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INTERNATIONAL LAW

Applied to The TREATY OF PEACE

Continued

SECTION VIII.—POLAND.

Articles 87-88. Germany recognizes complete independence of Poland and cedes certain territory, provision being made for delimitation of frontiers, and for plebiscites in portions of Upper Slesia.

Poland was extinguished by a final partition among Russia, Prussia and Austria in 1795, confirmed by the Congress of Vienna in 1815. In the present treaty large parts of Austrian and Prussian Poland are to be returned to the reconstituted State. A settlement with respect to Russian Poland lies in the future.

The provisions of this section are founded upon political rather than upon legal considerations, however, a primary object being the erection of a strong buffer state between Germany and Russia; for, in spite of the wrongful and unlawful acts of Russia, Prussia and Austria in the three partitions their titles had become good in law by prescription. (1 Oppenheim, pp. 309-310.)

By Annex I under Section VIII those qualified to vote shall be persons, without distinction of sex, who have completed their twentieth year and who were born in the plebiscite area or have been domiciled therein since a date to be determined by an International Commission in charge. On the conclusion of the voting the Commission will make a recommendation to the Allied and Associated Powers as to the frontier of Germany in Upper Silesia

in which "regard will be paid to the wishes of the inhabitants as shown by the vote, and to the geographic and economic conditions of the locality."

Article 91. German nationals habitually resident in territories recognized as forming part of Poland will acquire Polish nationality *ipso facto* and will lose their German nationality with the exception of those or their descendants who became resident in the territories after January 1, 1908, who require special authorization from the Polish state to become Polish nationals. Within two years Germans thus becoming Poles, as well as Poles resident in Germany who are German nationals, over 18 years of age, may opt for the other nationality respectively.

Persons thus exercising the right to opt "may" within the succeeding twelve months transfer their place of residence to the state for which they have opted. Each will be entitled to retain his immovable property in the territory of the other and freely to carry with him his movable property.

Within the same period Poles in foreign countries, who are German nationals, will be entitled, in the absence of restrictions in the foreign law, to acquire Polish nationality by complying with the requirements laid down by the Polish State.

Here again involuntary naturalization is resorted to, with, however, a subsequent

right to opt. (See Comment opposite Articles 36 and 37.) It will be observed in this Article that persons opting "may" transfer their residence within twelve months.

Article 92. Poland will assume a portion of the Prussian and German debt attributable to the territory on the basis of the ratio between the average for the years of 1911, 1912 and 1913, of such revenues of ceded territory and the average for the same years of revenues of the German empire, with the exception that there shall be excluded that portion arising from German and Prussian projects of colonization.

See Comment opposite Article 39.

Article 93. Poland agrees to embody in a treaty with the principal Allied and Associated Powers such provisions as may be deemed necessary to the protection of inhabitants who differ from the majority in race, language or religion.

See Comment opposite Article 86.

SECTION IX.—EAST PRUSSIA.

Articles 94-98. Provision is made herein for a plebiscite by the inhabitants to indicate their choice as between remaining a part of Germany or becoming incorporated into Poland under the same procedure and conditions previously set out in Articles 87 and 88 and the Annex thereto.

It does not appear that any right of option is given to the minority.

SECTION X.—MEMEL.

Article 99. Germany renounces in favor of the Principal Allied and Associated Powers all rights and title over Memel and undertakes to accept in advance any disposition to be made of same.

This renunciation of sovereignty is made in favor of the Principal Allied and Associated Powers, by which the United States becomes possessed of an undivided one-fifth interest in the territory. The right to acquire territory is incident to and inferable from Art. 1, Sec. 8, U. S. Constitution, but the disposition of territory thus acquired by the United States is in the sole power of Congress. (Art. IV, Sec. 3, U. S. Const.). The power to dispose of such territory is a legislative one and can not be delegated.

Articles 100-102. Germany renounces in favor of the Principal Allied and Associated Powers territory within certain boundaries on the Baltic within which the

"Free City of Danzig" is to be created, "under the protection of the League of Nations." Ibid.

Article 103. A constitution for the Free City of Danzig will be drawn up by representatives of the Free City and a High Commission appointed by the League of Nations.

Article 104. The Principal Allied and Associated Powers undertake to negotiate a treaty between Poland and the Free City of Danzig which will insure reciprocal economic privileges, ensure Poland control of the Vistula and of the whole system of railways within the Free City, with the exception of street railways, ensure Poland the right to develop waterways, docks, etc., and which will provide that Poland shall conduct the foreign relations of the Free City as well as undertake the diplomatic protection of its citizens abroad.

Such a treaty as contemplated between Poland and the Free City of Danzig would involve the transfer of the sovereignty over the so-called Free City to Poland, in view of the proposal to give Poland control of foreign affairs of the Free City; for that control is the test of sovereignty.

As cited supra, it involves for the United States a constitutional question, being alienation of territory, and would require an act of Congress in addition to ratification of the present treaty.

It is interesting to study in connection with this project the erection of the Free City of Cracow, by the Congress of Vienna in 1815, under the protection of Russia, Prussia and Austria, and the annexation of that so-called Free City by Austria in 1848. (Nys. 1, pp. 383-385).

Article 105. German nationals habitually resident in the territory of the Free City of Danzig "will ipso facto lose their German nationality" on the coming into force of the treaty "in order to become nationals of the Free City of Danzig."

It will be observed that German nationals thus losing German nationality do not at that instant acquire any other as in the preceding instances cited; until they become nationals of the Free City they are without any nationality or what the Germans term *staatenlos* or *heimatlos*.

Article 106. Within two years German nationals over 18 years of age may opt for German nationality though those opting

"must" transfer their residence to Germany within the ensuing twelve months. See Comment opposite Article 91.

Section 107. All property situated within the Free City of Danzig belonging to the German empire or to any German state shall pass to the Principal Allied and Associated Powers for transfer to the Free City of Danzig or to the Polish State as they may consider equitable.

As the United States would possess an undivided one-fifth interest, it would require an act of Congress to alienate that interest. (Vide supra, opposite Articles 99 and 104).

Article 108. The proportion of public debt to be assumed by the Free City of Danzig is to be calculated on the ratio indicated for Poland in Article 92, without the exception therein indicated.

Ratio is set out in Article 254 of the treaty.

SECTION XII.—SCHLESWIG.

Article 109. Provision is made in these Articles for a plebiscite within certain described territory by which the inhabitants may indicate their desire for incorporation with Denmark, the right to vote being given to all persons, without distinction of sex, who have completed their twentieth year and who were born in the zone in which the plebiscite is taken or have been domiciled there since a date before January 1, 1900, or had been expelled by Germany.

Denmark was despoiled of Schleswig by Prussia and Austria in 1864. Two years later Prussia became the sole possessor in war with Austria, which left Prussia supreme in the German political system. Schleswig is Denmark's Alsace-Lorraine and the treaty properly attempts to undo the wrong suffered by the Scandinavian state.

It may be remarked, however, that Denmark was not officially consulted in the arrangements made by the Allied and Associated Powers.

Article 110. Germany renounces definitely in favor of the Principal Allied and Associated Powers all rights of sovereignty over territories situated to the north of a frontier line fixed by the Allied and Associated Powers, who "will hand over the said territories to Denmark."

See Comment opposite Articles 99, 104 and 107.

Article 112. "All the inhabitants of the territory which is returned to Denmark will acquire Danish nationality ipso facto and will lose their German nationality," with the exception that persons who had become habitually resident in this territory after October 1, 1918, can become Danish nationals only with permission of the Danish government.

See Comment opposite Article 36.

Article 113. Within two years any person over 18 years of age, born in the territory, not habitually resident in this region, may opt for Danish nationality, and any person over 18 years of age, habitually resident in the region, may opt for German nationality. Those opting must transfer their place of residence within the ensuing twelve months. They will be entitled to retain their immovable property and freely to carry their movable property with them.

See Comment opposite Article 37.

Article 114. The proportion of public debt to be assumed by Denmark with respect to territory restored will be calculated on the ratio indicated in the case of the Free City of Danzig. (See Article 108).

By the treaty of October 30, 1864, by which Denmark renounced all rights over the three duchies of Lauenburg, Holstein and Schleswig in favor of the Emperor of Austria and the King of Prussia, these duchies assumed their portion of the Danish debt.

SECTION XIII.—HELIGOLAND.

Article 115. All fortifications on the islands of Heligoland and Dune shall be destroyed and shall not be reconstructed.

This constitutes a restriction on German territorial supremacy, technically described as a negative servitude. So many, both negative and positive, and military and economic, have been imposed upon Germany by the present treaty that it is doubtful that Germany can be described as a fully sovereign state, at least during their continuance.

SECTION XIV.—RUSSIA AND RUSSIAN STATES.

Article 116. Germany agrees to respect as inalienable the independence of all territories which were part of the former Russian empire, and, by reference to Article 292, accepts definitely the abrogation of the Brest-Litovsk treaties and all other agreements with the Maximalist government.

The Allied and Associated governments reserve the rights of Russian to obtain restitution and reparation as against Germany.

Article 117. Germany undertakes to recognize any treaties and agreements subsequently to be entered into by the Allied and Associated Powers with Russia or Russian states.

Arrangements entered into by two or more states with respect to another can not, of course, bind that other state. These are political and economic, rather than legal provisions.

PART IV.—GERMAN RIGHTS AND INTERESTS OUTSIDE OF GERMANY.

Article 118. In territory outside of her European frontiers as fixed by the treaty Germany renounces all rights, titles and privileges whatever in or over territory formerly belonging to her or to her allies, and undertakes to recognize any measures taken with regard to same.

In this general renunciation it is not clear in whose favor it is made.

SECTION I—GERMAN COLONIES.

Article 119. Germany renounces in favor of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions.

See Comment opposite Articles 99, 104 and 107.

Article 120. All movable and immovable property belonging to Germany or a German state shall pass to the government exercising authority over such territories, in accordance with Article 257, which declares that no portion of the public debt shall be assumed, that no credit shall be given to Germany on the reparation account, and that such property taken over shall include the private property of the former German emperor as well as that of other royal personages.

See Comment opposite Article 39.

Article 121. The provisions of Sections I and IV of Part shall apply to such territories whatever the government adopted.

Section I of Part X provides for the enjoyment of economic privileges in Germany with respect to the produce and manufactures of such territories.

Section IV provides for the confiscation of all private property of German nationals and its application toward the settlement

of claims and indemnities; and for restitution or compensation with respect to all private property of nationals of the Allied and Associated governments in German hands.

See Comment opposite Article 74.

Article 122. The government exercising authority over such territories may make such provisions as it thinks fit with reference to repatriation of German nationals and to the conditions upon which German subjects of European origin shall, or shall not, be allowed to reside, hold property, trade or exercise a profession.

In no treaty of peace imposed in modern times is to be found a provision comparable to this in severity toward individuals of the enemy country. Not only are these private persons to be despoiled of their property but they may be denied the right to hold property, to trade or practice a profession, or they may be expelled en masse. All responsibility to assist in their repatriation is denied.

Article 123. The provisions of Article 260 apply as to all agreements concluded with German nationals in such territories. Article 206 gives to the Reparation Commission power to cause Germany to dispossess her nationals of any rights or interests they may have in any public utility or concession operating in Russia, China, Turkey, Austria, Hungary and Bulgaria, or in any ceded territories, and turn the same over to the Reparation Commission. Germany shall be responsible for indemnifying her nationals so dispossessed.

See Comment opposite Article 74.

Article 124. Germany undertakes to pay for damage suffered by French nationals in the Cameroons at the hands of German civilians or military forces, in accordance with an estimate to be presented by France.

See Comment opposite Article 63, subsection (1).

The irresponsible acts of civilians of a belligerent government can not form the legal basis of a claim against their government. With respect to such cases the exaction is disguised indemnity.

Article 125. Germany renounces all rights under the conventions of November 14, 1911, and September 28, 1912, relating to Equatorial Africa and undertakes to pay to the French government, on its estimate, all deposits, credits, advances, etc., effect-

ed in virtue of these agreements in favor of Germany.

By the conventions of November 14, 1911, France ceded to Germany 107,000 square miles of Equatorial Africa, with a population of 1,000,000 as the price for German recognition of the French protectorate in Morocco. This area will thus come back to France, giving her a total of about 775,000 square miles and 10,000,000 of negroes in this colony.

Article 126. Germany undertakes to accept and observe the agreements made or to be made by the Allied and Associated Powers or some of them with any other power with regard to the trade in arms and spirits, and to the matters dealt with in the General Act of Berlin of February 26, 1885, the General Act of Brussels of July 2, 1890, and the conventions completing or modifying the same.

It is incorrect, says Oppenheim (*Int. Law*, Vol. 1, p. 368, n.), to maintain that the law of nations has abolished slavery, but there is no doubt that the conventional law of nations has tried to abolish the slave trade.

Three important general treaties have been concluded for that purpose during the nineteenth century, since the Vienna Congress—namely, (1) the treaty of London, 1841, between Great Britain, Austria, France, Prussia and Russia; (2) the General Act of the Congo Conference of Berlin, 1885, and (3) the General Act of the Anti-Slavery Conference of Brussels, 1890.

Of the principal civilized states ratifying this last international effort to abolish human slavery in Africa, France alone ratified with so many reservations as practically to have freed herself from its obligations.

(See reservations in act of ratification of General Act of Congo Conference by the United States Senate disclaiming approval of African Colonies, etc.; 2 Malloy, p. 1991.)

Article 126 does not indicate what the Allied and Associated Powers or some of them contemplate, whether a tightening or a relaxation of the obligations.

Article 127. The native inhabitants of the former German oversea possessions shall be entitled to the diplomatic protection of the governments exercising authority over those territories.

This is confirmation of the passage of such territories under the sovereignty of the state to which they are allotted, since the exercise of diplomatic protection is only possible as an incident to the possession of external sovereignty.

SECTION II.—CHINA.

Article 128. Germany renounces in favor of China all benefits and privileges resulting from the provisions of the final protocol signed at Peking on September 7, 1901, and from all annexes, notes and documents supplementary thereto. She likewise renounces in favor of China any claim to indemnities accruing thereunder subsequent to March 14, 1917.

It will be noted that with respect to China no declaration is made to the effect that all treaties and agreements are abrogated, as is done in other instances (*infra*, Articles 135, 138, 148), but there is here only a renunciation by Germany.

Among the benefits and privileges of the protocol of September 7, 1901, was the commemorative arch erected in Peking to Baron von Ketteler at the demand of Germany.

Germany also received economic privileges and an interest in the total Boxer indemnity of \$328,000,000, payable in 39 years.

Article 129. China need not grant Germany the advantages and privileges enjoyed by the other High Contracting Parties under the treaties of August 29, 1902, and September 27, 1905.

Article 130. Germany cedes to China all the buildings, wharves, pontoons, barracks, forts, arms, vessels and other public property which are situated or may be in the German concessions at Tientsin and Hankow or elsewhere in Chinese territory, except as otherwise provided in Section VIII, relating to Shantung. Consular and diplomatic residences or offices and property in the Legation Quarter are also excepted.

These concessions comprise comparatively small areas which have been wrung from China by all of the European powers in addition to their so-called "leased territory" in China. The titles in all instances are founded on force or threats of force, though the German concessions only are canceled.

Plainly, China can not be bound by any provisions of the treaty unless and until she ratifies it.

Article 131. Germany undertakes to restore to China within twelve months all astronomical instruments which her troops in 1900-1901 carried away from China, and to defray all expenses incident thereto.

Nothing is said of restitution by any of the other High Contracting parties, whose troops, with the Germans, to quote the eminent English authority Spaight, indulged in "looting and robbery, naked and unashamed";

nor do Great Britain and France offer to return from their museums any of the works of art taken from the Summer Palace at Peking in 1860, yet the Grand Allies compelled France to recognize the inviolability of property of rare artistic or scientific value in 1815 and to restore the same, even though it had passed to France by express treaty stipulation. (Final Act, Congress of Vienna, June 9, 1815.)

Article 132. Germany agrees to the abrogation of the leases under which the Hankow and Tientsin concessions are held.

"China, restored to the full exercise of her sovereign rights in the above areas, declares her intention of opening them to international residence and trade."

There is an affectation of virtue in this act of restoring China "to the full exercise of her sovereign rights," but how little ground there is for it can be seen from the words immediately following, which plainly put those sovereign rights in a strait-jacket; whatever is given is given to be immediately taken away.

Article 133. Germany waives all claims arising out of the capture and condemnation of German ships in China and the liquidation, sequestration or control of German property, rights and interests in China since August 14, 1917. Such property may be retained and used to satisfy claims of Chinese nationals, any balance to be turned over to the Reparation Commission.

The law forbids the capture and condemnation of enemy ships found in the waters of a belligerent on the outbreak of war. They may be seized and used, but only under an obligation to make restitution and compensation. (Report of American Delegation to the Hague Conference of 1907. The Hague Peace Conference, 1 Scott, pp. 556-568.)

Article 134. Germany renounces in favor of Great Britain German state property in the British concession at Shameen at Canton, and in favor of France and China conjointly the property in German schools in the French concessions at Shanghai.

It would appear that China is the logical beneficiary of this Germany state property in both instances, being the sovereign of the territory in which it is situated.

SECTION III.—SIAM.

Article 135. Germany recognizes that all treaties, conventions and agreements between her and Siam, and all rights, title

and privileges derived therefrom, including all rights of extra-territorial jurisdiction, terminated as from July 22, 1917.

The effect of this Article is to absolve Siam from responsibility for any breaches of treaty obligations from the date mentioned.

The outbreak of war does not abrogate all treaties; only those are annulled or suspended which are incompatible with the state of war, such as treaties of commerce and navigation. (5 Moore, pp. 376-377.)

Those treaties contemplating a permanent arrangement of things, and those entered into with a view to war, remain in force. (Scott, cases, 4128; Lawrence, 4th ed., Sec. 146.)

As to the abrogation of the right of extra-territorial jurisdiction in Siam, enjoyed by Germany, along with all other civilized states, it may be asked whether or not Germany alone is to be denied this protection for her nationals in Siam? Extra-territorial jurisdiction is instituted by civilized states through treaty in backward states in order that their nationals may not be subjected to legal systems that are incompatible with enlightened principles of justice. In many backward states their so-called legal systems authorize practices that are utterly barbarous. As their systems improve and approximate accepted standards the right of extra-territoriality is yielded, as in the recent case of the powers with respect to Japan.

There is no principle in morals that can justify the denial of extra-territorial jurisdiction to Germany in such cases.

Article 136. All German public property, with the exception of diplomatic and consular offices, pass ipso facto to Siam without compensation, and all private property of German nationals in Siam may be retained and applied to satisfy Siamese claimants.

See Comment opposite Article 74.

Article 137. Germany waives all claims on account of seizure or condemnation of German ships in Siamese waters, the liquidation of Germany property or the internment of German civilians.

It appears that the Allied and Associated Powers alone are to have the benefit of existing law instituted for the universal protection of property and persons.

SECTION IV.—LIBERIA.

Article 138. Germany renounces all rights and privileges arising from the arrangements of 1911 and 1912 regarding the nomination of a German receiver of customs.

In 1912 a loan of \$1,700,000 was raised, secured by customs rubber tax and tax on native laborers shipped from Liberia, which was administered by an American General Receiver and British, French and German Receivers. Military police were at the same time placed under control of American military officers.

Article 139. Germany recognizes that all treaties between her and Liberia terminated from August 4, 1917.

The treaty pretends to adopt as a principle that the outbreak of war automatically abrogates all treaties and agreements of every character (vide, Comment opposite Article 135), yet in the case of China only a few specified conventions and agreements are declared "renounced" by Germany. (See Comment, *infra*, opposite Article 156.)

Article 140. The property, rights and interests of Germans in Liberia may be retained and used to satisfy Liberian claimants.

No specific provision appears to be made for the taking over of German public property in Liberia.

See Comment opposite Article 74.

SECTION V.—MOROCCO.

Article 141. Germany renounces all rights and privileges under the General Act of Algieras of April 7, 1906, and by the Franco-German agreements of February 9, 1909, and November 4, 1911.

France is thus left a free hand in Morocco, and is restored to an even more favorable position than before Germany forced her participation through the Agidir and other incidents. Although the integrity of Morocco has been and is a subject of guarantee, its formal reduction to a French colony appears not far distant. This is forecasted in the Article immediately following.

Article 142. Germany recognizes the French protectorate in Morocco and renounces the regime of the capitulations therein; that is to say, extra-territorial jurisdiction.

See Comment opposite Article 135.

Article 143. The Sherifian government shall have complete liberty in regulating the status of German nationals.

See Comment opposite Article 122.

Article 144. All private and public German property in Morocco, movable and immovable may be taken over, the public property passing to the Sherifian empire

(France), and the private property to satisfy claimants.

See Comment opposite Article 74.

Article 145. Germany shall ensure the transfer to a person named by France of all German shares in the State Bank of Morocco, Germany being responsible for indemnifying private owners thus dispossessed.

Ibid.

Article 146. Moroccan goods entering Germany shall enjoy the privileges accorded French goods.

Ibid.

SECTION VI.—EGYPT.

Article 147. Germany recognizes the British protectorate over Egypt and renounces the regime of the capitulations.

Until December 18, 1914, the date of the British proclamation of a Protectorate, Turkey was the nominal sovereign of Egypt, though constantly, since the British occupation in 1882, Great Britain had increased her control over the administration. Egypt, though a vassal state, was nevertheless considered a part-sovereign member of the family of nations, capable of issuing a proclamation of neutrality, sending and receiving consuls as diplomatic agents and holding joint sovereignty with Great Britain over Sudan. (1 Oppenheim, p. 142.) This position of Egypt is clearly impeached by British action.

Article 148. All treaties, agreements and contracts concluded by Germany with Egypt are abrogated.

See Comment opposite Articles 135 and 139.

Article 149. Until Egyptian law is substituted by a reorganization of the judicial system British consular tribunals will assume jurisdiction over German nationals and property.

It will be observed not even this alternative was provided with respect to the position of German nationals in Siam.

Article 150. The Egyptian government shall have complete liberty in regulating the status of German nationals in Egypt. See Comment opposite Article 122.

Article 151. Germany consents to the abrogation of the decree issued by the Khedive on November 28, 1904, relating to the public debt.

Article 152. Germany consents to the transfer to Great Britain of the powers

conferred on the Sultan of Turkey by the convention of October 29, 1888, concerning the Suez Canal.

Article 153. All Germany public property in Egypt passes to the Egyptian government without payment.

All private Germany property may be retained and applied toward satisfaction of claims.

Article 154. Egyptian goods entering Germany shall enjoy the same privileges accorded British goods.

See Comment opposite Article 74.

SECTION VII.—TURKEY AND BULGARIA.

Article 155. Germany undertakes to recognize any arrangements made with Turkey and Bulgaria with reference to any rights, interests and privileges whatever of Germany or German nationals in those countries.

Apparently such property is to be confiscated as in all other instances.

SECTION VIII.—SHANTUNG.

Article 156. Germany renounces in favor of Japan all her rights, title and privileges—particularly those concerning the territory of Kiachow, railways, mines and submarine cables—which she acquired in virtue of the treaty concluded by her with China on March 6, 1898, and of all other arrangements relative to the province of Shantung.

All German rights in the Tsingtao-Tsinanfu railway, including its branch lines, together with its subsidiary property of all kinds, stations, shops, fixed and rolling stock, mines, plant and material for the exploitation of the mines, are and remain acquired by Japan, together with all rights and privileges attaching thereto.

The German state submarine cables from Tsingtao to Shanghai and from Tsingtao to Chefoo, with all the rights, privileges and properties attached thereto, are similarly acquired by Japan, free and clear of all charges and encumbrances.

It will be observed first that with respect to China, one of the Allied and Associated Powers, the doctrine that the supervision of a state of war automatically abrogates all treaties and agreements is not applied.

On the contrary, the German lease on Kiaochow, together with privileges and concessions in Shantung, are held to be so far continuing as to be capable of transfer by Ger-

many to Japan; and this in spite of the fact that by the terms of the treaty of March 8, 1898, the privileges are non-transferable.

Yet this treaty, wrung from China by Germany under a threat of force, was such an agreement as might properly be held to have been annulled by the entrance of China into the war. Treaties granting privileges, says Snow (*Int. Law*, p. 99), are abrogated by war.

It is true that in May, 1915, Japan wrung from China, under a threat of war, an agreement to abide by such disposition of Kiaochow and the privileges in Shantung, as Japan and Germany might ultimately agree upon; yet the perfidy of the whole affair was such as to justify the reprobation of the civilized world. So lacking was the proceeding in morals that Japan preferred to abandon all reference to it as a basis of right in the Treaty of Peace and fell back on the doubtful legal ground appearing in the article.

It is plain, however, that from August 14, 1917, the date China declared war, Germany's rights in Kiaochow lapsed. A renunciation by Germany to Japan of something not legally possessed is therefore a mere nullity. (See *The Shantung Question*, by Alpheus H. Snow, *The National*, Vol. CIX, No. 2829, September 20, 1919.)

All property belonging to the German empire and the German states in China became liable to seizure as fair prize by China on August 14, 1917.

As to the private property of German nationals, while it became liable to sequestration, it did not in law become liable to confiscation, although private Germany property in concessions which China might consider prejudicial to public policy might be canceled, with or without compensation as the case may be.

No distinction appears to be made, however, in the attempt to grant all property to Japan, although the phraseology is characteristically Japanese.

Article 157. Movable and immovable property of the German state, as well as all rights which Germany might claim, are acquired by Japan free and clear of all charges and incumbrances.

This enemy state property being within the restored sovereign jurisdiction of China, it is for China alone to say whether she will exercise her war right to confiscate it. No third state can possibly acquire legal title to it, save through China's previous seizure or approval.

Article 158. Germany will hand over to Japan within three months all records, reg-

isters, archives, deeds and documents of every kind, and will give particulars of all treaties, arrangements or agreements relating to rights, title and privileges in Shantung.

If an international court of arbitral justice could take cognizance of this provision it could find no legal ground upon which to compel performance by Germany for the reasons set out (*supra*, Comment opposite Article 156). It is a pure arrangement of force in contempt of law.

If a court of arbitral justice is to be set up by the League of Nations it is pertinent to ask whether the Allied and Associated Powers would consent to a review of this transaction and to abide by an award in conformity with the law?

Part V. MILITARY, NAVAL AND AIR CLAUSES.

SECTION I.—MILITARY CLAUSES.

Chapter I.

Articles 159-163. These Clauses seek to reduce Germany's military forces to fixed limits.

Chapter II.

Articles 164-172. These Clauses seek to establish equipment limits and exclude importations. They prohibit the manufacture of poisonous gases to Germany while demanding that Germany reveal to the Principal Allied and Associated Powers all formulæ with respect to her manufacture of such gases and explosives.

Chapter III.—RECRUITING AND MILITARY TRAINING.

Articles 173-179. These Clauses prohibit universal military service in Germany and place restrictions on training calculated to ensure the maxima in military forces previously referred to.

It may be remarked that although Germany is forbidden to have universal military service, most of the Allied and Associated Powers, including the United States, have adopted it in their military programs.

Chapter IV.—FORTIFICATIONS.

Article 180. This Clause provides for destruction and disarmament of certain German fortresses.

SECTION II.—NAVAL CLAUSES.

Articles 181-197. These Clauses fix the number and type of vessels Germany may have, forbid the building of others, for-

bid the construction by Germany of submarines, provide for the sweeping up of mines, fix the naval personnel, limiting it to voluntary engagements for long periods, and regulate wireless.

It will be observed that no obligation has been assumed by the Allied and Associated Powers to forego the building of submarines. On the contrary, the submarine occupies a conspicuous place on all the new naval programs.

SECTION III.—AIR CLAUSES.

Articles 198-202. These Clauses forbid Germany to possess military or naval air forces, provide for the demobilization of existing forces, admit freedom or passage to Allied and Associated aircraft, and compel the surrender of all aircraft and parts thereof by Germany.

SECTION IV.—INTER-ALLIED COMMISSIONS OF CONTROL.

Articles 203-210. Inter-Allied Commissions of Control shall be appointed by the Principal Allied and Associated Powers to enforce all the provisions of the preceding three sections. They may establish themselves at the seat of the German government and must receive every facility in their missions. Their orders shall be carried out at Germany's expense and the upkeep and cost of such Commissions shall be borne by Germany.

SECTION V.—GENERAL ARTICLES.

Article 211. Germany must within three months conform her laws to the preceding sections.

Part VI. PRISONERS OF WAR AND GRAVES.

SECTION I.—PRISONERS OF WAR.

Articles 214-216. These Articles provide for repatriation of prisoners of war as soon as possible after the peace, including German nationals who were habitually resident in Allied or Associated countries.

By Articles 3 and 18 of the Armistice of November 11, 1918, immediate repatriation was stipulated for all interned civilians, including persons under trial or convicted, and hostages, as well as inhabitants of occupied territories, who were nationals of Allied or Associated governments. There was no reciprocity.

Article 217. Germany shall bear the whole cost of repatriation.

This expense is usually included in the maintenance of prisoners' accounts and settled by the payment of any balance due after comparison of accounts. (See Article XIII, Treaty of Portsmouth, 1905; see Article 224, *infra*.)

Articles 218-219. Prisoners of war and interned civilians awaiting disposal or undergoing sentence for offenses against discipline shall be repatriated despite that fact, but those awaiting disposal or under sentence for common law crimes may be retained.

This, being reciprocally applicable, is in accordance with practice and the law.

Article 220. The Allied and Associated governments reserve the right to make repatriation of German nationals conditional upon the immediate release of any Allied or Associated nationals in Germany.

Article 221. Germany undertakes to give every facility to prisoners' Commissions to facilitate inquiries concerning missing prisoners and to punish any German nationals who may have concealed the presence of any Allied or Associated prisoners or who have neglected to reveal the presence of such prisoners.

Article 223. Germany undertakes to restore without delay all articles, money, securities and documents belonging to nationals of Allied and Associated governments which have been retained by Germany.

It will be observed that this obligation is not set out as reciprocal, yet it is a settled principle of the laws of war that the private property of prisoners of war remains their property and must be restored. (Spaight, pp. 278-289; Ariga, *La Guerre russo-japonaise*, p. 111, n.)

Is it conceivable that the Allied and Associated governments wish to reserve the right to set aside as to themselves the binding force of such an enlightened rule of war law? Are no exceptions whatever to be made in the repudiation of the principle of inviolability of private property?

Article 224. Repayment of sums due for maintenance of prisoners is reciprocally waived.

SECTION II.—GRAVES.

Article 225. The Allied and Associated governments and Germany engage to respect and maintain graves of soldiers and sailors buried in their respective territories. They agree to recognize any commission appointed by an Allied or Associated government

for the purpose of identifying, registering, caring for or erecting suitable monuments over said graves.

Furthermore, they agree to afford, as far as requirements of public health allow, every facility for giving effect to requests that the bodies of their soldiers and sailors may be transferred to their own country.

It will be observed that Allied and Associated governments alone are to be permitted to appoint representatives to identify, register and care for the graves of their dead. The German government is denied these rights with respect to her dead. The world was entitled to expect some magnanimity and generosity at least in dealing with a subject of such peculiar sanctity.

Article 226. Graves of prisoners of war and civilians shall be maintained as provided in Article 225, and each government shall furnish the other with all information with respect to same.

Part VII. PENALTIES.

Article 227. The Allied and Associated Powers publicly arraign William II. of Hohenzollern, formerly German emperor, for a supreme offense against international morality and the sanctity of treaties.

A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defense. It will be composed of five judges, one appointed by each of the following powers, namely: the United States of America, Great Britain, France, Italy and Japan.

In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed.

However black the iniquity of the former German emperor is under the moral law, his offenses are not crimes under any known system of jurisprudence with this exception: that if it can be proved—and it probably can be—that the former emperor is the author of any orders directing the violation of the laws of civilized warfare, he is triable before the military tribunal of any country suffering through the carrying out of such orders. In that respect his liability appears to be unquestionable. He was a military personage in addition to a ruler.

But he is not arraigned on the charge of being the responsible author of violations of the laws of war; he is arraigned "for a supreme offense against international morality

and the sanctity of treaties." There is no such offense in any penal code known to man, and it is the most elemental principle of criminal jurisprudence that no one can be punished for acts which, when committed, did not constitute a crime. We see this principle expressly embodied in our constitutional system in the prohibition against the enactment by Congress of an *ex post facto* law.

The Society of Nations may by agreement establish for the future a system of international criminal law, including as crimes, offenses against international morality and the faith of treaties; they may institute a court and confer jurisdiction as to the future; but to set up a court and assume to create crimes out of past acts condemned by no system of laws is to do violence to the basic principles of jurisprudence.

That the Allied and Associated governments can, as a precautionary measure of self-defense, place the former German emperor in a position where he can no longer menace their safety goes without saying.

The Allied and Associated Powers will address a request to the government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial.

Such offenses as the former German emperor is guilty of are essentially political in their character, the principal offense being the initiation of a war of aggression against Europe.

It is an elemental principle of the law of nations, embodied in municipal systems and in treaties universally, that no state shall be bound to deliver up political offenders who have fled their territories. The State in which asylum has been found may deliver up such fugitive, but it is wholly for that state to decide.

There is this to be said with respect to the rights of the Allied and Associated governments in relation to the ex-Emperor: that if his situation in Holland constitutes a menace to the Allied and Associated governments of sufficient gravity they may invoke the rights of self-preservation in eliminating that menace. And under cases of extreme necessity the vindication of this right may allowably involve what would ordinarily amount to an infraction of the law of nations. (Hall, 268; 1 Westlake, 302.)

In other words, assuming the necessity to exist, the Allied and Associated governments might be justified even in the use of force to recover the person and render the ex-Emperor harmless. (Hershey, pp. 144-146; yet see *Queen vs. Dudley et al.*, 14 Q. B. D., 273.)

Article 228. Germany recognizes the right of the Allied and Associated governments to bring before military tribunals persons accused of violations of the laws of war. Germany will hand over all persons who are specified.

The procedure here indicated appears fully to conform to the legal requirements. There is no question of the jurisdiction of military tribunals over crimes against the laws of war. In all sentences of death, however, it would seem necessary that some reviewing authority, analogous to the Commander-in-Chief, exist. (Spaight, pp. 461-462.)

This is one of the most wholesome of all the provisions in the Treaty of Peace. It is essentially calculated to vindicate that great branch of the law of nations comprised within the laws of war. It will give an added sanction of the highest value to that law. No belligerent in the future will care to embark upon a course of deliberate disregard of the laws of civilized warfare with such a deterrent example before its eyes.

Article 229. Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the Powers concerned. The accused shall be entitled to have his own counsel.

While mixed military tribunals are unusual, there appears no valid objection to their use in the cases indicated.

The rights of the accused are adequately protected by the provision permitting the choosing of counsel.

Article 230. The German government will furnish all documents considered necessary to the discovery of offenders and the just appreciation of responsibility.

Part VIII. REPARATION.

SECTION I.—GENERAL PROVISIONS.

Articles 231-244, together with Annexes 1-4. These Articles, affirming Germany's responsibility for causing all the loss and damage suffered by Allied and Associated governments and their nationals, and instituting means, including a Reparation Commission, through which restitution and compensation are to be made, have been discussed in part. (Infra, opposite Article 63, together with Annex I, par. 1-10.) It is to be noted (Annex II, 11) that the

Reparation Commission "shall not be bound by any particular code or rules of law" or rules of evidence. It must necessarily be freed from any such obligation if it is to carry out certain terms of the treaty.

Article 232, Germany pledges complete restoration of Belgium, and, in addition, to make reimbursement of all sums borrowed by Belgium of the Allied and Associated governments up to November 11, 1918, as a consequence of the violation of the Treaty of Neutralization of 1839.

It may fairly be contended that the exaction of these conditions rests so far in a legal justification as to take them out of the category of indemnity. (See Comment opposite Article 63.) Germany, being solemnly bound to respect the neutrality of Belgium, is properly denied the benefits that might accrue to a belligerent not so bound and clothed with the rights of war in their full force. Hence, it may be argued, that all destruction wrought, including that of the Allied and Associated governments in repelling Germany, all requisitions, contributions and fines imposed, and all other acts prejudicial to Belgium, must be repaired by Germany.

No warrant exists, however, for the placing of the other Allied and Associated governments in the category with Belgium. With respect to them Germany was legally at war, and as a belligerent she possessed *ipso facto* the right to enter upon and carry out destruction having a military object (see *supra*, opposite Article 63, par. 9); she possessed the war rights to levy requisitions, contributions and fines (see *supra*, opposite Article 63, par. 10).

Only where Germany exceeded the limits of these rights—and those instances were numberless—does a legal justification for the exaction of reparation exist. (Spaight, 462-463; II Oppenheim, pp. 319-321.)

To determine the instances and degree of responsibility of Germany for violations of the laws of war would require inquiry into the facts—unquestionably a long and tedious process—and an award in each case. The alternative of agreement upon lump sums covering estimated unlawful damage and the like would not have been open to serious objection. Either of these courses would have tended to establish more firmly and promote respect for law. In ignoring these settled principles, defining war rights and duties as to persons and property, the Allied and Associated governments wipe out the whole progressive development of the law and throw the world back upon the doctrine

of the unlimited right of the victor obtaining through the Middle Ages.

As the laws of war permit of certain destruction of property, so they allow acts of violence against the persons of civilians under certain circumstances, yet no notice is taken of these distinctions in the provisions looking to the compensation of civilians of the Allied and Associated governments in all cases of injury and damage (see *supra*, opposite Article 63, par. 2). Civilians (non-combatants) have certain rights and duties arising in times of belligerency, and their immunity from intentional injury is predicated upon the performance of those duties. Among those duties is abstention from all war-like acts. A civilian engaging in war-like conduct is a war criminal. Many of such persons deserve the affectionate remembrance of their own countries, but their punishment is none the less the lawful right of the enemy. (Spaight, 335 et seq.)

If it is proposed to enforce reparation in behalf of civilians of this class, described in law as unlawful belligerents, as well as in behalf of those suffering from acts in excess of the awful exercise of power, the whole benign system of principles relating to combatant and non-combatants and defining their rights and duties is confounded. It does not constitute progress; it does constitute reaction. (See Spaight, Chapter III, pp. 34-72.)

Annex III.

(1) Germany recognizes the right of the Allied and Associated Powers to replacement, ton for ton, and class for class, of all merchant ships and fishing boats lost or damaged owing to the war.

Germany will hand over all merchant ships, public and private, which are of 1600 tons and upward; one-half of all ships between 1000 and 1600 tons; one-quarter of all steam trawlers and one-quarter of all fishing boats.

The right to capture and destroy an enemy's merchant ships, under certain limitations, including a general obligation to provide for the safety of passengers and crew, is a settled one under the laws of maritime warfare. (II Oppenheim, 242-245; II Westlake, 309-312.)

These limitations include a summons or warning as a condition precedent to any resort to force, a qualification constantly and deliberately violated by Germany in her submarine warfare.

In such instances, it may be said generally, the destruction was unlawful and involves liability to make compensation. But no distinction is made, so far as replacement is con-

cerned, with respect to those vessels lawfully warned and sunk during resistance or flight and those prizes destroyed at sea under lawful conditions. So far as the latter category is concerned, replacement can be viewed only as indemnity; not as reparation.

As to replacement of fishing boats of the Allied and Associated governments, the law recognizes coast-fishing vessels alone as exempted from capture and destruction, and then only on condition of their innocent employment. It is well known that the fishing fleets of all the maritime states in the Great War were very largely used in mine-planting and mine-sweeping, under which circumstances no immunity could attach to them under the law. (Hall, *Int. Law*, 6th ed., pp. 444-445; *Pacquette Habana*, 195, U. S. 677.)

To enforce replacement in such cases must necessarily constitute indemnity, rather than reparation for wrong done.

As to the private property in ships to be handed over, see Comment opposite Article 74.

(8) Germany waives all claims against Allied and Associated governments in respect of the detention, employment, loss or damage of any German ships.

German vessels found in the territorial waters of most of the states at war with Germany were taken over by such states under a right to use them, though with an implied obligation to restore them at the peace and make compensation. They may not be confiscated. (See Report of American Delegation to Hague Conference, 1907, cited *supra*, opposite Article 133.) So far, therefore, as the taking over of such vessels otherwise innocent is concerned, it must be considered as indemnity, and not as reparation.

One of the results is a repudiation of the age long policy of the United States looking to the approximation of the laws of maritime warfare to the laws of land warfare in the matter of immunity of private property. (7 *Moore's Digest*, pp. 460, 461, 462, 467; *McKinley's annual message*, December 5, 1898; *Roosevelt's annual message*, December 7, 1903.)

(9) Germany waives all claims as to vessels or cargoes sunk by the Allied and Associated Powers.

A victorious belligerent may be justified in practice in declining to have the legality of its actions inquired into by the vanquished, but such a course can not contribute to clarification and a firmer establishment of the law.

Annex IV.

(1), (2), (3), (4), (5). These paragraphs provide for the immediate delivery by Germany to the Allied and Associated Powers, through the Reparation Commission, of animals, machinery, tools and like articles which have been seized, consumed or destroyed by Germany in Allied and Associated countries, lists of such articles desired to be filed by Allied and Associated governments. Machinery, equipment, tools and the like are to be demanded not in excess of thirty per cent of the quantity of such articles in any one establishment or undertaking. Services may be required toward repairing damage in lieu of physical restoration.

As to animals for food or transport, they may rightfully be taken under the war right of requisition, a receipt being given. This receipt does not imply an obligation on the part of the giver to redeem it. (*Holland*, No. III; *Bordwell*, 107, 318.) Yet it is not unusual in practice that the giver has been compelled to redeem it if he is vanquished. That is the extent to which the principle of inviolability of private property is satisfied. (See *supra*, opposite Article 63, pars. 8 and 10.)

As to machinery, equipment, tools and the like, these may also be seized under requisition. They may be destroyed as a part of some military design to overcome the hostile army, under the authority of the laws of war, involving no liability to make compensation. Liability to make compensation appears to be recognized as to certain classes of private property taken over by an enemy force for use. (*Juragua Iron Co. vs. U. S.*, Sup. Ct., Feb. 23, 1909.)

All of these distinctions are ignored in the Articles opposite.

SECTION II.—SPECIAL PROVISIONS.

Articles 245-246. These Clauses provide for restitution by Germany of trophies, works of art, etc., carried away from France in 1870-1871; the restitution of the original Koran of the Caliph Othman, taken from Medina by Turkish authorities, and other articles and restitution to the University of Louvain of manuscripts, incanabula, books and other objects in number and value corresponding to those destroyed.

This recalls the enforced restitution of works of art seized by Napoleon I in Italy upon the entrance into France of the Grand Allies in 1815. It is unquestionably settled law that property of this character is inviol-

able. Yet the museums of Europe still hold quantities of precious works of the class of specially protected property representing the spoils of war.

Under the provisions of Part VIII a Reparation Commission is instituted, to be composed of one delegate each of the United States, Great Britain, France and Italy, with a delegate from Japan, Belgium or the Serb-Croat-Slovene state sitting under specified conditions as the fifth member.

To this Commission is confided the power to enforce the various stipulations for reparation and indemnity. The Commission may fix as a first installment (whether in gold, commodities, ships, securities or otherwise) the equivalent of 20,000,000,000 gold marks, nearly \$5,000,000,000. The findings of the Commission as to the total sums due on account of damage shall be concluded and notified to Germany on or before May 1, 1921. The Commission shall thereafter consider the resources and capacity of Germany to pay.

Germany further agrees to direct her economic resources to reparation relating to merchant shipping, to physical restoration, to coal and derivatives of coal, and to dyestuffs and other chemical products, to be credited to the reparation account.

In addition to the total sum fixed, Germany shall make restitution in cash of cash taken away, seized or sequestered and shall make restitution of animals, objects of every nature and securities taken away, seized or sequestered.

Germany agrees irrevocably to the possession and exercise by the Commission of the power and authority set out in the treaty and Germany undertakes to pass, issue and maintain in force any legislation, orders and decrees that may be necessary to give complete effect to the treaty provisions.

The Commission may appoint all necessary officers, agents and employes required and may delegate authority to such officers. All its proceedings shall be secret unless it should decide otherwise for special reasons. Germany may present arguments as to her ability to pay. The Commission shall not be bound by any particular system or rules of law, but shall be guided by justice, equity and good faith.

The Commission may determine that Germany shall cover by way of guarantee by an equivalent issue of bonds any amount of proved claims not paid in gold, ships or otherwise. It shall examine the

German system of taxation with a view to seeing that it is fully as heavy proportionately as that of any power represented on the Commission.

In order to facilitate the restoration of economic life in Allied and Associated countries, Germany undertakes to issue forthwith 60,000,000,000 marks gold bearer bonds and to deliver forthwith a covering undertaking in writing to issue a further installment of 40,000,000,000 marks gold bearer bonds of various dates and rates of interest largely in the control of the Commission.

In case of any voluntary default by Germany the Allied and Associated governments may take any action they deem necessary, Germany agreeing not to regard any such measures as acts of war. When all the amounts due from Germany and her allies or the decisions of the Commission have been discharged the Commission shall be dissolved.

In view of the wide latitude of control of German internal affairs placed in the hands of the Commission, it is difficult to escape the conclusion that for an indefinite period at least Germany will cease to be a fully sovereign nation. Particularly is this indicated in the undertaking of Germany to pass, issue and maintain any legislation, orders and decrees which may be notified to her as necessary to give effect to the treaty.

PART IX.—FINANCIAL CLAUSES.

Article 248. It is declared the cost of reparation to be a first charge "upon" all the assets and revenues of the German Empire and its constituent states."

Article 249. Germany shall pay the total cost of occupation by Allied and Associated armies, including the keep of men and beasts, lodging, pay and allowances, and the cost of requisitions resorted to by the armies of occupation.

See Comment on Requisitions opposite Articles 428-432.

Article 254. Where any payment is to be made on account of the assumption of a portion of the German debt chargeable to ceded territory, it shall be made to the Reparation Commission and not to Germany.

Article 256. Powers to which German territory is ceded shall acquire all property and possessions situated therein belonging to the German empire, to German states, and to the former emperor and other royal personages. The acquiring state shall pay

the equivalent of the value fixed to the Reparation Commission for the credit of Germany.

See Comment opposite Article 39.

Alsace-Lorraine and territories ceded to Belgium are made exceptions as to the requirement of payment.

See Comment opposite Article 55.

Article 257. Where German territory is confided to a mandatory no portion of the public debt will be assumed nor shall any payment be made or credit given on account of public property taken over by the mandatory.

Article 258. Germany renounces all rights accorded to her or her nationals by treaties, conventions or agreements of whatsoever kind, to representation upon or participation in the control or administration of Commissions, State Banks, agencies, or other financial or economic organizations of an international character in any Allied or Associated country or in Austria, Hungary, Bulgaria or Turkey.

Thus are extinguished all of the once ambitious plans of the German empire in the southeast of Europe and in Asia Minor, including the projects of Berlin-to-the-Persian Gulf. And thus all portentous obstacles in the road to India are cleared away.

It is not indicated in whose favor the renunciation is made.

Article 259. Germany will deliver within one month to such authority as the Principal Allied and Associated Powers may designate Turkish gold deposited in the Reichsbank to secure the first issue of Turkish currency notes and other Turkish gold on deposit, as well as gold transferred by Austria-Hungary as collateral for loans.

Germany confirms her renunciation of the Brest-Litovsk and Bucharest treaties and will deliver to Roumania or to the Allied and Associated governments all monetary instruments, specie, securities and goods received under these treaties.

All such sums of money, securities, etc., will be disposed of by the Principal Allied and Associated Powers in a manner to be determined by them.

Article 260. Germany, on demand of the Reparation Commission, will become possessed of any rights or interests of German nationals in public utilities or concessions operating in Russia, China, Turkey, Austria, Hungary and Bulgaria, or in any territories of those states, and

transfer the same to the Reparation Commission. Germany shall be responsible for indemnifying her nationals thus disposed and shall receive credit on the reparation account for the value of rights transferred.

It will be observed that China, one of the Associated and Allied Powers, is placed in the category of enemy countries so far as contemplated projects of economic exploitation are concerned.

Article 261. Germany will transfer to the Allied and Associated Powers any claims to payment or repayment by Austria, Hungary, Bulgaria or Turkey.

See Comment opposite Article 259 as to Bulgaria.

PART X.—ECONOMIC CLAUSES.

SECTION I.—COMMERCIAL RELATIONS.

CHAPTER I.—CUSTOMS REGULATIONS. DUTIES AND RESTRICTIONS

Articles 264-270. These Articles grant exceptional and uniform privileges to Allied and Associated governments in the matter of duties and charges on their products and manufactures entering Germany.

For a period of five years natural and manufactured products of Alsace-Lorraine shall be exempt from all customs duties.

For a period of three years Polish products shall enjoy like exemption. A similar right is reserved for Luxemburg.

It can not be doubted that these provisions go far toward limiting the sovereignty of Germany.

In the absence of reciprocity these economic measures are in the nature of indemnity.

CHAPTER II.—SHIPPING.

Article 271. As regards sea fishing, coasting trade and towage vessels of Allied and Associated Powers shall enjoy most-favored-nation treatment in German territorial waters.

This is clearly a restriction placed upon the internal sovereignty of Germany.

Article 272. Germany agrees that all rights of inspection and police shall, in the case of fishing boats of the Allied Powers, be exercised solely by ships of those powers, in North Sea fisheries.

By the International Convention of May 6, 1882, for the Regulation of the Police of the Fisheries of the North Sea, Great Britain, Belgium, Denmark, France, Germany and Holland agreed upon certain reciprocal rights

of visiting vessels of signatory states by special cruisers. Germany is thus ejected from these arrangements.

CHAPTER III.—UNFAIR COMPETITION.

Article 274. Germany undertakes to adopt legislative and administrative measures to repress exportation, manufacture, distribution or sale in its territory of all goods bearing any marks, names, devices or description calculated to convey a false indication of origin, type or nature of such goods.

CHAPTER IV.—TREATMENT OF NATIONALS OF ALLIED AND ASSOCIATED POWERS.

Article 276. Germany undertakes: (a) Not to subject nationals of Allied and Associated Powers to any prohibition in regard to the exercise of occupations, professions, trade and industry not equally applicable to all aliens; (b) Not to subject them to any regulation or restriction not applicable to nationals of the most favored nation; (c) Not to subject their property, rights or interests to any charge or tax not imposed on its own nationals or their property.

Compare with action taken in Articles 122, 143, 150.

Article 278. Germany agrees to recognize any new nationality acquired by her nationals under the laws of Allied and Associated powers or by treaty, and to regard them as having severed their allegiance. See Comment opposite Article 37.

Article 279. Germany undertakes to approve the designation of Consuls-general, Consuls, Vice Consuls and Consular Agents by Allied and Associated Powers and to admit them to exercise their functions in German ports and towns.

The matter of receiving a particular foreign Consul (through issuing an exequatur) or dismissing him (through revoking the exequatur) is a right to be exercised wholly at the pleasure of the receiving state, though exequaturs are rarely revoked without cause.

It appears, however, that Germany is denied the right to decline to receive a designated consular officer even though he be *persona non grata*.

CHAPTER V.—GENERAL ARTICLES.

Article 280. Obligations imposed on Germany by Chapter I and by Articles 271 and 272 of Chapter II shall cease in five

years unless continued by the Council of the League of Nations.

The obligations under Article 276 shall continue for five years and may be extended for five years.

Article 281. If the German government engages in international trade it shall not be deemed to have any rights, privileges or immunities of sovereignty in respect thereof.

This proposition is founded upon such elemental principles that it seems hardly necessary to have referred to it.

SECTION II. TREATIES.

Article 282. There are here designated twenty-six multilateral treaties, conventions and agreements of an economic and technical character, which, it is declared, shall alone be applied as between Germany and those Allied and Associated Powers parties thereto. They include conventions relating to international protection of cables, birds, minors, to motor-cars, railways, customs inspection, tolls, tonnage, measurement of vessels, collisions and salvage at sea, the metric system, pharmacopoeial formulæ for potent drugs, agriculture, the establishment of a concert pitch; for the suppression of white phosphorus in the manufacture of matches, obscene literature, white slavery and phylloxera; and relating to other subjects.

The recital of international agreements of general concern set out as surviving the war and binding Germany looks to Article 24 of Part I (The Covenant of the League of Nations) of the Treaty, where it is declared all international bureaux shall be placed under the direction of the League.

Some idea of the magnitude of the proposed League's labors in fields other than those political may be obtained from this Article.

To what extent these conventions would be energized with a resultant conflict with internal authority in the respective states is a matter of opinion. It can not be doubted, however, that each would occupy a separate department, under a separate head, with its corps of experts and agents.

Articles 283-285. Further international treaties are designated herein which are to come into force conditionally, including the Postal, Telegraphic and Radio-Telegraphic conventions.

Article 286. The conventions of 1863 and June 2, 1911, for the protection of industrial property; of Berne, 1886, for the

protection of literary and artistic work, and of 1908 and 1914, relating to the same subjects, are revived, subject to exceptions and restrictions contained in the treaty.

By paragraph 15 of Annex I, Section IV, Article 287, the industrial, literary and artistic property of German nationals within the territories of Allied and Associated governments and ceded German territories is denied the protection of the conventions mentioned in Article 286 and is declared confiscable.

These treaties were made with the object of the permanent protection of these classes of private property and can not be considered as abrogated by the supervision of war, although their operation between signatories was necessarily suspended. (5 Moore, 376-377.) At the times of negotiation of the treaties it was fully realized that private property of all kinds was under the protection of the law during war and that must be considered as assumed in the indefinite duration agreed on as to the continuance of such treaties. (See 3 Malloy, Treaties, etc., Article 17½, p. 375.)

The action of the Allied and Associated governments in respect of Germany is plainly, therefore, a violation of the treaty.

Article 287. The convention of The Hague of July 17, 1905, relating to civil procedure is revived, though not applicable to France, Portugal and Roumania.

What, it may be asked, is the status of the dozen other highly important Hague Conventions, including the whole code of the law of land warfare? All except that for the pacific settlement of international disputes appear to be discarded. (See Comment opposite Article 13.)

Article 288. Special rights and privileges granted to Germany by the treaty of December 2, 1899, in Samoa shall be considered terminated as of August 4, 1914.

This was the tripartite treaty between the United States, Great Britain and Germany, relieving the United States from an entangling and vexatious joint control of the Samoan Islands and dividing them between the three powers. Germany received Upolu, Savaii and all other islands west of longitude 171 west of Greenwich. (See Introduction to C. K. Davis, International Law.)

Reciprocal privileges of trade were granted. (Compare this Article as to date of termination of Germany's privileges with Article 156.)

Article 289. Each Allied and Associated power shall notify to Germany the bilateral

treaties or conventions it wishes to revive with Germany.

As to the effect of the outbreak of war on treaties, there is a lack of agreement among the authorities as to whether certain classes of treaties are merely suspended or annulled so as to require re-negotiation.

This much is certain:

(a) Dispositive treaties, setting up a permanent condition of things, such as those of cession, boundary, independence, neutrality and the like are unaffected. (Soc. for Prop. of Gospel vs. New Haven, 8 Wheaton 464, 494; Scott, Cases, 428.)

(b) Law-making treaties to which third powers are parties, such as the Hague, 1899 and 1907, Postal Union, Industrial Property, and the like remain in force, though suspended in operation as between belligerent signatories. (Hershey, Essentials of Pub. Int. Law, p. 361.)

(c) Conventions entered into with a view to hostilities become operative.

(d) Political treaties, such as alliance, are abrogated.

(e) Treaties of commerce, navigation, etc., may be treated as annulled or suspended or continuing at the will of the belligerents, signified in the treaty of peace. (5 Moore, 376, 377.)

The United States maintained in 1898 that the last mentioned class of treaties was merely suspended, but yielded to Spain's insistence that they be considered abrogated, in accordance with the Spanish decree of April 23, 1898.

In the present treaty Germany has nothing to say; it is for the Allied and Associated governments alone to revive or abrogate any or all of its bilateral treaties with Germany.

Thus the rule of law is left even more in doubt than before.

Treaties and treaty provisions in conflict with the Treaty of Peace shall not be revived.

All bilateral treaties not notified as revived within six months shall remain abrogated.

The above provisions shall apply even as between an Allied and Associated Power that was not at war with Germany..

Uruguay, Ecuador and Bolivia, who are Allied and Associated Powers, did not declare war on Germany, but merely severed diplomatic relations. To deal with them as belligerents with respect to their treaty relations is most unusual. The situation might have been met with more consistency by a declaration that Germany agreed to a revision of the treaties in accordance with their

wishes and the requirements of the Treaty of Peace.

Yet the conclusion of a treaty of peace with Germany on the part of these three states which have not been at war with Germany is even more remarkable.

Article 290. Germany recognizes that all treaties, agreements, etc., concluded with Austria, Hungary, Bulgaria or Turkey since August 1, 1914, are abrogated.

Article 291. Germany undertakes to secure to Allied and Associated governments and nationals all privileges granted to Austria, Hungary, Bulgaria or Turkey or their nations so long as such privileges are enjoyed by the latter.

Article 292. Germany recognizes that all treaties and agreements concluded with Russia and with Roumania are abrogated. See Comment opposite Article 128.

Article 293. Any concession, privilege or favor which any Allied or Associated Power, Russia or Russian state has been forced to grant Germany or a German national since August 1, 1914, by reason of military occupation, or otherwise, is annulled. No claims shall result from this annulment.

Article 294. Germany undertakes to grant to Allied and Associated Powers and their nationals the benefit *ipso facto* of rights and advantages of any kind granted to neutrals in the war, so long as such rights remain in force.

Through this provision will be revealed the price, if any, paid by Germany for the neutrality of any European state.

The acquisition of such rights and privileges, if any exist, can hardly be justified as reparation.

Article 295. Those of the High Contracting parties who have not yet signed and ratified the Opium Convention of January 23, 1912, agree to bring the convention into force within twelve months. Ratification of the present treaty shall be considered ratification of the Opium convention.

SECTION III.—DEBTS.

Article 296. This Section dealing with debts due to and from the respective nationals of Allied and Associated governments and Germany has been referred to in Article 74, *supra*.

See Comment opposite Article 74.

SECTION IV.—PROPERTY RIGHTS AND INTERESTS.

Article 297. This Section, declaring the purpose of universal retention of all private German property in the hands of Allied and Associated governments and elsewhere, while committing Germany to restitution and compensation in the matter of private property of Allied and Associated nationals, has been referred to in Article 74, *supra*.

See Comment opposite Article 74.

SECTION V.—CONTRACTS, PRESCRIPTIONS, JUDGMENTS.

Article 299. Contracts between enemies shall be considered dissolved, except in respect of a debt arising out of an act done or money paid thereunder. Other exceptions are indicated.

The United States, Brazil and Japan are excepted from the operation of this Article.

The United States Supreme Court has repeatedly held that war does not dissolve or annul contracts entered into before the war; that they are merely suspended and that a right of suit revives with the peace. (*Williams vs. Paine* (1887), 169 U. S. 55.) And so far as resident alien enemies are concerned contracts with them are wholly unaffected. (*McVeigh vs. U. S.*, 11 Wall. 259.)

It therefore became impossible to commit the United States to a policy of dissolution of contracts as desired by the other Allied and Associated Powers without running counter to the law of the United States.

The participation of Great Britain in this action is likewise in contravention of long-established British law and policy. (See 2 *Westlake*, p. 48; 2 *Oppenheim* 138.)

Article 300. This deals with periods of prescription or limitation of right of action as to contracts excepted from the general policy of dissolution.

Article 301. As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason of failure within the required time to present it for acceptance or payment or to give notice.

Article 302. Judgments given by courts of Allied and Associated Powers shall be recognized by Germany as final. Judgments of German courts shall not be thus recognized.

ANNEX.—GENERAL PROVISIONS.

The following classes of contracts are excepted from dissolution without prejudice to the right of confiscation, referred to in Article 297:

(a) Those having as their object the transfer of real estate or personal property where the object had passed before the supervention of way;

(b) Leases and agreements for leases of land and houses;

(c) Contracts of mortgage, pledge or lien;

(d) Concessions concerning mines, quarries or deposits.

(e) Contracts between individuals or companies and states, provinces or other similar juridical persons, and concessions granted by states, provinces or other juridical persons.

These are excepted from dissolution without prejudice to the right of seizure and retention provided for in Article 297.

Rules made by recognized Exchanges for closure of enemy contracts are confirmed, including the closure of cotton "futures" on July 31, 1914, by the Liverpool Cotton Association.

No claim on the ground of sale of security shall be admitted if the creditor acts in good faith.

If a person before or during the war became liable on a negotiable instrument in accordance with an undertaking of a person who subsequently became an enemy, the latter shall remain liable.

It appears, therefore (Subsection (e) Annex 1), that at least some forms of private enemy debts are to be confiscated, and that the United States is a party to the policy along with the other Allied and Associated Powers. Yet it is the settled law of the United States that they may not be.

By every nation, whatever its form of government, the confiscation of debts has long been considered disreputable. *Wilson, J., in Ware vs. Hylton (1796), 3 Dall. 199, 281.*

The Conqueror is denied the right to confiscate private property, on the ground that it would violate "the modern usage of nations which has become law." *Marshall, C. J., U. S. vs. Percheman, 7 Peters, 51.*

See also *Planters' Bank vs. Union Bank, 16 Wall. 483; Williams vs. Bruffy, 96 U. S. 176, 186-188.*)

SECTION VI.—MIXED ARBITRAL TRIBUNAL.

Articles 304-305. These Articles, together with an annex, provide for the setting up

of a Mixed Arbitral Tribunal between each of the Allied and Associated Powers on the one hand and Germany on the other, to decide all questions within their competence under Sections III, IV, V and VII, relating to Debts, Property, Rights and Interests, Contracts, Prescriptions and Judgments and Industrial Property.

The Mixed Arbitral Tribunals are primarily an appellate body to which disputes arising in the "Clearing Offices" may be taken.

Appeals may also be taken to these tribunals from judgments of German courts inconsistent with the terms of the treaty; not, however, from Courts of Allied and Associated governments.

They may adopt such rules of procedure as are in accordance with justice and equity.

These bodies do not deserve the appellation of "tribunals" in view of the limitations upon their powers to decide controversies in accordance with law. This inability is inherent in the settlement which is the negation of law. It will be observed each is empowered to adopt its own rules of procedure instead of applying the system, together with the law, ready at hand in The Hague Convention of 1907, establishing a Court of Arbitral Justice, the achievement of the American delegation.

The object of its establishment was to replace international settlements based on compromise and expediency by settlements founded upon judicial determinations, to the end that the universal reign of law might be promoted.

SECTION VII.—INDUSTRIAL PROPERTY.

Articles 306-311. Conventions for the protection of industrial, literary and artistic property, mentioned in Article 286, shall be re-established between the High Contracting parties.

Nevertheless, all acts done, or to be done, in Allied and Associated countries in respect of such property of German nationals shall have full force and effect.

No claims on account of such acts shall be allowed.

Any sums due for the use of such German property shall be treated as other German property.

The provisions of the Article shall not apply to rights in industrial, literary or artistic property which have been dealt with through liquidation of businesses or companies.

The subject of the protection of industrial, literary and artistic property has been re-

ferred to in the discussion of Article 298 and the Annex thereto.

The policy of Allied and Associated countries with respect to such German property, including patents, during the war, was, with the exception of that in liquidation, to permit its use under an obligation to pay at the peace a fair compensation. The patentees and other German owners will not, however, receive such sums in view of the requirement of payment to the Reparation Commission.

SECTION VIII.—SOCIAL AND STATE INSURANCE IN CEDED TERRITORIES.

Article 312. Germany undertakes to transfer to any Power to which German territory is ceded and to any mandatory such portion of reserves accumulated by the government or by private organizations as is attributable to the carrying on of social or state insurance.

These sums must be applied to the performance of the obligations arising under such insurances.

PART XI.—AERIAL NAVIGATION.

Articles 313-320. Aircraft of Allied and Associated Powers shall have full liberty of passage and landing over and in the territory and territorial waters of Germany, and shall enjoy the same privileges as German aircraft.

All public aerodromes in Germany shall be open to aircraft of Allied and Associated Powers.

Any regulations applied by Germany to aircraft of Allied and Associated Powers shall apply equally to German aircraft.

As regards commercial air traffic, aircraft of Allied and Associated Powers shall enjoy most-favored-nation treatment.

Germany shall require all German aircraft flying over her territory to comply with all the rules as to lights, signals, etc., laid down in the Convention relative to aerial navigation concluded between Allied and Associated governments.

All of these obligations remain in force until January 1, 1923, unless before that time Germany is admitted to the League of Nations or shall have been authorized to adhere to the Convention relative to aerial navigation.

The convention relative to aerial navigation concluded by the Allied and Associated Powers recognizes at the outset that every state possesses complete and exclusive jurisdiction in the air space above its territory and territorial waters, and it deals with the subject by analogy to customary control ex-

ercised over territorial waters, recognizing the right of innocent passage, making requirements for registry, nationality markings, logs, lights, signals, etc.

By the terms of Articles 313-320, German sovereignty over her aerial space is set aside, at least, until January 1, 1923.

PART XII.—PORTS, WATERWAYS AND RAILWAYS.

SECTION I.—GENERAL PROVISIONS.

Articles 321-326. Germany undertakes to grant freedom of transit through her territories by rail, waterway or canal, to persons, goods, vessels, carriages, wagons and mails coming from or going to any Allied or Associated Power. They shall be subjected to no transit duty, delays or restrictions, and shall be entitled to national treatment.

Goods in transit shall be exempt from customs and similar duties.

No control shall be maintained over transmigration traffic beyond that necessary to insure that passengers are bona fide in transit.

No discrimination or preference in duties, charges or prohibitions relating to importations or exportations from her territories may be made. Nor may any surtax against the ports or vessels of any Allied or Associated Power be levied.

The transport of perishable goods shall be promptly facilitated.

Seaports of Allied and Associated Powers are entitled to all favors and reduced tariffs granted on German railways or navigable waterways for the benefit of German ports or any port of another Power.

The provisions of these Articles are subject to revision by the Council of the League of Nations after five years. Failing such revision no Allied or Associated Power can claim the benefits of these articles without reciprocity after five years.

See Comment opposite Articles 264-270.

SECTION II.—NAVIGATION.

CHAPTER I.—FREEDOM OF NAVIGATION

Article 327. Nationals of Allied and Associated Powers and their vessels shall enjoy in all German ports and inland water routes the same treatment as German nationals, vessels and property, including transport of goods and passengers to and from ports and places in Germany. Equality of treatment shall extend to all facilities and charges.

Should Germany extend preferential

treatment to one Allied or Associated Power it shall automatically extend to all.

These privileges shall be subject to revision by the Council of the League of Nations after five years. Failing such revision, their enjoyment shall depend upon reciprocity.

The exclusive right of a state to control its coasting trade, including that in inland waters, is an essential incident to its territorial supremacy. The law of nations, therefore, recognizes the right of a state to exclude foreign vessels from such navigation and trade. (1 Oppenheim, pp. 257-258.) This right was formerly held to apply even as between a state and its colonies. (See Wheaton, 5th ed., pp. 765-766.)

The provisions of Article 327 constitute a further invasion of German sovereignty during their continuance.

As to the economic privileges they are in the nature of indemnity.

CHAPTER II.—FREE ZONES IN PORTS.

Articles 328-330. These Articles provide for the maintenance of free zones in German ports on August 1, 1914, and the granting of economic privileges in the same, as well as in others established by the treaty.

The duration and conditions are the same as mentioned supra, Article 327.

Ibid.

See Article 65.

CHAPTER III.—CLAUSES RELATING TO THE ELBE, THE ODER, THE NIEMAN AND THE DANUBE.

(1) GENERAL CLAUSES.

Articles 331-338. The rivers mentioned in the title are declared international within certain boundaries, together with the lateral canals and channels.

The nationals, property and flags of all Powers shall be treated on a footing of perfect equality. Nevertheless German vessels shall not, for five years, carry passengers or goods between ports of Allied or Associated Powers without the authority of such Power.

Charges shall be based only on cost of maintenance and improvement of navigable conditions.

The General Convention of the Allied and Associated Powers relating to the waterways in question will become the controlling act when approved by the League of Nations.

Compare with internationalization of Rhine and Scheldt by Congress of Vienna, 1815.

(Martens, N. R. II, pp. 379, 427; Wheaton's History, 282-284, 552.)

Previous to the Congress of Vienna, the use of great international European rivers as well as international straits was subject to tolls levied not only for purposes of maintenance of navigation, but for revenue as well. (1 Moore, Sec. 134.)

The principle may now be said to be settled, however, that navigation of rivers that traverse more countries than one is open to all states upon equal terms, and that tolls may not be levied for profit. (1 Westlake, Ch. VIII.)

Article 339. Germany shall cede to Allied and Associated Powers within three months after ratification a proportion of tugs and vessels registered in ports of river systems referred to in Article 331, in addition to those mentioned (Part VIII, Annex III) and including facilities, to be determined by an arbitrator or arbitrators nominated by the United States, due regard being paid to the needs of the parties concerned.

Indemnification of private owners shall be a matter for Germany to deal with.

See Part VIII, Annex III, following Articles 242, and Comment, supra.

It is difficult to explain upon what grounds this Article is founded other than upon indemnity and the purpose of Allied and Associated Powers to consolidate their economic advantages in Europe.

(2) Special clauses relating to the Elbe, the Oder and the Nieman.

Articles 340-341. These Articles place the Elbe and Oder under the administration of international commissions and fix representation upon the commissions.

Articles 342-345. Upon request by a riparian state the League of Nations will institute an international Commission for the Nieman composed of the representative from each riparian state and three others.

Such Commissions will prepare projects for revision of systems in force in accordance with the General Convention referred to in Article 338.

(3) Special Clauses relating to the Danube.

Articles 346-353. The European Commission of the Danube reassumes the powers it possessed before the war. Nevertheless, as a provisional measure, Germany shall not be represented thereon. Where the competence of the old Commission ceases an international Commission re-

ferred to in Article 331, shall direct the administration, composed of two Germans, one representative of each other riparian state, and one representative of each non-riparian state represented on the old Commission.

The mandate given Austria-Hungary by the Treaty of Berlin of 1878 to carry out works at the Iron Gates is abrogated.

Germany shall make restitution, reparation and indemnities for damages inflicted on the European Commission of the Danube during the war.

The European Danube Commission was instituted by the Treaty of Paris of 1856, and reconstituted by the Treaty of Berlin, 1878, and again in London in 1883. It was made independent of the territorial governments, its members, offices and archives enjoying inviolability. Its competence extended from Ibralia downwards to the mouth of the Danube. (1 Twiss, Secs. 150-152.)

During the war the Commission ceased to function owing to Germany's violation of the treaty. It was to all intents and purposes abolished with Germany substituted in its stead.

CHAPTER IV.—CLAUSES RELATING TO THE RHINE AND THE MOSELLE.

Articles 354-356. The Convention of Mannheim of October 17, 1868, creating a Central Commission of the Rhine, shall become operative, subject to modification according with the General Convention previously referred to.

The Commission shall consist of four representatives of German riparian states, four of France, one of whom shall be president, and two each of Holland, Switzerland, Great Britain, Italy and Belgium. Certain articles of the Mannheim Convention are abrogated in the interest of free navigation.

The Rhine became free as an international river by a declaration of the Congress of Vienna, but the enjoyment of this status was long in question owing to a dispute over phraseology concerning the rights of regulation confided to co-riparian powers.

In the settlements attempted in the present treaty it is questionable whether the co-riparian states are recognized in the administration to the extent to which principle and custom entitle them.

Article 357. Within three months from date of notice Germany shall cede to France tugs and vessels registered in Rhine ports, from among those remaining after satisfying previous articles, including installa-

tions, berthing and anchorage accommodations, or shares in German Rhine navigation companies, the amounts to be determined by an arbitrator or arbitrators appointed by the United States.

The same shall apply to cessions in the port of Rotterdam.

Credit shall be allowed on the reparation account.

See Part VIII, Annex III, following Article 242.

See Comment opposite Article 339.

Article 358. Subject to provisions in preceding Articles, France shall have the exclusive right to power derived from German works on the river within the two extremes of the French frontier. A payment of one-half the value of power taken from Germany shall be made by France.

Germany will construct no lateral canal on the right bank of the Rhine, but recognize the right of France to fix the limits of necessary sites and occupy lands incident to the building and operations of works which France, subject to the Central Commission, may establish.

Germany shall make it her business to indemnify any proprietors burdened with such servitudes.

Article 361. Germany shall construct in her territory the necessary portion of a deep-draught Rhine-Meuse Canal should Belgium desire same within twenty-five years,

Article 362. Germany will not oppose the extension of the jurisdiction of the Central Rhine Commission to the Moselle, below the Franco-Luxemburg frontier and to the Rhine above Basle to Lake Constance and to lateral canals.

These provisions are plainly in contravention of the understood rights of a co-riparian state.

CHAPTER V.—CLAUSES GIVING THE CZECHO-SLOVAK STATE THE USE OF NORTHERN PORTS.

Articles 363-364. Germany shall lease for 99 years to the Czecho-Slovak state areas in Hamburg and Stettin, to be placed under the general regime of free zones.

Delimitation of such areas, etc., shall be under the control of a Commission consisting of one German, one Czecho-Slovak and one British representative.

These clauses are reminiscent of the operations of the European powers in China beginning in 1898. (See 5 Moore, 471 et seq., 534.)

SECTION III.—RAILWAYS.

CHAPTER I.—CLAUSES RELATING TO INTERNATIONAL TRANSPORT.

Articles 365-369. Germany submits to a great variety of regulations intended to extend the economic privileges of Allied and Associated governments on German railways, the privileges to be revised within five years by a general convention which will bind Germany whether she adheres or not.

Germany shall co-operate in establishing through ticket service required by any Allied or Associated government to insure communication with each other, and shall accept trains and forward them with a speed equal to her best trains.

No special regulations shall be applied to such service by Germany which will impede or delay it.

This is a further extension of economic advantage, no reciprocity being granted.

CHAPTER II.—ROLLING STOCK.

Article 370. Germany will adapt her railway systems to the physical requirements of Allied and Associated Powers, the rolling stock of the latter to enjoy equal treatment with the German, as regards movement, upkeep and repairs.

CHAPTER III.—CESSION OF RAILWAY LINES.

Article 371. Railways in ceded German possessions shall be handed over in good condition and with complete rolling stock; as to lines having no rolling stock commissions shall fix the quantity to be supplied.

CHAPTER IV.—PROVISIONS RELATING TO CERTAIN RAILWAY LINES.

Articles 372-374. Provision is here made for the regulation of railway lines at frontiers; for the construction of new lines and the conditional denunciation of the St. Gothard railway convention.

SECTION IV.—DISPUTES AND REVISION OF PERMANENT CLAUSES.

Articles 376-377. To the League of Nations is confided settlement of disputes under these Articles, together with a right to revise the same at any time.

SECTION V.—SPECIAL PROVISION.

Article 379. Germany undertakes to adhere to any conventions relating to transit, waterways, ports or railways concluded by

the Allied and Associated Powers, with the approval of the League of Nations, within five years.

SECTION VI.—CLAUSES RELATING TO THE KIEL CANAL.

Article 380-386. The Kiel Canal is by these Articles placed in the category of an international one, as to tolls, etc., though Germany's sovereignty over both banks is recognized to the extent of permitting its closure against states at war with Germany and limiting the rights of loading and unloading of goods and passengers to certain ports specified by Germany.

PART XIII.—LABOR.

Articles 387 to 427, inclusive, create an independent international body representing labor and possessing extraordinary powers, with the obvious object of introducing class legislation into the law of nations and of promoting the independence and solidarity of internationally organized labor.

A satisfactory discussion of this part of the Treaty is not permitted within the limits of this work. It may be dismissed with the statement that it attempts to create an international imperium in imperio based on the unnatural and illogical distinction of class.

PART XIV.—GUARANTEES.

SECTION I.—WESTERN EUROPE.

Article 428. As a guarantee for the execution of the present treaty, the German territory situated to the west of the Rhine, together with the bridgeheads, will be occupied by Allied and Associated troops for a period of fifteen years from the coming into force of the present treaty.

Article 429. If the conditions of the present treaty are faithfully carried out by Germany the occupation referred to in Article 428 will be successively restricted as follows:

(1) At the end of five years there will be evacuated the bridgehead of Cologne and territories north of a line running along the Ruhr, etc.

(2) At the end of ten years there will be evacuated the bridgehead of Coblenz, and territory north of a line to be drawn from the intersection between the frontiers of Belgium, Germany and Holland, running about 4 kilometers south of Aix-la-Chapelle, etc.

(3) At the end of fifteen years there

will be evacuated the bridgeheads of Mainz and Kehl and the remainder of German territory.

If at that date the guarantees against unprovoked aggression by Germany are not considered sufficient by the Allied and Associated governments, the evacuation of occupying troops may be delayed to the extent regarded necessary to obtain the required guarantees.

Article 430. If during occupation or after the expiration of fifteen years the Reparation Commission finds that Germany refuses to observe the whole or part of her obligations under the treaty, the whole or part of the areas specified will be re-occupied immediately by the Allied and Associated Powers.

Article 431. If before the expiration of fifteen years Germany complies with all the undertakings resulting from the treaty, the occupying forces will be withdrawn immediately.

Article 432. All matters pertaining to occupation not provided for in the treaty shall be regulated by subsequent agreements which Germany undertakes to observe.

The Articles respecting guarantees can best be dealt with in their entirety.

Many means have been resorted to in the past for compelling performance of the conditions of peace imposed. They have included placing the engagements under the aegis of religion, with the kissing of the cross and the administration of the oath (Bonfilis, Paris, 1912, p. 526); the giving and receiving of hostages, as when Henry VIII gave to Francis I, in 1527, two archbishops, eleven bishops, eight nobles as well as thirteen towns; the giving of a pledge as when the diamonds of the crown of Poland were given to Prussia; guarantees by third states, as that in the treaty of neutralization of Belgium of April 19, 1839, relating to the separation of the latter from Holland. (Termination of War, etc., Phillipson, pp. 207, et seq.) Military occupation of a part of a state's territory has been the most usual mode during the last century where guarantees were required.

Thus by the Treaty of Paris, November 20, 1815, after the final overthrow of Napoleon, Great Britain, Austria, Prussia and Russia stipulated for the occupation of positions along the French frontier with a force of 150,000 men, holding twenty fortresses. The maximum period of occupation was limited to five years, and might be terminated earlier. An indemnity of 700,000,000 francs had

been imposed, and in addition France was required to pay 50,000,000 francs annually toward maintenance of the occupying forces. Civil and judicial administration, collection of taxes, customs and police, were to continue in the occupied area as before. Evacuation did not hinge on the payment of the indemnity, but primarily upon the restoration of internal tranquility and the suppression of revolutionary agitation which the Grand Allies feared might spread to their own countries. (A. Sorel, *Histoire*, Paris, 1875, Vol. II, pp. 355-356.) In fact the indemnity had not been paid at the time of evacuation.

An instance bearing closer analogy to the present is found in the Treaty of Frankfort of 1871, by which an indemnity of 5,000,000,000 francs was exacted, with payment demanded as follows: 500,000,000 in 30 days; 1,000,000,000 within one year; 500,000,000 on May 1, 1872; 3,000,000,000 on March 2, 1874, with interest at 5 per cent. Meantime German troops were to remain in occupation of French territory at the expense of France, with provision for evacuation only as the installments were paid. The occupying forces were reduced successively from 500,000 men and 150,000 horses to 150,000 men and 50,000 horses, to 120,000 men and 40,000 horses, to 80,000 men and 30,000 horses. The period of occupation was shortened by the rapidity with which France was enabled to discharge the indemnity.

There are other instances of occupation as a guarantee as in the Chino-Japanese war of 1895, where China, by the terms of the Treaty of Shimoneski, was required to pay 200,000,000 taels, and the Greco-Turkish war, where by the Treaty of Constantinople of 1897 Greece was required to pay \$20,000,000.

The present treaty requires Germany to pay as "reparation" certain definite sums and others to be computed by a Reparation Commission upon inquiry into her capacity to pay. As has been pointed out, while some of these demands are designated as "reparation" the term "indemnity" is more fitting.

Reparation connotes amends for legal wrongs; indemnity is founded in the mere exercise of power in excess of reparation with the object of self-enrichment.

It will be observed that reservations occur in the Articles of guarantee whereby Allied and Associated troops may re-occupy German territory in any case of default within the fifteen years or afterwards, running into an indefinite future with the obligations imposed upon Germany.

Practically this reservation is of little value without the League of Nations or some such promise of permanence to the concert of Allied and Associated Powers. History attests that such coalitions are of brief duration, that the interests even of allies conflict too frequently and too vitally in the vicissitudes of even a few years to permit of expectation of permanency. Wherefore, and with the further object of recementing amicable relations as quickly as possible, practical statesmanship has been on the side of terms of peace that might be met as quickly as possible with safety.

In some respects the present treaty is more severe than the Treaty of Frankfurt of 1871, as, for example, in relation to occupation. It permits a greater degree of interference with the civil administration and authorizes the levying of requisitions upon the inhabitants, forbidden to Germany by Article VIII of the treaty of 1871.

SECTION II.—EASTERN EUROPE.

Article 433. As a guarantee of the provisions abrogating the treaty of Brest Litovsk and all other agreements with the Maximalist government of Russia, and to insure peace in the Baltic Provinces and Lithuania, all German troops at present in such territories shall return within Germany's frontiers as soon as the Principal Allied and Associated governments think the moment suitable. These troops shall abstain from requisitions and shall in no way interfere with measures for national defense adopted by the provisional governments of Esthonia, Latvia and Lithuania. No other German troops shall be sent to these territories.

PART XV.—MISCELLANEOUS PROVISIONS.

Article 434. Germany undertakes to recognize the full force of treaties of peace and additional conventions of the Allied and Associated Powers with Germany's allies, and to recognize all disposition of territories and the establishment of new states.

Article 435, with Annexes I and II. These Clauses, incorporating verbatim memoirs of France and Switzerland, relate to a change in the economic and political situation of a portion of Savoy and the Gex district, established by the Congress of Vienna in 1815. Switzerland is willing, apparently, to concede economic readjustments, provided the guarantees of neutrality given in the treaties of 1815, and particularly by the Declaration of November

20 of that year, are recognized by all of the Allied and Associated Powers.

A part of Savoy was neutralized by the Congress of Vienna in 1815, in connection with the neutralization of Switzerland, and certain free zones were established in which there should be exemption from transit dues. In 1860 France acquired Savoy from Sardinia, subject to these servitudes.

It appears that Switzerland is willing to trade, submitting to economic readjustments, if the United States can be induced to join in the guarantee of her neutrality. This guarantee does not extend to the independence of Switzerland, but it does include the integrity and inviolability of Swiss territory. It is a collective guarantee on the part of Great Britain, Austria, France, Portugal, Prussia, Spain and Russia.

The Allied and Associated Powers refer to this guarantee, in Article 435, as one "constituting international obligations for the maintenance of peace." This would appear to relate forward to Article 21 of the League of Nations covenant as a "regional understanding" the validity of which is not affected by the covenant.

Article 436. The High Contracting parties declare and place on record that they have taken note of the Treaty of July 17, 1918, between France and the Prince of Monaco, defining their relations.

Article 438. The Allied and Associated Powers except from the general policy of retention and liquidation of all German property, public and private, outside of Germany, the property of Christian religious missions of German societies and persons. Such property will be handed over to boards of trustees appointed by the governments concerned.

Germany waives all claims relating to this subject.

This relaxation of the policy of universal confiscation of German property appears to be an afterthought, a concession to arguments of German plenipotentiaries which could not in conscience be withheld.

Article 439. Germany undertakes to put forward no pecuniary claim against any Allied or Associated Power, including those not at war with her, on account of events which occurred at any time before the coming into force of the present treaty.

Thus all pecuniary claims which Germany might prefer against Allied or Associated Powers are swept into oblivion.

Article 440. Germany accepts and recognizes as binding all decrees and orders of Allied and Associated Powers concerning German ships and goods and the payment of costs made by their prize courts and undertakes to put forward no claims.

The Allied and Associated Powers, however, reserve the right to examine all decisions and orders of German prize courts, whether affecting the rights of nationals of Allied and Associated Powers or neutral states. Germany undertakes to give effect to any recommendations made after examination of such cases.

In concluding peace, the signatory powers pledge themselves either impliedly or expressly to regard as settled not only all of their differences existing before the war and leading to it, but also all such mutual claims as may have arisen during the war in connection with the conduct of hostilities. Although treaties of peace in the past have dealt with captures where no judgment of condemnation has been pronounced, none

has ever contemplated a re-opening of cases where a judicial determination has been arrived at. It was accepted that such determination once pronounced forever settled the property rights in question.

The Article in question is therefore most unusual, but may be justified to the extent that it contemplates a reconsideration of the many cases involved in the unlawful destructions of merchantmen by German submarines, and particularly any dicta attempting to uphold them as valid.

The Peace Conference might very wisely have taken up the whole subject of prize law, in this connection, calling into life The Hague Convention of 1907 establishing an International Court of Prize, and making provision for the clarification and approximation of the law to juster standards; and the United States might then have realized its age long policy looking to the establishment of general immunity of private property as a principle of the law of maritime warfare. (7 Moore, 461.)

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