within the domestic jurisdiction of a country such as our own, may, in 1948 or 1950, be regarded by the family of nations as having attained a new significance in the international life, and as having such a sinister aspect as to be regarded with real concern by States generally, and as subversive of the maintenance of justice in an international sense. The very theory and structure of the Charter of the United Nations are indicative and prophetic of fresh limitations upon the freedom of the individual State. Still, it is not believed that the American Government would at any time be disposed to press for an interpretation in the application of Proviso B that would be contemptuous of prevailing opinion.[4]

Proviso C is self-explanatory and calls for no comment. It is perhaps to be regretted that the declaration in behalf of the United States is to remain in force, to start with, merely for five years rather than for a longer period before the expiration of six months' notice of desired termination begins to run.

In presenting the President's declaration to the Secretary-General of the United Nations, Mr. Johnson said that the action taken was further testimony of the determination of the United States that the United Nations would fulfill the role assigned to it, which was nothing less than the preservation of world peace.[5] Acceptance by the United States of the optional clause is a real step forward in American diplomacy. It reflects a conviction widespread throughout the country that international controversies within a broad field should, when other methods fail, be adjudicated before a permanent international tribunal; and it attests the general confidence that the Court of International Justice is that tribunal. The existence of that confidence reveals a prodigious change in American thinking since the close of World War I. The fact, rather than the cause of it, is here noted. In plowing the soil that events made fertile for the growth of a sense of the vast desirability to the United States in obligating itself to adjudicate a broad class of differences before the Court of International Justice, there will never be forgotten the sturdy and vigorous labors of one particular plowman —the Honorable Manley O. Hudson.

CHARLES CHENEY HYDE

President of the Society

THE DRAFT TREATIES OF PEACE

The official release to the public, on July 30, 1946, of the texts[1] of the draft treaties of peace with Bulgaria, Finland, Hungary, Italy and Rumania, was

[4] See discussion in the Senate, August 2, 1946, *Congressional Record*, Vol. 92, pages 10828–10850.

[5] United Nations Press Release IC/2, August 26, 1946.

[1] The texts of the Bulgarian, Finnish, Hungarian, and Rumanian draft treaties are given in *The New York Times*, July 31, 1946, pp. 15–21, under a Washington dateline of July 30, that of the Italian treaty in a cable despatch from Paris in its issue of July 27, 1946, pp. 7–10. [These documents are not reprinted in the JOURNAL under our standing rule against printing agreements until finally concluded.—Ed.]

an event eagerly awaited throughout the world. While played up by the press as "bombshell" news, the stipulations of the texts were not surprising to anyone familiar with the terms of the Armistices.[2] An initial reading confirms the position taken two years ago to the effect that the armistices were in themselves preliminary treaties of peace and that the final terms would only be executory of the terms on which the defeated laid down their arms. Closer scanning of the texts reveals the common pattern of the treaties despite the considerable differences of detail which they contain. All start with a rather elaborate preamble which contains a summary of the political reasons adduced as justification of the treaty; all follow a general design as to territorial,[3] political,[4] naval, military, and air [5] clauses. Ensuing parts deal with the withdrawal of Allied forces,[6] reparation and restitution,[7] and economic matters.[8]

For the three defeated states which border on the Danube, special parts dealing with fluvial navigation[9] are proposed, although the Soviet Government has manifested distinct unwillingness to settle the questions concerning the Danube in a general peace conference, preferring a special and separate regime arrived at in consultation with all the riverain states.

The concluding portion of each treaty covers the "final clauses" regarding validation, interpretation, implementation and transitional arrangements.[10]

[2] Present writer, "Armistices, 1944 Style," in this JOURNAL, Vol. 38 (1944), pp. 286–296 and "Two Armistices and a Surrender," in same, Vol. 40 (1946), pp. 148–158.

[3] Bulgaria, Art. I; Finland, Arts. I–II; Hungary, Art. I; Italy, Part 1, Secs. I–VI, Arts. I–XIII; Rumania, Arts. 1–2.

[4] Bulgaria, Part II, Secs. I–II, Arts. II–VI; Finland, Part II, Secs. I–III, Arts. III–XII; Hungary, Part II, Secs. I–II, Arts. II–IX; Italy, Part II, Secs. I–VIII, Arts. XIV–XXXVII; Rumania, Part II, Secs. I–II, Arts. III–X.

[5] Bulgaria, Part III, Secs. I–II, Arts. VII–XVIII; Finland, Part III, Arts. XIII–XXI; Hungary (military only) Part III, Secs. I–II, Arts X–XIX; Italy, Part IV, Secs. I–VII, Arts. XXXIX–LXII; Rumania, Part III, Arts. XI–XX.

[6] Bulgaria, Part IV, Art. XIX; Finland, no comparable article; Hungary, Part IV, Art. XX; Italy, Part V, Art. LXIII; Rumania, Part IV, Art. XXI.

[7] Bulgaria, Part VI, Arts. XX–XXI; Finland, Part IV, Arts. XXII–XXIII; Hungary, Part V, Arts. XXI–XXII; Italy, Part VI, Secs. 1–2, Arts. LIV-LV, with an added section of great import to Italy, involving Renunciation of Claims, Arts. LVI–LVII; Rumania, Part V, Arts. XXII-XXIII.

[8] Bulgaria, Part VI, Arts. XXII–XXXI; Finland, Part V, Arts. XXIV–XXVI and six annexes; Hungary, Part VI, Arts. XXIII–XXXII and six annexes; Italy, Part VII, Secs. I–III, "Property Rights and Interests"; Part VIII, General Economic Relations; and Part X, Miscellaneous, embracing together Arts. LXVIII–LXXIV and eight annexes; Rumania, Arts. XXIII–XXIV.

[9] Bulgaria, Part VII, Art. XXXII; Hungary, Part VII, Art. XXXIII; Rumania, Part VII, Arts. XXXII–XXXIII.

[10] Bulgaria, Part VIII, Arts. XXXIII–XXXVI and annexes; Finland, Part VI, "Legal Clauses"—a verbalism apparently intended to cushion the effects of the content upon the Finns—Arts. XXXII–XXXIII and 6 annexes; Hungary, Part VIII, Arts. XXXIV–XXXVI and 6 annexes; Italy, Part XI, Arts. LXXV–LXXVIII and 9 annexes.

Save for the Italian treaty, where French is also made an official language, Russian and English are recognized on a parity. This marks a further ascent of the Russian language in the diplomatic scale.

When the treaty texts are compared with each other that with Italy reveals itself as the most complex, whereas the treaty with Finland is the briefest and most general in its provisions. In the light of the antecedent armistices there is, with the exception of the economic clauses noted below, little that is fundamentally new. Obviously the specific definition of new frontiers, such as those between Italy and France on the one hand, and between Italy and Yugoslavia on the other, calls for minute description and special arrangements, those concerning Trieste being the most controversial. The prior status of Italy being higher than that of any of the other countries, her loss of status entails proportionately greater renunciations—*vis-à-vis* France, Greece, Albania, Jugoslavia, Ethiopia, and China, not to mention the colonies,[11] mandated territories, and other matters. The frontier changes in the other treaties make concrete and specific the areas ceded or promised by the respective armistices.

The economic clauses have constituted the principal area in which fundamental conceptions of the economic order have directly clashed. In general the position of the United States, the United Kingdom, and France has been that it is entirely legitimate to regulate by treaty stipulations, as was done in the Paris settlement of 1919–1920, the transfer of title to public and private property, insurance, and similar matters, and the succession to debts and obligations of pre-war contracts of a public, mixed, or private law character. The position of the USSR has been that private law relationships are not appropriate subjects for inclusion in a treaty of peace.[12] This formula would reduce the economic clauses to broad, generic statements of policy. In the presence of so novel a doctrine agreement will not be easily reached, since the interests involved on the non-Soviet side are appreciable and will be tenaciously supported. In the whole body of Soviet treaty-law there has heretofore been no analogous situation, for in the peace settlement at Brest-Litvosk it was the Central Powers who determined the rules, and the RSFSR which submitted to "imperialist" exactions. In the peace settlements of 1920–1921 with her immediate neighbors Russia made no

[11] Italy, Arts. VI–XXXVI.

[12] This objection is raised in the Italian draft treaty to civil aviation (Art. LXXI, Par. 1, D), property rights of Italian nationals and corporations in ceded territory, and privately owned railways (Annex 3, Par. 5, 6, 10), and is voiced in the last case mentioned (Par. 10) as follows: "The USSR delegation considers that there is no reason for the inclusion in the peace treaty of the French delegation's proposal, because a peace treaty should not contain provisions dealing with particular private companies." It also applies to institution of civil proceedings for recovery of industrial, literary and artistic property rights (Annex 5, Par. 4), patent rights (same, Par. 6), insurance (Annex 6B), contracts, prescriptions and negotiable instruments (Annex 7). This view is reiterated in the draft treaties with Bulgaria, Art. XXVIII D Annex 4, P. 4, Annex 5; Finland, Annexes and 5; Hungary, Art. XXIII, Par. 9; Annex 4, B, Par. 3, Annex 5; and Rumania, Art. XXX 1, C.

attempt to insist on so general a doctrine, particularly as the Soviet Government was doing most of the renunciation. In the draft clauses of the present treaties the international effects of the Soviet economics are carried further, diminishing private rights previously held inviolate by the canons of international law.

The Paris Conference is faced with the ineluctable task of effecting a working symbiosis, at the international level, between sharply differing, if not always frontally opposed, conceptions of public—and private—international law. The ultimate grist of this protracted milling may well determine whether the two systems are or are not compatible with the basic concepts on which the United Nations Organization was established.

MALBONE W. GRAHAM

THE ADMINISTRATIVE PROCEDURE ACT AND THE STATE DEPARTMENT

The Administrative Procedure Act [1] was signed by President Truman on June 11, 1946, having passed both the Senate and the House of Representatives without a dissenting vote. It became effective as to most of its provisions on September 11, 1946. This important piece of legislation will have significance not merely for internal administration but also for many administrative agencies whose business it is to regulate our international intercourse in its various manifestations. The ever growing extension of administrative rules and regulations has been reflected also in the complexity of the relations of both the citizen and the alien with the authorities of the Government. Agencies having to deal with the determination of citizenship, the interpretation and application of treaty provisions, the enforcement of immigration laws, and many other matters will be affected by the new law.

The people of the United States are brought face to face with new forms and methods of government at the same time that executive power, often uncontrolled, is growing by leaps and bounds in many foreign countries. While Constitutional safeguards remain inviolate, the scope of administrative activity has grown so rapidly that the individual is often no longer able to inform himself readily of the nature of the rules and orders applicable to his conduct. Officials of government are themselves often unable to find their way in the labyrinth of regulations accumulated in different bureaus without adequate systematic registration or publication.

The provisions of the new Administrative Procedure Act clearly apply to many of the functions within the jurisdiction of the State Department, and it is, therefore, of great importance in the conduct of our foreign affairs. It is not our purpose here to review the Act as a whole. A brief outline will suffice. Its provisions apply to every "agency" of government, which is defined as "each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the possessions and Territories, or the District of Co-

[1] (1946) Public Law 404, 79th Congress.