in the Cutting Case at what we regarded as Mexico's infringement of our sovereignty, and when, during the World War, Great Britain blacklisted firms doing business in the United States and enforced penalties by holding up their goods, great indignation was aroused. Yet the requirements of international commerce make it necessary that states should not be too stiff in their attitude about sovereignty, and that they should coöperate by facilitating the reasonable activity of foreign agents within their jurisdiction. France, it is seen, wishes to attribute these activities to officials of the regularly established and officially recognized consular missions, whereas the United States would be less formal and give tacit permission for the presence of foreign agents so long as they were under the general supervision of the diplomatic mission and their activity was regarded as unobjectionable. This latter course may, on the one hand, give rise to misunderstandings and difficulties in regard to the status and activities of these minor departmental representatives, but, on the other, it is more flexible and allows rapid adjustments in regard to the numbers and functions of foreign agents.

In the settlement of this controversy in regard to the respect of sovereignty, and in that relative to the reasonableness of the respective tariff régimes, an admirable spirit of compromise has been shown. The future will no doubt bring forth other differences in regard to the application of the governing principles to new situations, but every reasonable compromise is of assistance as a precedent in building the foundation upon which ultimately a rule of law may be formulated.

ELLERY C. STOWELL.

THE PROGRESS OF COÖPERATIVE DEFENSE

Remarkable as was the development in the scope of international law during the second half of the nineteenth century and the opening years of the twentieth, it is significant that the fundamental basis upon which the law rested remained much as it had been at the close of the Thirty Years War. New rules had come into being relating to matters of common convenience and regulating the lesser interests of the nations, and these were on the whole effectively observed in spite of the absence from the international community of any system of sanctions. But in respect to the graver interests of states, in respect to the somewhat vague field including matters of national policy, each nation determined its own line of conduct and recognized no authority higher than its own will. Each nation was at once the judge in its own case and the enforcement officer of its own claims.

Foremost among these graver interests of national policy was, of course, the protection of the state against attack. Here each state was the keeper of its own gates, the guardian of its own territory. As such it could count only upon its own resources, unless indeed it was conscious of the weakness of its resources and concluded an alliance with one or more of its neighbors. Alli-

ances were in due course met by counter-alliances, and a balance of power was thus established as a check upon the pretensions of one side or the other. Taken as a whole, the system of defense showed few elements of a legal character. States not parties to an alliance were under no obligation to concern themselves with the merits of a dispute or to intervene in behalf of the victim of an unjust attack. In fact it might even be said that there was no such thing, legally speaking, as an "unjust attack," since each party had the "right" to determine when it was necessary to use force in pursuing the claims which it had decided for itself to be just. The preoccupation of the nineteenth century in strengthening the position of neutrals in time of war, instead of being regarded as marking progress in the development of international law, should have been stamped as a confession of the weakness of the whole international system.

At the close of the World War the first foundation stones were laid of a new international structure. The time and the circumstances were not propitious either for the consistent adjustment of political and economic conditions to the new constructive plans or for the conclusion of absolutely binding agreements. On the one hand, it was inevitable that the determination of the victors to punish the vanquished should interfere in a greater or less degree with the ideals of "concerted action" which had been set forth by President Wilson and tacitly accepted by the Allied Powers during the conflict. On the other hand, no government was ready to give a blank check to the new organization. An experiment was being tried; its success must depend upon good faith at the time of action rather than upon fixed obligations assumed in advance.

Thus the principle of coöperative defense laid down in Articles 10, 11, and 16 of the Covenant of the League of Nations was at once far-reaching in its effect upon the theory of international law and yet narrowly restricted in its practical application. While the undertaking of the members of the League in Article 10 to respect their mutual territorial integrity and existing political independence was but the reassertion of an established rule of international law, the undertaking to preserve the same against external aggression was the creation of a new rule. But this latter undertaking was seriously qualified by the uncertainty left open as to the means by which the obligation was to be fulfilled. The old "right to be neutral" in time of war or threat of war not involving the particular state was abandoned by Article 11 and a degree of collective responsibility was assumed, but again the action to be taken was left somewhat vague. The obligation of the members of the League to arbitrate, assumed by Articles 12, 13 and 15, contained the serious loophole, apart from the case of "domestic questions," that it might still be lawful for a state to go to war to enforce its claims provided the Council of the League had not decided unanimously against such action. And lastly, the economic and military sanctions laid down in Article 16 were conditioned not only by the qualifications of Article 15, but by the further fact that decisions of the Coun-

cil must be unanimous, so that not even a mere recommendation could issue from the Council for military action against an aggressor unless the particular member of the Council, in the case of the leading Powers, approved of its own participation in such action.

The legal weaknesses of the system of coöperative defense established by the Covenant of the League of Nations were obvious to all, but it was naturally hoped that the situation might be saved by good faith and practical action when the emergency might arise. Nevertheless, it came to be felt more and more that disarmament was conditioned upon security, and that security could be increased if the procedure of arbitration were worked out more definitely so as to make it possible to determine which of two nations was the aggressor in the event of the outbreak of war. The result was the signing in 1924 of the Protocol of Arbitration, Security and Disarmament. The protocol certainly restricted the possibilities of legal war, even though it may still have left open a narrow loophole in the matter of "domestic questions"; but it stopped short of taking an unequivocal position in respect to the sanctions to be applied, being definite on the point of economic sanctions but conditional and recommendatory rather than absolute and compulsory on the point of military action. Coöperative defense was thus strengthened in respect to the principle of law involved and national security increased to a corresponding extent.

The failure of the leading nations to ratify the protocol led to the conclusion of the Locarno Agreements. Here the principle of coöperative defense was again the chief object in view, but this time the obligation of mutual assistance against attack was limited to the states within what might be called the chief storm area in Europe. Great Britain, France, Germany, Italy and Belgium by the first treaty collectively and severally guaranteed the maintenance of the territorial *status quo* in the Rhineland, and further agreed that they would each of them come immediately to the assistance of a Power against whom an act of aggression might be directed in violation of the pledge as determined by the Council of the League of Nations, while special provision was made for aid in an emergency not allowing time for decision by the Council. This treaty was supplemented by four others between Germany, on the one hand, and Belgium, France, Poland and Czechoslovakia, on the other, providing comprehensively for the arbitration of future disputes; while France concluded two separate treaties of guarantee with Poland and Czechoslovakia which were more in the nature of alliances of the old type.

In so far as the principle of coöperative defense is concerned, the conclusion of the Multilateral Treaty for the Renunciation of War in 1928 marks a negative attitude. Here the sanction relied upon for the observance of the obligation assumed is a moral one. Neither economic pressure nor military coercion is contemplated. Public opinion and the good faith of the individual parties are alone relied upon. There is in the preamble of the pact a sugges-

tion that a state which should thereafter seek to promote its national interests by resort to war should be denied the "benefits" furnished by the treaty; but the denial to an aggressor of whatever benefits were intended by the treaty does not in any case amount to a promise of assistance to a state which is the victim of an act of aggression. The clause would, however, suggest that the attitude of legal indifference permissible under the old right of neutrality must now give way to moral concern and even active diplomatic mediation on the part of every signatory state when confronted with a violation of the pact, whether or not the state take any economic or military measures to make its mediation effective.

On the recent occasion of the military pressure brought by Russia (U. S. S. R.) against China to enforce a restoration of the *status quo* in the administration of the Chinese Eastern Railway, Secretary Stimson interpreted the Pact of Paris as justifying mediation between the two parties, and made the statement that "its sole sanction lies in the power of public opinion of the countries constituting substantially the entire civilized world, whose governments have joined in the covenant." In a separate statement calling the attention of the Russian and the Chinese Governments to the provisions for arbitration contained in the treaty, Mr. Stimson announced that "the American Government feels that the respect with which China and Russia will hereafter be held in the good opinion of the world will necessarily in great measure depend upon the way in which they carry out these most sacred promises." The resentment of the Russian Government at the interference of the United States was followed by a statement from the Secretary of State that "between cosignatories of the Pact of Paris it can never be rightly thought unfriendly that one nation calls to the attention of another its obligations or the dangers to peace which from time to time arise"; and in concluding the Secretary emphasized that the action of Russia in proceeding with direct negotiations with China was evidence to show that "the public opinion of the world is a live factor which can be promptly mobilized and which has become a factor of prime importance in the solution of problems and controversies which may arise between nations." Mediation was thus carried a step beyond the provisions of the Hague Conventions of 1889 and 1907, but it still holds to the sanction of public opinion and does not venture into the domain of coöperative defense.

Whether under present conditions of international life a system of coöperative defense, carried out to the extent of economic boycotts and mutual military support, is feasible or not is a question of practical statesmanship rather than of legal theory. As things now stand, national defense is the very corner-stone of international politics, and it is in consequence, as has been observed, the chief factor in determining the scope of arbitration treaties and the jurisdiction of the Permanent Court of International Justice. Quite clearly, if each nation is legally or even actually dependent upon its own resources and upon them alone for protection, it cannot risk agreeing to arbi-

trate an issue when an adverse decision might weaken the outer approaches to the citadel of national defense. For defense, when carried out by each state in isolation must mean not only defense against an impending attack but the anticipation of conditions under which defense might be more difficult at some future time. It is this necessity of looking to the future and to more remote contingencies that has made it impossible under the system of individual defense to draw any practical distinction between defensive and offensive wars.

At the present moment a solution of the pressing problem of the limitation of armaments is being sought at the London Conference along lines of proportionate reduction for each state according to agreed ratios. No element of coöperative defense enters into the situation. The argument proceeds wholly along the line that no one nation is any the weaker if it reduces its navy to the same relative extent that the others of the group reduce theirs. It is not in the contemplation of the conference that each and every member of the group, whatever reduction it might agree to, would be many times stronger if it could count upon assistance from others in the event of attack by a state which has refused to submit its case to the public forum of the nations. Yet while it is true that the history of the development of law within national boundaries points to the fact that security must precede disarmament, it would seem that there is a reciprocal relation between the two situations, so that the agreement to limit armaments even in slight measure in turn creates a degree of mutual confidence without which plans of unrestricted arbitration and coöperative defense cannot be brought into effective operation.

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THE BOLIVIA-PARAGUAY DISPUTE

Since the editorial in this JOURNAL of a year ago on the Bolivia-Paraguay dispute,[1] the Commission of Conciliation, established under the protocol of January 3, 1929,[2] has been successfully functioning in Washington. It will be recalled that the commission was (1) to investigate, after hearing both sides, what had taken place, taking into consideration the allegations set

[1] See this JOURNAL, January, 1929, page 110.

[2] As to the history of the protocol of January 3, 1929, it may be said that the Conference of American States on Conciliation and Arbitration assembled at Washington, took notice of the Bolivia-Paraguay dispute and resolved, on December 10, 1928, to call to the attention of the parties that there were adequate and effective means and organs for the solution of disputes with the preservation of peace and the rights of states, and appointed a committee to report on a plan of conciliatory action. On December 14th, the committee proposed and the conference resolved to proffer its good offices to the disputants for the purpose of promoting suitable conciliatory measures. As a result of the exchanges thus initiated, the parties signed, in Washington, the protocol of January 3, 1929. Although the protocol was fathered by the conference which concluded the Treaty of Conciliation of January 5, 1929, and while it follows the spirit of that treaty, it was not, as a matter of fact, entered into under or by virtue of that treaty.