

From the point of view of international politics, the relinquishment of the Philippines is an event of capital importance. According to some British opinion,⁷ it means the withdrawal of the United States to Hawaii and the abandonment of our position as a power in the Far East, with the result that the British navy would be left alone as a counterweight to the rapidly increasing power of Japan, whose attitude on her naval position in the East has recently been made abundantly clear at London. This change is more apparent than real.⁸ Even before the limitations on fortifications imposed by Article XIX of the Washington Naval Treaty, a considerable weight of naval opinion in the United States held that we could not retain the Philippines in the face of a hostile attack. Even if this were not the case, the provisions of the Philippine Act do not automatically alter our naval position in the islands, even at the end of the ten-year period. However, Section 11 of the act contains a highly important provision:

The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

Apparently these negotiations need not wait upon the termination of the ten-year Commonwealth period.⁹ It is probable that they will play an important part in any future naval conference dealing with affairs in the Pacific. They may play as important a part as the agreement to limit fortifications played in 1922 at the Washington Conference. If they result in placing the islands under a demilitarized régime guaranteed by all the Pacific Powers, they may free the United States from some of the false bases on which our recent naval policy has been popularly supported.¹⁰

PHILIP C. JESSUP

THE COMPLAINT OF YUGOSLAVIA AGAINST HUNGARY WITH REFERENCE TO THE ASSASSINATION OF KING ALEXANDER

King Alexander of Yugoslavia and M. Louis Barthou, the French Minister of Foreign Affairs, were assassinated in Marseille on October 9, 1934, while the former was paying an official visit to the French Republic. The assassin died from wounds received in the *melée*, but was promptly identified

⁷ See the views of the Marquess of Lothian in the London Observer, as quoted in the New York Times, Nov. 18, 1934. Cf. Sir Frederick White, "The Philippines as a Pawn in the Game," *Pacific Affairs*, Vol. VII (1934), p. 163.

⁸ Cf. Quincy Wright, "A Pawn Approaches the Eighth Square," *ibid.*, p. 326.

⁹ As far back as 1911, Mr. Cyrus French Wicker discussed the neutralization of the Philippines, concluding that this could be accomplished without a relinquishment of sovereignty. *Neutralization*, p. 81 ff.

¹⁰ The recommendations of the Committee on the Philippines sponsored by the Foreign Policy Association and the World Peace Foundation state: "From the strategic standpoint, the majority of the Committee regards the possession of the Philippines by the United States as a definite liability." *Foreign Policy Committee Reports No. 2, January, 1934*, p. 5.

and certain of his accomplices were arrested in France. Investigations carried on in France and elsewhere soon thereafter, indicated that the crime may have been committed as part of a political plot against the king and government of Yugoslavia in order to further certain designs in respect to Croatia and other districts made part of Yugoslavia, formerly the Serb-Croat-Slovene State, by the treaties of Saint-Germain-en-Laye. These districts formerly constituted a part of the Kingdom of Hungary within the Austro-Hungarian Monarchy.

Whether the alleged plot was participated in by persons acting with the active support or with the knowledge and connivance of responsible Hungarian officials and the extent to which such support, if any, was given, are questions of fact of a deeply controversial nature with which we are not here concerned. The facts must be investigated by some impartial body before proper conclusions may be drawn. As a result of the controversy, political tension between Hungary and Yugoslavia became intensified, and on November 22, 1934, Yugoslavia invoked Article XI, Paragraph 2, of the Covenant, in a note presented to the Council of the League of Nations, followed by a lengthy memorandum of particulars relating to prior events. The note specifically accused Hungary of complicity in the crime, and asked the League to investigate "this situation, which seriously compromises relations between Yugoslavia and Hungary, and which threatens to disturb the peace and good relations between nations." At the same time, Czechoslovakia and Roumania associated themselves with Yugoslavia in identic notes in which they referred to the "exceptional gravity" of the facts referred to, as being of direct concern to both these countries in their "neighborly relations with Hungary, which are thus endangered as well as the general conditions upon which the peace of Central Europe depends."

It will be observed that the complaint was presented under the second paragraph of Article XI, which declares it to be "the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstances whatever affecting the international relations which threaten to disturb international peace or the good understanding between nations upon which peace depends." It is significant that the three complainants did not invoke the first paragraph of Article XI, which speaks of "any war or threat of war," whether affecting any of the members of the League or not, and contemplates the taking of "action (*mesures*) that may be deemed wise and effectual to safeguard the peace of nations." It is therefore fair to assume that notwithstanding the sharp tone of the note and the recrudescence of national feeling which has been aroused on both sides, the proceeding itself was compatible with the desire to clear the air in Central Europe by bringing all the facts and circumstances surrounding the crime to the knowledge of the world and perhaps thereby leading to a better moral basis of international relationship among the nations affected. Indeed, the reply of Hungary to the League on November 24, 1934, expressed the desire

that the Council should immediately take the matter under consideration, so that the Government of Hungary should not be unjustly made responsible "for the odious crime of Marseille," emphasizing that delay would be dangerous because the political atmosphere thus created was "capable of affecting even the peace of the world." The reply denied complicity and maintained that Hungary had merely granted a right of asylum to refugees.

The peace of nations has often been endangered by assassinations and other terroristic acts committed by individuals closely associated with political groups acting with the connivance or knowledge of a foreign government. The Soviet Government has frequently been accused of fomenting disorder abroad through the Third International. The assassination of Chancellor Dollfuss was attributed by Austria to the activities of the German National Socialistic Party.

The extent to which a government is responsible for preventing or repressing subversive or revolutionary activity by persons or groups within its territory directed against the peace and order of a foreign state, is not well settled in international law. It has been said that treason is not an international crime. Certainly the lack of any general agreement and practise upon the subject represents one of those *lacunae* which one would least expect to find. An international community of states, wherein each was insistent upon the maintenance of its own sovereignty and wherein the equality of each was recognized as axiomatic, would be likely to develop a mutual obligation to suppress subversive acts directed against a friendly foreign nation. Vattel indeed asserted such a principle derived from a mutual duty to promote justice between nations: "If a sovereign who has the power to see that his subjects act in a just manner permits them to injure a foreign nation, either the state itself or its citizens, he does no less a wrong to that nation than if he injured it himself."¹

The legislation of some of the European countries, however, is based rather upon the desire to avoid foreign complications by unauthorized acts of private persons than upon any recognized obligation towards other states. Thus the French Penal Code (Arts. 84 and 85) provides that a person shall be liable to punishment who, by a hostile act not approved by the government, has exposed the state to a declaration of war, or the state or a French citizen to reprisals. The German Penal Code (Art. 102), on condition of reciprocity, makes punishable an act committed against a foreign state which would be punishable as treason if committed against the Reich. The Italian Penal Code (Art. 113) contains a general clause making liable to punishment a person who disturbs the friendly relations between the Italian Government and a foreign state.

The legislation of Great Britain and the United States contains nothing upon this subject as broadly phrased as the statutes to which we have just

¹ Vattel, *Law of Nations*, Bk. II, Chap. VI, s. 72, Fenwick's translation, *Classics of International Law*, p. 136.

referred. The duty of the state to prevent subversive acts planned or being committed against a foreign state, is restricted to obligation under the laws of neutrality in relation to an actual or impending civil war. Political plots generally are made punishable in Great Britain and in United States only if such acts amount to making the national territory a base for a "military or naval expedition" against a friendly state.²

Even where the statutes appear to be adequate on their face, the real protection lies in their enforcement through exercise of the general police powers of the state. Where the system of government is in law or in fact dictatorial, the letter of the statute is impotent. The fact that such legislation is often made subject to the condition of reciprocity, indicates that it does not result from a positive rule of international law. Lauterpacht says: "International law flowing from international solidarity cannot mean that a state is bound to prevent anything which constitutes a danger to foreign states."³ The complaint of Yugoslavia, however, is much more specific in that it alleges that "the assassination was organized and executed with the participation of those terrorist elements which had taken refuge in Hungary and which have continued to enjoy the same connivance in that country as previously, and it is only thanks to this connivance that the odious Marseille outrage could have been perpetrated."

One cannot but be struck by the remarkable resemblance of the present accusation to that brought *against* Serbia after the assassination of the Archduke Franz Ferdinand and his wife at Sarajevo on June 28, 1914. It was then asserted by the ally of Austria-Hungary that the plot to take the life of the Archduke was planned and promoted in Belgrade with the co-operation of official Serbian individuals, and that "the ultimate object of these policies was to revolutionize gradually, and finally to bring about a separation of the southwestern region of the Austro-Hungarian Monarchy from that empire and unite it with Serbia."⁴ The danger to the peace of the world lay then with the fact that both sides were receiving the support of other Powers, and that the dispute could not be limited to the parties directly affected. The present situation does not differ materially in this respect, as it is probable that Italy will support the position of Hungary. In 1914, however, the issue could not be presented in one place before representatives of the nations both directly and indirectly affected. In 1914, an atmosphere of acrimony remained throughout, leading eventually to war. The existence of the League of Nations and the competence directly conferred upon it to hear the accusations and counter-accusations in a neutral

² British Foreign Enlistment Act, Secs. 11-12; United States Act of March 4, 1909, as amended June 15, 1917, Sec. 8. For the cases, see Lauterpacht, this JOURNAL, Vol. 22 (1928), pp. 113-116.

³ *Ibid.*, p. 129. See also L. Preuss in this JOURNAL, Vol. 28 (1934), p. 649.

⁴ German White Book as translated in the Supplement to this JOURNAL, Vol. 8 (1914), p. 372.

approach, make the impasse of 1914 differ materially from the comparable situation of 1934. On the other hand, some factors are not so favorable. Nationalism has increased since the World War. The number of sovereignties has augmented and the multiplication of national boundaries in Central Europe has added to the danger of permitting nationalistic activism to be carried on under the guise of individual initiative. There is also a corollary brought out by the reply of Hungary, that such initiative, original or vicarious, is often the natural result of the oppression of minorities whose allegiance has been changed by the transfer of territory.

It would be futile to attempt to settle responsibility for the assassination of King Alexander under any purely legalistic procedure. The real issue is not whether a state is *obligated* to suppress activity subversive of the order of a foreign state, but whether it values peace with its neighbors sufficiently to *wish* to control within its jurisdiction acts which endanger good relations and to which it would object if committed against itself.

That the dispute involved much more than the determination of any international legal responsibility in connection with the assassinations was promptly demonstrated when the matter was brought up in the session of the Council on December 8, 1934. In the meantime, certain alleged mass expulsions carried on by Yugoslavia, of Hungarians settled near the border, exacerbated an already tense situation. The discussions at Geneva then assumed a character widely divergent from the immediate issue and involving questions going back to the peace settlements of 1919. Without the active participation of the great Powers, especially of France, Great Britain and Italy, a peaceful solution might have been difficult. The French Foreign Minister, M. Laval, proposed action by the Council, not upon Article XI under which the complaint was filed, but upon Article X, by which the members of the League "undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League," and by which, in case of any such aggression or "any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled." Acting under this article, a resolution was unanimously adopted on December 10, 1934, presented by Captain Anthony Eden, British Lord Privy Seal. The resolution, besides insisting that all those responsible for the "odious crime" shall be punished, recalls:

That it is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose;

That every State must do all in its power to prevent and repress acts of this nature and must for this purpose lend its assistance to governments which request it.

The Council called upon Hungary to take at once appropriate punitive action in the case of its authorities whose culpability may have been established and to communicate to the Council the measures it takes to this effect.

More far-reaching than all of these steps, however, because dealing not merely with a contemporary problem but also with a possible future development of international legal relations, is the decision to set up a committee of experts to study the question with a view to drawing up a preliminary draft of an international convention to assure the repression of conspiracies or crimes committed with political and terrorist purpose. The committee is to be composed of ten members, one each from the governments of Belgium, France, Great Britain, Hungary, Italy, Poland, Rumania, the Soviet Union, Spain and Switzerland. To this committee is referred the plan already presented by the French government for a Permanent International Penal Court, and to it are to be presented any other suggestions which other governments may wish to make.

The League has thus definitely averted a crisis by obtaining the recognition of obligations heretofore only vaguely defined. In so doing it is entitled to great credit, much of which is due not only to the constructive statesmanship of the representatives of France, Great Britain, Italy and other countries not immediately involved, but also to the restraint of the nations directly parties to the issue. An untrodden field in positive international law has been opened up to which even non-members of the League might well give earnest attention with a view to official coöperation.

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THE BUDAPEST RESOLUTIONS OF 1934 ON THE BRIAND-KELLOGG PACT OF PARIS *

At its 38th Conference in Budapest, September 6-10, 1934, the International Law Association placed on record its willingness to take account of current developments in its approach to international law, and expressed its determination to see the international law of the twentieth century shaped with reference to twentieth century conditions. When the Association met at Oxford in 1932, the report of its Neutrality Committee was severely criticized. Professor J. L. Brierly found the committee's draft conventions "based on a notion of the relations between neutrals and belligerents which was all right in 1899 and 1907 at the Hague Conferences, which was all right, possibly, as late as 1913, but which in 1932 belongs to an utterly outlawed order of ideas."¹ Dr. Arnold D. McNair asked, "Is it right at this stage of the world's history that this body should do anything to crystallize a conception of neutrality which most of us regard as completely out of order?"²

Following the meeting at Oxford, the Executive Committee of the Association created a Committee on Conciliation between Nations to study

* The writer of this comment presided at the sessions of the International Law Association in Budapest, Sept. 7-8, 1934, which were devoted to a consideration of the Briand-Kellogg Pact.—Ed.

¹ International Law Association, Report of the 37th Conference, 1932, p. 175.

² *Id.*, p. 185.