Charles Warren may be appraised not only by his intellectual attainments, but by his high principles of character. One could not but be impressed by his intellectual honesty and his steadfast search for the truth—the "Veritas" of his beloved Alma Mater. Indeed, his innate sense of fairness caused him to present both sides of a controversial question. Although he was endowed with a creative imagination, yet there was a strain of solid practicality running through his nature which kept him aloof from the pitfalls of speculation and sophism. And in his strength of conviction he stood up for views, whether his own or another's, which his acute mind had sifted and found free of dross. Underneath all ran a vein of subtle humor which enlivened his writings and his friendships. Now his clear voice in the pathways of history is still, but the pathways he trod he left forever adorned and endeared.

L. H. WOOLSEY

COLLECTIVE SECURITY AND THE LONDON AGREEMENTS

At the close of the first World War the words "collective security," "collective responsibility for the maintenance of peace" were words of high hope for the establishment of law and order in a world of states which had hitherto resisted any effective restraints upon their sovereign right to have recourse to war to enforce claims they believed to be just. The principle underlying collective security was simple enough: that the combined forces of the law-abiding states would be so formidable that no state that might otherwise be tempted to defy the law would dare to challenge them. The possibility of organizing the collective forces of the law-abiding states was, perhaps, too easily taken for granted; although under the conditions of the time, with the movement of troops as slow as it then was, there was reason to believe that the formidable array of reserved military strength possessed by the law-abiding states would make it clear to a possible aggressor that it could not hope to win its war in the end. All that was needed was unity among the leading Members of the League of Nations; and these were counted upon to be law-abiding. The participation of the United States in the system was, indeed, important; but even without that, it appeared possible to make it work.

Much the same hope existed when the Charter of the United Nations was signed at San Francisco on June 26, 1945. But this time the machinery of collective security was made more effective, both in respect to decisions in regard to acts of aggression and in respect to combined military action for the enforcement of the law. The assumption of unity on the part of the permanent members of the Security Council, however, soon proved to be unfounded; but even the unforeseen break between East and West might not have proved fatal to the principle of collective security had not the invention of the atomic bomb introduced a new instrument of warfare so devastating in its effects as to give an almost overwhelming advantage to a surprise attack. Hence the need for the organization of defense by alliances and regional groups in which there would be no veto of the Soviet Union, and immediate action could be taken for self-defense under Article 51 of the Charter.

The first of the regional groups was that of the twenty-one American states, which signed their regional security agreement at Rio de Janeiro on September 2, 1947, under the title, "Inter-American Treaty of Reciprocal Assistance."[1] This treaty, however, can scarcely be said to be a recognition of the failure of the system of collective defense under the Charter of the United Nations, inasmuch as it had been planned before the San Francisco Conference and was directed to the maintenance of the inter-American system without reference to any specific situation that might arise among the leading Members of the United Nations. The following year, however, the Brussels Treaty was signed with the direct objective of collective defense against the threat of further Russian aggression following the *coup d'etat* in Czechoslovakia;[2] and again a year later, on April 4, 1949, the North Atlantic Treaty was signed by twelve states, including the United States, pledging themselves to "maintain and develop their individual and collective capacity to resist armed attack."[3] Implementing the treaty is an elaborate series of commands and committees under the name of North Atlantic Treaty Organization, whose permanent military headquarters (SHAPE) control and direct an integrated defense force under a centralized command.

But the necessity was soon realized of going beyond an integrated defense force of separate national armies if German co-operation in the defense of Western Europe was not to give rise to fears of a new German menace. Hence the plan of a European Army in which the units contributed by each member would lose their national identity and come under the command of a single political authority. But the European Defense Community, as it was called, went beyond mere military defense. The European Coal and Steel Community had taken the first step towards a federation of European nations; the Defense Community now proclaimed the establishment of a new regional group that was to be "supra-national in character," that was to have "common institutions" as well as common armed forces—a community that was to have juridical personality and be represented by a Council of Ministers, a Common Assembly, and a Court of Justice, institutions looking towards "an ultimate federal or confederal structure."[4]

High hopes were aroused on all sides that the long-sought European Union might now at last be realized, and that beginning with defense the Defense Community might go on to establish those political and economic bonds which might disarm the rivalries of centuries, and not only remove the fear of future conflict, but set an example to the Communist world that peace and material prosperity could be attained without the sacrifice of liberty. But unhappily it proved more difficult than was anticipated to allay the suspicion and distrust that still conditioned the reaction of the

[1] Pan American Union, Congress and Conference Series, No. 53; this JOURNAL, Supp., Vol. 43 (1949), p. 53.

[2] Great Britain, Foreign Office, Misc. No. 2 (1948), Cmd. 7367; this JOURNAL, Supp., Vol. 43 (1949), p. 59.

[3] Department of State Publication 3497; this JOURNAL, *loc. cit.*, p. 159.

[4] See this JOURNAL, Vol. 46 (1952), p. 698.

French Chamber of Deputies, and on August 30, 1954, the hopes for the treaty came to an end when a vote in the Chamber refused to continue discussion of the plan.

The London Agreements of October 3, 1954, now come to replace the Defense Community Treaty, and there is every promise that, if they be duly ratified, the defense needs of Western Europe will be met by them, all the more so because this time the United Kingdom has agreed to participate in the maintenance of the armed forces of the nine-Power group. An interesting feature of the agreements is the manner in which they interlock with the earlier Brussels and North Atlantic treaties. The Brussels Treaty of 1948 is made "a more effective focus of European integration" by providing that the German Federal Republic is to be invited to accede to the treaty so that "the system of mutual automatic assistance in case of attack" will be extended to it. At the same time the Consultative Council of the Brussels Treaty will become a council with powers of decision, and the Brussels Treaty Organization will include an agency for the control of armaments of the continental members of the Organization, so that no one country will be able to dominate the combined forces. The United States representative, the Secretary of State, announced the willingness of the United States "to continue its support for European unity," and to this end he would "recommend to the President" the renewal of the assurance given in connection with the European Defense Community that the United States would continue to maintain in Europe the units of its armed forces "while a threat to the area exists." A similar statement was made by the representative of Great Britain, while the representative of Canada reaffirmed its resolve to continue its obligations under the North Atlantic Treaty Organization, which it was said, "remains the focal point of our participation in collective defense." The London Agreements further provide that the Federal Republic of Germany is to be admitted as a member of the North Atlantic Treaty Organization and that all the forces of the NATO countries stationed on the Continent shall be placed under the authority of the Supreme Allied Command, Europe (SACEUR).

On its part the Federal Republic of Germany accepts limitations upon its right to manufacture atomic, chemical or biological weapons and other forms of armament, and it agrees to supervision of the restrictions by the competent authority of the Brussels Treaty Organization. At the same time a special declaration by the German Federal Government, accompanied by a joint declaration by the governments of France, the United Kingdom and the United States, proclaims their determination to settle disputes by peaceful means, to refrain from the threat or the use of force in their international relations, and to give to the United Nations assistance in any action it may take in accordance with the Charter.[5]

Whether on the basis of the London Agreements the nine Powers may now be able to enter into negotiations with the Soviet Union so as to relieve the tensions that now exist remains to be seen. It was the hope of

[5] For text of the Final Act of the Nine-Power Conference, see Department of State Bulletin, Oct. 11, 1954, and Publication No. 5659 entitled "London and Paris Agreements September–October 1954."

those who supported the European Defense Community that the example of closer federal ties among the members of the Community, with resulting material progress accompanied by respect for human rights and greater liberty of action, might influence the ring of satellite states and, it might be, even the separate races and peoples that constitute the Soviet Union. Perhaps the advance towards European Union may go forward more steadily now that the first step has been taken, even though it is a shorter step than was first contemplated.

C. G. FENWICK

ENEMY PROPERTY

It is a sound general proposition that the confiscation of private property of aliens is a breach of international law. The assertion of the generalization does not foreclose argument on the definition of "confiscation" or on the existence of conditions which justify an exception to the rule. The purpose of this comment is to discuss the question whether the presence of the condition that the alien owner of the property is an "enemy alien" justifies an exception, that is, makes confiscation lawful, and if lawful, whether confiscation is a wise policy.

The literature on the general issue of lawfulness of confiscating enemy alien property is abundant and generally familiar.[1] It is the writer's view that those who maintain that such confiscation is unlawful have the better of the argument, although recent decisions of the courts of the United States do not lend support to this view as did the opinion of Chief Justice Marshall.[2] Since customary international law reflects the practice of states and since that practice in the 20th century has been ambiguous, the issue deserves determination by an internationally authoritative judicial body.

In explaining the submission of applications to the International Court of Justice on March 3, 1954, instituting proceedings against the Soviet and Hungarian Governments on account of their conduct in connection with American airmen who came down on Hungarian soil in 1951, the Department of State declared that "in determining to bring this matter before the International Court of Justice," it had been "moved by the

[1] See the classic discussion by John Bassett Moore, International Law and Some Current Illusions (1924), pp. 13 ff.; O. C. Sommerich, "A Brief Against Confiscation," Law and Contemporary Problems, Vol. 11 (1945–1946), p. 152; and the numerous discussions, particularly by Professor Edwin Borchard, in this JOURNAL.

[2] "Unquestionably to wage war successfully the United States may confiscate enemy property." Silesian-American Corporation *v.* Clark (1947), 332 U. S. 429, 475, digested in this JOURNAL, Vol. 42 (1948), p. 473. Compare Chief Justice Marshall's views in U. S. *v.* Percheman (1833), 7 Peters 51, 86. Compare also the position of the American Bar Association in 1943: "Confiscation is contrary to the principles of law. It is contrary to our constitutional law principles and to the principles of international law." Annual Report of the American Bar Association (1943), p. 454. See also the conclusions in the Final Report of the Subcommittee to Examine and Review the Administration of the Trading with the Enemy Act of the Committee on the Judiciary, U. S. Senate (1954), p. 68: "The Committee feels that the record set forth in this report clearly indicates that the policy of confiscating the individual enemy's property located in the United States has been an unsound deviation from international law and the historic policy of the Government."