[1] The question whether in any circumstances the Court is actually obliged not to give an advisory opinion is a controversial one. The reason why it may be so obliged is that, as the Court said, " the consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases ", and that Article 68 of the Statute provides that " In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases *to the extent to which it recognises them to be applicable* ". However, the presence of the words in italics gives the impression that the Court always has a complete discretion in the matter. This impression is confirmed by the fact that, in the *Interpretation of Peace Treaties* case, although there were weighty reasons, including a precedent (*i.e.* the refusal of the Permanent Court of International Justice to give an opinion in the *Eastern Carelia* case, Series B, No. 5), against giving an opinion, the Court nevertheless decided to give one and that the judges who dissented seem to have based their dissent not so much on the view that the Court *could* not give one as on the view that it *should* not give one. (See Fitzmaurice in *British Yearbook of International Law*, 29 (1952), pp. 45–55).

[2] See § 828 above. [3] Fitzmaurice, *op. cit.*, p. 54. [4] *Ibid.*, p. 55.

[5] Thus, Section 30 of the General Convention on the Privileges and Immunities of the United Nations provides as follows : " If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties ".

§ 831. Some of the most important Articles of the Statute of the Court such as Articles 35 (access to the Court) and 65–8 (advisory opinions) have already been mentioned. It now remains to summarize, though very briefly, the Statute and also the Rules of Court made by the Court itself under Article 30 of the Statute.

§ 832. Articles 2–23 of the Statute relate to the organisation of the Court. The Court consists of fifteen judges, " no two of whom may be nationals of the same State " (Article 3). The judges are to be " elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law " (Article 2). Nominations of candidates are made by the national groups in the Permanent Court of Arbitration (Article 4 [1]) and " those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected " (Article 10). It is the intention " not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilisation and of the principal legal systems of the world should be assured " (Article 9). Judges are elected for nine years and may be re-elected (Article 13). They may not " exercise any political or administrative function, or engage in any other occupation of a professional nature ". Nor may they " act as agent, counsel or advocate in any case, " or participate in cases in which, before election, they have taken part in any capacity. Doubts on those points " shall be settled by the decision of the Court " (Articles 16–17). The judges " when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities " (Article 19). The Court elects its President and Vice-President for three years : they may, however, be re-elected (Article 21). The Court appoints its own Registrar and other staff (Article 21). Although the seat of the Court is at The Hague, this " shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable " (Article 22). The Court may sit either as a full Court—it is provided that " a quorum of nine judges shall suffice to constitute the Court " (Article 25)—or in Chambers of three or more judges. Chambers for labour cases and for cases relating to transit and communications are specifi-

[1] Concerning the national groups in the Permanent Court of Arbitration see Chapter XXXI.

cally mentioned in the Statute, but these are not exclusive (Article 26), and " with a view to the speedy despatch of business, the Court shall form annually a Chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure " (Article 29). As already stated, the Court makes its own rules of procedure (Article 30). Article 31 contains important provisions concerning the rights of the parties to be represented on the Court by a judge of their own nationality. If the Court already includes judges of the nationality of both the parties, these judges " shall retain their right to sit in the case before the Court ". If the Court includes a judge of the nationality of one of the parties only, the other party has the right to appoint a judge for that particular case. If the Court does not include a judge of the nationality of either of the parties, both parties have the right to appoint a judge for that particular case. The additional judges appointed in this way " shall take part in the decision on terms of complete equality with their colleagues ".[1]

§ 833. Articles 34–38 of the Statute relate to the competence of the Court. In so far as the jurisdiction of all international tribunals ultimately rests upon the consent of States, these Articles are of the greatest importance. Article 34 lays down the general principle that " Only States may be parties in cases before the Court ". Thus the United Nations, though it is " an international person " and though it has " capacity to bring international claims ",[2] has no capacity to prosecute such claims before its own " principal judicial organ ". This remains true, even if the State against which the claim is brought is willing to have the matter adjudicated by the Court. The capacity of the United Nations and its organs and specialized agencies to initiate proceedings before the Court is therefore limited to the right to request advisory opinions (§§ 827–829 above). However, Article 34 also provides that the Court " may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative ".

§ 834. By contrast with Article 35 of the Statute which deals with the general right of access to the Court (§§ 820–822 above), Article 36 is concerned with the jurisdiction of the Court to determine the particular dispute submitted to it. Article 36(1)

[1] The additional judges (usually known as *ad hoc* judges) need not possess the nationality of the party who appoints them, although of course they usually do.

[2] See the Advisory Opinion concerning *Reparation for Injuries suffered in the service of the United Nations* (*I.C.J. Reports 1949*, p. 174).

provides that " The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force ". This paragraph mentions two of the three ways in which a case may be brought before the Court, the third way being mentioned in Article 36(2). These three ways will now be considered in turn.

§ 835. The first way in which a case may be brought before the Court is by the consent of the parties (*i.e.* " all cases which the parties [1] refer to it "). Usually this consent is given in the form of a written agreement or treaty, known as a " special agreement " (*compromis*). However, so long as the necessary consent is really present, the Court is not punctilious about the form. As the Permanent Court of International Justice said in the case of the *Minority Schools in Upper Silesia ;*

> The acceptance by a State of the Court's jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement.[2]

Citing this decision, the International Court of Justice in the *Corfu Channel Case* (*Preliminary Objection*) said :

> Furthermore, there is nothing to prevent the acceptance of jurisdiction, as in the present case, from being affected by two separate and successive acts, instead of jointly and beforehand by a special agreement.[3]

§ 836. The second way in which a case may be brought before the Court is under a treaty providing for the submission of a certain class of disputes to the Court by the unilateral application of one of the parties. The treaty concerned may be a treaty relating purely to the settlement of disputes—in which case the article providing for the reference by unilateral application of one class of dispute to the Court may be accompanied by other articles providing for the reference of other classes of disputes to other bodies —or it may be a treaty dealing with other matters (*e.g.* commerce and navigation) and containing an article providing that any dispute relating to the interpretation or application of that particular treaty shall be capable of reference to the Court by one party

[1] By " parties " is meant states having a right of access to the Court under Articles 34 and 35 of the Statute.

[2] P.C.I.J. Series A., No. 15.

[3] *I.C.J. Reports 1948*, p. 15.

only. In either case the competence of the Court depends upon whether the dispute actually referred to the Court is or is not within the class of disputes covered by the treaty. The reference in Article 36(1) to " all matters specially provided for in the Charter of the United Nations " is a drafting error, as no matters are in fact specially provided for in this way.

§ 837. The third way in which a case may be brought before the Court is under the provisions of Article 36(2) of the Statute which reads as follows :

> The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all 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.

As between two states, both of which have made the declaration referred to in this paragraph (usually known as the " Optional Clause ") and have deposited it with the Secretary-General of the United Nations, one is entitled to institute proceedings before the Court against the other by means of a unilateral application, and the Court will have jurisdiction so long as the subject matter of the dispute is covered by the declarations and is not excluded by any reservation. For this purpose the respondent State is entitled to rely upon any reservation made by the applicant State.

§ 838. In the event of a case being brought before the Court by unilateral application, it is always open to the other party to raise a preliminary objection, provided he does so before the expiry of the time-limit fixed for the delivery of his first pleading. The effect of raising an objection is to cause the proceedings on the merits to be suspended while the Court hears the objection. Three possibilities are open to the Court : either to uphold the objection, or to overrule it, or to join it to the merits.[1]

§ 839. Although the International Court of Justice is a new Court, it is provided in Article 36(5) of the Statute that " Declarations made under Article 36 of the Statute of the Permanent Court

[1] The rules governing preliminary objections—which are usually, though not necessarily, objections to the jurisdiction—are contained in Article 62 of the Rules of Court.

of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they have still to run and in accordance with their terms " ; and in Article 37 that " Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice ".

§ 840. Article 36(6) contains the important provision that " In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court ".

§ 841. Article 38, which is one of the most important articles in the whole Statute, states :

1. The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply :

(*a*) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States ;
(*b*) international custom, as evidence of a general practice accepted as law ;
(*c*) the general principles of law recognized by civilized nations ;
(*d*) 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.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

The importance of this Article lies in the fact that the sources mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 above are now generally regarded as the sources of international law which *any* international tribunal, to which a dispute is referred for judicial settlement, should apply in the absence of an express direction to the contrary. In the particular case of the International Court of Justice the only possible direction to the contrary is an agreement between the parties that the Court should decide the case *ex aequo et bono*. The effect of such a direction—which is likely to be rare—would be that the Court need not confine itself to applying the existing law but could, if it deemed the existing law to operate harshly or unjustly, give a decision more in keeping with the essential requirements of

justice and equity. It may also be noted that, whereas sub-paragraphs (*a*), (*b*) and (*c*) of Article 38(1) indicate the *sources* where international law may be found (*i.e.* international conventions, international custom and the general principles of law recognized by civilized nations), sub-paragraph (*d*) of the same paragraph indicates the " means for the determination of the rules of law ". Judicial decisions (by which is meant the decisions of national tribunals and also—and above all—of international tribunals, including the Court itself) and the teachings of publicists are mentioned as " subsidiary means " for this purpose, the principal means being of course the States themselves who are parties to the conventions or who are responsible for the customary law or the general principles of law referred to in sub-paragraphs (*a*), (*b*) and (*c*). Sub-paragraph (*d*), while classifying " judicial decisions " among the " subsidiary means for the determination of rules of law, expressly states that these are " subject to the provisions of Article 59 ", which in turn states that " The decision of the Court has no binding force except between the parties and in respect of that particular case ". The International Court of Justice is therefore, in strict law, not bound even by its own precedents, let alone by the decisions of inferior international tribunals. In practice, however, the Court attaches great weight to previous decisions, not only its own and those of the Permanent Court of International Justice, but also on occasions those of arbitral tribunals of high standing.[1]

§ 842. Articles 39–64 of the Statute relate to procedure before the Court, and it is necessary to single out only a few matters for attention. The official languages of the Court are French and English, although there is nothing to prevent a party using another language provided it arranges for a translation to be made into one or other of the official languages (Article 39 of the Statute ; Articles 39 and 58 of the Rules of Court). The procedure consists of two parts : written and oral, and the oral proceedings may include the hearing of the evidence of witnesses (Article 43 of the Statute). Article 46 provides that " The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted ". The Court has power to make orders governing any aspect of the conduct of the case (Article 48), to call upon the parties to produce documents and supply explanations (Article 49), to appoint an individual or a

[1] For a lucid exposition of the provisions of Article 38 of the Statute see Schwarzenberger, *International Law*, vol. 1, 1949 (Stevens), Chapter 2.

number of persons to carry out an enquiry or give an expert opinion (Article 50) or to put its own questions to the parties (Article 52 of the Rules). Article 53 of the Statute provides that " Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim ". Before doing so, however, the Court must " satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law ". The deliberations of the Court take place in private and remain secret (Article 54). All questions are to be decided by a majority of the judges present, and in the event of an equality of votes, the President or the judge who acts in his place has a casting vote (Article 55). The judgment, which must contain the names of the judges taking part, is also required to state the reasons on which it is based (Article 56). Any judge is entitled to deliver a separate opinion (Article 57), which may be either a " dissenting opinion ", or an " individual opinion " agreeing with the conclusions of the judgment, though not necessarily with the reasons on which it is based. The judgment is final and without appeal. The Court may, however, be asked to construe it if a dispute arises as to its meaning or scope (Article 60), or even to revise it in the event of a new fact being discovered " of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence ". The application for revision must be made within six months of the discovery of the new fact, and no application for revision may be made after the lapse of ten years from the date of the judgment (Article 61). Article 62 provides that " Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene ". It is for the Court to decide whether or not to accept such a request (Article 62). Third parties have an automatic right to intervene, however, " whenever the construction of a convention to which States other than those concerned in the case are parties is in question ". But, if they exercise this right, they are bound by the judgment (Article 63). Article 64 provides that " Unless otherwise decided by the Court, each party shall bear its own costs ".

§ 843. Article 41 of the Statute, though contained in the chapter on procedure, really relates to a matter of more than procedural importance. It reads as follows :

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.
2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

It may be a matter of considerable political importance whether or not, in a given case, the Court decides to indicate provisional or interim measures. It is a controversial question whether the measures indicated by the Court are legally binding or not. The words " indicate " and " suggested " in Article 41 give the impression that the measures are not intended to be binding, and this impression is strengthened by the fact that the Court has decided that it has power to indicate interim measures even before it has decided that it is competent to deal with the merits of the case.[1] The indication of interim measures of protection is governed by Article 61 of the Rules of Court, which provide that requests for the indication of such measures shall be treated as a matter of urgency and that " if the Court is not sitting, the members shall be convened by the President forthwith ". Even before that " the President shall, if need be, take such measures as may appear to him necessary in order to enable the Court to give an effective decision." The Court is also entitled to indicate measures other than those proposed in the request and even to indicate measures *proprio motu* (*i.e.* without any request having been made), and it may " at any time by reason of a change in the situation revoke or modify its decision indicating interim measures of protection ".

§ 844. Articles 65–68 of the Statute, which relate to advisory opinions, have already been considered (§§ 827–829 above). The last two Articles (69 and 70) are concerned with the amendment of the Statute. Since the Statute is an integral part of the Charter it is natural that Article 69 should provide that " Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter ". In view, however, of the fact that, under Article 93(2) of the Charter, it is possible for non-members of the United Nations to become parties to the Statute of the Court (see § 819 above), Article 69 of the Statute goes on to state that the procedure

[1] *Anglo-Iranian Oil Company Case* (*Indication of Interim Measures of Protection*), *I.C.J. Reports 1951*, p. 89. If, however, the Court subsequently decides that it lacks jurisdiction to deal with the merits of the case, then any interim measures previously indicated lapse (*Anglo-Iranian Oil Company Case* (*Jurisdiction*), *I.C.J. Reports 1952*, p. 93).

for amending the Statute shall be " subject to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of States which are parties to the present Statute but are not Members of the United Nations ". Under Article 70 of the Statute, the Court itself is given power to propose, through written communications to the Secretary-General of the United Nations, amendments to its own Statute.

CHAPTER XXXIII

ASSOCIATIONS OF WESTERN STATES

§ 845. Early in the existence of the United Nations a cleavage became apparent between the policies of the Western Powers and of Soviet Russia and its Eastern European associates. The divergence went so deep that the United Nations could no longer be regarded as providing the effective instrument of world-wide collective security that was hoped for when the Charter was signed in 1945. The Western Powers, forced to recognise the need for greater unity in defence of their fundamental freedoms, accordingly began to build up a complementary system of collective security and co-operation. The first post-war alliance of this kind was the Treaty of Dunkirk (1947). This was followed by the Brussels Treaty (1948), by the North Atlantic Treaty (1949), and by various agreements signed in Paris (1954).

The Treaty of Dunkirk

§ 846. On March 4, 1947, the United Kingdom entered into a fifty-year Treaty of Alliance and Mutual Assistance with the French Republic (Cmd. 7217). Each country bound itself to give the other all the military and other support in its power, should either again become involved in hostilities with Germany. The Treaty of Dunkirk also provided for consultation on matters affecting the economic relations of the two countries. It did not provide for the establishment of any formal machinery. It is still valid, although in practice it has been largely superseded by the more comprehensive agreements signed later.

The Brussels Treaty

§ 847. (*a*) *Signature and Provisions.* The Brussels Treaty was signed on March 17, 1948 between the United Kingdom, France, Belgium, the Netherlands and Luxembourg.[1] It is described as a "Treaty of Economic, Social and Cultural Collaboration and Collective Self-defence." The preamble declares that the

[1] Cmd. 7599.

Parties resolve " to reaffirm their faith in fundamental human rights . . . to fortify and preserve the principles of democracy, personal freedom and political liberty, the constitutional traditions and the rule of law . . . to strengthen the economic, social and cultural ties by which they are . . . united ; . . . to afford assistance to each other in accordance with the Charter of the United Nations, in maintaining international peace and security and in resisting any policy of aggression. . . ."

In addition to undertaking immediately to consult together with regard to any situation which might constitute a threat to peace in whatever area this threat should arise, and also in the event of a renewal of an aggressive policy by Germany, the Five Powers entered into a specific engagement for automatic mutual support in the case of aggression against any one of them in Europe. This obligation is defined as follows (Article IV) : " If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power."

The Treaty also provided for the co-ordination of economic activities and the signature of social and cultural conventions between the Parties (Articles I–III). Finally, it contained an accession clause enabling the Parties, by agreement among themselves, to " invite any other State to accede to the present Treaty on conditions to be agreed between them and the State so invited " (Article IX).

(*b*) *Machinery.* Article VII provided for the creation of a Consultative Council as a permanent means of consultation on all questions dealt with in the Treaty. In 1948 this Council, which consisted of the Foreign Ministers of the Parties to the Treaty, set up a Permanent Defence Organisation, which was the responsibility of the Five Defence Ministers. A Finance and Economic Committee was also set up under the direction of the Five Finance Ministers. This defence and economic machinery was absorbed in due course by the North Atlantic Treaty Organisation (see § 848 below) and need not therefore be described in detail.

Other organs were set up to deal with the non-military aspects of the Brussels Treaty and these are still active (1953). They are the Social Committee, the War Pensions Committee, the Cultural Committee, the Public Health Committee, the Joint Committee on the Rehabilitation and Resettlement of the Disabled, and the

Civil Defence Conference, with their sub-committees. All these committees meet at frequent intervals and submit the results of their work to the Permanent Commission. They have achieved substantial practical co-operation between the five countries in matters such as medical and social security, exchanges of labour and students, etc. A number of conventions, *e.g.* the multilateral conventions on Social Security,[1] Social and Medical Assistance,[2] Student Employees,[3] Frontier Workers,[4] have been signed as a result of Brussels Treaty action. The existing network of bilateral cultural conventions between the five countries (*e.g.* that of 1948 between the United Kingdom and France[5] has been progressively enlarged in the spirit of Article III of the Brussels Treaty—cf. the cultural convention (1950) between the United Kingdom and Luxembourg.[6]

North Atlantic Treaty Organisation

§ 848. The Brussels Treaty provided a framework for co-operation between the five Western European Powers. But at the time of its signature there was already a growing realisation on both sides of the Atlantic that a wider alliance combining the joint strengths of Europe and North America was desirable. In the autumn of 1948 and spring of 1949, there were negotiations in Washington between representatives of the United Kingdom, France, Belgium, the Netherlands and Luxembourg, and of Canada and the United States, which were later extended to include Norway, Denmark, Italy, Portugal and Iceland. These efforts culminated in the signature of the North Atlantic Treaty[7] by the twelve powers in Washington on April 4, 1949. Turkey and Greece acceded to the Treaty later, in February, 1952.

(*a*) *Provisions.* The preamble affirms the Parties' determination " to safeguard the freedom, common heritage and civilisation of their peoples . . . to promote stability and well-being in the North Atlantic area . . . to unite their efforts for collective defence and for the preservation of peace and security." The relationship of the Treaty to the United Nations Charter is made clear in the text. In Article 1 the Parties undertake " as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or

[1] Cmd. 7911. [2] Cmd. 7973. [3] Cmd. 7972. [4] Cmd. 7971.
[5] Cmd. 7386. [6] Cmd. 8013. [7] Cmd. 7789.

use of force in any manner inconsistent with the purposes of the United Nations." They further undertake to strengthen their free institutions " by promoting conditions of stability and well-being " and to seek " to eliminate conflict in their international economic policies . . ." (Article 2). They undertake to " maintain and develop their individual and collective capacity to resist armed attack " (Article 3) and to " consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened" (Article 4).

In Article 5, the Parties " agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all ; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."

Article 6 describes the circumstances in which Article 5 becomes operative. Since the accession of Turkey, Article 6 reads : " For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack :

(i) on the territory of any of the Parties in Europe or North America, on the Algerian Departments of France, on the territory of Turkey or on the islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer :

(ii) on the forces, vessels or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer." [1]

(*b*) *Machinery.* Article 9 provided that the Parties should establish a Council charged with considering matters concerning the implementation of the Treaty and with setting up any necessary subsidiary bodies. This North Atlantic Council first met in

[1] Protocol Regarding the Accession of Greece and Turkey to the North Atlantic Treaty of April 4, 1949 ; signed in London on October 17, 1951 (Cmd. 8407).

Washington in September, 1949, and was then composed of the Foreign Ministers of all Parties. It created a Defence Committee (Defence Ministers), a Military Committee (Chiefs of Staff) with a Standing Group of three (United Kingdom, United States, France) as its Permanent Sub-Committee, and Regional Planning Groups constituted on a geographical basis. Later a Defence Financial and Economic Committee (Finance Ministers) and a Military Production and Supply Board were set up. In May, 1950, the North Atlantic Council of Deputies, with headquarters in London, was formed to act as the continuing body for the Council between ministerial sessions.

These bodies formed the first working nucleus of N.A.T.O. but the structure was progressively developed and re-modelled. In September, 1950, the Council decided to set up an integrated force in Europe under centralised command and control. A supreme Allied Commander for Europe (SACEUR) [1] was nominated in the spring of 1951. A corresponding command (SACLANT) was later set up for the Atlantic (1952).[2] The European Command is divided into four sectors (Northern, Central, Southern and Mediterranean) each under its own Commander-in-Chief, with subordinate commanders. It has an international integrated staff (SHAPE) with headquarters at Marly near Paris.

In February, 1952, the N.A.T.O. civilian organisation was reformed and the Permanent Headquarters moved to Paris. The present organisation is as follows :

(i) The North Atlantic Council which is regarded as being in permanent session. At least twice a year it meets at Ministerial level and is then usually attended by Foreign, Defence and Finance Ministers. Normally it is composed of Permanent Representatives (of ambassadorial rank) who reside and meet continuously in Paris, under the chairmanship of the Secretary-General.

(ii) An International Secretariat under a Secretary-General [3] serving the whole organisation ; with smaller secretariats in London and Washington.

[1] This post was held as follows :
1951–52– General Eisenhower
1952–53– General Ridgway
1953–56– General Gruenther.

[2] This post was held as follows :
1952 – Admiral McCormick.

[3] 1952– Lord Ismay.

(iii) The Military Committee (consisting of national Chiefs of Staff) which meets when required, generally in Paris just before the Ministerial Council.

(iv) The Military Representatives' Committee, and a Permanent three-power Standing Group (United Kingdom, United States, France) located in Washington. (The Supreme Commanders are responsible through the Standing Group to the Council.)

(v) Permanent Committees dealing with the following aspects of the Council's work: the Annual Review (see (*c*) below), Infrastructure, Civil Co-operation,[1] Emergency Planning,[2] Budget and Security, with numerous sub-committees.

(vi) A Military Standardisation Agency (located in London).

(*c*) *Procedure and Activities.* In N.A.T.O. decisions are reached unanimously. All Parties to the Treaty are represented on all the major committees except the Standing Group. Whilst the Treaty provides for collaboration between the members in economic, social and other spheres, the major task since 1949 has been to build up the forces to implement the provisions in the Treaty relating to collective defence. The combined defence effort is reviewed annually by Ministers to take into account both the military requirements and the economic and financial capabilities of the member-countries, in the light of which firm military programmes are established for the succeeding years. The military and civilian bodies of N.A.T.O. work in close contact on these plans throughout the year. They also take account, on the economic side, of the work of the O.E.E.C. (see § 851 below). Various long-term aspects of emergency planning are also considered. Meanwhile the non-defence activities of N.A.T.O. and the general development of the concept of the "Atlantic Community" are pursued in the committees of the North Atlantic Council and by periodical conferences between information officials designed to promote understanding of the aims of N.A.T.O. This work is supplemented by the activities of non-official bodies in some of the N.A.T.O. countries. It should be noted that N.A.T.O., while maintaining the individual sovereignty of its members, has achieved

[1] This includes working groups on Information Policy, Labour Mobility and Social and Cultural Co-operation.

[2] This includes committees on Wartime Commodity Problems and Civil Organisation in Time of War (with sub-committees on Civil Defence and Refugees and Evacuees) and Planning Boards for Ocean Shipping and European Inland Surface Transport.

a wide degree of voluntary co-ordination in their policies and has laid the foundations of a new type of all-round collaboration between free nations of two Continents in peacetime.

(*d*) *Privileges and Immunities.* The privileges and immunities of N.A.T.O. are on the usual lines adopted in international organisations, *e.g.* the United Nations. They are governed by the following instruments :

Agreement on the Status of N.A.T.O. National Representatives and International Staff ;[1] Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty[2] and Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty[3] (superseding the earlier Agreement on the Status of Members of the Armed Forces of the Brussels Treaty Powers,[4] which was not ratified).

The Paris Agreements

§ 849. In 1950 the question of obtaining a German contribution to the security of the West became urgent. On the one hand there was general recognition that Germany should participate in her own defence and in that of Western Europe ; on the other hand there was a natural reluctance in Europe, and particularly in France, to allow uncontrolled German rearmament. The French Government thereupon proposed a compromise arrangement which came to be known as the " Pleven Plan " ; Germany should be rearmed within a European army in which national units would be wielded together under a supranational command. Effect was given to this idea in the European Defence Community Treaty signed in Paris on May 27, 1952, by France, the Federal Republic of Germany, Italy, Belgium, the Netherlands and Luxembourg.[5]

In August, 1954, however, the French National Assembly after many anxious delays, finally decided not to accept the E.D.C. Treaty. In consequence it became necessary to establish new arrangements for the integration of the Federal Republic of Germany into the Western system of security. At a Conference held in London from September 28 to October 3, and attended by the United Kingdom, the United States and Canada as well as by the six Powers of the abortive European Defence Community, certain fundamental decisions were taken.[6] These included

(i) the decision of the United Kingdom, the United States and

[1] Cmd. 8400. [2] Cmd. 8279. [3] Cmd. 8687.
[4] Cmd. 7868. [5] Cmd. 9127. [6] Cmd. 9289.

France to terminate the Occupation regime in the Federal Republic of Germany ;

(ii) the decision of the Brussels Treaty Powers to invite the Federal Republic of Germany and Italy to accede to the Brussels Treaty, to modify that Treaty so as to emphasise the objective of European unity, and to strengthen the Brussels Treaty Organisation (B.T.O.) by giving it work to do in connexion with fixing the levels of the maximum defence contributions to N.A.T.O. of all members of B.T.O. and with the control of armaments on the Continent of Europe of the continental members of B.T.O. ;

(iii) certain assurances given by the United States and the United Kingdom with regard to the maintenance of armed forces on the Continent of Europe, as well as a declaration by Canada reaffirming its resolve to discharge the continuing obligations arising out of its membership in N.A.T.O. and its support of the objective of European unity; and

(iv) the decision of those Powers represented at the Conference which were members of N.A.T.O. to recommend at the next ministerial meeting of the North Atlantic Council that the Federal Republic of Germany should forthwith be invited to become a member.

Effect was given to the London decisions at a Conference held in Paris from October 20–23, 1954.[1] The Brussels Treaty was amended by a Protocol so as to make the Federal Republic of Germany and Italy Parties to the Treaty. References in the original Treaty to the " renewal by Germany of a policy of aggression " were suppressed and Article VII (now Article VIII) was completely altered. It now provides for a Council of Western European Union so organised as to be able to exercise its functions continuously, and with power to set up such subsidiary bodies as may be considered necessary. In particular, the Council is required to establish immediately an Agency for the Control of Armaments. The new Article IX of the Treaty reads as follows : " The Council of Western European Union shall make an Annual Report on its activities and in particular concerning the control of armaments to an Assembly composed of representatives of the Brussels Treaty Powers to the Consultative Assembly of the Council of Europe " (see § 850 below). At the same time a Protocol was signed by all the members of N.A.T.O. providing for the accession of the Federal Republic of Germany to N.A.T.O.

The Council of Europe

§ 850. After the war, a substantial and influential body of opinion in Europe advocated the establishment of an organisation

[1] Cmd. 9304.

to further European unity. This idea was realised by the signature in London on May 5, 1949, of the Statute of the Council of Europe.[1] The original signatories of the Statute were Belgium, Denmark, France, the Irish Republic, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom. The Federal Republic of Germany, Greece, Iceland and Turkey acceded to the Statute later as full Members, and the Saar became an Associate Member.

(*a*) *Aim.* The aim of the Council of Europe, as set out in Article I of the Statute, is " to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress." This aim " shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms." Matters relating to national defence are specifically excluded from the Council's scope. There is a further provision that participation in the Council " shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations or unions to which they are parties."

(*b*) *Membership.* Every Member of the Council " must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council. . . ." Membership is open to any European State " which is deemed to be able and willing to fulfil " the preceding provisions and which is invited to accede by the Committee of Ministers (see below). " In special circumstances " a European State which fulfils the above conditions may be invited to become an Associate Member of the Council by depositing an instrument of acceptance. An Associate Member is entitled to representation in the Consultative Assembly (see below) only. (The Saar is also represented by an observer at meetings of the Committee of Ministers.)

(*c*) *Machinery.* The Council consists of the Committee of Ministers and the Consultative Assembly, served by the Secretariat. There is also the Joint Committee, the organ of liaison between the Assembly and the Ministers. The permanent seat of the Council is at Strasbourg.

[1] Cmd. 7778.

The Committee of Ministers is the intergovernmental organ of the Council. Its members are the Foreign Ministers of member-States, who can, if necessary, be represented by an alternate, preferably of Ministerial rank. The Committee deals with recommendations made by the Consultative Assembly, any other matters of general concern which it decides to place on its agenda, and with administrative and financial questions affecting the Council. It is the only organ of the Council empowered to take decisions; these may take the form of recommendations to member-governments. In practice, decisions are taken unanimously, although the Statute provides that certain decisions, including membership invitations, require a two-thirds majority and, in some cases, lesser majorities. Meetings of the Committee are held two to three times a year. The preliminary work is undertaken by a group of officials known as the Ministers' Deputies, who also meet between sessions to discuss current matters. The Deputies have been authorised to take decisions on behalf of the Committee of Ministers on all questions other than those involving important issues of policy.

The Committee of Ministers has, from time to time, set up Committees of Experts, composed of government officials, to examine the more technical recommendations of the Assembly and to discover what measure of intergovernmental agreement exists on the action to be taken on these recommendations. Committees of this kind have so far dealt with such subjects as cultural and social affairs, legal questions, patents, the standardisation of passports, etc.

(*d*) *The Consultative Assembly*, which is the "deliberative organ" of the Council, is composed of 132 representatives elected by national parliaments or appointed in such manner as the parliaments may decide. The number of seats allotted to each member-state in the Assembly is governed by the need to keep the size of the Assembly to reasonable proportions and at the same time to ensure that the smaller states are adequately represented. Under present arrangements (1953) France, the German Federal Republic, Italy and the United Kingdom each have 18 seats; Turkey, 10; Belgium, Greece and the Netherlands, 7 each; Sweden, 6; Denmark and Norway, 5 each; the Irish Republic, 4; and Iceland, Luxembourg and the Saar, 3 each.

The Assembly holds one ordinary session each year, and there is a provision for the calling of extraordinary sessions. The practice has developed of the Assembly's dividing its ordinary

session into two or more parts. The President and the six Vice-Presidents of the Assembly form the Bureau which directs the Assembly's work. The Assembly's views may be incorporated in resolutions or recommendations. The latter, which may propose specific action by member-governments, come before the Committee of Ministers for consideration. Major decisions require a two-thirds majority.

The work of the Assembly between sessions is carried on by a group of committees of which the most important is the Standing Committee, consisting of the Bureau and the chairmen of the other committees. At the time of writing (1956) the other committees deal with general affairs (*i.e.*, political questions), economic affairs, social affairs, legal and administrative questions, cultural and scientific questions, population and refugee matters, rules of procedure and privileges, and municipal and regional affairs.

The Joint Committee was set up in 1951 by a decision of the Committee of Ministers. Its function is to discuss problems of interest to the Assembly and the Committee of Ministers, to co-ordinate the work of the Council as a whole, and to resolve differences arising between the Ministers and the Assembly. It meets immediately before and after sessions of the Committee of Ministers and at such other times as may be necessary. Its Chairman is the President of the Assembly, and it is composed in principle of twelve Members, seven from the Assembly and five from the Committee of Ministers.

(*e*) *Activities.* In the first two years of its existence the Assembly's deliberations were largely concerned with federation and the possibility of transforming the Assembly into a European Parliament and the Council as a whole into a European Political Authority. It became clear that whereas certain member-governments wished to create forms of association on federal or confederal lines, other member-governments were, for a variety of reasons, not willing to do this. The Committee of Ministers decided in 1950 that member-governments who wished to enter into closer forms of association could set up " specialised authorities " (such as the present European Coal and Steel Community, the European Defence Community and the proposed European Political Community) and conclude " partial agreements " of a federal character within the framework of the Council. The Council has since taken further steps to ensure close links between it and the other European organisations of a " federal " character.

The earlier pre-occupation with the question of federation

absorbed the greater part of the energies of the Council. It was, however, able at the same time to conclude a number of European Conventions of which the most important is the Convention for the Protection of Human Rights and Fundamental Freedoms.[1] This Convention was signed on November 4, 1950, and came into force on September 3, 1953. Other Conventions and Agreements have been concluded concerning the equivalence of diplomas for University admission, Patent formalities, social and medical assistance, and social security.

Organisation for European Economic Co-operation

§ 851. *Origin, Membership and Constitution.* The Organisation for European Economic Co-operation was created by the Convention for European Economic Co-operation signed in Paris on April 16, 1948, between the Governments of the following countries: Austria, Belgium, Denmark, France, Greece, Iceland, Ireland, Italy, Luxembourg, Norway, The Netherlands, Portugal, The United Kingdom, Sweden, Switzerland, Turkey, and the Commanders-in-Chief of the French, United Kingdom and United States Zones of Germany.

On September 21, 1949, the German Federal Government succeeded to the representation in O.E.E.C. of the Commanders-in-Chief of the Western Zones of Germany, and on October 14, 1949, the British/United States Zone of the Free Territory of Trieste was admitted to membership. On June 23, 1950, the United States and Canada became Associate Members of the Organisation.

The O.E.E.C. owes its origin to the historic speech made at Harvard University on June 5, 1947, by the United States Secretary of State, Mr. George Marshall, in which he referred to the need for positive action to help Europe towards economic recovery but stressed the need for the countries of Europe to reach agreement on the requirements of the situation before the United States could consider how it could aid the joint European programme.

His speech produced a prompt response from Western Europe. The governments of France and the United Kingdom immediately invited the Soviet government to join with them in considering the American offer of economic aid and preparing a European

[1] Cmd. 8130.

recovery programme. However, at a meeting between the Foreign Ministers of the three countries, it soon became evident that the Soviet government would not co-operate in the active role which the other two governments considered would have to be played by Europe. Accordingly, the French and United Kingdom governments proceeded to invite all European states (with the temporary exception of Spain) to participate in a Conference for the drawing up of a European programme. The invitation was accepted by the majority of European Governments but declined by the Governments of Finland and of those countries under Soviet influence.

The Conference opened in Paris on July 12, and adjourned on July 15, leaving the work to be continued by a Committee of European Economic Co-operation, under the Chairmanship of the late Mr. Ernest Bevin, at that time United Kingdom Secretary of State for Foreign Affairs, whose alternate was Sir Oliver Franks. The Committee completed its task at the end of September with the submission of a report covering estimates of production, requirements and future plans, on the basis of which the President of the United States presented to Congress the outline of a European recovery programme which was put into effect by the Economic Co-operation Act of 1948. This provided for economic aid to Europe during a four-year period ending in 1952, and set up the Economic Co-operation Administration to administer the aid.

In the report submitted to the President of the United States, the participating Governments declared their readiness to set up a joint organisation to review progress achieved in the execution of the programme ; and on the initiative again of the French and United Kingdom governments, a working party of the Committee was set up in March, 1948, with the task of submitting proposals as to the purpose, functions and organisation of the new body, and of preparing a draft multilateral agreement. These proposals were submitted in the form of a draft Convention for European Economic Co-operation, and on Friday, April 16, a further meeting was held in Paris to sign the Convention and to hold the inaugural meeting of the Organisation itself.

Aims of the Organisation. The central aim of the Organisation is expressed in Article 11 of the Convention :

> The aim of the Organisation shall be the achievement of a sound European economy through the economic co-operation of its members.

The Article continues :

An immediate task of the Organisation will be to ensure the success of the European recovery programme. . . .

The European Recovery Programme ended in June, 1952, but the United States Economic Co-operation Act was succeeded by the Mutual Security Act of 1952, providing for continued United States economic aid to Europe and setting up, as the successor body to the Economic Co-operation Administration., the Mutual Security Agency (restyled, as from August, 1953, the Foreign Operations Administration and, since 1955, known as the International Co-operation Administration) ; and the O.E.E.C. still retains its function of co-operation with the latter, particularly in connexion with the Technical Assistance Programme.

General Obligations. Under the Convention member countries assumed certain general obligations. They agreed, for instance, to promote both individually and collectively the development of production through efficient use of their resources (Article 2), and to draw up general programmes for the production and exchange of commodities and services (Article 3). They undertook to achieve as soon as possible a multilateral system of payments, to co-operate in removing restrictions on payments and trade, and to correct and avoid excessive disequilibrium in their financial and economic relations (Article 4). They agreed to strengthen their economic links, to study Customs Unions or analogous arrangements, to co-operate in reducing tariff and other barriers for the expansion of trade, to avoid or counter the dangers of inflation, to maintain stability of their currencies and sound exchange rates, and to make the most efficient use of their manpower (Articles 5 to 8). They also undertook to furnish the Organisation with all the information it required of them (Article 9).

Machinery of O.E.E.C.

(*a*) *The Council.* Authority to take decisions, both on questions of economic policy and those relating to the functioning and structure of the Organisation itself, and to enter into agreements on behalf of, as well as to make recommendations to, member-Governments is vested in a Council composed of representatives of each country. This representative is usually the Minister of Foreign Affairs or the Minister of Finance, but the Minister may appoint a substitute, who is usually the head of the country's permanent delegation to O.E.E.C.

The Council approves the Budget, the appointment of senior staff, and the Staff regulations laid down by the Secretary-General.

It receives and pronounces upon the reports prepared by the various committees set up to assist and advise it, and on the basis of this preparatory work evolves a common economic policy. Unless the Organisation otherwise agrees for special cases, the unanimity rule applies in the Council.

(*b*) *Executive Committee.* Day to day supervision of the work of the Organisation is delegated by the Council to an Executive Committee, consisting of seven members and a Rapporteur-General. Any member-country has a right to participate in the Committee's discussion of items particularly affecting it. The Committee examines and sifts all studies, reports and recommendations coming forward from the various other committees and from the Secretariat, assesses their importance and either deals with them on its own delegated authority or refers them to the Council.

(*c*) *Technical Committees.* The Council is advised on particular aspects of its responsibilities by a number of committees. These are roughly of two types : " horizontal " and " vertical." The task of the horizontal committees is to study certain continuing economic questions of general interest to all members. In this category there are, for instance, the Economic Committee (concerned with the preparation of the Organisation's Annual reports, analyses of national programmes, study of investment policies, etc.), the Manpower Committee, the Trade and Payments Committee.

There are two particularly important bodies, the Steering Board for Trade and the Managing Board of the European Payments Union (q.v. below), which also fall into this category. These are restricted groups of seven, the members of which are appointed by the Council not as representatives of their countries but as experts in their particular subjects, responsible respectively for the general study of trade questions and for supervising the operation of the E.P.U.

Subjects of a specialised nature are dealt with by the vertical committees. As examples of these there are committees on machinery, food and agriculture, pulp and paper, maritime transport, productivity, etc., etc. These committees carry out studies of, and make reports and recommendations on, the production and exchange of particular groups of commodities, manufactures or services.

(*d*) *Secretariat.* The Secretariat of the Organisation consists of an international staff headed by the Secretary-General and two

Deputies, these three being appointed by the Council. The Secretary-General attends or is represented at the meetings of the Council and the committees, with the right to take part in discussion. He prepares and records the meetings of the committees and ensures the execution of their decisions, prepares the Budget, and engages and dismisses staff. Apart from these specified powers and duties, the Secretary-General has other functions and authority deriving from Decisions of the Council and the Executive Committee.

The Secretariat is divided into a number of directorates, divisions and sections which provide secretarial services for the various committees. The Secretariat also includes as a special department a European Productivity Agency charged with the task of promoting and developing productivity over the whole range of economic activity of the participating countries.

Seat of the Organisation. The Headquarters of the O.E.E.C. are in Paris.

Languages. The two official languages are French and English, both being equally valid.

Finance. The Organisation is financed by the contributions of member-countries on a scale fixed from time to time by the Council by a method similar to that used in determining countries' contributions to the Budget of the United Nations, but also taking into account gross national products and other special considerations.

Work and Achievements. The O.E.E.C. is primarily a forum where the countries of Western Europe can discuss their common problems and evolve a common approach to them. Much of the work of the Organisation therefore consists of study, discussion and preparation of reports, decisions and recommendations for individual implementation by members as part of the joint effort towards the common objective—the creation of a sound, progressive economy in Western Europe.

An important part of its work is the preparation of the Annual Reports in which the progress achieved by the member-countries is analysed and recommendations made as to the future economic policies they should follow. The first four of these reports emphasised, respectively, the need for increased production, internal financial stability, liberalisation of trade, and selective expansion of production, designed to reduce the balance of payments disequilibrium between the O.E.E.C. countries and the dollar area. The problem of achieving a wider multilateral system

of trade and payments continues to engage the attention of the Organisation.

In recent years impressive economic progress has been made in Western Europe, and although this is mainly attributable to the capacity for hard work, the determination, and the recuperative power of the individual countries assisted by economic aid from the United States, the Organisation has made an important contribution to this progress by providing in addition to the necessary intra-European payments facilities and liberalisation of trade between the participating countries, an atmosphere of confidence, goodwill and mutual trust which has facilitated orderly and rational development. By providing constant opportunities for the joint discussion of practical economic problems by representatives both ministerial and official of so many countries, it has helped all governments to understand the views of the others, to take account of these in reaching decisions and to reduce the chances of disputes arising out of the very serious economic difficulties which confronted Europe after the war.

Relations with Other Organisations. Under its Convention the Organisation maintains relations with those organs and Specialised Agencies of the United Nations which have European interests, such as the Food and Agriculture Organisation, the International Labour Organisation and the Economic Commission for Europe. Relations have also been established with other organisations with the object of facilitating exchange of information or avoiding duplication of work. Links with the North Atlantic Treaty Organisation flow from the fact that all members of N.A.T.O. are members or associate members of O.E.E.C. and that the burdens of defence place a strain on the economies of these countries. The seat of the North Atlantic Council is also in Paris and to a large extent the same national delegations are accredited to both organisations.

Liaison with the Council of Europe is effected by a joint Committee, and O.E.E.C. provides the Council of Europe with reports on its work on European economic problems.

O.E.E.C. has particularly close links with the European Coal and Steel Community, the six members of which are regarded for certain O.E.E.C. purposes as a single unit: and the High Authority of the community has been given observer status by the organisation. The O.E.E.C. has decided that in order to make possible a common market, the six countries may for certain purposes depart from the principle of non-discrimination in the field of trade liberalisation which is applied by the O.E.E.C.

The Organisation also maintains relations with a number of other intergovernmental organisations, such as the International Monetary Fund, and the General Agreement on Tariffs and Trade and with non-governmental organisations, representing the interests of European employers, workpeople, farmers, craftsmen and merchants.

Privileges and Immunities. Under Supplementary Protocol No. 1 to the Convention, the Organisation, its property and assets enjoy general immunity from legal process, taxation and customs duties, while representatives of the national delegations as well as certain officials of the organisation, enjoy the privileges, immunities and facilities normally accorded to diplomatic personnel of comparable rank. Experts performing missions for the organisation are also granted such similar privileges as are necessary for the exercise of their functions, but the Secretary-General may (and indeed is required to) waive these privileges in particular cases where he considers that they would impede the course of justice.

European Payments Union

§ 852. Soon after the end of the war, it became evident that trade was being hampered by the strict bilateral payments arrangements which countries were obliged to adopt in order to safeguard their balance of payments positions. Under these arrangements each country endeavoured to ensure as far as possible that its trade with each of its trading partners was exactly balanced. Where it was not possible to achieve this balance, and in the absence of transferability of currencies, the only solution lay in the restriction of imports from each separate country. The countries signatory to the Convention on European Economic Co-operation were conscious of these limitations, and provision was therefore made in Article 4 of the Convention, for the creation of a multilateral payments system for Western Europe. Three such systems of a progressively more automatic character were devised and with the assistance of dollar aid from the United States, operated successfully, culminating in the European Payments Union set up on September 19, 1950.

Under the arrangements in the E.P.U., each country provides every month a statement of the balance of its current account with every other member. These balances, which are expressed in " units of account " equivalent to the gold value of the United States dollar, are offset against each other, and the resultant figure,

which is cumulative from July 1, 1950, represents the country's credit or debit position with the Union as a whole. This balance is not necessarily settled in full immediately. Each country is given an equal credit and debit quota in the Union (based on an estimate of its long-term trading position) ; the cumulative credit or debit balance is compared with this quota and certain proportions of gold are given to or received from the Union, on a progressive scale related to the percentage which the balance represents of the total quota, the remainder being dealt with by credit received from or given to the Union. The credit arrangements are automatic.

The effect of the operation of the Union has been to foster multilateral trade between the participating countries and the territories included in their monetary areas. The amount of credit available within the Union was increased by allotting each country an initial debit or credit balance : these balances were weighted in favour of prospective debtors, so as to lessen the impact of the Union's operations on the economically weaker countries and to facilitate their recovery by postponing their need to make gold payments. The debts owed to the creditor countries at the beginning of the operation were settled by an equivalent direct grant of dollars from the United States, which also provided a lump sum of capital for the Union and also has furnished from time to time dollars for the settlement of the deficits of the weakest countries, *i.e.*, those which were likely to remain " structural debtors " for some time to come.

The E.P.U. is not a separate organisation from the O.E.E.C. except in so far as its funds are kept apart. It operates within the framework of O.E.E.C. and its activities are supervised by the Managing Board of E.P.U., a group of seven experts appointed by and responsible to the Council of O.E.E.C. The O.E.E.C. provides the staff and services of the E.P.U., apart from those connected with accountancy and clearing which are affected by the Bank for International Settlements, Basle, as the designated " Agent " of the Union. The Union enjoys similar privileges and immunities to those of the O.E.E.C.

European Coal and Steel Community

§ 853. *Origin and Membership.* In May, 1950, Monsieur Robert Schuman announced the French government's proposals for the integration of the coal and steel industries of Western Europe

under some form of supra-national authority. Subsequent negotiations culminated on April 18, 1951, in the signature, by representatives of France, the Federal German Republic, Italy, Belgium, the Netherlands and Luxembourg, of the Treaty constituting the European Coal and Steel Community; and the Community finally came into existence on July 25, 1952, with the deposit in Paris of the Instruments of Ratification of this Treaty, which is valid for a period of 50 years.

Organisation of the Community. The institutions are as follows:

(i) *The High Authority.* This consists of nine members, eight of them nominated by the governments of the member-states, and the ninth appointed by the eight members so nominated. Acting by majority decision, they form the executive organ of the Community, and are forbidden individually either to consult or to accept instructions from any Government or organisation. For the purpose of advising the High Authority there is a Consultative Committee, consisting of fifty-one producers, workers, and consumers and dealers, in equal numbers. The High Authority is obliged to consult this Committee in certain cases prescribed by the Treaty, and may do so in other cases as it thinks fit; but it is never bound by the Consultative Committee's recommendations.

(ii) *The Council of Ministers.* This is composed of Ministerial representatives of the member-governments. Its object is to reconcile the decisions of the High Authority with the general economic policies of the participating countries. The High Authority is bound to consult the Council over many issues, and in some cases must obtain its concurrence before taking action. But in a number of important matters the Council can only impose its will on the High Authority if it reaches unanimity.

(iii) *The Common Assembly.* This is the Parliament of the Community, and is made up of seventy-eight Delegates chosen annually by the national Parliaments from among their own memberships. France, Germany and Italy each have eighteen members (the French Delegation including three members from the Saar); Belgium and the Netherlands each ten; and Luxembourg four. The Assembly holds one ordinary Session a year, to debate

the Report submitted to it annually by the High Authority. If it adopts a motion of censure on the High Authority, the latter must resign in a body.

(iv) *The Court.* This is the final authority on the interpretation of the Treaty. It has seven members.

Aims of the Community. The long-term political aim of the originators of the Treaty was to put an end to Franco-German rivalry by laying the first foundation of a united Europe in a limited but vital sector of the economy. The more immediate economic objective, as described in the Treaty, was the abolition of artificial barriers to free and fully competitive trade in coal, iron ore, scrap and steel within the Community ; in the belief that the common market thus created would gradually lead to the rational distribution of production at the highest possible level of productivity, and so to economic expansion, the development of employment and the improvement of the standard of living in the participating countries. The basic provisions of the Treaty are accordingly those which abolish and prohibit import and export duties, quantitative restrictions, double pricing, discriminatory and restrictive practices among producers, buyers and consumers, and State subsidies or special charges.

The primary task of the High Authority is to keep all facets of the Community's activities under constant review, and to ensure that the Treaty is observed and conditions of fair competition maintained. Its decisions, within the wide range of its competence, as prescribed by the Treaty, are binding both on Governments and on enterprises, and it may punish infringements of its decisions by the imposition of fines on a scale laid down by the Treaty. But it also has important powers, which enable it both to prevent the play of economic forces in the Community from leading to violent fluctuations of prices, production and supply, and to exert a certain influence on the rate and pattern of the development of the Community's coal and steel industries. Thus, the High Authority may fix maximum and minimum prices. With the Council's concurrence, it can allocate resources in times of shortage and fix production quotas in times of surplus. It imposes a levy of up to one per cent on the value of the Community's production, and can use the funds thus raised, after all administrative expenses have been met, to finance research activities and re-adaptation programmes made necessary by the operation of the common market. It can also borrow in order to grant loans to enterprises and can use the proceeds of the levy to guarantee the

service of loans obtained for this purpose. Moreover, it can require all investment programmes to be submitted to it, and any programme on which it issues an adverse opinion can only be financed by the enterprise concerned out of its own funds.

Labour. The High Authority has no *locus standi* with regard to wages and social charges and benefits unless it considers that wages are abnormally and unjustifiably low, in which case it can issue an appropriate recommendation. (Recommendations are binding as to the aim but not as to the means of obtaining it.) As regards mobility of labour, all restrictions and discrimination based on nationality against the employment of "qualified" workers are forbidden.

Commercial Policy. The High Authority may fix maximum and minimum export prices, allocate the Community's resources between consumption and export in times of shortage (if this is not done by the Council), recommend governments to impose quantitative restrictions in certain circumstances, and supervise the administration by governments of import and export licensing. Moreover, the Council of Ministers, acting unanimously, may fix maximum and minimum rates for Customs duties against coal and steel imports from third countries. Apart from this, member-states retain full control of their commercial policy. But the Community as a whole is bound by the Treaty to further the development of international trade and see that equitable limits are observed in prices charged on external markets ; and it was only in return for an express undertaking to this effect that the Contracting Parties to the General Agreement on Tariffs and Trade and the Council of the Organisation for European Economic Co-operation authorised the member-states to discriminate in favour of each other, as was necessary for the establishment of the common market.

Transitional Provisions. A Convention, signed at the same time as the Treaty, provides certain safeguards against the sudden and harmful shift in production which would result from the abrupt introduction of the full common market. This provides for a transitional period, lasting from five to seven years from the introduction of the common market, during which the High Authority has power to authorise the continuance of such State subsidies and other discriminatory practices prohibited by the Treaty as it deems necessary. Moreover, during this transitional period an annually diminishing levy may be imposed on coal for use in member-states whose production costs are below the average for the

Community (*i.e.*, Germany and the Netherlands) for the purpose of subsidising Belgian and Italian coal production ; and Italy may be permitted to retain import duties on steel imported from other members of the Community.

The Community and the Council of Europe. Relations between the Community and the Council of Europe are dealt with in a Protocol to the Treaty. Among other things, this recommends that the delegates to the Assembly should as far as possible be chosen from among representatives at the Consultative Assembly of the Council of Europe, and obliges the High Authority to send copies of its Annual Report both to the Committee of Ministers and to the Consultative Assembly of the Council of Europe. It has also been decided, since the conclusion of the Treaty, that there should be an annual joint session of the Common and Consultative Assemblies.

Establishment of the Community. The final location of the different institutions of the Community has not yet been decided, but the High Authority established its temporary headquarters in Luxembourg on August 10, 1952. The Council of Ministers held its first meeting in September, 1952, and the Judges of the Court took the Oath in December, 1952, also in Luxembourg. The Assembly, on the other hand, held its first session in Strasbourg in September, 1952, and its subsequent sessions have also been in Strasbourg, as is natural in view of its close link with the Consultative Assembly of the Council of Europe. The common market for coal and iron ore was introduced on February 11, for scrap on March 15, and for steel on May 1, 1953.

Relations between the United Kingdom and the Community. On December 21, 1954, there was signed in London an " Agreement concerning the relations between the United Kingdom of Great Britain and Northern Ireland and the European Coal and Steel Community ".[1] This Agreement was signed for the United Kingdom Government by Mr. Duncan Sandys, Minister of Housing and Local Government (and Minister of Supply during the time that the Agreement was negotiated), by Sir Hubert Houldsworth, Chairman of the National Coal Board, and also by Sir Archibald Forbes, Chairman of the Iron and Steel Board. In addition it was signed by representatives of the six states members of the Community and also by three persons representing the Community itself. The Agreement provides for a Standing Council of Association between the United Kingdom government and the High Authority as well as for special meetings

[1] Cmd. 9346.

of the Council of Ministers of the Community with the United Kingdom government. The Council of Association consists of not more than four persons representing the High Authority and not more than four persons representing the United Kingdom government. Unless the Council of Association agrees otherwise, it meets alternately at the seat of the High Authority and in London. There are provisions whereby States members of the Community whose interests are particularly affected by the matters under discussion may attend, either as participants or as observers, the meetings of the Council of Association. Similarly the High Authority is entitled to participate in the special meetings of the Council of Ministers of the Community with the United Kingdom government.

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