during forty years from war as a legalized institution to war as a crime against the international community, and the advance from neutrality to collective responsibility. The past tense could then be used freely, without the encumbrance of a text which in fact marked the end of an era. Who better could write the volume than the distinguished scholar now holding the Whewell Professorship held by Oppenheim before him?

C. G. FENWICK

COGNITION AND RECOGNITION

The article on "The Quasi-Judicial Function in the Recognition of States and Governments," published in this JOURNAL in its issue of October, 1952,[1] merits careful consideration and comment. The author, Charles Henry Alexandrowicz-Alexander, Research Professor of the University of Madras, draws a correct distinction between the "cognition" or "cognizance" of facts, and the political nature of the recognition of states and governments. He states that: "Unrecognized communities are treated in many respects as if they were subjects of international law, and unrecognized governments are often considered as endowed with quasi-governmental capacity." In other words, *de facto* situations, irrespective of formal recognition, cannot be ignored. Cognizance of such facts must be taken either diplomatically or judicially.

The practice of American and British courts of taking cognizance of actual conditions, regardless of political recognition, was noted in an editorial on "The Effects of Recognition" in this JOURNAL.[2]

The author of the article under immediate consideration acknowledges that, irrespective of the objective facts which might warrant recognition, the function of extending formal recognition is a political function, depending on various factors that may not be judicial or even quasi-judicial. When a nation considers such factors as political organization, capacity to fulfill international obligations, viability, and the attitude of the unrecognized community towards other states, it can hardly be said to be exercising a judicial function.

In treating the subject of the collective recognition of states and governments by the League of Nations and by the United Nations, or as in the instance of the Treaty of Paris of 1856, the author falls into the error of considering such action to be in conformity with international law. It would seem evident that, until the Members of the Family of Nations have surrendered their freedom of diplomatic action to an international organization, any collective act of recognition must conform to special treaty agreements, notably the Charter of the United Nations. It may not properly be considered as the exercise of a judicial function under international law. The most glaring evidence of this is to be found in the

[1] Vol. 46 (1952), pp. 631–640. [2] Vol. 36 (1942), pp. 106–108.

diplomatic compromise admitting the Russian province of The Ukraine as a Member of the United Nations.

The author states, furthermore, that "It is impossible to recognize legally a state which does not exist *de facto.*" When the United States and Great Britain recognized the non-existent state of Czecho-Slovakia in the first World War there was no legal impediment to this extraordinary political act of recognition. Incidentally, it may be observed that this was a fantastic instance of what Hans Kelsen characterizes as the "constitutive" effect of recognition: it certainly created a new state!

In referring to the tests applied by individual nations in respect to recognition the author states that: "There is no risk in saying that the basic objective tests relating to statehood and governmental capacity have never been ignored." The fact is, as illustrated in the non-recognition of the Communist regime in China by the United States, the decisive factor has generally been a purely political one. And conversely, the recognition of this same government by Great Britain would seem to have been actuated by the exigencies of its economic and political interests in the Far East.

Professor Alexandrowicz-Alexander has focused attention on some of the controversial aspects of diplomatic practice with respect to recognition. In seeking, however, to restrict the freedom of nations to determine the nature of their diplomatic relations with states and governments of doubtful, and possibly of unfriendly, conduct, he is pleading for a reform which may not be either wise or practicable. The cognition of the facts of international relations may often place limitations on the nature and the extent of diplomatic intercourse. Though there may exist an attenuated kind of *de facto* recognition in some instances, full, formal, and unrestricted recognition may be accorded only as a sovereign political prerogative. It is not a judicial, or quasi-judicial, function.

PHILIP MARSHALL BROWN

SELF-DETERMINATION IN THE UNITED NATIONS

Recent discussions in United Nations organs, and one or two actions taken, indicate a slowly dawning realization that the term "self-determination," long a theoretical subject, has become one of practical importance and immediate urgency, badly in need of legal definition. The problem now developing around this term may be of wider importance than the "cold war." The rising tide of nationalism has brought along an almost frantic revival of the concept of "self-determination" made famous by President Wilson; and now some very strange meanings are being given to it. Discussion and action have been related to Trusteeship, to Non-Self-Governing Territories, and to Human Rights; but the discussion has not reached down to fundamental principles and practical methods. It has been conducted, indeed, in what is unfortunately becoming the tone of the General Assembly: noble utterances on behalf of high-sounding principles which would