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INTERNATIONAL LAW AND THE TREATY OF PEACE

BEING A COMPARATIVE ANALYSIS OF THE COVENANT AND TREATY OF VERSAILLES OF JUNE 28, 1919, WITH THE ARTICLES OF THE SETTLEMENT AND APPLICABLE PRINCIPLES OF THE LAW OF NATIONS—SET OUT IN PARALLEL COLUMNS

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Considering the terms of the treaty of Versailles, as they relate to the actual settlements, from the standpoint of international law, it may be affirmed that no modern treaty of peace has done this system such violence; certainly not the cynical treaty of Vienna of 1815. For that treaty, in spite of the wickedness of its settlements, left us some progressive principles of the utmost value, notably that of the freedom of international rivers. Further, its labors in behalf of the abolition of the slave trade were surely worthy of the world's approval.

In the treaty of Versailles, however, it is difficult to find a single progressive principle established, while rule after rule of the law of nations, heretofore recognized as instituted for the protection of all states, is ignored or violated where it conflicts with the purposes of the respective allied and associated powers.

The validity of title founded in conquest is not abolished, as it might have been, and as the world was led to believe it would be, embodied, as it was, in the preliminaries to negotiation. The recognition of the secret treaties, confirming the rights of conquest, stood in the way of this benign possibility.

The plebiscite, designed to prevent the handing of peoples around like flocks of the field, was not established as a principle of the law of nations, as the world was also led to expect it would be. There is only a very restricted application of it in the terms, and with respect to some territories it is denied altogether.

Neither is the right of option, designed for the protection of individuals or minorities, established. It is permitted in some instances of cession, but withheld altogether in others.

As to the covenant of the league of nations, it is a reactionary institution rather than a progressive one in that it ignores the whole modern trend toward the establishment of international relations upon the foundations of law rather than upon compromise and expediency. The covenant of the league of nations looks to the establishment of superintendence over international relations by political as distinguished from legal methods. There is not a single reference to international law in the whole covenant that points to any definite plan whatever for the progressive improvement and extension of that law. In neither the council of the league of nations nor in any body to function under it in the proposed settlement of disputes is there any provision for the limitation of their actions within the settled principles of law. It is possible for the league of nations to take up and carry on the achievements of the last two decades, starting where The Hague conferences left off and looking to the progressive development of law and the substitution of judicial settlements for mere arbitration based on compromise, but such an intention is nowhere manifested in the covenant. In fact, there appears to be almost a complete abandonment of the lessons of the past.

Not only does the treaty of Versailles fail to lend its great sanction to the establishment of progressive principles, but it sets aside, so far as future validity is concerned, many principles wrung only with the most laborious effort from a self-interested world. Thus the rules instituted for the protection of private property on land and in territorial waters, and even that protecting the private property of prisoners of war, are swept aside. The settled distinctions with respect to belligerent rights of destruction and those limiting the exercise of belligerent force within lawful bounds are confounded. The effect of the outbreak of war on treaties is thrown into greater confusion than ever by reason of inconsistent and contradictory action.

In the stipulation for the trial and punishment of those German nationals found guilty of violations of the laws of civilized warfare a wholesome step forward has been taken, calculated to sustain these laws in the times to come and to promote their observance.

It was not necessary to the placing of the severest burdens upon Germany to have declared that Germany must accept the responsibility for causing all loss and damage to which the allied and associated Governments and their nations have been subjected; for, as pointed out in the discussion of the article, the laws of war plainly distinguish between lawful and unlawful loss and damage. The amount of unlawful loss and damage for which Germany is responsible, in view of her utterly barbarous methods of carrying on war, probably far exceeds any sum which may ultimately be received. To have adhered to these laws in assessing reparation—as it is proposed to invoke the law in the infliction of punishments—would have done incalculable service toward the effective establishment of these restraints upon warlike violence.

In the failure of the allied and associated Governments to take this course they have established a precedent which future belligerents will not fail to act upon in freeing themselves from heretofore fixed limitations upon the use of force. It must be borne in mind that one of the sources of international law is just such a great international congress as that assembled at Versailles; it is these gatherings mainly that make and unmake its principles. Such congresses are, therefore, under a very solemn responsibility to the future of the world.

In the preface to Prof. William E. Hall's scholarly treatise on international law, which has run through many editions, is the following remarkable prophecy, penned in 1889:

Looking back over the last couple of centuries we see international law at the close of each fifty years in a more solid position than that which it occupied at the beginning of the period. Progressively it has taken firmer hold, it has extended its sphere of operation, it has ceased to trouble itself about trivial formalities, it has more and more dared to grapple in detail with the fundamental facts in the relations of States. The area within which it reigns beyond dispute has in that time been infinitely enlarged, and it has been greatly enlarged within the memory of living men. But it would be idle to pretend that this progress has gone on without check. In times when wars have been both long and bitter, in moments of revolutionary passion, on occasions when temptation and opportunity of selfishness on the part of neutrals have been great, men have fallen back into disregard of law and even into true lawlessness. And it would be idle also to pretend that Europe is not now in great likelihood moving toward a time at which the strength of international law will be too hardly tried. Probably in the next great war the questions which have accumulated during the last half century and more, will all be given their answers at once. Some hates, moreover, will crave for satisfaction; much envy and greed will be at work; but above all, and at the bottom of all, there will be the hard sense of necessity. Whole nations will be in the field; the commerce of the world may be on the sea to win or lose; national existences will be at stake; men will be tempted to do anything which will shorten hostilities and tend to a decisive issue. Conduct in the next great war will certainly be hard; it is very doubtful if it will be scrupulous, whether on the part of belligerents or neutrals; and most likely the next war will be great. But there can be very little doubt that if the next war is unscrupulously waged, it also will be followed by a reaction toward increased stringency of law. In a community, as in an individual, passionate excess is followed by a reaction of lassitude and to some extent of conscience. On the whole the collective seems to exert itself in this way more surely than the individual conscience; and in things within the scope of international law, conscience, if it works less impulsively, can at least work more freely than in home affairs. Continuing temptation ceases with the war. At any rate it is a matter of experience that times, in which international law has been seriously disregarded, have been followed by periods in which the European conscience has done penance by putting itself under straighter obligations than those which it before acknowledged. There is no reason to suppose that things will be otherwise in the future. I therefore look forward with much misgiving to the manner in which the next great war will be waged, but with no misgiving at all as to the character of the rules which will be acknowledged ten years after its termination, by comparison with the rules now considered to exist.

Only the first half of this prophecy has been fulfilled; in the pursuit of material and illogical objects by the allied and associated Governments the opportunity to realize the latter half has been postponed to a later time.

The sweeping aside of all restraints by the victors must cause something of a shock to those who read the articles of the treaty in the belief that the character of imposed peace has changed.

It is to be hoped, however, that with the cooling of passions and the coming of sober second thought to the world the influence of the great international jurists of the United States, of France, of Italy, and of Great Britain will reassert itself toward the readjustment, restatement, and restoration of the principles of international law, as the only foundation upon which the relations of nations can rest in definite security.

The following analysis is, of necessity, a mere outline, in which the articles of the treaty are paraphrased in the interest of brevity; only a work of volumes would permit of a thorough discussion of the multifarious phases of the settlement and their relation to and effect upon the law of nations.

THE TREATY.	THE LAW.
PART I. THE COVENANT OF THE LEAGUE OF NATIONS.	
The high contracting parties, In order to promote international cooperation and to achieve international cooperation and achieve international peace and security: By the acceptance of obligations not to resort to war; By the prescription of open, just, and honorable relations between nations; By the firm establishment of the understandings of international law as the actual rule of conduct among governments, and	Not only does the covenant fail to provide any means for the "firm establishment of the understandings of international law" but the treaty itself appears to discard many vital principles of the customary as well as of the conventional law of nations. (See comment opposite arts. 282–287.)
By the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another agree to this covenant of this league of nations.	
Article 1. Members of the league shall be those signatories named in the annex, and also such of those named (as invited) as shall accede without reservation by a declaration deposited with the secretariat within two months of the coming into force of the treaty.	Thirty-two States, dominions, and colonies mentioned in the annex as signatories are declared members (though China, one of the States mentioned, refused to sign) and 13 others are named as those invited to become members, making 45 in all. In 1910 Oppenheim, the eminent English successor to Westlake as Whewell professor at Cambridge, asserted (vol. 1, Int. Law, pp. 162–164) that there were then in Europe 74 States possessing international personality, and therefore members of the family of nations. He included the 24 German States and free towns. He cites 21 States in the Americas, 1 in Africa, and 1 in Asia. As to China, Siam, Afghanistan, and Thibet, he denied to them the status, asserting that they possess international personality only for some purpose. His list embraced 97. None of the British dominions or colonies is mentioned as possessing the essential attributes of an international person qualified for association in the family of nations. (See W. Allison Phillips, The Peace Settlements, 1815 and 1919. Edinburgh Review, July, 1919, as to exclusion of German States from the holy alliance.)
Any fully self-governing State, dominion, or colony may become a member if its admission is agreed to by two-thirds of the assembly, provided that it shall give effective guaranties of its sincere intention to observe its international obligations and shall accept such regulations as may be prescribed by the league as to its military and naval forces and armaments.	This paragraph confounds all previously accepted principles with respect to international personality and sovereignty. If it connotes the assumption ipso facto by such dominion or colony of a bona fide free and independent status, there is nothing inconsistent, but then it would cease to be a dominion or colony. Thus the British Empire would be broken up. Half and part sovereign States, says Oppenheim (vol. 1, pp. 529–530), may be parties to international negotiation, but so-called colonial States, as the Dominion of Canada, can never be parties to international negotiation. Thus viewed from the standpoint of the law of nations, the Dominion of Canada, the Commonwealth of Australia, New Zealand, and the Union of South Africa are British territory. (Ibid., vol. 1, p. 231.) No genuine league of nations can be founded upon such basic inequalities. These inequalities appear not only in the organic structure from the outset but they appear with respect to the treatment of subsequently admitted members.

THE TREATY.	THE LAW.
Any member may, after two years' notice of its intention so to do, withdraw from the league, provided that all its international obligations and all its obligations under this covenant shall have been fulfilled at the time of withdrawal	The effect of notice of intended withdrawal would be immediately to transfer to the league the power of inquiry into and decision upon the whole body of international relations of the notifying State. Nor does it appear that time would bar any circumstance. In a particular case a State may of its own free will submit to an outside authority for decision the question of its fulfillment or nonfulfillment of certain obligations without derogating in any way from its sovereignty, but to transfer the right of final decision over the whole of its foreign relations is to yield the very essence of external sovereignty. Such State would occupy the position of ward to the outside authority. (See 1 Halleck, Ch. III, sec. 1; Blumtschli, sec. 64; Vattel, ch. 1; Manning, p. 93; Hall, sec. 1; 1 Westlake, ch. 3.)
Article 2. The action of the league shall be effected through the instrumentality of an assembly and of a council, with a permanent secretariat.	
Article 3. The assembly shall consist of representatives of members of the league. It shall meet at stated intervals and from time to time as occasion may require, and at its meetings may deal with any matter within the sphere of action of the league or affecting the peace of the world. At meetings of the assembly each member of the league shall have one vote and not more than three representatives.	It will be observed that the assembly, which is a representative body, in principle at least, is not required to meet within any definite period as is the council. (Infra, art. 4.) Although apparently clothed with concurrent power, it is in vital respects subordinate to the smaller council. The basis of legal equality in any league of nations necessarily requires equality in voting. (See Scott, The Hague Peace Conferences, vol. 1, p. 37.) It will be noted that the principle of equality disappears at this point, the five great powers constituting themselves an indefeasible majority. Yet every attempt at organizing a league of nations must start from and keep intact the independence and equality of all civilized States. (Oppenheim (1919), The League of Nations, p. 33.)
Article 4. The council shall consist of representatives of the principal allied and associated powers (the United States, Great Britain, Italy, France, and Japan) together with four other members to be selected by the assembly from time to time in its discretion. Belgium, Brazil, Spain, and Greece are named provisional members. With the approval of a majority of the assembly, the council may name additional members whose representatives shall have fixed places in the council.	The enlargement of the council can take place only by unanimous consent of the council, with the approval of a majority of the assembly. Self-interest will always adjust and readjust the balance in the council.
The council shall meet from time to time as occasion may require and at least once a year, and it may deal with any matter within the sphere of action of the league or affecting the peace of the world. Any member not represented on the council shall be invited to send a representative to sit as a member at any meeting during the consideration of matters specially affecting the interests of such member.	Although a State whose affairs are under consideration by the council may have a representative thereon, the rule of unanimity excludes the vote of this added representative. (Infra, art. 5.) Such representative is therefore not an equal in fact.
At meetings of the council each member represented shall have one vote and not more than one representative.	While there is equality in the vote of the council, the principle is nullified by inequality of representation.
Article 5.—Except where otherwise provided decisions of the assembly and the council shall require agreement of all members represented at the meeting. Matters of procedure, including appointment of committees to investigate particular matters, may be decided by a majority present. The first meeting of the assembly and the first meeting of the council shall be summoned by the President of the United States.	That is to say, there must be agreement as to such representatives present. This would constitute the President of the United States the presiding officer of both bodies temporarily, at least.
Article 6. The permanent secretariat shall be established at the seat of the league. The secretariat shall comprise a secretary general and such other secretaries and staff as may be required. The first secretary general shall be the person named in the annex; thereafter he shall be appointed by the council with the approval of a majority of the assembly.	As to the possible magnitude of the personnel, see infra comment opposite article 282.

THE TREATY.

Secretaries and staff shall be appointed by the secretary general with the approval of the council.

The secretary general shall act in that capacity at all meetings of the assembly and of the council.

The expenses of the secretariat shall be borne by members in accordance with the apportionment of expenses of the International Bureau of the Universal Postal Union.

Article 7. The seat of the league is established at Geneva. The council may decide at any time to establish the seat elsewhere.

All positions under or in connection with the league, including the secretariat, shall be open equally to men and women.

Representatives of members of the league and officials of the league when engaged on the business of the league shall enjoy diplomatic privileges and immunities.

THE LAW.

Diplomatic privileges and immunities include extraterritoriality, that is, immunity from local law, civil and criminal in foreign countries, such immunities extending to the agent's residence and to those in his suite. Owing to the inviolability attaching by the law of nations to the person of a diplomatic agent, a crime committed against him is punished with exceptional severity by the laws of all States. (U. S. *v.* Hand, 2 Wash., 435.)

The diplomatic immunities extended to all officials of the league must be considered as deriving from the respect due to the sovereignty of the league as a distinct political entity, as the immunities of an ambassador flow from the respect due to the person of the sovereign whom he represents.

Yet article 7 appears to extend the principle far beyond its application, even in the case of ambassadors, in clothing these officials with the status apparently anywhere "when engaged on the business of the league." Diplomatic immunities do not attach under the law of nations to ambassadors passing through third countries. They can claim no more than courteous treatment. (1 Westlake, pp. 273–275; 1 Oppenheim, pp. 469–470; 1 Twiss., sec. 222; 1 Wharton, sec. 97; 4 Moore, sec. 643.)

By the treaty of Berlin, 1878, and the treaty of London, 1883, instituting the Danube commission, the principle of inviolability was recognized as between the signatories as attaching to the respective representatives, their archives, etc. But it was not contemplated as of universal application, as in the present instance, where league officials will be sent into the territories of nonmembers.

The buildings and other property occupied by the league or its officials or by representatives attending its meetings shall be inviolable.

Article 8. The members of the league recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common motion of international obligations.

The council, taking into account the geographical situation and circumstances of each State, shall formulate plans for such reduction for consideration and action of the several governments.

Such plans shall be subject to reconsideration and revision at least every 10 years.

After these plans shall have been adopted by the several governments the limits of armaments fixed therein shall not be exceeded without the concurrence of the council.

The deduction is a fair one that "the geographical situation and circumstances" to be taken into account in reduction of armaments create an exception in favor of the great powers, whose far-flung empires may be thought to require large military and naval establishments. And the great powers, constituting a dominant force in the council, will formulate plans for themselves as well as for other States.

The hegemony of the great powers in the league is silently recognized throughout the covenant. Yet historically a great power of to-day is not necessarily a great power of to-morrow. Spain, Portugal, and Sweden were great powers in 1815. Germany, Austria-Hungary, and Russia were great powers in 1914.

And, it may be asked, who will keep in order those who are to keep the world in order?

THE TREATY.

Members agree that the manufacture by private enterprise of munitions of war is open to grave objections. The council shall advise how the evil effects can be prevented.

Members undertake to interchange full and frank information as to the scale of their armament, their programs, and of their industries adaptable to warlike purposes.

Article 9. A permanent commission shall be constituted to advise the council on the execution of the provisions of articles 1 and 8, relating to military and naval questions.

Article 10. 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. In case of any such aggression or in case of any threat or danger of such aggression, the council shall advise upon the means by which this obligation shall be fulfilled.

THE LAW.

This would undoubtedly be a military commission whose functions would include superintending disarmament of States newly admitted, as well as directing the forces necessary to vindicate international obligations.

This article embraces two distinct obligations in the first sentence, viz: "To respect" the territorial integrity and existing political independence of member States, and to "preserve" the same as against external aggression.

A State undertaking to respect the territorial integrity of another contracts to refrain from doing anything that shall in any way impair or impeach that territorial integrity, including its possessions, dependencies, colonies, protectorates, leased territories, spheres of influence, and hinterlands. All of these terms express degrees of territorial rights. (1 Westlake, ch. 6.)

Under existing principles of the law of nations, States are under a general duty to respect the territory and independence of all other States. This duty connotes the right of all States to complete immunity from interference by others. But there are exceptions to this general rule recognized by the law. A State may lawfully decline to respect the territory and independence of another (1) in self-defense, (2) in accordance with treaty stipulations, (3) on grounds of humanity, and (4) in behalf of an oppressed population. (Davis, 4 ed., p. 104; Woolsey, sec. 43; Wheaton, sec. 36; Snow, p. 57; Hall, sec. 88; Lawrence, secs. 74–89; 1 Moore, p. 73.)

The acceptance of the obligation "to respect" the territorial integrity and existing political independence of member States means, therefore, a mutual engagement not to interfere on grounds of humanity or to assist an oppressed people within the territorial limits of member States. This obligation would probably forbid extending a recognition of belligerency to revolting peoples within the territories of member States.

The second obligation in the first sentence of article 10 is that to preserve as against external aggression the territorial integrity and existing political independence of member States; so that there is not only the duty to abstain from giving any recognition or assistance to a revolting portion of a member State, but there exists the duty to aid in putting down such revolt should some other State assist the revolting portion.

It is plainly a renewal of the proposition of the holy allies at the congress of Aix-la-Chapelle, in 1818, to stereotype the State of possession, which was promptly rejected by Lord Castlereagh as impossible of achievement until existing wrongs had been righted. (Allison's Life of Castlereagh, vol. 3, p. 66.)

THE TREATY.

Article 11. Any war or threat of war, whether immediately affecting members or not, is hereby declared a matter of concern of the league, and the league shall take any action deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the secretary general shall on the request of any member forthwith summon a meeting of the council.

It is the friendly right of each member to bring to the attention of the assembly or council any circumstance whatever affecting international relations which threatens to disturb international peace or good understanding.

Article 12. Members agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the council, and they agree in no case to resort to war until three months after the award by arbitrators or the report by the council. In any case the award by arbitrators shall be made within a reasonable time and the report of the council shall be made within six months after submission.

Article 13. Members agree that whenever a dispute arises between them which they recognize as suitable for submission to arbitration and which can not be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration. Disputes as to interpretation of treaties, as to questions of international law, as to the existence of any fact which if established would constitute a breach of international obligation or as to the extent and nature of reparation to be made for such breach are declared to be suitable for arbitration. For the consideration of any such dispute the court of arbitration to which such case is referred shall be the court agreed on or stipulated in any convention between the parties. Members agree to carry out the award in good faith and not to resort to war against a member complying therewith. In the event of failure to carry out such award the council shall propose what steps should be taken to give effect thereto.

THE LAW.

What, it is pertinent to ask, constitutes a threat of war. The extent and variety of acts and situations embodying a threat of war defy enumeration. It is impossible even to catalogue acts and causes of war. One instance of a threat of war, in that it is a hostile act, may be cited: namely, any premature recognition of belligerency or of independence extended to a people struggling to be free. (Hall, pp. 39–42; Woolsey, sec. 180; Davis, 4th ed., pp. 277–278.)

The term "threat of war" is absolutely undefined in the terminology of the law of nations. It may be construed to embrace any degree of friction in international negotiation and authorize intervention by the league.

It is presumed that the right of the assembly or council to obtrude itself into the ordinary diplomatic negotiations between States would not be needlessly exercised, yet the right is apparently contemplated if the negotiations do not move smoothly. The possession of the untrammeled right of negotiation is the test of independence. (Manning, pp. 93–100: Westlake, Chap. VII; 1 Halleck, Ch. IV., sec. 1.)

The obligation embodied in this article has been assumed generally by the civilized States of the world in bilateral treaties; and since 1899 the permanent court of arbitration at The Hague has been successfully occupied with a great variety of disputes. It is true that in a great majority of these bilateral treaties, "questions of honor and vital interest," that is, political questions, are excepted and reserved. There are certain political questions that are admittedly not arbitrable, as, for example, with us, one involving the validity of the Monroe doctrine.

The principle of delay has been similarly embodied in bilateral treaties, providing for commissions of inquiry in place of reference to arbitration, though it has not been extensively applied as yet, except by the United States in the so-called Bryan treaties of 1913–14.

This article puts "teeth" in the conventions of 1899 and 1907 establishing the permanent court of arbitration at The Hague. This court has heard and determined many grave controversies, but its determinations have been founded largely upon compromise and expediency rather than upon the application of the principles of law. It was due to an existing sense of the inadequacy of this court as a means for building up a body of legal decisions that the American delegation to The Hague conference of 1907 was able to bring about the adoption of a draft convention for the institution of a court of arbitral justice. The matter of representation alone prevented it from being put into immediate operation, a difficulty easy of solution to-day.

The convention establishing the permanent court of arbitration appears to be the only one of the dozen or more of beneficent conventions signed at The Hague in 1907 that is recognized by the principal allied and associated powers as possessing any binding force or as worthy of survival. (See art. 287.) There appears to be a distinct break with the past 20 years' development of law and judicial processes as the preeminently desirable means toward the establishment of peace and an espousal of the doctrine of force.

THE TREATY.

Article 14. Council shall formulate and submit to members of the league for adoption plans for a permanent court of international justice.

Article 15. Members agree that any dispute likely to lead to a rupture, not submitted in accordance with article 13 will be submitted to the council. Any party may effect submission by giving notice to the secretary general. The parties will communicate to the secretary general statements of their case with all relevant facts and papers, and the council may forthwith direct the publication thereof.

The council will endeavor to effect a settlement, and if successful a statement shall be made public giving the facts and explanations. If the dispute is not settled the council, either unanimously or by majority vote shall publish a report and recommendations. Any member of the league or the council may do likewise.

If the report of the council is unanimously agreed to by members other than the representatives of one or more parties to the dispute, members will not go to war with any party complying with the recommendation.

If the council fails to reach a report unanimously agreed to by members other than those in dispute, members reserve the right to take such action as they consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the council shall so report and make no recommendations.

The council may in any case refer the question to the assembly, and it shall be referred to the assembly at the request of either party if such request be made within fourteen days after the submission of the dispute to the council. The assembly shall have all the powers of the council conferred in this article and in article 12, provided that a report made by the assembly be concurred in by members in the council and a majority of other members of the league other than the parties to the dispute.

Article 16. Should any member resort to war in disregard of its covenants under articles 12, 13, and 15, it shall ipso facto be deemed to have committed an act of war against all other members of the league, which hereby undertake to subject it to the severance of all

THE LAW.

The convention referred to (supra, opposite art. 13) is ready at hand, having been accepted by all the civilized States of the world. (See Scott, The Hague Conferences.)

This article attempts to deal with disputes other than those known as "justiciable," dealt with in article 13. It is realized that some of these questions are beyond amicable solution. They are outside the realm of law and no principle of law or possibility of compromise can give hope of settlement. In such circumstances the league apparently sanctions a resort to war, after conciliation through the medium of the council has failed. The principles embodied in articles 12, 13, and 15 are sound; the objection lies in the methods of their application.

What provision is made, it may be asked, for cases of self-defense against sudden attack, as, for example a border raid. Must the State assailed submit passively until the council has deliberated upon the question of "external aggression" or upon conciliation? The right of self-defense appears nowhere to be recognized in the sense that it has heretofore existed. (Hershey, 144–146, and notes.)

It will be observed that as to whether or not a dispute arises out of a matter "which by international law is solely within domestic jurisdiction" is for the council to find. There is a great variety of things a State may do in pursuance of its territorial supremacy, or domestic jurisdiction, which have international effect, and which may or may not infringe the rights of other States. Thus all persons, including aliens, within the territorial limits of a State are subject to the jurisdiction of that State, yet the State to which the alien owes allegiance may rightfully protect him abroad and compel a standard of treatment recognized by international law. (See Borchard, Diplomatic Protection, etc.) So all exercises of domestic jurisdiction having international effect may be held to involve international concern. Knowing that "it is the duty of a good judge to extend his jurisdiction" it is conceivable that much exercise of domestic jurisdiction having international effect might ultimately pass under the control of the council in the application of this article.

The apparent concurrent power of the assembly will be seen by this article to have disappeared, requiring the concurrence of the council to effectuate its action, thus leaving the council the preponderantly powerful authority in the scheme.

It is for the council (or the assembly with the consent of the council under art. 15) to decide when the contingency arises under which the duty of invoking and applying measures of commercial warfare falls upon members.

THE TREATY.	THE LAW.
trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State and the nationals of any other State.	The term "resort to war" must be held to include defensive and offensive warlike violence as well as war legally declared and war in its material sense. (The *Three Friends* (1896), 166 U. S.) The obligations under this paragraph are clear and definite.
It shall be the duty of the council in such case to recommend to the several Governments concerned what effective military, naval, or air force the members shall severally contribute to the armed forces to be used to protect the covenants of the league of nations.	The duty of commercial boycott appears to arise ipso facto with a determination by the council as to a "resort to war"; the duty to contribute armed forces appears to rest on a decision of the league ad referendum.
Members of the league agree, further, mutually to support one another in financial and economic measures in order to minimize the loss and inconvenience resulting, and that they will afford passage of troops through their territories.	Whether or not a member contributes to the armed forces he shall contribute his share toward the financial burdens assumed by those States employing their forces against the recalcitrant State, and become a passive ally at least to the extent of permitting the passage of troops across his territory. Such assistance constitutes war quite as fully as though troops were furnished.
Any member of the league which has violated any covenant may be declared no longer a member by unanimous vote of the council (excluding the vote of the member in disfavor).	
Article 17. This article extends the force of articles 12 to 16, inclusive, to nonmembers of the league, who shall be invited to accept the obligations of membership for the purpose of the dispute.	
Upon such invitation the council shall immediately institute an inquiry.	This paragraph clothes the council with jurisdiction over all matters affecting or held to affect international relations arising in nonmember States, with or without the approval of such nonmembers. It necessarily involves a denial of the heretofore accepted principles of the equality and independence of States.
	There is no limit to the measures that may be taken.
If both parties to the dispute be nonmembers and decline to accept the obligations of membership, the council may take such measures and make such recommendations as will prevent hostilities and result in settlement.	On the whole, this article reduces those nonmembers desiring to retain sovereignty and independence to the same condition of wardship to the council as is produced in the cases of members other than the principal allied and associated powers.
	The power to be assumed by the council appears to be that of unlimited intervention. Consent to the exercise of the power may be inferred as to signatories, but it can not be inferred as to nonsignatory or nonmember States. The principle of independence would vanish from the law of nations under this article.
Article 18. Every treaty or international engagement entered into hereafter by any member shall be forthwith registered with the secretariat and published. No such treaty shall be binding until so registered.	
Article 19. The assembly may from time to time advise the reconsideration of treaties which have become inapplicable.	
Article 20. Members severally agree that the covenant abrogates all obligations and understandings inter se which are inconsistent with the terms thereof and that they will not hereafter enter into inconsistent engagements. Any member bound by inconsistent obligations shall take immediate steps to procure release therefrom.	The execution of this article is left to the conscience of the members; there is no provision for scrutiny into existing treaties of alliance and other conventions serving special aims, nor is there any criterion by which inconsistency may be determined to exist. Thus the Anglo-Japanese alliance with respect to the special interests of those two States in Asia announces as an object the preservation of peace. It may be contended by the high contracting parties that on incompatibility exists; that it is in fact a "regional understanding" for securing the maintenance of peace. (See art. 21.)
	It is clear that different standards will be applied as between the principal allied and associated powers, on the one hand, and the small States on the other.

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Article 21. Nothing in this covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration, or regional understandings like the Monroe doctrine, for securing the maintenance of peace.	In the first part of this sentence all bilateral and multilateral treaties of arbitration are recognized as possessing continuing binding force. (See comment opposite art. 282–287.) As to the Monroe doctrine, it is not a regional understanding; it is a mere unilateral declaration of State policy which has never received the recognition of any State as a rule of international law. It is, however, founded upon the right of self-preservation, which right is recognized by international law. (1 Phillimore, secs. 210–220; 1 Twiss, secs. 106, 108–110; 1 Halleck, Ch. IV, secs. 1–7, 18–27; Wheaton, sec. 60; Woolsey, secs. 17, 37; Davis, p. 93.) The term "regional understanding" is new in diplomatic language and has no history from which a definition may be drawn. It would appear, however, to embrace a vast field of bilateral and multilateral treaties, conventions, and agreements relating to geographical areas and to the various degrees of existing territorial rights. The aggression of all powerful States upon weaker ones, establishing protectorates, spheres of influence, spheres of interest and hinterlands, and exacting territory on lease, has been clothed invariably in language emphasizing the anxiety of the aggressor for the maintenance of peace and the extension of protection. Such is the language of diplomacy, and, if accepted literally, all such agreements, founded upon force and fraud alone, are validated. (See 1 Westlake, 121–142, for discussion of minor territorial rights.) This article evidences merely a continuation of the stereotyping process, seeking to bind down mighty natural forces that no human power can hold in check. As a pertinent illustration of regional understanding, the Lansing-Ishii agreement of 1917 recognizes the "special interests" of Japan in China on the ground of contiguity; if the principle of equality has any validity whatever, China is equally entitled to a recognition of special interests in Japan upon the same ground. These understandings are not like the Monroe doctrine, which harbors no aggressive designs, but from the materialistic European and Asiatic points of view the Monroe doctrine is in the same category.
Article 22. To those colonies and territories which have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there shall be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this covenant. The best method of effecting this purpose is to intrust the tutelage of such peoples to advanced nations, as mandatories on behalf of the league. The character of the mandate must differ according to the stage of development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances. Certain communities of the former Turkish Empire have reached a stage of development where their independence can be provisionally recognized, subject to the rendering of administrative advice and assistance by a mandatory.	These peoples are perfectly able to stand alone if protected against despoilment and degradation at the hands of aggressive powerful States. After the laudable sentiments of the preceding paragraphs this is intended to prepare the reader for certain exceptions, made necessary in view of the existence of definite obligations in secret treaties and arrangements for the distribution of the spoils of war. This refers to Asia Minor and conforms to the age-long British policy of dominating the road to India. The principal community referred to is Hedjaz, which is thus created as a vassal State of Great Britain.

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Other peoples, especially those in Africa, must be placed under a mandatory responsible for administration, order, morals, the prohibition of the slave-trade and liquor traffic, and the prevention of military organization among the natives.

There are territories, such as Southwest Africa and certain of the South Pacific islands, which, owing to sparseness of population, remoteness from civilization, or contiguity to the territory of the mandatory, can best be administered as integral portions of its territory.

In every case the mandatory shall render to the council an annual report in reference to the territory committed to his charge.

The degree of authority, control, or administration to be exercised by the mandatory shall, if not previously agreed upon, be explicitly defined by the council.

A permanent commission shall be constituted to receive and examine annual reports and advise as to the observance of mandates.

Article 23. Subject to and in accordance with conventions existing or hereafter agreed upon the members of the league—

(*a*) Will eneavor to maintain fair and humane conditions of labor for men, women, and children in all countries;

(*b*) Will undertake to secure just treatment of native inhabitants under their control;

(*c*) Will intrust the league with general supervision over agreements relating to traffic in women and children and in opium and other dangerous drugs;

(*d*) With supervision of trade in arms in countries in which it may be necessary;

(*e*) Will make provision to secure freedom of communications and transit and equitable treatment for commerce of all members;

(*f*) Will endeavor to take steps for the prevention and control of disease.

Article 24. There will be placed under the direction of the league all existing international bureaux if the parties to such treaties consent. All such bureaux hereafter established shall be placed under the direction of the league.

The council may include as part of the expenses of the secretariat the expenses of any bureau or commission placed under the league's direction.

Article 26. Amendments to this covenant will take effect when ratified by members whose representatives compose the council and by a majority of the members whose representatives compose the assembly. No amendment shall bind a member which signifies dissent, but in such case it shall cease to be a member.

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This is the paragraph that conceals but conforms to secret arrangements for the disposition of German Southwest African colonies to France and certain Pacific island possessions to Japan.

It is a mere mandate for annexation.

With the possible exception of Belgium the four principal allied powers, who sit in the council, will alone retain possession of the German colonies. They will therefore report to themselves annually and define their degrees of control, occupying the dual relation of principal and agent in this trust.

Such a commission can not perform a serious function.

This program, when considered in connection with articles 24 and 282 infra, reveals a magnitude of labors and a diversity of administrative power, the logical development of which would abolish all conceptions of sovereignty and independence among nations.

(See comment opposite arts. 23, 282.)

It will be observed that there are no limits to the powers which the council may assume under this article nor are there any limitations upon the powers of the council in the whole covenant comparable to an international bill of rights.

The structure contemplates not an association of equals but the subordination of the many to the authority of the few. The overruling authority is not a diplomatic assembly but a small group in which unequal representation exists, combining and confusing legislative, executive, and judicial power. The distinction may be clarified by a quotation from Dr. James Brown Scott's The Hague Peace Conferences, volume 1, pages 35–36:

> It must not, however, be forgotten that great—indeed radical and essential—differences exist between a parliament and a diplomatic assembly. A parliament legislates for a nation, and by means of proper representatives, it legislates for various component parts of the nation. International conferences in which the nations of the

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world are represented, recommend to the nations represented, or legislate ad referendum. A parliament presupposes subordination; a conference equality. A parliament binds the dependent; a conference recommends to the equal and independent nations. The parliament, by means of majorities, decrees or issues a law; the conference, by means of unanimous agreement presents to the nations represented a draft which, when ratified by the nations, becomes by the approval of the internal and constitutional organs, the law of the ratifying nation. When ratified by the nations as a whole it becomes jus inter gentes; that is, international law in the strict sense of the word. At most the decree or resolution of a majority binds the majority; it does not, and under existing conditions it can not, well control an individual State.

Oppenheim, in his three lectures on the league of nations (supra, p. 36) in 1919, declared it essential that the league start from the beginning made by the two Hague conferences. This the peace conference failed utterly to do.

ANNEX I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS SIGNATORIES OF THE TREATY.

The United States of America.
Belgium.
Bolivia.
Brazil.
British Empire:
Canada.
Australia.
South Africa.
New Zealand.
India.
China.
Cuba.
Ecuador.
France.
Greece.
Guatemala.
Haiti.
Hedjaz.
Honduras.
Italy.
Japan.
Liberia.
Nicaragua.
Panama.
Peru.
Poland.
Portugal.
Roumania.
Serb-Croat-Slovene State.
Siam.
Czecho-slovakia.
Uruguay.

STATES INVITED TO ACCEDE TO THE COVENANT

Argentine Republic.
Chili.
Colombia.
Denmark.
Netherlands.
Norway.
Paraguay.
Persia.
Salvador.
Spain.
Sweden.
Switzerland.
Venezuela.

ANNEX II. FIRST SECRETARY GENERAL OF THE LEAGUE OF NATIONS.

The Hon. Sir James Eric Drummond, K. C. M. G., C. B.

PART II. BOUNDARIES OF GERMANY.

PART III. POLITICAL CLAUSES FOR EUROPE.

Section 1. Belgium.

Article 31. Germany recognizes and consents to the abrogation of the treaty of neutralization of April 19, 1839, and undertakes to recognize and to observe any conventions which may be entered into by the principal allied and associated powers, or any of them, in lieu thereof.

The first part of this article apparently takes cognizance of the continuing force of the principle enunciated by the London conference of 1871, to the effect that it is an essential principle of the public law of Europe that no state may release itself from the obligations of a multilateral law making treaty, or modify the terms thereof, except with the consent of the other contracting parties previously obtained.

The latter part of the article looks to some new arrangement whereby Belgium's territorial situation is to remain permanently fixed as a buffer state on the

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	west coast of Europe, in which arrangement, however, it is anticipated that the United States, as one of the principal allied and associated powers, may not take part.
Article 32. The condominium of Prussia and Belgium over Moresnet neutre is replaced by the passage of this territory under the single sovereignty of Belgium.	This is, in effect, annexation of Moresnet neutre by Belgium with the consent of the powers.
	This territory has been in dispute since 1815 because of lack of agreement as to the boundary treaty of that date between the Netherlands and Prussia.
	The renunciation of the territory in favor of Belgium excludes the possibility of a plebiscite, and it does not appear that the inhabitants are given any right of option.
Articles 33, 34 stipulate for the cession of Prussian Moresnet and Eupen and Malmedy to Belgium, in which within six months the inhabitants may indicate in writing a desire to see the whole or a part of the territory remain under German sovereignty. The league of nations will decide as to any action taken.	Anciently and until the close of the eighteenth century it was the universal practice of successful belligerents, in cases of conquest and forced cession, to subject the inhabitants in such conquered or ceded territory forthwith to the new allegiance, regardless of their wishes or preferences. It is no longer permissible, however, to hand such populations around, in view of the development of political principles which recognize the sovereighty of the people as the governing factor in the political and social life of civilized states. This development has given rise to the plebiscite, under which the people may indicate en masse their wishes as to the disposition of the territory. (Funck-Brentano et Sorel (1887), 157 f. and 335 ff.; 1 Rivier, 210.)
	Although the plebiscite was invoked as early as 1552 by Henry II of France, after the capture of Toul, Metz, and Verdun, its fixed position in international practice begins in the French revolutionary period. Inconsistent though it may seem, the United States has evinced little approval of the doctrine in its own practice.
Article 35. Provision is made herein for the appointment, within 15 days after the coming into force of the treaty, of a commission to delimit the boundaries of the German territories going to Belgium.	In the articles of the treaty referred to it must be assumed that the final disposition of the territories ceded to Belgium will be in accordance with the expressed wishes of the inhabitants, though no pledge is given that such will be the case, nor is the disposing authority expressly bound to observe such wishes.
	If the final disposition of these territories is to depend upon plebiscites it seems needless to have provided for a formal delimitation of boundaries in advance.
Article 36. With the actual transfer of sovereignty "over the territories referred to above"—that is, upon the coming into force of the treaty by ratification—German nationals habitually resident in the territories will definitely acquire Belgian nationality, ipso facto, and will lose their German nationality. But German nationals who became residents in the territories after August 1, 1914, shall not obtain Belgian nationality without a permit from the Belgian Government.	Complementary to the right of plebiscite in the mass of a population, looking to the protection of the political rights of a people with respect to their territory, there has developed for the protection of the minority in case of transfer of territory, the so-called right of option, under which the individual may retain his old allegiance, if he so desires, by the formal recording of that election. (3 Moore, Digest, secs. 379–380; Boyd *v.* Thayer, 143 U. S., 135.)
	The article opposite contains the remarkable provision that German nationals habitually resident in the ceded territory will become Belgian nationals immediately upon the actual transfer of sovereignty to Belgium, and will lose their German nationality. Since allegiance to Germany thus ceases, Germany's right and obligation to protect them likewise ceases. That is one the practical effects.
Article 37. However, within two years German nationals over 18 years of age, in such territories will be entitled to opt for German nationality, option by	It appears that German nationals who have become involuntary Belgian nationals may exercise the option to divest themselves of Belgian nationality within

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the husband including the wife, and by the parents, including their children under 18 years of age.

Persons thus opting "must within the ensuing 12 months transfer their place of residence to Germany."

They may retain their immovable property in the territories and may carry with them their movable property free from export or import taxes, with respect to such property.

Article 39. Belgium will assume a portion of the public debt on account of such territories to be calculated on the basis—

(*a*) Of the ratio of the average for the three years of 1911, 1912, and 1913 of revenues of the ceded territories and the average for the same years of the revenues of the German Empire; or

(*b*) Of the same ratio in its application to the German State to which such ceded territory belonged as of August 1, 1914, to be determined by the reparation commission.

However, Belgium shall acquire all property and possessions situated in such territory, belonging to the German Empire and States, including the private property of the former German Emperor and other royal personages, free from any obligation to make compensation or to allow credit for same in the financial statement.

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two years after the coming into force of the treaty and become German nationals again, the German nationality laws to the contrary notwithstanding.

There is a provision of the German laws which declares that a German national acquiring allegiance elsewhere automatically forfeits his German nationality. It is difficult to understand how one who has forfeited a particular nationality may opt for it; yet since the acquisition of new nationality by Germans in this case is voluntary it may properly be viewed as void from the standpoint of German domestic law.

As has been pointed out (supra, opposite article 30), the inhabitants of conquered or ceded territory may not be compelled to accept the new allegiance against their will. Nationality is a juridical status and is essentially voluntary. We have contended for the principle in various manifestations from the foundation of this Government, until at length it has become fixed in the law of nations. (3 Moore's Digest, sec. 439; Scott, cases 375.)

To force a new allegiance even upon the outcast German, and merely temporarily, as in this case, is none the less a violation of the law of nations.

Even the congress of Vienna, that reactionary gathering which divided the spoils of Europe in 1815, did not attempt such a thing. On the contrary, in Article VII of the treaty of Paris of 1815, it is declared that in all countries which shall change sovereigns a period of six years shall be allowed to the inhabitants, of whatsoever condition or nationality, "to dispose of their property, if they should think fit to do so, and to retire to whatever country they may choose."

The present treaty requires those opting for German nationality, within the ensuing 12 months to "transfer their place of residence to Germany," which appears to mean that they shall quit the soil of Belgium physically and return to Germany. Whether they can emigrate to the United States or to some other place is doubtful, at least before they have transferred their residence to Germany.

The provision with respect to their immovable and movable property appears to accord with enlightened practice.

In cases of conquest or cession, such as this, the rule is embraced in the maxim, res transit cum suo onere; that is to say, the conqueror succeeding to the rights must also assume the burdens running with the territory. However, there are exceptions in practice. As to the public debt, he need not share in that portion imposed for the prosecution of the war; and the calculation of the debt to be assumed by Belgium properly refers to the prewar period. The portion to be assumed conforms to enlightened practice.

Nothing is said, however, concerning other contractual obligations running with the territory, and it must be inferred that these are assumed subject to the law with respect to same. (1 Moore, p. 334; 1 Westlake, p. 75; Scott cases, 85.)

An invasion of the law of inviolability of private property occurs in the article in question, and that relates to the taking over by Belgium of the private property of the former German Emperor and other royal personages along with public property. A century ago no distinction was made between the private property of the sovereign and the domains of the State. Napoleon, for example, appropriated the private property of the elector of Hessel-Cases.

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	Though the property of a monarch is assimilated to that of the State, and as such devolves on the successor, the private property of a sovereign or other head of the State in his personal capacity is under the protection of the principle of the inviolability of private property quite as fully as that of the individual subjects. (Phillipson, Termination of War, etc., p. 321.)
Section II. Luxemburg.	
Articles 40, 41. Germany renounces the benefit of various treaties with Luxemburg and recognizes its withdrawal from the German Zollverein; agrees to the termination of the régime of neutrality and accepts in advance any arrangements to be made by the allied and associated powers continuing the Grand Duchy as a buffer State. Germany also recognizes the Grand Duchy as sharing in the commercial advantages to be enjoyed by the allied and associated powers.	This is a purely political arrangement designed to take Luxemburg from under the influence of Germany's commercial and political system.
Section III. Left Bank of the Rhine.	
Articles 42–44. Fortifications either on the left bank of the Rhine or on the right bank to the west of a line drawn 50 kilometers to the east of the Rhine is forbidden, as are military maneuvers and the assembly of armed forces in such area. Violations of these terms shall be regarded as a hostile act against the powers signatory of the treaty, and as calculated to disturb the peace of the world.	In this arrangement, looking to the prevention of Germany ever again possessing a strategic frontier against France, it will be observed that all States signatory of the treaty, including those neutral in the Great War, should they ratify it, are to be bound by this provision. It is in effect the neutralization of such portion of Germany under a world guaranty.
Section IV. Saar Basin.	
Article 45. As compensation for the destruction of coal mines in the north of France and as reparation, Germany cedes to France, in full and absolute possession, with exclusive rights of exploitation, unencumbered and free from all debts and charges, the coal mines of the Saar Basin. It will be for Germany to indemnify the proprietors.	This article disregards utterly the rights of private property to the extent that the Saar Basin mines are privately owned, and is in effect an act of confiscation in violation of the spirit of law. (See comment, art. 74.)
Article 46. The extent of France's rights in the Saar Basin mines is set out by reference to Chapter I of an annex. French ownership is extended to deposits for which concessions may or may not have been granted, whether private or public property, with the right of working, not working, or transferring the right to work the mines; all accessories and subsidiaries, including plant and equipment, by-product plants, electric lines, buildings, dwellings, schools, hospitals, and all other property enjoyed by the present owners, go with the mines to France free from all debts and charges. Germany must pay over any sums due employees on account of pensions for old age or disability.	
Workmen of French nationality may be introduced into the region, and they shall have the right to belong to labor unions.	It does not appear that German workmen have a right to belong to labor unions.
France shall have the right to establish and maintain schools for its employees and of giving instruction in the French language. It may also maintain hospitals, dispensaries, and other charitable and social institutions.	
France shall enjoy complete liberty with respect to the distribution, dispatch, and sale prices of the products of the mines.	

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The government of the Saar Basin is provided for in Chapter II of an annex referred to in article 46. It will be intrusted to a governing commission of five members, chosen by the council of the league of nations, to include a citizen of France, a native of the Saar Basin who is not a citizen of France, and three members belonging to three countries other than France or Germany, appointed annually. One of the five will be designated as chairman, and he will act as the executive.

The commission shall have all the powers hitherto belonging to the German Empire, Prussia, and Bavaria in such region and shall be charged with the protection abroad of the interests of the inhabitants. Nevertheless, it is declared the existing nationality of the inhabitants remains unaffected, unless they choose to acquire a different nationality.

The inhabitants may elect local assemblies, every inhabitant over the age of 20 years having the right to vote, without distinction of sex. Such inhabitants as may desire to leave the territory may do so without restriction as to property.

The governing commission is supreme in interpreting the scheme under which it is instituted, the decisions to be taken by majority.

Article 47. The ultimate fate of the Saar Basin is here dealt with by reference to Chapter III of an annex. In this chapter it is set out that at the termination of a period of 15 years the population of the Saar Basin may have a plebiscite, the vote to be taken by communes or districts on the three following propositions: (*a*) Maintenance of the régime of the governing commission; (*b*) union with France; (*c*) union with Germany.

All persons, without distinction of sex, more than 20 years of age resident in the territory at the date of the signature of the present treaty will have the right to vote. Other conditions may be made by the league of nations. The league shall decide on the ultimate sovereignty, taking into account the wishes of the inhabitants thus expressed. If the league decides in favor of Germany in whole or in part, the rights of France shall be repurchased in gold, the price to be fixed by a commission of three, one of whom shall be nominated by France, the second by Germany, and the third by the league of nations, who shall be neither a Frenchman nor a German. The league of nations will take all decisions by majority.

Article 48. This deals with the fixing of boundaries of the Saar Basin.

Article 49. Germany renounces in favor of the league of nations, in the capacity of trustee, the government of the territory defined above.

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What, it may be asked, is the political status of German nationals under the governing commission? Their nationality is said to be unaffected, yet nationality implies allegiance, and allegiance involves the right and duty of protection. (Hershey, Essentials of Pub. Int. Law, p. 236.) The protection of German nationals is given over to the governing commission. Germany may not exert herself anywhere in their behalf. No hindrance is placed in their way against departing from the country or acquiring a new nationality; in fact, these clauses, including ample safeguards with respect to their private property, are of customary liberality.

The inhabitants may elect local assemblies, but it is nowhere set out what the degree of influence such assemblies will have in the ordering of the domestic concerns.

It is not quite plain why the "repurchase" of the Saar Basin by Germany should have been made contingent upon a plebiscite. The population is overwhelmingly German, and since the qualified voters are those only over 20 years of age who were "resident in the territory at the date of the signature of the present treaty," that is, June 28, 1919, no amount of colonization by France can overcome that fact.

The question arises, however, may those who have meantime removed from the Saar Basin back to Germany enjoy the privileges of taking part in the plebiscite? They would seem to be qualified if more than 20 years of age, since the provision designates "all persons," etc., yet it is not clear.

The league shall decide, "taking into account the wishes of the inhabitants as expressed by the voting," with respect to the final disposition of the territory. There is no obligation to respect the results of the plebiscite; it is merely to be taken into account along with other things.

Nothing is said of the rights of German labor. France, as the one big employer in the territory, dominating practically every business and enterprise, is free wholly to substitute French for German labor, through which the entire German population might be compelled to emigrate. In such a contingency it might then become important to settle whether absentees, who were resident in the Saar Basin in 1919, had the right to take part in the plebiscite.

A unique question of sovereignty arises from this article. It is stated that Germany renounces in favor of the league of nations as trustee only the government of the Saar Basin, and it is contemplated that German sovereignty subsists, since provision is made for "renunciation of sovereignty or cession" by Germany ultimately, in the event the league of nations decides to award the whole or a part of the territory to France.

Yet the political or governmental authority over a territory is the very essence of sovereignty, and by the provisions of Chapters II and III this authority, inter-

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nal as well as external, is vested in the governing commission. It is even charged with the protection abroad of German nationals, inhabitants of the territories. It may thus be contended that Germany has parted with sovereignty over the Saar Basin. If such a condition as the suspension of sovereignty is a legal possibility it may be that such occurs in the Saar Basin. (1 Moore, pp. 252–254.)

In whatever terms the treaty seeks to describe the transaction, however, it appears to be a simple case of disguised cession, or all fours with the so-called leased territory of the European powers and Japan in China, the restoration of such territories depending upon certain and uncertain contingencies. The Saar Basin case differs, of course, in the fact that a third state, and not the cessionary is given exclusive rights of exploitation. (1 Westlake, 133–139; Hershey, pp. 184, 185.)

Section V. Alsace-Lorraine.

The high contracting parties recognizing the moral obligation to redress the wrong done by Germany in 1871 both to the rights of France and to the wishes of the population of Alsace-Lorraine, which were separated from their country in spite of the solemn protest of their representatives at the assembly of Bordeaux agree upon the following articles:

Article 51. The territories of Alsace and Lorraine are retroceded to France.

As set out in the preamble the taking of Alsace-Lorraine by Germany in 1871, constituted a moral not a legal wrong; that is to say, title to the territory of another State founded in conquest is quite as legal and unimpeachable as if founded upon voluntary cession. It is a principle that violates our modern sense of justice but it is nevertheless a settled one.

It is to the credit of the high contracting parties that they recognized the moral obligation to redress this wrong both to the rights of France as sovereign over the territory and to the wishes of the people. If this measure were applied universally the moral principle would thereby attain the position of a legal one, since the basis of all law is universal acquiescence or assent. The high contracting parties have not only failed to seize the opportunity to legalize the principle against conquest and the rights of peoples to choose their own way of obedience by the universal application of these principles, but they have destroyed and nullified the force of this instance of its application in settlements which repudiate these principles (see Part IV, sec. 8, art. 156–158); nor is any intimation given in the treaty that existing instances of the subjection of peoples to alien governments against the will of such peoples constitutes a moral wrong. (See sec. 6, art. 147.)

Article 53. The political status of the inhabitants of Alsace-Lorraine is fixed in this article by reference to an annex which makes the following decisions:

As from November 11, 1918, the following persons are ipso facto reinstated in French nationality:

(1) Persons who lost French nationality under the treaty of 1871 and acquired German nationality.

(2) The legitimate descendants of those referred to above, except those whose ascendants in the paternal line include a German who emigrated into Alsace-Lorraine after July 15, 1870.

(3) All persons born in Alsace-Lorraine of unknown parents or whose nationality is unknown.

It will be observed that the treaty here attempts to determine the French nationality of the inhabitants without in any way consulting their wishes. It institutes three broad classes of persons whose nationality is changed arbitrarily. Those in the classes have nothing to say in the matter.

The first class "reinstated" in French nationality includes all those who, upon the cession of Alsace-Lorraine to Germany in 1871, declined to avail themselves of the right to opt for French nationality under Article II of the treaty of Frankfort, but chose to remain and acquire German nationality.

It is conceivable that many of this class are satisfied with their acquired German nationality and are thus involuntarily transferred to a new allegiance.

And so in the second class, the descendants of the first class, it is probable that many will not willingly renounce their German allegiance.

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The annex also sets out the following classes as eligible to opt for French nationality: (1) All persons whose ascendants include a Frenchman or a French woman who failed to opt for French nationality in 1871. (2) All foreigners, not German nationals, who became citizens of Alsace-Lorraine prior to August 3, 1914. (3) All Germans domiciled in Alsace-Lorraine since July 15, 1870, or who had an ascendant so domiciled. (4) All Germans, domiciled or born in Alsace-Lorraine, who served in the allied or associated armies. (5) All persons born in Alsace-Lorraine before May 10, 1870, of foreign parents and the descendants of such persons. (6) The husband or wife of any person whose French nationality may have been restored in the three classes referred to above, or who may have claimed and obtained French nationality in accordance with the preceding provisions.	These persons are denied the right to opt for German nationality. The rule that the nationality of the wife and children follow that of the husband and father is apparently ignored. The anomalous situation is thus made possible that a French national, residing in French territory, may have a wife who is an alien to him and to her own children.
Subject to the above exceptions no Germans born or domiciled in Alsace-Lorraine shall acquire French nationality, even though they are citizens of Alsace-Lorraine, except by the normal process of naturalization, on condition of having been domiciled from a date previous to August 3, 1914, and of submitting proof of three years unbroken residence. France will be solely responsible for their diplomatic and consular protection from the date of application for naturalization.	The treaty, while arbitrarily restricting the right of option to limited classes and to a particular nationality (French) does not attempt to set aside the principle of naturalization. The practice of enlightened states, which may be said to conform to the law in respect of protection abroad of declarant aliens, is that such protection is asserted to the full extent in countries other than those of origin. As against their native countries no such rights are claimed in view of the continuing allegiance of such declarants up to the moment of complete acquirement of a new nationality. The rule rests upon a sound and logical foundation. (3 Moore, pp. 893, 895.) However, France proposes to override it as against Germany, in behalf of German nationals who have declared their intention to become French citizens. It is safe to say that the position can only be maintained by a stronger as against a weaker state. Considering the nationality provisions generally with respect to Alsace-Lorraine, it will be seen that a plebiscite has not been considered, although Germans may predominate in the territories; nor is option freely granted. Large classes of persons are made French citizens by the fiat of the treaty and other restricted classes are declared eligible to claim French citizenship. None is declared capable of choosing any other nationality. Those in whom German nationality continues are marked out by the treaty with equal definiteness. The utter absence of observance of the doctrines of plebiscite and option, and of uniformity in dealing with like situations, may be seen by comparison with articles 36–37, whereby German nationals resident in the territories ceded to Belgium acquire Belgian nationality ipso facto and lose their German nationality; however, within two years German nationals there may opt for German nationality.

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Article 55. This deals with the public debt of Alsace-Lorraine by reference to article 255, Part IX, of the treaty, which sets out that since Germany refused to assume any of the public debt of Alsace-Lorraine in 1871 France shall receive the territories free and quit of all public debts, nor shall any credit be given for same on the reparation account.	In principle, therefore, there is no difference between the conquest and the reconquest, so far as the conduct of the victors is concerned. Each takes all it can get over and above the reparation account.
Article 56. In conformity with the provisions of article 256, Part IX, France shall enter into possession of all property and estate in the territories belonging to the German Empire, the German States, as well as the Crown property and the private property of the former German Emperor and other German sovereigns, without any payment or credit on account of same.	See comment, article 39.
Article 58. Provision is made for "repayment in marks of the exceptional war expenditure advanced during the course of the war by Alsace-Lorraine, or by public bodies in Alsace-Lorraine on account of the Empire in accordance with German law, such as payment to the families of persons mobilized, requisitions, billeting of troops, and assistance to persons who have been evacuated."	Thus France not only does not assume any portion of the German debt in connection with Alsace-Lorraine, but there is to be repaid the sums Alsace-Lorraine, in common with all parts of the Empire, was called on to expend as indicated.
Article 59. France will collect on its own account Imperial taxes of every kind leviable and not collected at the time of the armistice, November 11, 1918.	
Article 60. Germany shall restore without delay to Alsace-Lorrainers all property, rights, and interests belonging to them on November 11, 1918, situated in German territory.	
Article 62. Germany undertakes to bear the expense of all military and civil pensions earned in Alsace-Lorraine on November 11, 1918, and to pay annually the sums to which persons resident in Alsace-Lorraine would have been entitled under German rule.	
Article 63. Germany's liability for injury and damage is declared by reference to Part VIII (reparation) as follows:	
The allied and associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the allied and associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.	Damages have been calculated on the premise that, since Germany was the aggressor, she precipitated and carried on an unlawful war, and should therefore be responsible for all damage of whatsoever kind, whether resulting from the operations of herself and her allies or from the measures of the allied and associated Governments. While it is within the power of a successful belligerent to impose any terms he wishes, the law of nations nowhere makes any distinction between a just and an unjust war, nor between a lawful and an unlawful war. In view of the law, since each sovereign nation may alone determine the demands of its welfare and interest, it is the right of each to determine when its exigencies require a resort to war. Since 1899 (The Hague, convention No. 4) a distinction has been made between a war lawfully declared and one not thus declared.
The allied and associated Governments require and Germany undertakes to make compensation for all damage done to the civilian population of the allied and associated Governments and to their property during the period of the belligerency of each by such aggression by land, by sea, and from the air, and, in general, all damage as defined in Annex I, hereto.	From a moral standpoint a war may be unjust and unrighteous, as that precipitated by Germany unquestionably was, but it can not be unlawful, since it is the supreme and final appeal of all States in the protection of their well-being. It has been argued, and not without force, that by reason of the obligations assumed by Germany toward Belgium under the treaty of neutralization of April 19, 1839, it became legally impossible for Germany to

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The annex then declares:

"Compensation may be claimed from Germany under article 232 above in respect of the total damage under the following categories:

"(1) Damage done to injured persons and to surviving dependents by personal injury to or death of civilians caused by acts of war, including bombardments or other attacks on land, on sea, or from the air, and all direct consequences thereof, and of all operations of war by the two groups of belligerents wherever arising.

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carry on war against Belgium; and that Germany may not therefore claim the benefits of the laws of war ordinarily obtaining; that is to say, in the case of Belgium, Germany is not entitled to deny responsibility for such destruction, fines, contributions, requisitions, and other warlike acts as are within the compass of the lawful rights of belligerents.

Taking into consideration this exception, there is no principle of public international law that enlarges the legal responsibility of one of the belligerents because it was the aggressor. In fact, it is generally impossible to determine with accuracy whether or not a particular State was or was not the aggressor. It is clear in the Franco-Prussian War of 1870–71, in the Anglo-Boer War of 1900, and in the Turco-Italian War of 1912, but no one has yet determined whether Russia or Japan was the aggressor in 1904. (See the Peace Problem (1916) John Bassett Moore.)

In order to avoid as far as possible the evils of society, it is agreed, says Vattel, to regard every lawfully declared war as just on both sides. (Halleck, International Law, 4th ed., vol. 1, p. 571.)

This statement of the law has undergone no change up to the present. Out of this view has necessarily sprung the law of neutrality.

War brings into operation a great variety of laws defining rights and duties of belligerents and neutrals, and among its rights accruing to a belligerent is that to inflict any damage upon his enemy, which has a military object. There are certain specific limitations upon a belligerent's means of injuring his enemy, both at sea and on land, designed to prohibit needless and wanton injury and damage. However, it may be asserted as a general principle of the laws of war that all damage and injury inflicted in pursuit of military object are lawful. (Lawrence, 4th ed., sec. 206, p. 549; Spaight, 112.)

Civilians are under the protection of the laws of war, but their immunity from direct and intentional injury is dependent upon peaceable and nonhostile conduct. It is one of the marked moral achievements of the last century that the great divisions of populations of belligerent States into combatants and noncombatants, with definite law regulating their rights and duties, have been made.

Whence, civilians, taking no part in hostilities, may not lawfully be made the object of direct injury. Nevertheless, their injury or killing, as a mere incident to the carrying out of a lawful military operation involves no responsibility. For example, enemy munition plants are lawful objects of attack. If in such attacks death should ensue to all of the employees, men, women, and children, no liability whatever would rest upon the government of the attacking force. So, too, the incidental deaths of civilians in cases of bombardment of defended towns, villages, buildings, and places involve no liability. (Holland, p. 30; Spaight, pp. 174–180.)

It has never been settled what constitutes a "defended" place, but it has been contended by eminent authority (Westlake, Collected Papers) that the presence of a single soldier or company of soldiers might

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	be sufficient to constitute a defended place. If this be so, it may be said that in the present Great War hardly a city, town, or village in any of the belligerent States was undefended, so great were the proportions of the population taken into the armies. As to the immunity of noncombatants, it may be asked to what degree, if any, was this immunity compromised in the present Great War in view of the universal mobilization of man, woman, and child power behind the armies of the respective belligerents?
	The following principles of law are settled: (*a*) That acts of war, including bombardments and other attacks on land and from the air, involve no legal liability whatever so long as they have a military object and are not directed against an undefended place. (*b*) That attacks at sea against public armed enemy vessels involve no liability; that attacks upon unarmed merchantmen, not guilty of flight or resistance, are illegal and do involve liability. But even where flight or resistance has been overcome, there is a legal obligation to provide for the safety of crew and passengers. The placing upon a vanquished belligerent of responsibility for all damage and injury resulting from the operations of the victor is a mere exercise of power in the nature of indemnity; it can not be construed as reparation.
"(2) Damage caused by Germany and her allies to civilian victims of acts of cruelty, violence, and maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment, or evacuation, or exposure at sea, or of being forced to labor) wherever arising and to the surviving dependents of such victims.	(2) Damage by Germany and her allies caused to civilian victims by acts of cruelty, violence, or maltreatment may properly give rise to legal responsibility where such acts of cruelty, violence, and maltreatment were not permissible—and many of such are—under the laws of war. For example, the right of reprisal upon a rebellious population in a militarily occupied district may lawfully involve extreme violence, even to the shooting of civilians and the destruction of whole towns. (Spaight, 465–470.) It is the right of a belligerent state to imprison, intern, and deport enemy civilians, particularly male persons of military age, and to use reasonable disciplinary measures against them for cause.
"(3) Damage caused by Germany or her allies in their own territory or in occupied or invaded territory to civilian victims of all acts injurious to health or capacity to work or to honor, as well as to surviving dependents of such victims.	Legal responsibility properly lies in the matter of exposure at sea in view of the settled principle requiring provision for the safety of crew and passengers of a captured vessel. As to acts injurious to health or capacity to work, such conditions might follow the exercise of lawful violence, as reprisals against a disobedient or resisting population in a militarily occupied territory. Family honor is clearly under the inviolable protection of the laws of war. (The Hague, 1907, convention 4, art. 46.)
"(4) Damage caused by any kind of maltreatment of prisoners of war.	(4) There is no legal liability in cases of damage resulting from reasonable disciplinary measures in which the victim was culpable.
"(5) As damage caused to the peoples of the allied and associated powers all pensions and compensation in the nature of pensions to naval and military victims of the war, whether mutilated, wounded, sick, or invalided, and to the dependents of such victims.	(5) This is a mere exercise of power by the victor over the vanquished in the nature of indemnity.
"(6) The cost of assistance by the Governments of the allied and associated powers to prisoners of war and their families and dependents.	It is customary among belligerents to compute the respective costs of maintenance of prisoners of war, including salaries allowed officers, and to settle any balance at the peace. The provision is in the nature of indemnity where it exceeds this custom.

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"(7) Allowance by the Governments of the allied and associated powers to the families and dependents of mobilized persons and persons serving with the armed forces.	This is a mere exercise of power in the nature of indemnity.
"(8) Damage caused to civilians by being forced by Germany or her allies to labor without just compensation.	(8) The services of civilians in militarily occupied territory may be requisitioned, nor does the law require more than that a receipt for such services shall be given. The receipt does not imply liability on the part of the giver to redeem it. (2 Westlake, 270; Bordwell, 319; Spaight, 402–405.)
"(9) Damage in respect of all property wherever situated belonging to any of the allied or associated powers or their nationals, with the exception of naval and military works or materials, which have been carried off, seized, injured, or destroyed by acts of Germany or her allies on land, on sea, or from the air, or damage directly in consequence of hostilities or of any operations.	This provision ignores the whole body of settled law with respect to allowable damage and destruction. Such legal destruction includes: (*a*) All destruction of naval and military works, including shops, railroads, and equipment, munition plants, barracks and all buildings used by armed forces (other than hospitals). (*b*) Destruction of private property incidental to bombardment. (*c*) Destruction of property of military value to prevent it falling into the hands of the enemy. (*d*) Destruction of property to facilitate an attack or to impede pursuit. To summarize, it may be said that all destruction which serves a military end and is not purely wanton is lawful. (Spaight, 111 et seq., 418.) As to property carried off or seized, the law makes a distinction between public movables, that is, Government-owned property, and private property. The former is confiscable under the laws of war; the latter is not. (Spaight, 411, 412; 2 Westlake, 103–104; Bonfils, Nos. 1191–1193.) Yet even private property may be seized and converted by a belligerent if it is noxious, that is to say, if it is of a character lending itself peculiarly to warlike use; so, too, private property may be taken under the right of requisition. (Spaight, 199–200.)
"(10) Damage in the form of levies, fines, and other similar exactions imposed by Germany or her allies upon the civilian population."	(10) Levies (contributions and requisitions) and fines are lawful measures of war. Levies in service, in supplies, and in cash are lawful if undertaken for the needs of the army or in lieu of or in addition to taxes, for the support of the administration of occupied territory, provided that they are in proportion to the resources of the territory; and provided further that they are not levied for mere purposes of plunder. Fines are a lawful measure against the disobedience of a population in a militarily occupied territory, if responsibility for disobedience be collective. It is the mildest manifestation of the right of reprisal. (Spaight, 383, 408–410.)
Article 64. Regulations concerning the control of the Rhine and the Moselle are laid down by reference to Part XII of the treaty. Part XII, Chapter IV, provides, among other things, that Germany shall cede to France tugs and vessels registered in German Rhine ports, including fittings and gear, installations, berthing and anchorage accommodations, docks, warehouses, plant, etc., whether publicly or privately owned, in an amount to be decided by an arbitrator to be appointed by the United States, "due regard being had to the needs of the parties concerned." The value of such property shall be set off against the total sums due from Germany.	This is purely an economic advantage in the nature of indemnity. It is repugnant to the spirit of the law at least to the extent that private property exists in such tugs, vessels, etc. (See comment, infra, art. 74.)
Article 65. This article gives to France certain economic advantages in the parts of Strasburg and Kehl under the Central Rhine Commission, to be presided over by a Frenchman.	This is in the nature of indemnity.

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Articles 66, 67. Railway and other bridges across the Rhine within the limits of Alsace-Lorraine throughout their length become French property, as do all imperial railways and tram concessions, entailing no payment on the part of France.

Articles 68–71. Additional economic advantages are given to France, including exemption from customs duties on natural or manufactured products of Alsace-Lorraine entering Germany and the import into Alsace-Lorraine of certain goods from Germany free from internal duties in Germany; supply of electric current to Alsace-Lorraine by Germany; prohibition of German participation in enterprises in Alsace-Lorraine; renunciation of German rights regarding trade in potash salts.

Article 74. The French Government reserves the right to retain and liquidate all the property, rights, and interests which German nationals or societies controlled by Germany possessed in Alsace-Lorraine on November 11, 1918. Germany will compensate her nationals thus dispossessed. The product of these liquidations shall be applied in accordance with the stipulations of Sections III and IV of Part X of the treaty.

Section III (art. 296) provides for the settlement through clearing offices to be established by each of the high contracting parties of the following classes of debts:

(*a*) Debts due before the war from a national of an allied or associated power, residing within its territory, to a national of Germany or her allies, residing in its territory.

(*b*) Debts payable during the war to nationals of allied or associated powers, payment of which was suspended by the war.

(*c*) Any interest accrued before or during the war on securities issued by Germany or her allies.

(*d*) Any capital sums which have become payable in respect of securities issued by Germany or her allies.

The high contracting parties will prohibit all settlements otherwise than through the clearing offices; they will be respectively responsible for the payment of such debts as were due from their nationals. (Debts due by inhabitants of invaded territory will not be thus guaranteed, nor does the guaranty extend to a debtor who was insolvent before the war or whose property was liquidated under emergency legislation.)

Private settlements of debts between a national of an allied or associated power and a national of Germany or her allies is assimilated even after peace to trading with the enemy and will involve "the same penalties as are at present provided" in such legislation. All legal processes for the private recovery of such debts will be prohibited.

Creditors shall give notice to the clearing office within six months of debts due to them.

Any person having claimed payment of an enemy debt which is not admitted in whole or in part shall pay to the clearing office by way of fine interest at

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This is in the nature of indemnity. No obligation with respect to uniformity of tolls appears to rest upon France in connection with the use of these international bridges.

These are in the nature of indemnity.

This article and its references (Secs. III and IV of Part X) commit the allied and associated Governments to the confiscation of all private property of German nationals, whether situated in their own territories or in the territories taken from Germany, and restitution of or compensation for all private property of nationals of allied or associated powers in German hands. It is true that it is declared that Germany will compensate her nationals who are thus dispossessed, but in view of the extent of the various indemnities imposed it is doubtful that this declaration can ever be fulfilled. It is therefore, at best, disguised confiscation.

From antiquity to the dawn of the nineteenth century it was the custom of a belligerent to seize and convert the private property of nationals of his enemy, while the private enemy individual might be dealt with after the desires of the captor. In the last century, however, a settled distinction in the law has differentiated the private unarmed enemy person and his property from the public armed enemy person and public property, on the principle that war is a relation between States and not between individuals. The former, classified as noncombatant, is entitled to protection in his person and property; the latter, classified as combatant, may be made the object of direct hostile action. As to public property, all movables of the enemy Government are liable to confiscation. Private property is under the protection of written law, declaring it to be inviolable. (The Hague, 1907, Convention IV, art. 46.) This must be understood to be qualified, however, by certain definite exceptions. (See comment on article 63, subsection 9.)

This would require an act of Congress to carry it into execution.

As to the universally recognized rule of law forbidding the confiscation of private enemy debts, see infra, comment opposite article 302.

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5 per cent on the part not admitted during the pendency of such claim.

Persons "having unduly refused to admit the whole or part of a debt claimed from him" shall pay by way of fine 5 per cent of the amount "with regard to which his refusal shall be disallowed."

Clearing offices shall be responsible for the collection of such fines, which "will be credited to the other clearing office, which shall retain them as a contribution toward the costs" of the office.

A mixed arbitral tribunal is set up as a court of appeal as between disagreeing clearing offices.

Section IV (Article 297) sets out the following with respect to the private property, rights, and interests of German nationals situated in allied and associated countries:

(*a*) Germany shall immediately discontinue all war measures (including liquidation and transfer) taken against the property, rights, and interests of nationals of allied and associated powers, such nationals to enjoy full rights in accordance with article 298.

(*b*) The allied and associated Governments reserve the right to retain and liquidate all property, rights, and interests belonging to German nationals, or companies controlled by them within their territories, colonies, possessions, and protectorates, including the territories ceded.

German nationals shall not be able to dispose of such property nor to subject it to any charges.

German nationals who acquire ipso facto the nationality of an allied or associated power shall not be liable to such deprivation of their private property.

(*e*) Nationals of allied and associated powers shall be entitled to compensation in respect of damage or injury to their property, rights, or interests, including any company in which they are interested, due to war measures of liquidation or transfer; and they may be compensated out of private property of German nationals in the hands of allied and associated Governments. Germany will receive credit on the reparation account as to any balances, which shall be paid to the reparation commission.

(*i*) Germany undertakes to compensate her nationals thus deprived of their private property by the allied and associated powers.

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It appears under this subsection that the United States is empowered to seize, in addition to the private property situated in the United States of German nationals resident in Germany already sequestered by the Alien Property Custodian, the private property of all German nationals resident in the United States. An act of Congress would, however, be necessary as a condition precedent to the exercise of that power.

"What we have said of the detention of the enemy's person, also holds good with respect to the right to seize and confiscate all enemy property found within the territory of the other belligerent at the commencement of hostilities. In former times this right was exercised with great rigor, but it has now become an established, though not inflexible, rule of international law that such property is not liable to confiscation as prize of war. This rule," says Chief Justice Marshall (Brown *v.* United States, 8 Cranch, R. 123), "like other precepts of morality, of humanity, and even of wisdom, is addressed to the judgment of the sovereign—it is a guide which he follows or abandons at his will; and, although it can not be disregarded by him without obloquy, yet it may be disregarded." (Halleck, 4th ed., vol. 1, p. 587.)

The power to confiscate enemy property can not be exercised by the United States, however, except by the direct authority of Congress. (Brown *v.* United States, 8 Cranch, R. 123.) The extent of authority existing in the absence of such legislation is to sequester using reasonable care to conserve such property for its owners, under an obligation to restore it or its equivalent at the peace as we have done through the law creating the Alien Property Custodian. Even this right is generally qualified by treaty. (See treaty with Prussia, 1828, 2 Malloy, p. 1496.)

The far-reaching effect of this policy is likely to hamper American investments all over the world.

See comment opposite article 74.

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(*j*) The amount of all capital taxes levied on property of allied and associated nationals by Germany after November 11, 1918, shall be refunded.	
By sections *a* and *b* (art. 298) Germany undertakes to restore to nationals of allied and associated powers their property, rights, and interests as they existed prior to the war, and not to subject such property, rights, and interests to any measures not applied equally to property of German nationals.	
By Annex, paragraph 1, under Section IV, Germany confirms all acts of allied and associated powers with respect to the property of Germany nationals.	
By paragraph 2, Germany agrees that no claim or action shall be brought against any allied or associated power or person on account of acts or omissions with respect to German property.	
By paragraph 10, Germany will, within six months, deliver to each allied or associated power, all securities, certificates, deeds, or other documents of title held by its nationals and relating to property, rights or interests situated in the territory of that allied or associated power, including any shares, stock, debentures, debenture stock, or other obligations of any company incorporated in accordance with the laws of that power. She will further furnish any information desired concerning property of her nationals so situated.	On the whole, it may be said that in the pursuit of large indemnities the allied and associated Governments have in these articles repudiated principles which, in the language of Spaight, the eminent English publicist, constitute the Magna Charta of war law. (War Rights on Land, p. 374.) And since the remaining great powers have concerted in its repudiation it may be asserted that they have brought to naught the enlightened and laborious work of a century in this regard.
By the concluding paragraph of the Annex the foregoing provisions are declared to apply to industrial, literary, and artistic property.	This provision appears, with respect to some of the signatories, to make a "scrap of paper" of the "revised Berne convention" for the protection of copyrights, signed November 13, 1908, and other similar treaties. (See comment, art. 286.)

Section VI. Austria.

Articles 80. Germany acknowledges and will respect strictly the independency of Austria within frontiers to be fixed and agrees that the independence is inalienable.	Provision in the new German constitution for a seat for an Austrian delegate in the German Reichsrat was held by the principal allied and associated powers to be violative of this obligation "to respect" Austrian independence. (Compare with the mutual obligation "to respect" the territorial integrity and existing political independence, under art. 10.) The racial characteristics of what is left of Austria are predominably German, the subject peoples of the old dual monarchy having been accorded the right of self-determination. Yet the achievement of German unity is forever forbidden. This ignores the inexorable lessons of history and makes for Irredentism.

Section VII. Czecho-Slovak State.

Articles 81–83. Germany recognizes thein dependence of the Czecho-Slovak State and renounces all rights and title over a portion of Silesian territory therein described.	
Article 84. German nationals habitually resident in territories recognized as forming part of the Czecho-Slovak State will obtain Czecho-Slovak nationality ipso facto and lose their German nationality.	See comment opposite article 36.
Article 85. Within a period of two years German nationals over 18 years of age habitually resident in such territories may opt for German nationality "within the same period Czecho-Slovaks who are German nationals and are in a foreign country will be entitled, in the absence of any provision to the contrary in the foreign law, and if they have not acquired the foreign nationality, to obtain Czecho-Slovak nationality by complying with the requirements laid down by the Czecho-Slovak State."	See comment opposite article 37.

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Article 86. The Czecho-Slovak State agrees to embody in a treaty with the allied and associated powers provisions for the protection of inhabitants differing from the majority in race, language, or religion.	See treaty of Berlin, 1878, articles 5, 25, 35, and 44, recognizing conditional independence of Bulgaria, Roumania, Serbia, and Montenegro. (Martens, N. R. G., 2d ser., III, p. 449.) This implies the right, and perhaps the duty, of intervention.

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 Silesia.	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 12 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 land, 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 arts. 36 and 37.) It will be observed in this article that persons opting "may" transfer their residence within 12 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 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.

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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 the 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 article 1, section 8, United States 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, insure Poland control of the Vistula and of the whole system of railways within the free city, with the exception of street railways, insure 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 instance cited; until they become nationals of the free city they are without any nationality, or what the Germans term staatlos 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 12 months.	See comment opposite article 91.
Article 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 arts. 99 and 104.)

THE TREATY.	THE LAW.
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. See comment opposite articles 99, 104, and 107.
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."	
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 12 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 Russia 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.

THE TREATY.	THE LAW.
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 X 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 260 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 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 his 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., effected 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.

THE TREATY.	THE LAW.
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 antislavery 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 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.	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. 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, arts. 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 12 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.)

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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. **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 concession at Shanghai.	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 Conferences, 1 Scott, pp. 556–568.) It would appear that China is the logical beneficiary of this German 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 extraterritorial 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 extraterritorial 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? Extraterritorial 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 extraterritoriality 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 extraterritorial jurisdiction to Germany in such cases. See comment opposite article 74.
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. **Article 137.** Germany waives all claims on account of seizure or condemnation of German ships in Siamese waters, the liquidation of German 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.

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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 art. 135), yet in the case of China only a few specified conventions and agreements are declared "renounced" by Germany. (See comment, infra, opposite art. 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 art. 74.)
Section V. Morocco.	
Article 141. Germany renounces all rights and privileges under the general act of Algeciras 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 régime of the capitulations therein; that is to say, extraterritorial 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 insure 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.	
Section VI. Egypt.	
Article 147. Germany recognizes the British protectorate over Egypt and renounces the régime 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 of holding joint sovereignty with Great Britain over Soudan. (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.

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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 German public property in Egypt passes to the Egyptian Government without payment. All private German property may be retained and applied toward satisfaction of claims.	See comment opposite article 74.
Article 154. Egyptian goods entering Germany shall enjoy the same privileges accorded British goods.	

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 Kiaochow, 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 attaching 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 supervention 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 Germany to Japan; and this in spite of the fact that by the terms of the treaty of March 8, 1898, the privileges are nontransferable.

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 Nation, Vol. CIX, No. 2829, Sept. 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 German property in concessions which China might

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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 Japanesque.

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 encumbrances.

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, registers, 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 art. 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 insure 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, forbid 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 of passage to allied and associated aircraft, and compel the surrender of all aircraft and parts thereof by Germany.

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Section IV. Interallied Commissions of Control.	
Articles 203–210. Interallied 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 Art. XIII, treaty of Portsmouth, 1905; see art. 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 detained.	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. 279, 280; Ariga, Le 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	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

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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.

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.

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world was entitled to expect some magnanimity and generosity at least in dealing with a subject of such peculiar sanctity.

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 guaranties 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 law is to do violence to the basic principles of jurisprudence.

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.

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.

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 to 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 right 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.)

THE TREATY.

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.

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.

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

THE LAW.

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 *v.* Dudley et al., 14 Q.B.D., 273).

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.

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.

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 art. 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 art. 63, par. 9); she possessed the war rights to levy requisitions, contributions, and fines (see supra, opposite art. 63, par. 10).

THE TREATY.

THE LAW.

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 art. 63, par. 2). Civilians (noncombatants) 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 warlike acts. A civilian engaging in warlike 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 emeny. (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 lawful exercise of power, the whole benign system of principles relating to combatants and noncombatants and defining their rights and duties is confounded. It does not constitute progress; it does constitute reaction. (See Spaight, Ch. 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 1,600 tons and upward; one-half of all ships between 1,000 and 1,600 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 concerned, 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.

THE TREATY.	THE LAW.
	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.
(8) Germany waives all claims against allied and associated Governments in respect of the detention, employment, loss or damage of any German ships.	As to the private property in ships to be handed over, see comment opposite article 74. 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 art. 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, Dec. 5, 1899; Roosevelt's annual message, Dec. 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 30 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. 111; 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 art. 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. *v.* U. S., Sup. Ct., Feb. 23, 1909.) All of these distinctions are ignored in the articles opposite.

THE TREATY.

THE LAW.

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 1870–71; 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, incunabula, books, and other objects in number and value corresponding to those destroyed.

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 restutition 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 employees 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 guaranty 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.

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

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.

THE TREATY.

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 measure 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.

THE LAW.

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 arts. 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 art. 39.

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

See comment opposite art. 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 Emperor 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 these States, and transfer the same to the reparation commission. Germany shall be responsible for in-

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.

THE TREATY.	THE LAW.
demnifying her nationals thus dispossessed and shall receive credit on the reparation account for the value of rights transferred.	
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.

THE TREATY.	THE LAW.
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 exercized 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 26 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, pharmacopœial 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 radiotelegraphic conventions.

Article 286. The conventions of 1883 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 297, 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 supervention 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., art. 17½, p. 375.)

The action of the allied and associated Governments in respect of Germany is plainly, therefore, a violation of the treaty.

What, it may be asked, is the status of he dozent 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 art. 13.)

THE TREATY.	THE LAW.
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.	
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 right with art. 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 renegotiation. 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 *v.* New Haven, 8 Wheat., 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.
Treaty 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.

THE TREATY.	THE LAW.
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 nationals so long as such privileges are enjoyed by the latter.	
Article 292. Germany recognizes that all treaties and agreements concluded with Russia or 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 12 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 *v.* Paine (1887), 169 U. S., 55). And so far as resident alien enemies are concerned, contracts with them are wholly unaffected. (McVeigh *v.* 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.	

THE TREATY.

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 war.

(*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 claims 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.

THE LAW.

It appears, therefore (subsection (*e*), Annex I), 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 *v.* 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. *v.* Percheman, 7 Peters, 51.)

(See also Planter's Bank *v.* Union Bank, 16 Wall., 483; Williams *v.* 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 reestablished 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.

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

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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.

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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 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 exercised 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 1. 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 rational 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 on 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.

See comment opposite articles 264–270.

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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.	

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 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.

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.

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. VII.)

See Part VIII, Annex III, following article 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.

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(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 fixing 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, referred to in article 331, shall direct the administration, composed of two Germans, one representative of each other riparian State, and one representative of each nonriparian 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 Ibraila downward to the mouth of the Danube. (I 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 coriparian powers.

In the settlements attempted in the present treaty it is questionable whether the coriparian 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 installations, 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 on 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 operation of wiers which France, subject to the central commission, may establish.

These provisions are plainly in contravention of the understood rights of a coriparian State.

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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-draft Rhine-Meuse Canal should Belgium desire same within 25 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.	
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 régime 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 cooperate 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.	

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Section VI. Clauses Relating to the Kiel Canal.

Articles 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.

PART XIV. GUARANTIES.

Section 1. Western Europe.

Article 428. As a guaranty 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 15 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 10 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 15 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 guaranties.

Article 430. If during occupation or after the expiration of 15 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 reoccupied immediately by the allied and associated powers.

Article 431. If before the expiration of 15 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 guaranties 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 (Bonfils, Paris, 1912, p. 536); the giving and receiving of hostages, as when Henry VIII gave to Francis I in 1527, 2 archbishops, 11 bishops, 8 nobles, as well as 13 towns; the giving of a pledge as when the diamonds of the crown of Poland were given to Prussia; guaranties 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 guaranties 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 20 fortresses. The maximum period of occupation was limited to 5 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 no 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 1 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

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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 guaranty as in the Chino-Japanese War of 1895, where China, by the terms of the treaty of Shimonoseki 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 guaranty whereby allied and associated troops may reoccupy 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 Frankfort 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, Lavia, 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.

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Article 435, with Annexes I and II. These clauses, incorporating verbatim memoires 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 guaranties 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.

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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 guaranty of her neutrality. This guaranty does not extend to the independence of Switzerland, but it does include the integrity and inviolability of Swiss territory. It is a collective guaranty on the part of Great Britain, Austria, France, Portugal, Prussia, Spain, and Russia.

The allied and associated powers refer to this guaranty 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 "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 event 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 reopening 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.)