> Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty.[13]

The opinion is notable for the extent to which the Court relied upon broad principles of law, apparently deemed to be self-evident and stated without citation of precedent or authority. It is also notable that these principles referred to rights of humanity and obligations not to resort to force which have been especially emphasized in recent general conventions. This aspect was especially noted in Judge Alvarez's concurring opinion suggesting that we are entering "a *new era* in the history of civilization" in which "profound changes have taken place in every sphere of human activity, and above all in international affairs and in international law." He therefore sought to relate the opinion to principles of what he called "the new international law" and the interpretation it gives to such questions as the sovereignty of states, the responsibility of states, intervention, and misuse of right.[14]

Judge Basdevant, President of the Court, dissented from the conclusion that the Court had jurisdiction to assess the amount of compensation. Judges Zoričić (Yugoslavia), Winiarski (Poland), Badawi Pasha (Egypt), Krylov (Soviet Union), and *ad hoc* Judge Ečer (Czechoslovakia), appointed by Albania for the case, dissented from this conclusion and also from the portion of the judgment holding Albania responsible. Judges Krylov and Azevedo (Brazil) dissented in respect to the Court's finding that the British Navy was innocent in its passage of the Channel on October 22, 1946.[15]

QUINCY WRIGHT

THE NEW FUNDAMENTAL LAW FOR THE WESTERN GERMAN FEDERAL REPUBLIC

Thirty years ago, at the close of World War I, an expectant world turned its eyes toward the German city of Weimar, to discover what manner of constitution a defeated and dejected nation, truncated in territory and threatened with civil war, would produce. Those Germans desirous of breaking with the imperial tradition thought it imperative that the nation repudiate more than a half-century of its history, and return to the tradition of the liberal revolutionists of 1848. Those disinclined to turn back the pages of history saw greater promise in transforming the essentially political anti-dynastic and republican revolution of November, 1918, into a more socially dynamic process which would link the fate of the republican Reich to the contemporary Soviet experiment in the re-ordering of society. The result was the Weimar Constitution of August 11, 1919, which, if it "vibrated with the tramp of the proletariat" as an analyst

[13] *Ibid.*, p. 35.
[14] *Ibid.*, p. 39.
[15] *Ibid.*, pp. 37–38.

then described it, did not, in fact, break too violently with the Bismarckian régime. To cope with domestic and international necessities, however, the molders of the Weimar instrument endowed the republican Reich with plenary authority and centralized power, thus giving the new Germany an unfettered opportunity of self-redemption.

Behind the façade of parliamentary democracy under a multi-party system, however, there lurked the possibility of using the republican constitution for other ends. And when the powerful middle classes, to whom the outside world looked for real leadership of the republic, were ruined by the economic disasters that followed, the way to totalitarianism of either the Right or the Left was wide open. It was the evil genius of Nazism that it effected an apparent symbiosis of the radical Right and the radical Left by crossing an exacerbated nationalism with a socialistic ferment to which the Republic failed to give satisfaction. The resulting hybrid, the National Socialist revolution, gave violent expression to both these dynamic forces. In the process the Weimar Constitution, although never formally abolished, was legally swept aside.

When the Nazi régime collapsed in 1945, under the hammer blows of both East and West, the whole institutional complex fell in ruins. The victorious Occupying Powers were thus directly faced with the problem of erecting an effective substitute mechanism of authority which should avoid the recurrence of Nazi aggression, and return a recidivist Germany, after a second expiation of her sins, to the circle of civilized society. The problem was essentially a dual one: to prevent the resurgence of frenetic nationalism—on which West and East were then indubitably in agreement—and to exorcise from the minds of the German people the socialistic traits of the Hitler régime—a point on which the victors were sharply divided.

This is neither the time nor the place for reviewing or evaluating the history of the occupation in the different zones. That must await the patient work of the economic and social historian. It will suffice for present purposes to note that from the outset the Occupying Authorities in all four zones fell back upon the *Länder,* the feeble territorial entities of "democratic centralism," Weimar style, as the primary building-blocks out of which a regenerate Germany was to be reconstructed. Whatever the other bonds of cohesion might be—chiefly the major political groups that survived a dozen years of subterranean existence—it was the retouched *Länder,* as the primordial administrative units, that were the basic elements for reconstruction purposes. The internal re-ordering of each *Land* was effected during 1945–1947 by the several Occupying Powers, each of which sought to refashion the *Länder* under its control by remolding them in the image of its own institutions.

That process elicited varying responses from the respective fragments of the German people, who, in addition to taking inventory of the institutional complex and the particularistic tradition in each *Land,* borrowed

quite consciously from other foreign sources, chiefly Switzerland and Austria, something of the mechanics of collegial, non-parliamentary representative government. Bavaria went so far at one time as to copy extensively from the corporative structure of Austrian fascism, and so earn the mild reproof of the American Military Government. It was only when this process, which was attritional in the extreme, was complete in all the *Länder* occupied by the Western Allies that the discussion of constitutional reconstruction at a higher level could be approached. At this point the almost unbridgeable crevasse between East and West intervened to delay, obstruct and confuse not only the German people themselves, but also the outside world.

With the convening at Bonn in the fall of 1948 of an assemblage of representatives from the three western zones, the first effort at higher-than-*Land* level in constitution-making was inaugurated. The final product, the *Grundgesetz,* or Fundamental Law, of May 9, 1949,[1] permits both layman and expert to glimpse something of what has been going on in the German political mind in the Western Zones, and to see concretely at what points and in what ways the pressure of the Occupying Powers has registered institutionally in the mechanics of the new federal régime for Western Germany.

The 147-article document is, above all things, a transitory and transitional instrument, definitely providing for and eagerly anticipating, its own extinction.[2] This leaves the diplomatic issue to the victors, but foreshadows an early reunion of all Germany, unquestionably the ardent hope of an only slightly chastened nationalism. The institutional complex set up by the Bonn Assembly is necessarily federal, creating a *Bundesrepublik* with a Federal President, a Federal Assembly of two chambers, the Lower House or *Bundestag,* "elected by the people in universal, equal, direct and secret elections" for a term of four years, and the *Bundesrat,* a pallid secondary chamber of representatives of the *Land* governments. There is a Federal Chancellor, a Federal Ministry, and a Federal Administration, the nomenclature of which superficially resembles that of the German Confederation (1815–1866) and of the equally transitional North German

[1] Basic Law for the Federal Republic of Germany (agreed Anglo-American translation), Department of State Publication 3526 (European and British Commonwealth Series 8). An English text based on a translation issued by the U. S. Military Government in Germany appeared in the New York Times of May 9, 1949, pp. 6–8. An authentic German text is reproduced in the Munich *Süddeutsche Zeitung* of May 9, 1949, pp. 1–4.

[2] The final article of the *Grundgesetz* declares: "This Basic Law shall become invalid on the day when a constitution adopted in a free decision by the German people comes into force." It is noteworthy that throughout the text a clear distinction is kept between the *Grundgesetz* and the future constitution (*Verfassung*). This does not impute any lack of validity to the Bonn instrument, but clearly reserves for the future document the dignity of being a "constitution."

Federation (1867–1871). This surface similarity to past federal régimes should not blind even the casual reader to the fact that by substituting the word *"Reich"* for *"Bund,"* the institutional picture thus formed closely resembles the Weimar régime from 1919 to 1933, except in two fundamental and far-reaching respects: the handing of much administration back to the *Länder,* reverting in this regard to the Bismarckian Reich, and the intrusion into the federal, democratic, parliamentary régime of an elaborate Constitutional Court (*Bundesverfassungsgericht*), not only as the definer of jurisdictional competences and the guarantor of property against socialization, but also as the shield and buckler of an elaborate system of personal rights and liberties. Far from content with the programmatic formula of the so-called "bourgeois guarantee" (Article 164) of the Weimar Constitution, the new *Grundgesetz* sets up a comprehensive system of safeguards against the unlawful alienation or confiscation of property, thus depending on the judicial machinery of government, rather than on precarious parliamentary majorities, for the safeguarding of substantive, chiefly property, rights.

In the extensive listing of individual and public liberties, the Bonn document considerably whittles down the ill-assorted second part of the Weimar Constitution, but also shows indubitably the effect of external influences, notably the long discussions of human rights at Geneva and Lake Success. There is an explicit effort to anchor in the instrument iron-clad guarantees against persecution of individuals on racial grounds, coupled with an equal guarantee of freedom to express divergent ideologies—a point which must be comforting to both Nazis and Communists, as the principal exponents of a different *Weltanschauung.* However, efforts to guarantee the new federal authorities against successful infiltration of contrarient, or "subversive" ideologies are found in the very explicit provisions of Articles 18 and 143. The former declares that:

> Whoever abuses the freedom of expression of opinion, in particular the freedom of the press (Art. 5, par. 1), the freedom of teaching (Art. 5, par. 3), the freedom of assembly (Art. 8), the freedom of association (Art. 9), the secrecy of mail, post, and telecommunications (Art. 10), property (Art 14), or the right of asylum (Art. 16, par. 2), in order to attack the free, democratic basic order [*Grundordnung*], shall forfeit these basic rights. The forfeiture and its extent shall be pronounced by the Federal Constitutional Court.

It is obvious that in the presence of any extensive movement against the new federal state, it would be possible to re-create, notwithstanding the formal semblance of fundamental freedoms, a large class of degraded and pariah citizens without such rights. Article 143, which is patently directed against those using force or the threat of force to change the constitutional order, is even more far-reaching. With the experience of Czechoslovakia in mind, the framers of the Bonn document wrote into it a condemnation

to penal servitude for life or not less than ten years for persons so altering the *Grundordnung* of either the Federation or a *Land,* or depriving the Federal President of the powers accorded to him by the *Grundgesetz,* or by force or the threat of danger compelling him to exercise his powers in a specific manner or not at all, or preventing the exercise of his powers. The same penalty constitutionally extends to separatists, *i.e.,* those who may in future "deprive the Federation or a Land of a territory." In the light of the public attitude revealed in the Rhineland a decade before the Nazis towards those lending themselves to separatist agitation, this is indeed the lesser penalty. However, public incitation to do any of the other things covered by the article incurs mandatorily the ten-year prison penalty, while less serious cases incur not less than a two-year penalty; while every inducement is held out to co-conspirators, by the promise of immunity, to turn state's evidence.

Whether these constitutional stipulations will be any more successful in dealing with the Left than the numerous instances of the complete outlawry of Communism a decade or more ago in countries now operating under Communist régimes remains, from a historical standpoint, dubious. And whether the deliberate multiplication of localized administrations in regions that have known and obeyed a single central authority will be workable in practice seems even more so. It will require a political miracle greater than the refitting of the skeletons in Ezekiel's Valley of Dry Bones to make effective against an *Einheitswille* the tedious division of competences between *Bund* and *Länder.* While the text of the *Grundgesetz* posits a measure of international personality for the *Länder,* it is almost incredible to assume that the German people would, even in their extremest separatism, attempt to revert to 1849 and be content with a confederal stage of development in which the individual *Länder* maintained official diplomatic relations with neighboring states.

In sum, the Bonn instrument is a document to ingratiate Germans in the Western areas with their temporary occupants and to keep open and unsettled the form of a future Germany. Seen in this perspective, the new text hardly warrants detailed commentary and exegesis. In all essentials, its fate depends far more on forces operating outside Germany than on the bickering splinter parties characteristic of a defeated country.

MALBONE W. GRAHAM

THE GENOCIDE CONVENTION AND STATE RIGHTS

The assumption is sometimes made that the Convention on the Prevention and Punishment of Genocide is in some way connected with the proposed Covenant and Declaration on Human Rights. Indeed, it has been asserted that it presents for consideration many of the same basic questions. Objection has been made to the Declaration of Human Rights on the ground that