of a final judgment or of a prosecution already commenced (this is, for example, the principle contained in the Swiss Federal Law of January 22nd, 1892).

The result of the report cannot be said to be very encouraging to those who look for immediate results, but perhaps the same is true of any field of codification where there is no uniformity of practice. The report is in itself an approach to the task of codification for the very reasons that it has analyzed the principal problems resulting from divergent practice.

The extradition of criminals plays a very important rôle in the administration of criminal justice generally. The rising tide of crime proceeds very largely in proportion to the advance in the facilities for rapid transportation. Automobiles and aircraft have now been added to all the other mechanical means which have made the territories of all states relatively smaller and escape to foreign soil easier. The increase in the number of states due to the World War has magnified the problem. Self-interest ought therefore to dictate the need for improving the technique of extradition. In this, as in so many other matters, the nations of the world are interdependent, for in large measure it is upon all other nations that each must rely for maintaining the majesty of the law.

ARTHUR K. KUHN.

EXTRATERRITORIAL CRIMES

The League of Nations Committee on the Codification of International Law adopted in January last a report on the criminal competence of states in respect of offences committed outside their territory,[1] and found that "international regulation of these questions by way of a general convention, although desirable would encounter grave political and other obstacles."

The reasons for this negative report of the committee are presumably those outlined in the report of the subcommittee, consisting of Mr. Brierly and M. DeVisscher. The subcommittee, for the reasons given by them, gave little attention to crimes committed by nationals anywhere abroad, or by non-nationals outside the territory of any state, and centered their discussion on crimes committed by non-nationals within the territory of another state. An analysis of their report may be stated as follows:

(1) Crimes of nationals abroad.
    Eliminated since "no good purpose would be served by suggesting that a principle so well established should be embodied in a convention."
(2) Crimes of non-nationals abroad, committed—
    (a) Outside the territory of any state.
        Eliminated because "no single principle underlies the cases in which a State may assume jurisdiction over non-

[1] Printed in Special Supplement to this JOURNAL, July, 1926, pp. 252–259.

nationals . . . ," such as crimes on national vessels, piracy, and liquor treaties.

(b) Within the territory of another state.

Found impracticable since the "possibility of a conventional regulation of the whole matter will depend, not on the merits of this or that case in which a non-territorial jurisdiction is at present claimed, but on the prior and more fundamental question whether the territorial basis is to admit of any exception at all. It is clear that the crux of the problem lies in the divergence of view between those States which do and those which do not allow the legitimacy of such exceptions, and that we have to ask ourselves whether the Committee would be justified in hoping for a possible reconciliation between these two groups of States. . . . Your Sub-Committee is not qualified to express any opinion as to the likelihood of a compromise on such lines as we have suggested being found acceptable to either group of States."

The policy of the Assembly appears to be to obtain a list of the "most desirable and realizable" subjects for regulation by international agreements. In view of this policy, the report of the committee on the subject of extra-territorial crimes is probably warranted, especially since codification appears to be under way on the subject of extradition, which is closely connected with the present subject. International agreements on extradition may tend to reduce some of the difficulties involved in the question of extra-territorial crimes committed by non-nationals within the territory of another State. This question, as the subcommittee points out, is the most difficult branch of the general subject.

The main trouble, as the subcommittee states, is due to the divergent practice of states under (2-a). Apparently most, if not all, of the states allow some exceptions to the strict territorial rule, and the question is to determine the extent to which exceptions should go. Once the principle of exception is allowed, it is difficult to fix the limit beyond which exceptions may not be pressed by interested states in new cases. At the present time every state is regarded as the judge of what exceptions it will advocate, but, on the other hand, the application of its judgment is tempered by the interests of other states who may object that the exceptions claimed are invasions of their soveriegn territorial rights.

While the theory of sovereignty is in some quarters regarded as obsolete, or nearly so, yet it is a curious fact that the intercourse of states is largely a matter of give and take in respect of the exercise of the rights of sovereignty. On a strict basis of territorial sovereignty, a state might claim the right to punish any person within its borders who has committed an offense

abroad which it believes to be committed against the state, but the exercise of this sovereign right is held in check by the possibility that other states might claim reciprocity in this respect. As a result, a balance is struck in practice which operates as a *modus vivendi*. The right to punish nationals is admitted by practically all states. The right to punish non-nationals is still contested except as to a few cases. Such conflicts of sovereign rights are as a rule appropriate matters for agreements between states covering particular classes of cases, and such agreements as they multiply through the years will no doubt point the way to a rule of practice which may in the end be adopted in a general international convention.

In this connection it is interesting to refer to Pitt Cobbett's summary of the disadvantages of the extraterritorial principle. He says:

> Nevertheless the system under which a criminal jurisdiction is claimed or exercised by a State over offenses committed outside its territory is, for the most part, and saving certain necessary exceptions,[1] at bottom a bad one. It tends to obstruct or impede the course of justice by making the prosecution of crime difficult and expensive, owing to need of transporting witnesses and proofs to another country than that in which the crime is committed. By disassociating punishment from the locality of the offense, it also tends to diminish its deterrent effect. Nor is it commonly necessary; for the reason that the escape of the offender to another country can generally be met by a proper system of extradition. It is also anomalous, for the reason that whilst it rests in some measure itself on a territorial basis—*viz.*, the presence of the offender within the territory—it is really subversive of the territorial principle. Finally, as was pointed out in *Cutting's Case*, it is a system which, when applied to offenses committed by foreigners in foreign territory, is open to grave abuses.[2]

L. H. WOOLSEY.

LEGAL STATUS OF GOVERNMENT SHIPS EMPLOYED IN COMMERCE

Among the questions placed at the outset by the Committee of Experts for the Progressive Codification of International Law on its provisional list of subjects concerning which international regulation seemed desirable and realizable at present was "The legal status of government ships employed in commerce." At the same time a subcommittee composed of M. de Magalhaes and Professor Brierly was appointed to inquire further into the subject and report whether in its opinion the problems which have recently arisen in consequence of the immunities hitherto enjoyed by such ships are capable of solution by means of international conventions. The conclusions of the subcommittee are embodied in a report which sets out the reasons in support

[1] "As where the offense is committed in territory not occupied by a civilized Power, or where the act done outside the territory depends for its character on some act previously done within the territory, or where the offense affects the safety or public order [or public credit] of the state exercising jurisdiction."

[2] Pitt Cobbett's Leading Cases on Int. Law, 4th ed. by Bellot, pp. 235–6.