> out distinction of nationality, sex, race, language and religion," to the equal right to life, liberty and property, together with all the subsidiary rights essential to the enjoyment of these fundamental rights. It aims not merely to assure to individuals their *international* rights, but it aims also to impose on all nations a standard of conduct towards all men, *including their own nationals.* It thus repudiates the classic doctrine that states alone are subjects of international law. Such a revolutionary document, while open to criticism in terminology and to the objection that it has no juridical value, cannot fail, however, to exert an influence on the evolution of international law. It marks a new era which is more concerned with the interests and rights of sovereign individuals than with the rights of sovereign states. It is specifically concerned with the status and rights of those who, like many Russians, may be in the unhappy state of being, not merely *heimatlos*, but also proscribed by their country of origin.[2]

The unhappy situation in which many Europeans have since been placed by the action of their governments in depriving them of those human rights which the founders of the American democracy declared to be "unalienable," was the subject of discussion at the recent annual meeting of the American Society of International Law. A perusal of those discussions suggests many interesting points for the consideration of international lawyers.

GEORGE A. FINCH

THE TRAIL SMELTER ARBITRATION — UNITED STATES AND CANADA

The Mixed Arbitral Tribunal constituted under the Ottawa Convention of April 15, 1935, to decide the controversy as to damage caused in the State of Washington by noxious fumes issuing from the smelter at Trail, British Columbia, reported its final decision on March 11, 1941.[1] It will be remembered that under its previous decision of April 16, 1938,[2] the Tribunal awarded an indemnity for damage occurring between January 1, 1932, and October 1, 1937, leaving still to be determined the question of subsequent damage, if any, as well as the fixing of a permanent régime for the operation of the smelter.

The Tribunal was requested on behalf of the United States to reconsider its decision not to allow the expenditures incurred by the United States in the preparation of its case. In its final decision, the Tribunal raised the question whether such a request can ever be entertained in international law unless special powers have been expressly granted to the arbitral tribunal. The Tribunal admitted that the convention did not deny power to grant revision, especially as the controversy had not been finally disposed of. However, the Tribunal emphasized the importance of the rule of *stare decisis* while admitting that arbitral decisions were not in agreement upon the point.

The reconsideration of the recent Sabotage cases, United States and Ger-

[2] Philip Marshall Brown, in this JOURNAL, Vol. 24 (1930), p. 127.

[1] Published in this JOURNAL, *infra*, p. 684.

[2] *Ibid.*, Vol. 33 (1939), p. 182; see editorial comment, *ibid.*, Vol. 32 (1938), p. 785.

many, was rightly considered not to be in point, because in those cases it was alleged that the decisions had been induced by fraudulent testimony. In the instant case, the Tribunal draws a distinction between "essential error" and "manifest error," permitting revision only in the latter case. The distinction appears to be rather casuistic. What is "manifest" is, after all, a relative term, with a personal connotation. The Tribunal has softened the blow somewhat by remarking by way of dictum that even if it had the power to reopen the question, it would have reached the same conclusion as in its previous decision. It will be remembered that the Tribunal intimated that another result might have been reached if the claimants had been private individuals instead of the government of a sovereign state. The present writer believed then and still believes that this distinction is not cogent, especially where the expenditures were principally incurred in obtaining scientific expert testimony of the nature and extent of the damage over a long period of time, the legal obligation having been recognized.

The Tribunal found that no actionable damage by the fumes was proved to have occurred between October 1, 1937, and October 1, 1940. Judgment on this point having gone against the United States, it was to be expected that its claim for costs in the preparation of the unsuccessful part of its case should not be allowed. In view of the very large expense in obtaining the necessary technical proof in cases of this kind, it will be advisable to make proper provision for this in the *compromis* in all similar future arbitrations.

A most important part of the decision consists in recommendations for a permanent régime in the operation of the Trail Smelter as provided for in Article III of the convention. The Tribunal found that damage may occur in the future unless operations be subject to some control. To prevent this, the Tribunal decided that a régime or measure of control shall be applied and shall remain in full force unless modified after December 31, 1942, by the opinion of scientists appointed and functioning as particularly set forth in the decision.

The decision represents most painstaking work on the part of the three members of the Tribunal, Jan Hostie (of Belgium), Charles Warren (of the United States), and R. A. E. Greenshields (of Canada), as it required careful consideration of the voluminous reports of the technical consultants. The arbitrators and the two governments concerned may be congratulated upon bringing to an end in a constructive and permanent manner this long-pending controversy.

ARTHUR K. KUHN

SOVEREIGNTY IN EXILE

The appointment of the American Ambassador to Poland, Mr. Biddle, as diplomatic representative to Belgium, The Netherlands, Norway, and Yugoslavia, raises a nice point of international law and procedure. Is this unique embassy to governments-in-exile in England a fiction or a fact?