

ejusdem generis,¹² and the maxim that "He who considers merely the letter of an instrument goes but skin deep into its meaning"¹³ would seem to foreclose the conclusion that the disarmament of Germany was deemed a "right, privilege, indemnity, reparation or advantage" to the United States. Considering that the United States by the Treaty of Berlin sought to escape European entanglements and the military and political commitments of the Treaty of Versailles, it would seem extraordinary that it had nevertheless by mentioning Part V in the reservoir from which "rights" and "advantages" might be claimed, committed itself legally to the military and political disabilities on Germany and the obligations and liabilities of enforcement which that Part contemplated.

On February 3, 1935, Great Britain and France undertook to release Germany from the obligations of Part V of the Treaty of Versailles on certain conditions. The United States Government, it is understood, was not consulted in this renunciation, nor was its consent asked or given. It seems hardly conceivable that the United States consent would not have been asked had it been assumed by the Allied governments or by the United States that we were a party to Part V of the Treaty of Versailles. The entire historical development of the peace negotiations with Germany and the conclusion of the separate Treaty of Berlin with its source in the Knox-Porter Resolution, would seem to make it clear that the "rights, privileges, indemnities, reparations or advantages" stipulated for the benefit of the United States in the Treaty of Versailles and incorporated by reference in the Treaty of Berlin, did not include the disarmament of Germany and that hence the rearmament of Germany, whatever one may think of it, does not affect or violate the Treaty of Berlin.

EDWIN M. BORCHARD

RUSSIAN CLAIMS NEGOTIATIONS

It would be interesting to check up the number of international agreements entered into in perfect good faith on each side yet representing serious misunderstandings between the parties as to the exact meaning and effect of the terms agreed upon. The number of international agreements which have been submitted to arbitration for interpretation suggests that a surprisingly large percentage are defective in that respect. Perhaps many of them would not have been concluded unless susceptible of diverse interpretation to suit the desires of the respective parties.

¹² 2 Sutherland, *Statutes and Statutory Construction* (2d ed. 1924), Sec. 414; McNair, "Application of the *Ejusdem Generis* Rule in International Law," 5 *British Year Book of International Law* (1924), 181.

¹³ *Qui haeret in litera haeret in cortice*. Broom's *Legal Maxims*, 8th Ed. by J. G. Pease, London, 1911, p. 533, citing Coke's *Littleton* 283 b. See also St. Paul's proverb, "the letter killeth but the spirit giveth life," *Corinthians*, II, ch. 3, verse 6, cited by John Bassett Moore in connection with another question of treaty interpretation, in *International Law and Some Current Illusions*, New York, 1924, p. 20.

At all events, the arrangements agreed upon between the Governments of the United States and Russia at the time the former extended official recognition to the latter in November, 1933, are now found to have been very differently understood and interpreted by the respective parties.

In the negotiations for the recognition of Russia, it was agreed that the arrangement was preparatory to a final settlement of "the claims and counterclaims between the two Governments and their nationals," and it was understood that one of the principal purposes of the arrangement was to secure the "settlement of all outstanding questions, including claims and other indebtedness."¹

At the close of the negotiations, which resulted in the recognition of Russia, it was formally announced by the representatives of both Governments that—

In addition to the agreements which we have signed today [November 16, 1933], there has taken place an exchange of views with regard to methods of settling all outstanding questions of indebtedness and claims that permits us to hope for a speedy and satisfactory solution of these questions, which both our governments desire to have out of the way as soon as possible.

The claims settlement negotiations contemplated in this arrangement were soon thereafter undertaken, and a series of conferences followed, beginning in Russia and shifting afterwards back and forth between Washington and Moscow, until finally it was discovered that there was no possibility of reaching an agreement and probably never had been. The final conference was held in Washington on January 31, 1935.

The proposed terms of settlement discussed at these conferences have not been made public, but it appears from press reports and fragmentary official statements made from time to time that Russia expected the United States to make a cash loan sufficient to pay all the American claims, and this the United States was unwilling to do. It also appears that the United States' counter-proposal contemplated the establishment of substantial credits for Russia's account sufficient to finance the purchase of commodities in the United States for export to Russia, as a revolving fund which would carry an unusually high rate of interest designed on a long term basis to reimburse the United States Government for the credits advanced. An Export-Import Bank to carry out this plan was authorized and organized by the United States Government.

It does not appear why there should have been any misunderstanding at the outset, or even before these negotiations were undertaken, as to the respective positions of the two Governments in view of the great difference and conflict between their respective proposals, as promptly disclosed in the negotiations.

¹ See editorial comment "Recognition of Russia," Chandler P. Anderson, this JOURNAL, Vol. 28 (1934), p. 96.

It does not appear what amounts, if any, were fixed or proposed, as the total to be paid in settlement of claims or credits to be authorized.

At the close of the final negotiations the Secretary of State announced:

The Government of the United States indicated its willingness to accept in settlement of all claims of the United States and its nationals against the Soviet Government and its nationals (and of all claims of the Soviet Government and its nationals against the United States and its nationals) a greatly reduced sum to be paid over a long period of years. The Government of the United States indicated that it would accept payment through the application of a rate of interest beyond the ordinary rate of interest on credits extended to the Soviet Government with the financial assistance of the Government of the United States. To facilitate the placing of orders in the United States by the Soviet Government on a long-term credit basis, the Government of the United States was prepared to make, through the Export-Import Bank, to American manufacturers and producers requiring financial assistance in connection with the granting of credit on such orders, loans to a very large percentage of the credit granted. It was contemplated that the length of the credit extended would vary according to the different categories of goods, and the Soviet Government was advised that the Government of the United States was not averse to making special terms in exceptional cases at the President's discretion. It was intended that the loans extended to American manufacturers and producers should constitute a revolving fund for the continuous maintenance of Soviet purchases in the United States.

We hoped confidently that this proposal would prove entirely acceptable to the Soviet Government, and are deeply disappointed at its rejection. In view of the present attitude of the Soviet Government, I feel that we cannot encourage the hope that any agreement is now possible. I say this regretfully because I am in sympathy with the desire of American manufacturers and agricultural producers to find a market for their goods in the Soviet Union, and with the American claimants whose property has been confiscated. There seems to be scarcely any reason to doubt that the negotiations which seemed so promising at the start must now be regarded as having come to an end.

One of the important inducements for entering into the arrangements on which recognition was based was the expectation that as a result American industrial interests would be provided with a larger market for their goods, and that trade between the two countries would be greatly stimulated. It now appears, however, that, on the contrary, ever since the Soviet Government was recognized imports from the United States have steadily diminished.

As part of the background of this situation, it must be recalled that in 1924 Great Britain and France recognized the Soviet Government as the *de jure* Government of Russia. In each case recognition was predicated on understandings and pledges similar to those underlying recognition by the United States. In each of those cases, as in the case of recognition by the United States, considerations of economic and trade advantages formed an important part of the inducements for granting recognition, but in both

of the earlier cases, foreshadowing the same result in the later case, the conditions attached to the granting of recognition were not satisfactorily carried out. For this reason diplomatic relations were broken off by Great Britain in 1927, but were renewed two years later in consequence of renewed assurances of more friendly action on the part of Russia.

The basic principle of Soviet international relations up to the present time seems to be that the observance of the usual diplomatic and commercial intercourse between nations must be purchased by an international loan to Russia.

In connection with the recognition negotiations it is also to be noted that one of the pledges given by the Russian Government in the negotiations for recognition was "not to permit the formation or residence on its territory of any organization or group, and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group, which has as an aim to overthrow, or the preparation for the overthrow of, or the bringing about by force or a change in the political or social order of the whole or any part of the United States, its territories or possessions."

As the result of a series of hearings on un-American activities before a subcommittee of the Foreign Affairs Committee of the House of Representatives, a report has been filed, under date of February 15, 1935, challenging the good faith of the Russian Government in carrying out the pledge above quoted. This report is, in part, as follows:

The date of this pledge was November 18, 1933. Despite this pledge, about the middle of December 1933, within a month after this pledge by Maxim Litvinoff and his government, the executive committee of the Communist Internationale, sitting at Moscow, Soviet Russia, adopted resolutions of the "Thirteenth Plenum of the Executive Committee of the Communist Internationale", which are applicable to the whole world, and of course to this country, which stated:

There is no way out of the general crisis of capitalism other than the one shown by the October revolution. (In Soviet Russia when the Communists overthrew the then existing government of Russia by force.) Via the overthrow of the exploiting classes by the proletariat, the confiscation of the banks, the factories, the mines, transport, houses, the stock of goods of the capitalist, the lands of the landlords, the church, and the crown.

This resolution was approved and adopted on January 16-17, 1934, by the Central Committee of the Communist Party, at New York City, and by the National Convention of the Communist Party at Cleveland, Ohio, in April 1934, at which convention there were present 470 voting and associate delegates.

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The oppositions of the philosophies of communism and the American ideals of democracy are so direct and so fundamental that they cannot

exist together. Communism, moreover, is of foreign origin and is directed by an alien organization outside of the United States.

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Opposed to our present form of government we see the un-American character of the Communist Party in the United States. It is a party recognized on an international scale, governed and controlled by a constitution and rules emanating from the "Communist Internationale", with headquarters at Moscow in the Soviet Union, and dedicated to the overthrow of government by violence and force.

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The Communist Party of the United States is a section of this Internationale. As such, it is subject to the control and direction, first, of the World Congress of the Communist Internationale and, second, of the executive committee of that body. The Internationale control of the Communist Party of the United States is intimate, membership in that party being open only to

those who accept the program and rules of the given Communist Party and of the Communist Internationale, who join one of the basic units of a party, actively work in it, abide by all the decisions of the party and of the Communist Internationale, and regularly pay party dues. (See par. 3 of the constitutions, p. 88.)

It will be observed, therefore, that stringent conditions are imposed upon the party membership which are wholly foreign to the American conception of political organization. A Communist Party member here is not simply an enrolled Communist who gives intellectual assent to its political and economic program. He must be an active worker, bound to accept and carry out promptly the orders issued to him by superior party committees, the chief of which is in a foreign country, whether he likes such orders or not.

In relation to the information disclosed by this investigation, a concurrent resolution was introduced in the House of Representatives on January 3, 1935, by the Honorable George H. Tinkham, resolving "That it is the sense of the Senate and House of Representatives of the United States that the diplomatic recognition by the Government of the United States of America of the Union of Soviet Socialist Republics should be withdrawn." This resolution has not yet been acted upon.

The action proposed in this resolution raises an interesting question as to the authority of Congress to interfere with the well-established right of the executive branch of the Government to determine, in its own discretion, the question of recognition. This aspect of the situation, however, is not involved in the present discussion, and need not be considered here.

Meanwhile, on February 6, 1935, the Department of State announced that the following changes in our representation in Moscow have been ordered:

The acting naval attaché will be withdrawn;
The air attaché will be withdrawn;

The consulate general will be abolished;

Reductions will be made in the personnel of the Embassy.

A list of agreements between Russia and foreign Governments affecting claims against Russia is embodied in the annex appended hereto.

CHANDLER P. ANDERSON

ANNEX CONTAINING LIST OF AGREEMENTS BETWEEN RUSSIA AND FOREIGN GOVERNMENTS
AFFECTING CLAIMS AGAINST RUSSIA¹

FRANCE—Notes were exchanged Oct. 28 and Oct. 29, 1924, respecting claims of French citizens. France declined Russia's proposals for settlement. Texts: *European Economic and Political Survey*, Sept. 30, 1927, pp. 43–48.

GERMANY—The Treaty of Rapallo, signed April 16, 1922, provided that both governments should renounce repayment for war expenses and damages . . . and repayment for civil damages, etc. Text: *Russian Information and Review*, May 15, 1922, Vol. 1, p. 379.

GREAT BRITAIN—

(1) Trade agreement, signed at London, March 16, 1921, contained mutual declaration of recognition of claims. Text: this JOURNAL, Vol. 16 (1922), Supplement, p. 147. General treaty, signed Aug. 8, 1924, in Chap. III, containing provisions on (Claims and loans, Arts. 6–9) was either not ratified, or was denounced on Nov. 21, 1924. Text: *Russia*, No. 4 (1924), p. 11.

(2) A protocol was signed in London, Oct. 3, 1929, relative to the procedure for regulation of matters in dispute . . . to be applied upon renewal of diplomatic relations. Sec. III related to claims and counter-claims to be settled by negotiation between the two governments. Text of protocol: *Russia*, No. 1 (1929), p. 7.

(3) The Russian Claims Department was founded in September, 1918, for the purpose of collecting and classifying the claims of British subjects against Russia or individual Russian nationals. Claims had formerly been notified to the Foreign Claims Department of the Foreign Office. The reports of the Russian Claims Department are found in the *Annual report of the Comptroller of the Clearing Office (Germany)* . . . beginning with the 3d annual report published in London, 1923. The 13th report, published in 1934, states that "Claims by British nationals continue to be registered and classified." See *Great Britain Clearing Office. Annual reports*.

No agreement for settlement of claims seems to have been concluded.

ITALY—The Treaty of Commerce and Navigation, signed at Rome, Feb. 7, 1924, contained a declaration relating to claims. See Art. 2 of the text in *L'Europe Nouvelle*, Aug. 30, 1924, p. 1152.

JAPAN—Agreement, signed at Peking, Jan. 20, 1925, for settlement of disputed questions and resumption of diplomatic relations. English text: *L'Europe Nouvelle*, special edition, Aug. 22, 1925, No. 3, pp. 56–59. Protocol (A) Art. II ("All questions relating to claims are reserved for adjustment at subsequent negotiations.")

UNITED STATES—Editorials by C. P. Anderson in this JOURNAL, Vol. 28 (1934), pp. 90 and, 545, entitled, respectively: "Recognition of Russia," and "Assignment of Claims by the Russian Government to the United States."

¹ NOTE.—This list was prepared in part by M. Alice Matthews, Librarian of the Carnegie Endowment for International Peace, and verified and amplified through consultation with the Department of State. It duplicates to some extent the list appended to the editorial on "Recognition of Russia," by C. P. Anderson, published in this JOURNAL, Vol. 28 (1934), at p. 97.

An examination has been made of a number of treaties between Russia and other countries in addition to those mentioned above, but no record has been found of any settlement made by Russia in respect to claims of foreign governments or nationals.

THE ADJUSTMENT OF THE *I'M ALONE* CASE

The auxiliary schooner *I'm Alone*, built and registered at Lunenburg, Nova Scotia, and owned by the Eugene Creaser Shipping Company Limited, a company incorporated under the laws of the Province of Nova Scotia, was sunk on the high seas by the United States Coast Guard vessel *Dexter* on March 22, 1929, more than 200 miles from the coast of the United States. The master and crew were plunged into the sea. The boatswain, one Leon Mainguy, died from drowning. The captain and the remaining members of the crew survived and were taken on board American Coast Guard vessels. They sustained losses of instruments, tools and personal effects. The cargo, consisting of intoxicating liquors, and valued at \$125,457, was lost. The destruction of the vessel was the climax of the pursuit thereof initiated by the United States Coast Guard cutter *Wolcott* on March 20, 1929, when the *I'm Alone* was within one hour's sailing distance from the coast of the United States, but outside of the territorial waters thereof. The *Dexter* joined in the pursuit on March 22. The schooner was fired upon and sunk because of the refusal of the commander to heave to.¹

After her construction, the *I'm Alone* was employed for some years in rum running, the cargo being destined for illegal introduction into, and sale in,

¹ See "I'm Alone" Case: Diplomatic Correspondence between the Governments of the United States and Canada concerning the Sinking of the "I'm Alone," together with an Opinion of Attorney General William D. Mitchell and the Conventions of January 23 and June 6, 1924, for the Prevention of Smuggling of Intoxicating Liquors, Department of State, Arbitration Series No. 2 (1); "I'm Alone" Case: Claim made by His Majesty's Government in Canada under the Provisions of Article IV of the Convention concluded January 23, 1924, between the United States and Great Britain, *id.*, No. 2 (2); "I'm Alone" Case: Answer of the Government of the United States of America to the Claim of His Majesty's Government in Canada in Respect of the Ship "I'm Alone," *id.*, No. 2 (3); "I'm Alone" Case: Brief Submitted on Behalf of His Majesty's Government in Canada in Respect of the Ship "I'm Alone," *id.*, No. 2 (4); "I'm Alone" Case: Answering Brief of the Government of the United States of America to the Claim of His Majesty's Government in Respect of the Ship "I'm Alone," *id.*, No. 2 (5); Claim of the British Ship "I'm Alone": Statement with Regard to the Claims for Compensation Submitted by the Canadian Agent Pursuant to Directions Given by the Commissioners, Dated the 30th June, 1933, Ottawa, 1933; Claim in Respect of the Ship "I'm Alone": Statements Submitted by the Agent for the United States Pursuant to the Directions Given by the Commissioners, Dated the 30th June, 1933, Government Printing Office, Washington, 1934; Joint Final Report, Jan. 5, 1935, Department of State, Press Release, Jan. 9, 1935; Department of State, Press Release of same date, descriptive of Joint Final Report; Mr. Hull, Secretary of State, to the Minister of the Dominion of Canada, Jan. 19, 1935, Department of State, Press Release, Jan. 21, 1935. The Joint Interim Report of the Commissioners, dated June 30, 1933, and the Joint Final Report of Jan. 5, 1935, are reprinted in this JOURNAL, *infra*, pp. 326-331.