

the difficulties of formulating a law of interstate trade which will equalize to some degree the competition between sections of the country in which high labor standards prevail and those which have cheap labor available, between advanced and backward agricultural communities, between the small producer and the highly organized industrial unit. But the difficulties of the problem at home are at the same time an encouragement to action in the larger field of international economic relations. The analogies and parallels between the two fields, while not so close as to permit too ready inferences from one to the other, nevertheless throw considerable light upon the methods of approach and the feasibility of the particular forms of regulation. An "interstate commerce" law for the nations is so indispensable that the formulation of its fundamental principles must become a subject of immediate concern to international lawyers and its study must be pursued unremittingly until a solution be found.

Publicists have on more than one occasion called attention to the intimate connection between political and economic security and to the necessity of supplementing pacts of political non-aggression with pacts of economic non-aggression. It is an interesting academic question whether political stability in international relations is a condition precedent to economic recovery or, on the other hand, economic recovery is a condition precedent to political stability. As a practical matter, the two are interdependent and their causes and effects are so closely interwoven as to make it impossible to determine at times whether a particular measure bears more upon the one than upon the other. A marked revival of foreign trade would undoubtedly do a great deal towards lessening the present situation of political tension; and, on the other hand, it is equally clear that if the political situation could be brought to a greater degree of stability it would release forces that would have an immediate effect in stimulating world trade. As for the policy of the United States, Professor Wright has emphasized forcibly in the recent Report on International Economic Relations that the present efforts that are being made to promote domestic recovery should be entered upon with a due care to avoid creating distress and resentment abroad or a shock to the world's political equilibrium.

C. G. FENWICK

#### GERMAN REARMAMENT AND UNITED STATES TREATY RIGHTS

In September, 1934, the Department of State issued a Press Release<sup>1</sup> entitled, "Exportation of Arms and Munitions to Germany," in which a

<sup>1</sup> Saturday, Sept. 22, 1934, Weekly Issue 260, Publication No. 641. The Press Release ends as follows: "That as the United States, under the provisions of Articles I and II of the Treaty of Berlin enjoys all the advantages stipulated in Arts. 170 and 198 [of the Treaty of Versailles] the importation of military aircraft into Germany or the possession or use of aircraft by the German police would constitute a violation of the treaty rights of this Government."

letter to an aircraft manufacturer was quoted expressing the Department's opinion that under Article 170 (included in Part V) of the Treaty of Versailles,<sup>2</sup> alleged to have been incorporated by reference in the Treaty of Berlin,<sup>3</sup> the exportation of military airplanes from the United States to Germany would be a violation of Article 170, and hence "a violation of Germany's treaty obligations to the United States." More recently, a part of the American press has taken the position that the rearmament of Germany is a violation of Part V of the Treaty of Versailles and hence a violation of the Treaty of Berlin with the United States.

These conclusions are of so portentous a nature that it is well to examine them more closely. Apart from the fact that the British Government, a direct party to the Treaty of Versailles, appears to have taken the position that the sale and export to Germany of airplanes and parts, and even of engines to be used for military purposes, was not a violation of any treaty engagement between Germany and Great Britain,<sup>4</sup> the assumption that the disarmament of Germany under the military clauses of Part V of the Treaty of Versailles is included among the "rights, privileges, indemnities, reparations or advantages" which the United States reserved to itself in the Knox-Porter Resolution of July 2, 1921,<sup>5</sup> or which, according to the Treaty of Berlin, were "stipulated for the benefit of the United States in the Treaty of Versailles" seems destitute of foundation, either in law or in fact.

The United States had found much difficulty in coming to a state of peace with Germany. A simple repeal of the declaration of war would have accomplished that result. After President Wilson's veto of a 1920 peace resolution,<sup>6</sup> the Knox-Porter Resolution was adopted in 1921 after the Senate had clearly indicated its intention to avoid all the military and political commitments of the Treaty of Versailles while reserving to the United States and its citizens all the "rights, privileges, indemnities, reparations or advantages" of a pecuniary or economic kind which the Treaty of Versailles had conferred upon the Allied governments or its nationals. Inasmuch as the words quoted were carried into the Treaty of Berlin,<sup>7</sup> it becomes important to determine what Senator Knox, the author of the words, considered to be the substance of the "rights, privileges, indemnities, reparations or advantages" which, among the reserved parts of the Treaty of Versailles, were deemed a "benefit" to the United States.

<sup>2</sup> Art. 170 reads in part: "Importation into Germany of arms, munitions and war materials of every kind shall be strictly prohibited."

<sup>3</sup> See text in 61 Cong. Rec. 5769 (1921); 42 Stat. L. (67th Cong., 1st Sess.), 1939; this JOURNAL, Supplement, Vol. 16 (1922), p. 10.

<sup>4</sup> See article in *New York Times*, Sept. 19, 1934, at 8, col. 4, reporting statements of Sir John Simon in the House of Commons; *London Times*, Sept. 18, 1934, at 12, col. 3; *ibid.*, Sept. 19, 1934, at 10, col. 3; Sir John Simon, May 14, 1934, in House of Commons, *London Times*, May 15, 1934, at 8, col. 4; 41 Current History, 200 (Nov. 1934).

<sup>5</sup> 61 Cong. Rec. 3299; 42 Stat. L. (67th Cong., 1st Sess.), 1921, Public Laws, p. 105.

<sup>6</sup> 59 Cong. Rec. 5129; *ibid.*, p. 7102; *ibid.*, p. 7429.

<sup>7</sup> Art. I.

Senator Knox explained the terms used as follows:

By the treaty [of Versailles] we became, as one of the principal allied and associated powers, with our associates co-owners of the following property, rights and privileges: A part of German territory in Europe and all of Germany's territorial overseas possessions; of parts of Schleswig in trust for Germany or Denmark; of all the German national property, imperial and state, and the private property of the ex-Emperor and other royal personages, without compensation for that in the colonies, with compensation for that in Memel; of the public utilities in areas ceded to the principal allied and associated powers; of all German cables, reaching all over the world; of practically all German merchant marine shipping and of certain portions of her inland shipping; of bonds in the total fixed amount of 100,000,000,000 gold marks, and of a commitment for an indefinite further issue; of certain amounts of gold specified; of German claims against Austria, Hungary, Bulgaria and Turkey; of a maximum of 200,000 tons of shipping per year to be built by Germany; and as single owner in our own right of all American securities, certificates, deeds or other documents of title, including shares of stock, debentures, debenture stocks, or other obligations of any company incorporated in accordance with our laws, as also all materials, and so forth which may have been taken from our citizens during the war.

By this same treaty our citizens became the beneficiaries, fully and completely, with the nationals of other allied and associated powers, of *restrictions accepted, grants made, and obligations incurred by Germany with reference to her external commerce* in the matter of duties, charges, and commerce restrictions, reciprocity treaties, customs provisions, shipping, freedom of transit, free zones, the internationalization of her great internal waterways, railway transit, and the Kiel canal. We are likewise the beneficiary of the principle accepted by Germany that Germany is responsible for herself and for her allies, for all loss and damage to which the allied and associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies, and this includes—under the broad wording of the provision—not alone the loss and damage resulting from the operation of Germany and her allies, but loss suffered as the result of the [acts of the] allied and associated powers.

While not now waiving our rights to all the foregoing, *ultimately we want, sir, only those parts which will provide for the compensation of our citizens for the losses they suffered because of the war, and those parts which will assure them equality of treatment with the nationals of the most favored nation in all matters pertaining to residence, business, profession, trade, navigation, and commerce.* It is to secure these, which we have a right to expect and demand, that the proviso of the resolution before us is drafted.<sup>8</sup>

It is evident from this recital that the rights thus reserved comprised reimbursement for past losses suffered by or assurance of future commercial

<sup>8</sup> 59 Cong. Rec. 6566, May 5, 1920. Italics supplied. The proviso related to the retention of German private property until suitable provision had been made for the satisfaction of all claims of American nationals, etc.

advantages for the United States and its citizens. The most liberal construction cannot read into these "benefits" or "advantages" any reference to the disarmament of Germany.

It is true that the Treaty of Berlin, in mentioning the several parts of the Treaty of Versailles, from which as a reservoir might be claimed the rights and advantages deemed of benefit to the United States,<sup>9</sup> includes also Part V, the military clauses. Many of the Senators were disturbed by the inclusion of this Part V in the reservoir, for most of those who spoke deemed the Part a liability and danger, and hardly a source of benefit or advantage. Some thought the United States might have to enforce it, which they claimed the American people would never support; some thought that as the Council of the League of Nations was the permanent agency for the enforcement of Part V we might have to coöperate in this respect with the League, which it was thought we had decided not to do. Inasmuch as the United States agreed to avail itself of the "rights" and "advantages" accorded it "in a manner consistent with the rights accorded to Germany under such provisions,"<sup>10</sup> Senator Walsh, who considered Part V nothing but a liability, advanced the argument that the United States would morally have to come to the aid of the country we had helped to disarm, were she attacked. Senator Borah thought that it was a source of confusion to leave in the treaty any reference to Part V. Only Senators Kellogg and Pomerene seemed to suggest that the disarmament of Germany was of any benefit to the United States, but even they were hardly purporting to interpret the Knox reservation of "rights, privileges, indemnities, reparations or advantages."<sup>11</sup> But as Part V was long and involved, and as all the Parts named were merely optional sources for the identification of specific claims and benefits, Part V was not struck out, partly on the assurance that the fears of contracting military or political liabilities were not justified. In the light of the fact that it took three years after the Armistice to make formal peace with Germany, it seems unfortunate that a treaty could not have been drafted which was clear, precise and unambiguous. The very looseness of the reference to Part V, read independently of the history of the evolution of the treaty, invites such awkward interpretations as the Press Release embodies.

Apart, however, from the history of the clause "rights, privileges, indemnities, reparations or advantages," the legal principles of *noscitur a sociis* or

<sup>9</sup> Art. II, Sec. 1, reads: "With a view to defining more particularly the obligations of Germany under the foregoing Article with respect to certain provisions in the Treaty of Versailles, it is understood and agreed between the High Contracting Parties: (1) that the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV."

<sup>10</sup> Treaty of Berlin, Art. II, Sec. 1, par. 2.

<sup>11</sup> The debates will be found in 61 Cong. Rec. 173, 183, 8327, 748, 838, 2455, 5776, 6379, 6403, 6059, 5861, 6366, 6248, 6251, 6364, 6382, 5772.

*ejusdem generis*,<sup>12</sup> and the maxim that "He who considers merely the letter of an instrument goes but skin deep into its meaning"<sup>13</sup> would seem to foreclose the conclusion that the disarmament of Germany was deemed a "right, privilege, indemnity, reparation or advantage" to the United States. Considering that the United States by the Treaty of Berlin sought to escape European entanglements and the military and political commitments of the Treaty of Versailles, it would seem extraordinary that it had nevertheless by mentioning Part V in the reservoir from which "rights" and "advantages" might be claimed, committed itself legally to the military and political disabilities on Germany and the obligations and liabilities of enforcement which that Part contemplated.

On February 3, 1935, Great Britain and France undertook to release Germany from the obligations of Part V of the Treaty of Versailles on certain conditions. The United States Government, it is understood, was not consulted in this renunciation, nor was its consent asked or given. It seems hardly conceivable that the United States consent would not have been asked had it been assumed by the Allied governments or by the United States that we were a party to Part V of the Treaty of Versailles. The entire historical development of the peace negotiations with Germany and the conclusion of the separate Treaty of Berlin with its source in the Knox-Porter Resolution, would seem to make it clear that the "rights, privileges, indemnities, reparations or advantages" stipulated for the benefit of the United States in the Treaty of Versailles and incorporated by reference in the Treaty of Berlin, did not include the disarmament of Germany and that hence the rearmament of Germany, whatever one may think of it, does not affect or violate the Treaty of Berlin.

EDWIN M. BORCHARD

#### RUSSIAN CLAIMS NEGOTIATIONS

It would be interesting to check up the number of international agreements entered into in perfect good faith on each side yet representing serious misunderstandings between the parties as to the exact meaning and effect of the terms agreed upon. The number of international agreements which have been submitted to arbitration for interpretation suggests that a surprisingly large percentage are defective in that respect. Perhaps many of them would not have been concluded unless susceptible of diverse interpretation to suit the desires of the respective parties.

<sup>12</sup> 2 Sutherland, *Statutes and Statutory Construction* (2d ed. 1924), Sec. 414; McNair, "Application of the *Ejusdem Generis* Rule in International Law," 5 *British Year Book of International Law* (1924), 181.

<sup>13</sup> *Qui haeret in litera haeret in cortice*. Broom's *Legal Maxims*, 8th Ed. by J. G. Pease, London, 1911, p. 533, citing Coke's *Littleton* 283 b. See also St. Paul's proverb, "the letter killeth but the spirit giveth life," *Corinthians*, II, ch. 3, verse 6, cited by John Bassett Moore in connection with another question of treaty interpretation, in *International Law and Some Current Illusions*, New York, 1924, p. 20.