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LA DOCTRINE DE LA RECONNAISSANCE

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Chapter I.

THE HISTORY OF THE

INTRODUCTION

THE DOCTRINE OF RECOGNITION IN INTERNATIONAL LAW

Chapter I.

INTRODUCTION

Since the famous Assembly Report of the League Of Nations was adopted on February 24th, 1933, the Stimson Doctrine of Recognition has become a formal international decision. It be soundly admitted as the first distinguished document on the international law of Recognition, which has marked^{ing} the beginning of a new progress. Yet so far as among the international jurists, there appeared a few different opinions, in particular of its application to the recognition of the puppet State "Manch^oukuo". Some English writers, such as Professor Herbert Arthur Smith and Sir John Fisher Williams, seeming to have been tired of being bound by the League's Resolution, hold that whether International Law permits not to recognize a new independent civilized State, is a question⁽¹⁾ and that, in the Covenant of the League of Nations, or in any other conventions or treaties, or in the British laws, no clause is to compel the British King to give up his right of independence; thus the requirement of unanimity in amending the League's Resolution of Non-recognition would be in contradiction to the power of King.⁽²⁾ Some French writers, such as Professor Louis Cavaré, are taking a fundamentally different point of view quite in opposition to that of Lytton Report, considering the puppet State "Manch^oukuo" as naturally an independent civilized State, which is entitled to be recognized by

(3)
 other States and approving the Japan's view of denying the application of the Covenant to the Sino-Japanese Conflict by reason of China's not being an "organized State" such as mentioned in the Covenant. (4)

To these opinions, Professor Quincy Wright of the United States, (5) Professor S. R. Chow of China, (6) and Lord Lytton of Great Britain and the League of Nations (7) had already made excellent replies. In fact, all States of the world except Japan and Salvador, are ^{with} holding such recognition. ^{Yet it is also a fact that} ~~But~~ there ^{have} ~~still~~ exist ^{other} some arguments attacking the "useless" weapon of non-recognition, ⁽⁸⁾ though their attitudes seem ^{not} to be ~~so much less~~ straight ^{as} ~~than~~ Major Thomas. (9) On the other hand, since the Sino-Japanese Conflict of 1931, some appreciable efforts have been made in the codification of this classical doctrine. The most distinguished ones are the Resolutions of the Institut de Droit International, Brussels, (10) the "Code" of Professor Consentini, (11) and the work of Professor Briggs. (12) Although these works do not represent a work of formal codification, no doubt they would constitute a valuable basis for further efforts. Another valuable work which showed a good attention to the new development of this Doctrine, was initiated by Sir John Fisher Williams, (13) which constitutes an important supplement to that of Professor R. Erich. (14) It also urged the drafting of this article.

Through these considerations, this article was, therefore, put in drafting. The Author wishes to give a survey of the development and involvement of this Doctrine. His plan is not to sketch a code, but it is purposely arranged to be a preparatory

work for such a code. Before conclusion, the Author proposes to give a full discussion on the problem of the recognition of "Manch^ukuo". For it constitutes the most important precedent to the application of this international Doctrine, and ~~it~~ still remains ~~as a case waiting for a full settlement,~~ *determinant in the fate of world.*

Chapter I.

Notes:-

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2. Sir John Fisher Williams' Letter in London Times, Nov. 13, 1934.
3. Prof. Louis Cavaré, "La Reconnaissance de l'Etat et le "Mandchoukouo"; Revue Générale de Droit International Public, Paris, tome XLII, 1935, pp. 5-99. (fondée en 1894 par MM. Pillet-Fauchille-Pédone)
4. Chailley, "La Creation et la Reconnaissance du "Manchoukouo"; Revue de Droit International, 1934, No. I, pp. 160-163.
Lytton Report, 1932.
5. Prof. Quincy Wright, "Some Legal Aspects of the Far Eastern Situation", American Journal of International Law, 1933, pp. 509-516.
6. Prof. S. R. Chow, "The Problem of the Recognition of the so-called "Manchoukouo", Social Sciences Quarterly of National Wu-Han University, Wu-chang, China, Vol. V, No. I, 1935, pp. 1-26. (周鯉生教授, "所謂滿州國之承認問題", 武漢大學季刊)
7. Lytton Report,
Lord Lytton's Letter in London Times, Nov. 1934 (before Prof. Smith's Letter).
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8. Prof. Arnold McNair, "The Stimson Doctrine of Non-Recognition, A Note on its Legal Aspects", British Year Book of International Law, 1933, pp. 65-74.
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"Some Thoughts on the Doctrine of Recognition in International Law", 47 Harvard Law Review, 1933-1934, pp. 776-794.
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Chapter II.

HISTORICAL SURVEY

Chapter II.

HISTORICAL SURVEY

The Doctrine of Recognition, same as other principles of International Law, had its similarity in the ancient history of the oldest civilized State, the Chinese Empire. Two thousand and five hundred years ago, when Europe, as well as America, were mostly still in their barbarian age. China was ~~in a period of~~ involving five, and later seven, sub-States of the same nation under the Emperor of Chow Dynasty, which used to be termed as "Chuen Chu Chan Kuo Period". The constitution of that Period (春秋戰國時代) was quite like the recent political constitution of British Empire, or ^{of} the German Confederation before 1871. Among those sub-States, there had appeared conventions, treaties, despatch and reception of diplomatic envoys and other principles ^{the} of law of peace, of war and of neutrality, some based upon the law of nature, and some based upon common consent. There were also a great many of bright philosophers, jurists, diplomats and statesmen, having produced a group of ^{the theories and} practices of the recognition of State, and of government, together with that of intervention, non-recognition and effective sanction. This state of affairs had been standing through about four hundred years, much longer than ^{present} the duration of the existing International Law. It had marked a very brilliant age of Chinese ancient civilization and have been winning the attention of modern students.

But what I am going to talk is only the Doctrine of Recognition in modern International Law, a product at least two thousand years after that ancient age. And the so-called modern Inter-

national Law is a product of the development of European State system. For Asia, the largest continent of the world, was from the beginning, through over five thousand years, ^{mostly} under the control of Chinese Empire; and the Chinese Empire had never been divided "internationally" in the real sense. Either in the above case of "Chuen Chu Chan Kuo Period" or in other cases alike, the political changes were in sense the changes of government. The Chinese Empire as one single State, has remained as the same from the beginning of history to date. The people of all such occasional sub-States were of the same race, the Chinese, living under the same Emperor, called "King of Kings" (共主) or "Tien-tze" (天子). The status of all such occasional sub-States were same as those sub-States in the United States of America or as the Dominions in the British Empire. What all thought was the unification of the Empire; what all did was the unification and expansion of this Empire. Not only the people of the whole Empire regarded those occasional sub-States as provinces, those sub-heads as lieutenant-governors, but also the heads of those sub-States, called Dukes or Princes or kings, considered themselves as obedient servants of the Emperor, called "King of Kings", and always sought to keep the unity or otherwise to take the whole Empire over by way of revolution. That is why in reality the Chinese Empire have ever been a territorial, political and cultural unity through more than five thousand years, never broken in the national sense. All other acknowledged nations then were bowing to this only giant Power in ^{the} East. Therefore, there had been no idea or reality of equality between

China and them. China was their master, master of the Continent. Asia was unified, under the prestige of ^{the} Chinese Empire, giving no chance and no necessity to develop such an "international" law as based ^{up} on the common consent of nations. (15)

In case of Europe, the situations were quite different. The representatives of the Western ancient civilization, the Greek Kingdom as well as the Roman Empire, had not the fortune of occupying so vast a continental territory with so large a population of same race as the Chinese Empire. There were too many tribes beside the Greeks and Romans, scattering over the other larger part of Europe. There were also problems of religion. The basis of the unification of Europe was ~~very~~ ^{thus,} shakable. [^] Since the Chinese Empire's written history entered ^{into} its four thousand and six hundredth year, just after its ~~wonderful~~ ^{unprecedented} conquest of almost the whole Asia and Eastern Europe, the European State system took place with the breakage of the Holy Empire. The first document of modern International Law was produced, therefore, by the Peace of Westphalia.

But the modern Doctrine of Recognition, same as other parts of the International Law, can be traced back to the Western ancient times. In the Roman Age, the Roman Empire lived more or less similar to the Chinese Empire in ^{the} East, dominating the "world". There was no idea of ^{the} equality of nations. The Roman law operated "everywhere". There was also no one having thought of a necessity to establish juridical international relations between these two Empires involving a definite doctrine of Recognition.

In the Middle Age, owing to that the "infidèles" and the Christians (the "fidèles") were living upon different basis of religion and law and that the "infidèles" were not recognised as

possessing the same rights and obligations as the "fideles" in the domain of law, (I6) there happened for the first time the problem of recognition. Yet it was still not a problem of the recognition of a particular State or Government, but one of a different human race.

After the Middle Age, the formation of European State system, the progress of the idea of national State, and the development of the thought of ^{the} Law of Nature had formed a strong trend to the production of a law of nations, involving originally the right of legation, on the basis of "the natural rights of national State" and "the equality among nations". It was the real beginning of the modern International Law.

The Father of International Law, M. Grotius, did first mention the "Reconnaissance du droit d'ambassade" in his famous work of "De jure belli ac pacis", (I7) holding that only ambassador can be the full power representative of his sovereign, that ambassadors are only exchanged between sovereigns, representing them and their sovereign powers and that a sovereign's acceptance of a foreign ambassador be considered to involve a recognition as an independent sovereign State to the State which despatched that ambassador.

This principle of the "Reconnaissance du droit d'ambassade" appeared before the Paix de Westphalie and had been confirmed in it.

During the Age of Queen Elizabeth, the Queen did refuse to accept Duc de Alva, the Ambassdor despatched by King Philipp of Spain, by reason of his not having brought up King Philipp's Lettre de Créance.

This case gave rise to another principle of "le droit d'ambas-

sade"----"Tout État indépendant et reconnu est censé avoir le droit d'envoyer des agents diplomatiques à d'autres États."

Later, there happened further three important cases. One was the Recognition of the "Republique hollandaise" into the family of nations which constituted the first precedent of the modern Doctrine of Recognition of new State.

The second was the Recognition of the "Government of the Commonwealth of the Republic of England" by France, Spain and some other countries, as the representative Government of England, despite its illegal origin. This case constituted the first precedent of the modern Doctrine of Recognition of new government.

The third was that at the end of the seventeenth century, Louis XIV purposely recognized the son of Jacques II as the King de jure of England. This case is regarded as important, because it constituted the first precedent of improper Recognition, which ~~was considered in reality~~ as an act of intervention or invasion in the English Constitution. (18)

Then came the eighteenth century. The thoughts of Recognition in this period were gradually less influenced by the Naturalist conceptions, but more by Positivists. M. Bynkershock first wrote in his "Quaestionum juris publici" (livre II, Chap. I et III): (1) ~~that a new~~ Government of an old State or a new State, once firmly established, is entitled to be recognized by other States; the ambassadors despatched by such new Governments or such new States, should be accepted by the destined States; It is a matter of peace; ~~and (2) that the revolution~~ of independence is an unreasonable mode of the formation of State; but to recognize or not to recognize is a matter of discretion within the power of the old States; it

is desirable to issue such recognition in view of world peace; the lawfulness (by constitution) or unlawfulness (by revolution) of the *fait accompli* should be left out of concern.

The second leading writer was M. Vattel, who wrote in his "droit des gens" (I, i, 4, 1758) that "la reconnaissance d'un nouvel Etat n'est donc pas un acte créateur ou constitutif de ce meme Etat, mais l'attribution justifiée à cet Etat d'un qualité ou d'un caractère auquel il a titre pour pretendre;" a collectivity, when having had a sovereign government and a legal institution, should be qualified as to be a State, and, therefore, has a right to enter into the society of nations, with international obligations and rights. M. Vattel was supposed to be the first writer in the study of the nature of Recognition, referring implicitly to its character "constitutive" or "declarative".

The third, but not the least, one was M. Moser ("Versuch des Neuesten Europaischen Volkerrechts, 1777). He is regarded as "le chef des premiers auteurs purement positivistes". But he did not mention much about the doctrine of Recognition. The only occasion concerning this was in his discussing the European history of 1740-1777; he referred to the Recognition of the new State-Tartarie-Krim by Turkey in ^{the} "Paix de Kutchuk-Kainardji" of 1774, and demonstrated the difficulties in the problem of Recognition.

The distinguished facts in the eighteenth century had also effected important influences on the Doctrine of Recognition. The first was the Revolution of North America. The Declaration Of Independence of North America was proclaimed in 1776. By the French-American Treaty of February 6th, 1778, the French King, Louis XVI, first granted it Recognition. This was regarded by Great Britain as a

premature Recognition, an unlawful act. Therefore, Great Britain made a declaration of war against France as reprisal. Not until the conclusion of Anglo-American Treaty of 1783, Great Britain granted such Recognition.

Thus, there had been two important principles of Recognition derived from this precedent: one was that the premature Recognition may lead to a lawful reprisal; the other was that Recognition may be withheld for a certain long time, despite the "fait accompli" and the attitudes of other States. Since then, the doctrine of Recognition began to draw the whole world's attention.

The second fact was the French Revolution of 1789. The Revolutionary Government of the Premiere Republique Francaise of 1792 was not recognized by Great Britain for a long duration. Prime Minister Pitt refused to open negotiations with the envoy of the then de facto Government of France, Marquis de Chauvelin, who was formerly the Ambassador of the French King. The French King continued to be recognized as the French Government by Great Britain for a time. This precedent furnished another evidence to the political nature of Recognition. (19)

Now we turn to the nineteenth century. Both facts and thoughts in this period played the most considerable rôle in the formation or, say, the completion of this Doctrine. Among the facts, we may choose to mention the following:

First, the Congrès de Vienne and L'Acte final du Congrès de Vienne in 1814-1815, which recognized: Hanovre as a Kingdom, Orange-Nassau as the "Souveraine de l'Union des Pays-Bas", the Cantons Suisses as an integral and perpetually neutral State, the Emperor of Austria as the Emperor of Italy, and Ferdinand IV as Roi de Deux-

Siciles.

The generally admitted explanation of the word "Recognition" in the early part of this period was purely derived from the Latin word "Recognoscere", meant "Certification comme valable". "L'assentiment et l'approbation des parties reconnaissantes serait une condition suspensive de la validité juridique de l'opération; la 'reconnaissance' dans un tel cas, est plutôt un engagement que prend la puissance reconnaissante de ne pas chercher à troubler l'effet de l'acte reconnu."

Secondly, the Revolution of Independence in South America. Its importance in the development of this Doctrine is regarded as only next to the Revolution of Independence in North America. The opinions and attitudes of the then old States were divided into two opposite sides. On the one hand, the Protocol de Troppau de Sainte Alliance of 1820 confirmed M. Metternich's Policy, which comprehended: (1) non-recognition of Naples' Revolutionary Government and all other revolutionary governments, (2) intervention in revolution even happened within other countries; thus, for instance, Austria did so in Naples' Revolution; and (3) exclusion of revolutionary States (having revolutionary governments) from the European Concert.

On the other hand, President Monroe of the United States declared in his Message of December 1823 that "Our policy----is to consider the Government de facto as the legitimate Government to us;" a new State might be reasonably recognized only provided it is permanently established and capable of self-preservating. In the British House of Commons, 1824, Sir James Mackintosh, the leader of whigs, argued (1) that the word "Recognition" in international law should be reasonably explained as an act of explicite

acceptance of the independence of a new State by its mother State. It has only domestic meaning; its functions are limited to the change of municipal laws and nationality; in international society, there is generally no need to use this word; Because a civilized collectivity by nature and by justice has the right to enter into international society; (2) that recognition or non-recognition is determined by the need and policy of a State; and (3) that the despatch or reception of a diplomatic agent constitutes a mode of Recognition.

The most distinguished opinions as expressed in official government documents may be that in Foreign Secretary Canning's Note of March 25th, 1825, which was sent to the Spanish Government, explaining the British act of Recognition of the South Americas' Independence. In Mr. Canning's opinion, Recognition is not constitutive, but an act of reception of an accomplished fact. There is necessity to recognize a fact of Independence. A new State is qualified to be recognized under the following conditions: (1) having a liberal and responsible Government, (2) promising to be loyal to its international obligations, (3) having existed with permanence and stability, and (4) having occupied a definite territory. Britain's recognizing South Americas' Independence was based upon the following considerations: (1) that the recognized States had already made the declarations of independence toward other States, (2) that the recognized States had had already the power of sovereignty over their territories, (3) that the recognized States had been fully stable and had had a Government and (4) that the recognized States had already proclaimed the abolition of old treaties.

These reasons were also shared by the United States. (20)

The contributions of the precedents as embodied in this group of cases were mostly in the principle of the right time for granting Recognition--qualifications of the existence of a new State.

Thirdly, the Sino-British War of 1840. It was a war of thought and civilization. Because before it, the Chinese Empire ever considered herself as the master of the world, not knowing other parts of the globe and not trusting the existence of another type of advanced civilization in the same world. On the other hand, the Western people were also not convinced of the existence of an old and giant civilized Empire in ^{the} Far East, which had had one fourth of ^{the} world population, had had a quite early advanced civilization with an over five thousand year written history, had conquered all other peoples and nations she met, and had conquered almost whole Asia and part of Europe. Most of those new comers could not know. They knew only their trade. But China was traditionally paying more respect to farmers, rather than merchants. What they had was a "colonial" and "invasionist" attitude, unreasonable and impolite. But China used to have, and ever have maintained, her prestige and dignity. Both Chinese and Western people could not understand each other. They came from different origins and lived in different regions, The means of communications and the quite different type of languages prevented them from mutual understanding and constant contact. It was not until this War that these two ^{great} types of civilization ^{of the world} began to adapt to each other. And China was eventually invited into the Family of Nations by the Sino-British Treaty of Nanking in 1842. This precedent

constituted the first example of the tacit mode of Recognition granted to an old State and the first evidence to the "declarative" character of Recognition. Then the Recognition of Turkey by the Traite de Paris, 1856, and the Recognition of Japan by the Sino-Japanese Treaty of 1895 were following with the same sense.

Some writers, such as MM. Williams(21), Oppenheim(22), Hall(23), Hervey(24), Escarra(25), etc., take Turkey's participating in the Traite de Paris in 1856 as the first precedent in this aspect instead of China. They consider Japan being the next to Turkey, by her Treaty of Alliance with Great Britain ^{in 1902} and China, by her participation in the Hague Conference of 1907. They ignored the preceding fact of ^{the} Sino-British Treaty of 1842.

This kind of opinion can not stand. Because Turkey's participating in the Traite de Paris of 1856 might only constitute a precedent of the express and collective mode of Recognition. These writers seem to have paid more attention to some "anti-International Law" acts made by China after 1842, such as the "Boxer Rebellion" in 1900 and her refraining from signing the Hague Convention of 1899 relating to the laws and customs of land warfare. They do not even have the intention to consider her being invited to the Hague Conference of 1907 as a Recognition. Such opinions are also unsound. Because they failed to understand the "Boxer Rebellion", which was in reality a kind of reprisal made against the then impolite and anti-International Law acts of foreigners, either merchants or diplomatic agents. China's refraining from signing the Hague Convention of 1899 was also a normal manner in dealing with foreign affairs. There were many such precedents and examples. The United States did not ratify her participating in the typical international law organ, the

League of Nations. Germany, Russia, Italy, etc. did either condemn it or withdraw therefrom. Should we take the United States, Germany, Russia, etc. as not yet being recognized into the Family of Nations? Moreover, even a possible anti-International Law act after Recognition can not produce as effect the withdrawal of Recognition. Germany, Russia, Italy, Japan, as well as some other States, had made more than once the so-called anti-International Law acts, such as the unilateral renouncement of such treaties as the Treaty of Versailles, the Treaty of Locarno, the Covenant of the League of Nations, the Kellogg Pact, the Nine Power Treaty, etc., the intervention in Chinese affairs, the refusal to pay foreign debts and the aggression into the territory of other Members of the Family of Nations.(26) Should we now consider those anti-International Law States as non-members of the Family of Nations? Certainly the so-called "anti-International Law acts after Recognition are eternally independent of the status of Recognition,(27) and can be only dealt with by reprisals or sanctions. Recognition can not prevent the recognized State from initiating an anti-International Law act. Furthermore, the fact that ~~China~~ had not the sincere intention to carry out her intercourse with other States,⁽²⁸⁾ was also not blamable. For Recognition and intercourse are different things (see following chapters). According to International Law, intercourse is not a matter of right or obligation, but a matter of free intention. The so-called "right of intercourse" only means that the will of intercourse of a State should not be intervened by other States and that a State may make intercourse everywhere on the basis of

mutual consent. Every State has a right of liberty in adopting a policy of intercourse or of ~~non-intercourse~~. The attitude of the old Chinese Empire was in accordance with such principle of International Law. Otherwise, the non-intercourse between the United States and Soviet Russia before 1933, the non-intercourse between Germany and Great Britain since 1939, the non-intercourse between Switzerland, Holland, Belgium and Soviet Russia after 1934 and the non-intercourse between Uruguay and Soviet Russia since 1935 would be also blamable and effect the disappearance of their mutual Recognition.

Therefore, the Chinese Empire's negotiating and concluding the Treaty of Nanking with Great Britain in 1842 undoubtedly constituted the first precedent of a non-christian State's being a Member of the so-called Family of Nations. It has been already proved by the historical facts that illegal intervention and selfish invasion, a result of the Industrial Revolution, were the real factors which made the so-called Chinese "anti-International Law acts after 1842 and which also made the Chinese Empire to adopt a ^{defensive} policy of non-intercourse from the beginning.

There is another small group of writers, such as MM. Lorimer, Fauchille, etc., (29) who classed the Recognition of China with the second species of Recognition, "La reconnaissance politique partielle", by their theory of "triple degré de reconnaissance", saying that "certains États octroient à d'autres États qu'ils considèrent comme inférieurs en qualité ou différents en civilisation. -----Des notions divergentes de moralité et à l'ordre public prévalent dans les uns et dans les autres États. Par suite, la réciprocité des droits et des devoirs ne saurait être complète.

Ainsi, en règle générale, les États mahometans et ceux de l'extreme-Orient ne peuvent obtenir des États chrétiens la reconnaissance politique plénière." (30)

This kind of opinion cannot stand too. Because China is undoubtedly the oldest ~~and powerful~~ civilized State in the world. About three thousand years ago, there ^{already} had flourished a great many of theorists and statesmen in China, with a standard of spiritual civilization at least similar to modern Europe and modern world. We can find many points in similarity between the Chinese philosophical and political thoughts and the modern European-American's. Yet the modern civilized Europe and America then were almost entirely occupied by "l'humanité barbare et l'humanité sauvage", "inférieurs en qualité---en civilisation".

Moreover, so far there is no generally admitted principle in International Law involving a discrimination of its application according to different civilizations. Nor in international practice can we find such a precedent. The abnormal privileges of foreign powers in China as stipulated in some of the treaties concluded between 1842 and 1901, were but the products of war. Those treaties were peace treaties, similar to the Treaties of Versailles in 1871 and 1919. If China had won those wars, the result would be possibly the reverse. It was a problem of force, not of the degree of civilization. Between Germany and France, war has been always duplicated and triplicated, winning over each other; the degree of their civilizations was about the same, ^(the French one is superior.) or And to-day, in the Second World War, Germany has conquered France, but reversely having been treated by Governments' statements and newspapers as barbarian; ^{and superiority} the honour of French civilisation remains still. Furthermore, Turkey, another State treated by Lorimer and

Fauchille as "l'humanité barbare", "inférieurs en qualité ou différents en civilisation", was accepted expressly into the so-called family of nations through the Article VII of the Peace Treaty of Paris of 1856, in which the five great European Powers of the time, namely, France, Austria, Great Britain, Prussia and Russia, and besides those, Sardinia, the nucleus of the future Great Power Italy, expressly declared "la sublime porte admise à participer aux avantages du droit public et du concert européens."

(31) No sign of official opinion declaring such term as "la reconnaissance politique partielle" was found here or elsewhere.

As the truth, the character of civilization of a State is purely a matter of domestic affairs. International Law does not require the same type of civilization involved in each nation. It does not involve any principle of discrimination in the application of the law of nations. It does not approve an act of illegal intervention. What International Law requires is the equality of status and treatment among nations, except in case of self-preservation or retorsion. M. Lorimer's theory can not be reasonably approved, for all that he held on this aspect were neither supported by international practice, nor by justice.

The only conclusion which could reach, would be that, as Professor Smith said, "to the case of China,---Great Britain attempted to establish diplomatic relations with China by despatch of Lord Macartney's Mission in 1793.---expected China to conform to the general principles of international law.---The decisive defeat of the Chinese in the so-called 'Opium War' of 1840 led to the Treaty of Nanking in 1842 and the establishment of formal diplomatic intercourse." (32) ^{thus} It is no doubt that the Sino-British Treaty of 1842 constituted the first precedent, by which a great

old non-christian State was accorded Recognition.

Fourthly, the American Civil War, to which Great Britain made a typical precedent for the "Recognition of Belligerency".

Fifthly, the Treaty of Berlin, 1878. The Recognition of the Balkan States--Serbia, Roumania and Montenegro-- by this Treaty marked for the first time another principle of so-called "conditional" Recognition.

Sixthly, the competition in the colonization of Africa had brought about some precedents for a principle on the Recognition of international facts and territorial changes. For instance, the Draft of the Acte general de Berlin, 1884-1885, did mention that any State's occupying a new territory in Africa should be notified to third States as to seek for Recognition. Following this example, Denmark did ask for Recognition from third States in her occupying Greenland. In 1890, France did make, and is still insisting ^{upon} protestation against the Anglo-German Treaty concerning the settlement of East Africa, according to which Germany agreed with Great Britain's forming a Protectorate in Zanzibar, provided that Great Britain made the cession of Heligoland to Germany. France held that the arrangements in this Treaty was incompatible with the Anglo-French Treaty of 1862 and the Treaty of Vienna of 1815. But on the other hand, the American Practices were different therefrom. The United States' buying Louisiane and Floride was carried out without any Recognition from third States. The United States considered also the Texas' Independence and her entering into the American Union as a matter without any necessary concern of third States. But it should be remarked that this kind of Recognition of international facts and territorial changes is out of the

scope of the so-called Doctrine of Recognition in the proper sense; because it takes no concern of the Recognition of an international person, but concerns to special interest or policies. (33)

Seventhly, the Chilian Insurrection in 1891 and the Brazilian Rebellion in 1893 produced another object of Recognition, the Recognition of Insurgency (see Chapter IV).

Owing to so many cases and practices as happened in this century, the thoughts of jurists were certainly affected. The real beginning of the formation and progress of International Law as a whole was to take place since this century. It goes without saying the Doctrine of Recognition.

The leading writers in this period may be mentioned as follows:

(I) G. F. De Martens:- M. De Martens' great work of "Precis du droit des gens" was published in French in 1784 and then in German in 1796, and translated into many other languages later. His thought was influenced by the American situations in 1776-1783. He did discuss much about the Doctrine of Recognition, both of new State and of new Government. According to his opinions, Recognition is not necessarily relating to the existence of a new State, and is not an element of State. The so-called international personality should be classified into two kinds: one is moral international personality, which is naturally obtained with the formation of State; the other is legal international personality, the acquisition of which is necessarily through Recognition. As to the formation of a State and the effects of the so-called moral international personality, He wrote as the following: "Lorsque tel peuple (nation), possédant une demeure fixe, s'unit sous un pouvoir législatif, exécutif et judiciaire commun et suprême. qui

fixe et garantit ses droit, c'est alors qu'il se forme un État (civitas). Et cet État, considéré comme personne morale, est également susceptible d'un double genre de droits et de devoirs, savoir: 1. la relation intérieure qui s'établit entre ses membres; 2. sa relation extérieure envers les étrangers."(34)

(2) Kluber:- M. Kluber, in his "droit des gens" of 1818 (Second ed. 1874), shared the theory of "declarative", by saying that it is dangerous to let the legitimacy of an insurrection to be judged by the Recognition by other State. He also contributed a theory involving a distinction between de facto ("la reconnaissance d'une possession de souveraineté par intérim-- reconnaissance du seul fait") and de jure Recognition ("la reconnaissance de la justice de fait"), and classified the modes of Recognition into express and tacit. For these opinions, he wrote: "La souveraineté est acquise par un État ou lors de sa fondation ou bien lorsqu'il se dégage légitimement de la dépendance dans laquelle il se trouvait. Pour être valide, elle n'a pas besoin d'être reconnue ou garantie par une puissance étrangère quelconque, pourvu que la possession ne soit point vicieuse. Cependant il faut avoir la prudence de la faire reconnaître expressément ou tacitement et de se procurer la garantie d'une ou plusieurs autres Puissances. Au contraire, la reconnaissance, non pas de la possession par intérim, mais de l'indépendance définitive d'un peuple en insurrection illégitime ou de celle d'un usurpateur, serait un outrage fait au souverain légitime, tant que celui-ci n'a pas renoncé, ou qu'il n'est pas censé avoir renoncé, à ses droits de souveraineté."(35)

(3) Heffter:- M. Heffter's famous book is the "Das Europäische Volkerrecht" of 1844 (5th ed. 1867). He was also a writer loyal

to the theory of "declarative", for "la reconnaissance n'est que la confirmation (bekraftigung) de l'existence internationale et l'admission d'un membre nouveau à la société internationale existanté." (36)

(4) Kent:- M. Kent, in his famous book "Commentaires" of 1826 (12th ed. 1873), did not mention the Recognition of new States, but expressed his opinions on the Recognition of new Government as follows: "Nul État n'est justifié à prendre connaissance de l'administration domestique d'un autre État, ni à porter son intérêt sur ce qui se passe à l'intérieur de cet autre État entre le gouvernement et ses propres ressortissants". (37)

(5) Wheaton:- Mr. Wheaton, the famous American writer, had given a general discussion on the Doctrine of Recognition. In his "International Law", 1836, he contributed the following principles: First, the Recognition of a new State is a matter of discretion within the power of the recognizing State. Secondly, the existence of a new State is independent of Recognition. Thirdly, the Recognition of a new State is irrevocable. Fourthly, a State may juridically keep its existence, in case no more complete sovereignty remains at hand, as a result of a definite dissolution of its society, or of other causes which effected the termination of the existence of that State.

(6) Travers Twiss:- M. Travers Twiss, in his "Law of Nations", 1863, had given us some opinions on the Recognition of the cession of territories. In his opinion, the cession of territories does not juridically need formal Recognition by third States. "The notification of the important augmentation of territories is but a question of mutual courtesy as toward third States; it is not obligatory to the State which made such acquisition." Therefore,

such Recognition is not necessary, but desirable. (38)

(7) Sir Robert Phillimore:- The Famous British writer, Sir Robert Phillimore, in his great work "International Law", (39) 1882, discussed both the Recognition of new States and of new Governments and that of the cession of territories. His opinions may be summarized as follows: 1. Recognition may be as a right or a quasi-right of new State or new Government. 2. The refusal to grant Recognition may be not regarded as an act of delinquency. 3. Recognition is not constitutive to a new State. 4. Recognition is constitutive to an international personality. Therefore, before Recognition, the new State can claim no right against other States. 5. The official cession of territory to a victory-State as a result of war, should be deemed as reasonable. 6. Recognition only can not effect reasonable cession of territory.

(8) Le Normand:- M. Le Normand was an important writer in this period who approved the theory of "constitutive", similar, to a certain extent, to the opinions of Mr. Phillimore. He also expressed some opinions on the cession of territory. His famous book was published in 1899, named "La Reconnaissance internationale et ses diverses applications."

(9) Ernest Nys:- M. Nys was a "declarative" theorist. He wrote in his "La Doctrine de la Reconnaissance": "Loin d'être le resultat d'une reconnaissance internationale, l'Etat est le fondement même de cette reconnaissance, et comme l'écrit Labandé, le droit international en suppose l'existence----l'entrée d'un nouveau membre dans la société des États se constate par la reconnaissance que font les membres de cette société. La reconnaissance ne donne nullement l'existence; elle consiste à admettre celle-ci, à l'accepter,---- les États ne demandent point si le

nouvel État s'est constitué régulièrement ou s'il est issu de la violence; ils se bornent à voir en lui un État. Toute la théorie de la légitimité a croulé.---"(40)

Chapter II.

Notes:-

15. See "Li Kuo Chi", (列國志) "Chou Chuan", (傳) "Chan Kuo Chek", (戰國策).
 "Li Kuo Chi", Preface and p. 139. Prof. C. Y. Shih, "~~China~~
~~Sin Treaties~~, (清法海軍條約) "Chuen Chu International
 Law" (Commercial Press) (春秋國際法). See also many Chinese
 great works on Chinese History, such as "Twenty-four Dynasty
 History", (二十四史), "Twenty-five Dynasty History", (二十五史),
 "A Survey of Chinese History", (中國通史), "A Survey of
 Chinese Cultural History", ((中國文化史) Prof. Hu Shih, (胡適)
 "Philosophical History of China", (中國哲學史大綱;
 Prof. Liang Chi-Chao, "Ancient History of Chinese Political (梁啟超)
 Thought", (先秦政治思想史). etc. The readers can obtain a
 very satisfactory list of the books relative to this aspect
 from The Commercial Press, The Chung Hwa Book Co., The World
 Book Co., etc. Shanghai, and all leading libraries of China and
 world. (of the
- Before 1840, during the past thousands years, there had been
 occasional and informal intercourse between China and the
 "other world", such as India, Western Asia, Eastern Europe,
 part of Pacific, etc., as a result of personal adventures and
 the operations of Chinese troops and navy.
 It is memorable that many learned Catholic Fathers had come
 over to China about four hundred years ago, and had been
 heartily welcome and received by both Chinese Government and
 people. They were even invited by the Chinese Emperor to
 become government officials. If the later new comers, such
 as the merchants, missionaries, diplomats, etc. of Western
 European nations, were so polite and kind as those respectable
 learned Catholic Fathers, it might not happen the War of
 1840 and the official relations between China and Western
 nations could be established without any important misunder-
 standing and obstacles.
16. Williams, dans Recueil des Cours, tome 44.
17. Grotius, "De jure Belli ac Pacis", II, XVIII, 2.
18. Williams, dans Recueil des Cours, tome 44.
 Satow, "Guide to Diplomatic Practice", 1932, Recognition.
19. Williams, dans Recueil des Cours, tome 44.
 Smith, "Great Britain and the Law of Nations", 1932, pp. 80--.
20. Williams, dans Recueil des Cours, tome 44.
 Temperley, "Foreign Policy of Canning", 1925, pp. 124, 498-500.
 American Foreign Relations, 1928, Yale University Press, 1929,
 p.80.
 De Martens, "Nouveau Recueil des Traités", tome II.
 J. B. Moore, "International Law Digest", Vol. I.
 Smith, "Great Britain and the Law of Nations", Vol. II.
 dans
21. Williams, /Recueil des Cours, tome 44.
22. Oppenheim, "International Law", Vol. I, p. 45.
23. Hall, "A Treatise on International Law", p. 49. 1938.

24. Hervey, "Legal Aspects of Recognition in International Law," p. 6.
25. Escarra, "La Chine et le droit international", 1931.
26. See Royal Institute, "Survey of International Affairs" and "Documents on International Affairs", 1931---. See also the facts that Russia, while being an ally of France before the First World War, was a spiritual enemy of France after the Communist Revolution, by reason of Soviet Government's refusing to pay foreign debt. But this "anti-International Law" act effected nothing on the Recognition of the State of Russia. In 1935, France and Russia became allies again.
27. Cosentini, "Code International de la paix et de la guerre", p.36.
28. Lytton Report.
29. Lorimer, "Principles de droit international", liv. II, Ch. 2, p. 69, Ch. 6,7,8,9,10,14, 15,17. (resume et traduit par M. Ernest Nys).
30. Fauchille, "Traite de Droit International", tome I, pp. 526---) Public
31. Smith, Vol. I, p. 17.
Some writers, such as Prof. Hershey, mentioned the Recognition of China as a tacit one; while Turkey, as an express one.
32. Lord Palmerston's Despatch of 20th February 1840, see Whyte, "China and Foreign Powers", 1927, p. 40.
Smith, Vol. I, pp. 17-18.
One of the most important factors which led to the War of 1840 was ~~that~~ the British Government "laissez faire" and to help the British merchants to import opium to China forcibly and unreasonably. Thanks to this honourable policy, and action, of the British Government and people, the opium problem in China ~~was~~ began to arise and have cost so much/spiritual and political efforts to fight opium. our
33. See Chapter V.
34. G. F. de Martens, "precis du droit des gens", 1784, III, ii, s. 80-92.
See also Williams, dans Recueil des Cours, tome 44.
35. Kluber, "droit des gens", 1874, Paris, I, i, 23.
36. Heffter, 5th ed., 1867, sec. 23.
See also Recueil des Cours, tome 44, Williams.
37. Kent, 12th ed., 1873.
See also Recueil des Cours, tome 44, p. 231.
38. Travers Twiss, "Law of Nations", 1865, p. 19.
39. Phillimore, "International Law", 3rd ed., 1882, Vol. II, ch. IV, Vol. III, pp. 784-785.
40. Ernest Nys, "La Doctrine de la Reconnaissance des États", Revue de Droit International, Paris, 2e serie V. pp. 292 et suiv., 1903.

Chapter III.

RECENT DEVELOPMENT

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In the preceding chapter, we have briefly stated the progress of this Doctrine before First World War. Owing to the four major factors---the Revolution of North America, the Congress de Vienne, the Revolution of South America, and the Sino-British War of 1840, a tradition of the Doctrine of Recognition had been formed. The major principles were roughly settled. The subject had been to a certain extent fully discussed. But after the First World War, there were another groupe of four major factors appeared. The first was the First World war of 1914-1918; the second was the creation of the League of Nations; the third was the Russian Revolution; the fourth was the Sino-Japanese Dispute of 1931. By these factors, not only international jurists have been more interested in this phase, but also international tribunals and institutions and domestic courts have been compelled to produce decisions, opinions and revolutions in large scale. All these fruitful products have beaten^{up} a further progress of this Doctrine and wonderfully characterized this twentieth century.

In this wonderful twentieth century, we may introduce here some important facts, which derived from the above four factors and have been recruiting the traditional Doctrine with a groupe of new precedents and bright principles.

In the first place, there were some oppressed Minorities on the Allies' side (the Triple Alliance's side) which had joined in the First World war as independent "Nations" and co-belligerents of the Ententes (the Entente-Cordiale's side). Such were the

cases in 1916 and 1917, when the Polish, the Czechoslovaks and the Yugoslaves were turning to England, France and Italy for cooperation in War side by side against their mother-States.-- Germany and Austro-Hungary. They had organized respectively a "Comites nationaux" and their own armies, within the territories of the Ententes. They became independent States later. This fact offered a new phase of the Doctrine of Recognition---"the Recognition of Nation".

On the other hand, the Jews did about the same. Their "Sionisme" was sympathized by Great Britain, France, Italy, the United States, Greece, Japan, Serbia, etc. All these States declared their approval to the establishment of a new country as the "Jewish Homeland". The Jews were generally admitted as a "Nation" and were finally confirmed at the Conference de San-Remo of the Supreme Council, April, 1920, which granted it "reconnaissance comme nation du peuple juif". (41)

In the second place, the emergence of new States from the First World War, such as the Baltic States, Finlande, Poland and Czechoslovakia, had produced many precedents on the express mode of Recognition and, more important, created the first precedent for the principle of the withdrawal of the Recognition of Government. (42)

In the third place, the appearance of the League of Nations had effected a great development of International Law, generally as well as particularly in the Doctrine of Recognition. In the Art. I of the Covenant, it runs: "Any fully self-governing State, Dominion or colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the

Assembly, provided that it shall give effective guarantees of its sincere intention to observe international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments." In the application of this Article, the Assembly adopted the "Alvarez's Doctrine" that "la reconnaissance antérieure, une reconnaissance plus ou moins générale, n'est pas considérée comme étant une condition indispensable pour l'admission." Albania and Lithuania were admitted into the League by this Doctrine. (43) Another explanation was that "admission, a collective decision of a given majority, is in fact an act by and on behalf of the entire membership of the League, declaring that the candidate possesses the requisite qualifications for membership and at the same time constituting the applicant a member;" thus, "the binding force of League membership produces automatic Recognition". This principle had applied to Yugoslavia's granting Recognition to Latvia and Estonia, 1926, by reason of their having entered into the League. (44) On the other hand, there were cases, such as that of the relations between Holland, Belgium, Switzerland and Uruguay and Russia, after 1934, which furnished another rule that Members of the League, though having granted recognition to each other, may still withhold official relations between each other. (45)

Based upon the above stipulations and explanations, the League did grant admissions to Albania in 1920, to Estonia, Latvia and Lithuania in 1921, to Hungary in 1922, to Irish Free State and Abyssinia in 1923, to the Dominican Republic in 1924, to Germany in 1926, to Mexico in 1931, to Turkey and Iraq in 1932 and to Union of Socialist Soviet Republics, Ecuador and Afghanistan in

1934. (46) And the Arts. 18 and 20 of the Covenant may be deemed as sanctions for unlawful treaties.

The importance of such facts as resulted from the appearance of the League of Nations may be described as follows: 1. The Covenant ^{has} given us the first written International Law of Recognition, though it is not perfect. 2. The admission into the League of Nations ^{has} constituted, to a certain extent, another example of the express and collective mode of Recognition. 3. The conditions of, and the right time for, Recognition have been formally defined. 4. The Covenant created a kind of coercive or obligatory Recognition, by the system of "two-thirds vote". The States have no longer their ^{full} discretion in withholding Recognition. 5. The League of Nations ^{has} furnished ^{some} the precedents for the principle of ^{the} separation between express Recognition and intercourse, which involves that Recognition may be granted without the establishment of official relations. 6. Since the League embraces almost all nations of the world, it has given us a real international law of peace. The Covenant and the League Resolutions, including that relative to Recognition, naturally become universal and forcible.

In the fourth place, the withholding and delay of the Recognition of Soviet Russia by Powers, especially by the United States, gave rise to many international and national courts' decisions, which formed a considerable addition to the practices of Recognition rendered before the First World War. Such additional cases have contributed much to the principles of: the status of recognized States and Governments in foreign courts, the status of unrecognized States and Governments in foreign courts, the intent as an element of Recognition, the legal effects of de jure and de facto Recognition, the declarative nature of Recognition, the

retroactive effect of Recognition, etc..(47)

In the fifth place, the Secretary of State of the United States, Mr. Stimson, did despatch an identical Note to both Japan and China, on 7th, January 1932, expressing the United States' attitude toward the Japanese invasion in China, which read: "In view of the present situation and its own rights and obligations therein, the American Government deems it to be its duty to notify both the Government of the Chinese Republic and the Imperial Japanese Government that it cannot admit the legality of any situation de facto nor does it intend to recognize any treaty or agreement entered into between these Governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the Open Door Policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which treaty both China and Japan, as well as the United States, are parties." This is the so-called Stimson Doctrine of Non-Recognition.

On the 24th, February 1932, Mr. Stimson further explained this Doctrine in another official letter to Senator Borah, by saying that: "if a similar decision should be reached and a similar position taken by the other governments of the world, a caveat will be placed upon such action which we believe will effectively bar the legality hereafter of an title or right sought to be ob-

tained by pressure or treaty violation.--"

Two weeks after, the Special Assembly of the League of Nations, when dealing with the Sino-Japanese Dispute, unanimously adopted (excluding the two parties) the Stimson Doctrine of Non-recognition on 11th, March 1932, by stipulating that: "The Assembly---declares that it is incumbent upon the Members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris." Next day, it was accepted by China. This is called the League's Doctrine of Non-recognition, which involves the Stimson Doctrine.

On February 24th, 1933, the League Assembly Report reminded this Doctrine again. Both the United States and the Members of the League of Nations, except Japan (the International Law breaking State) and Equador, have been following their pledges without change. (48)

There are four significant aspects of this Doctrine of Non-recognition which deserve to be remarked:

I. It was first declared by the United States and approved by the Members of the League of Nations. We should have noticed that in the year of 1932, almost all nations of the world, except the United States, ^{and Russia} were in the League. That it was the product of the combined efforts of the United States and the League, would mean that it is an existing universal law of nations. (49) No such similarity can be found in other traditional principles.

2. The appearance of the so-called Doctrine of Non-recognition in 1932, was not for the first time in the world. Early as prior to the First World War, there happened the Holy Alliance Treaty

of 1815, condemning all popular movements in favour of political freedom. At the Congress of Troppau in ⁸1920 the ministers of Russia and Prussia put forth a joint circular, explaining that while the Holy Alliance was not hostile to reforms proceeding from the voluntary action of sovereigns, it was determined to put down violence and revolution. Next year, 1821, the sovereigns assembled at the Congress of Laybach proclaimed in a circular despatch that they would regard as null and disallowed by the public law of Europe any pretended reform effected by revolt and open force. In pursuance of these ideas, the Alliance interfered in Spain, Naples and other States, and would have extended its operations to Central and South America, had it not been checked by the concerted opposition of George Canning, the brilliant Foreign Minister of Great Britain, and James Monroe, the President of the United States. (50)

Later, in 1878, the Russo-Turkish Treaty of San Stefano was a consequence of the violation of the Treaty of Paris of 1856. The other States interested did protest and not grant recognition. (51)

Then, in 1907, M. Tobar, the Foreign Minister of Ecuador, did declare a doctrine of non-recognition in the Five Power Conference of Central America, suggesting not to recognize any de facto government which came to being through the way of revolution against the constitutional government.

In 1909, The Five Power Treaty of Central America (Le Traité de l'Amérique Centrale) enacted this Tobar Doctrine as follows: "ne pas reconnaître un gouvernement qui s'emparerait du pouvoir dans l'une quelconque des cinq républiques à la suite d'un coup d'Etat ou d'une révolution contre le gouvernement reconnu, aussi longtemps que les représentants librement élus du peuple n'auront pas reorganisé le pays d'une façon constitutionnelle." This Treaty also regulated

a system of ~~le~~ ^{la} Cour permanente de justice internationale de l'Amérique centrale invested with the power to declare whether it has happened a situation as noted in the Treaty, and whether the High Contracting Parties are desirable to grant recognition. (52)

In 1908, there were two precedents of the doctrine of non-recognition: one was Great Britain's not recognizing the Independence of Bulgaria. For in the Treaty of Berlin of 1878, Bulgaria had been declared as an "autonomous and tributary Principality under the Suzerainty of the Sultan of Ottoman Empire. Thus, the British Government in its Note of October 6, 1908 despatched to the Bulgarian Government, protested that: "we cannot admit the right of any power to alter an international treaty without the consent of the contracting parties. His Majesty's Government cannot, therefore, recognize what has been done until the views of the other Powers are known, especially of Turkey, who is more concerned than any one else". The other one was Great Britain's not recognizing the absorption of Bosnia-Herzegovina of 1908, which was also protested as a result violating the Treaty of Berlin of 1878. (53)

In 1913, there was again a doctrine of non-recognition, named President Wilson's "Constitutionalism", declaring that the United States will not recognize any Government in Latin Americas which came to power by non-constitutional way. This doctrine was soon supported by Central American Republics and was carried out by the Treaty of Washington, 1923. According to this Treaty, the High Contracting Parties undertook not to recognize such new governments in the interested parties as coming up from revolution or from an election by unqualified voters; and the Cour permanente de justice internationale de l'Amérique centrale established by the Treaty of 1905 was abolished. This Treaty had applied to the Revolutionary

Government of Salvador, while there were twenty-seven nations in Europe and some States in Asia and Latin Americas having granted Recognition. Eventually, in 1934, it seemed to have absorbed Salvador as a party.

In September of 1930, another doctrine of non-recognition came to being. It was the "Estrada's Doctrine". The Foreign Minister of Mexico, M. Genaro Estrada, when announcing his foreign policy, declared that a State has a right to determine freely its attitude in international intercourse and may at its liberty not recognize a foreign government which came from a situation violating International Law. He explained that "Après un examen consciencieux de la matiere, le Gouvernement du Mexique a charge ses ministres et chargés d'affaires dans les pays troubles par les crises politiques récentes d'informés ces pays que le mexique ne favorise pas l'octroi de la reconnaissance parce qu'il trouve cette pratique contraire aux sains principes du droit international---cette pratique, en effet, met ces pays dans une situation où leurs affaires domestiques pourront etre jugees---par d'autres gouvernements qui, en fait, prennent une attitude de censure en decidant favorablement ou defavorablement sur la légalité d'un regime étranger. En conséquence, le gouvernement du mexique se borne a maintenir ou revoquer ses agents, diplomatiques quant il croit desirable de le faire et a continuer d'accepter également quand il le juge désirable, les agents diplomatiques similaires que d'autres nations ont pu accrediter près de lui, sans soulever de question, soit préjudiciellement, soit a postèriori, sur le droit pour les nations étrangères de conserver ou de changer leurs gouvernements ou autorités.---"(54)

It is not necessary to discuss respectively these doctrines. What we may find there is that all these former precedents or

doctrines are mostly either relative to the domestic affairs of foreign countries, or merely regional or vague in character. The universal and more fully forcible one was only a matter after 1932.

3. The third point should be remarked is that the words "not to recognize any situation, treaty or agreement" in both the Stimson Doctrine and the League's Doctrine involves not only the non-recognition of a fact, a treaty or an agreement, but also that of a State or a Government.

4. Lastly, it should be remarked that the Stimson's and the League's Doctrine of Recognition had brought about some new precedents and new declarations as its application and development:

The first was that the Conference of Washington of the Nineteen American Republics in August 3, 1932, in regard to the Bolivie-Paraguay Dispute, did declare not to recognize any acquisition of territory rendered through conquest by force.

The second was that the Resolutions of the Council of the League of Nations, March 18, 1933, in dealing with the Perou-Colombian Dispute, did adopt the League's declaration of Non-recognition, March 11, 1932, and the American Conference's Declaration of Non-recognition of August 3, 1932. (55)

The third was the Treaty of Non-aggression and Conciliation of October 10, 1933, drafted by the Foreign Minister of the Argentine Republic, M. Saavedra Lamas, signed at Rio de Janeiro, and ratified by twenty-four States, of which several were European States including Italy. In Art. I. of this Treaty, it runs: "The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations and that the settlement of disputes and controversies shall be effected only through the

pacific means established by International Law". In Art. II, it runs: "They declare that territorial questions must not be settled by resort to violence and that they shall recognize no territorial arrangement not obtained through pacific means, nor the validity of an occupation or acquisition of territory brought about by armed force." Therefore, in Art. III, it runs: "The Contracting States undertake to make every effort in their power for the maintenance of peace. To that end, and in their character of neutrals, they shall exercise the political, juridical or economic means authorized by International Law; they shall bring the influence of public opinion to bear; but in no case shall they resort to intervention either diplomatic or armed." (56)

The fourth was the Convention on Rights and Duties of States adopted by the Seventh International Conference of American States and signed on December 26th, 1933, at Montevideo, which was to remind the Treaty of Rio de Janeiro of October 10, 1933.

The fifth was the Convention of American States of December 1936, concluded at Buenos Aires, as a result of the Inter-American Conference, which was also to remind the Treaty of Rio de Janeiro of Oct. 10, 1933 and to co-ordinate, extend and assure the fulfillment of the existing treaties between the American States.

All these Conventions were signed by the United States. (57)

The sixth was that the Special Assembly of the League, on July 4, 1936, had applied the Doctrine of Non-recognition to the fait accompli in Abyssinia, made by Italy's armed invasion (for the third time for its application by the League). After Italy announced its annexion of Abyssinia on May 9, 1936, the Seventeenth

Assembly of the League sat on Sept. 1936, where Italy objected Abyssinia's capacity of presence. On Sept. 23, 1936, the Assembly adopted the Second Report of the Committee of Credentials, by declaring that "the Assembly recognize the Delegates of Abyssinia as having the right of presence at this Assembly." Therefore, Abyssinia still remains as a Member-State of the League of Nations under the League's Doctrine of Non-recognition. (58)

From the above facts and explanations, we may draw some points as their result in the Doctrine of Recognition:

(1) The contents of the Doctrine of Non-recognition have formed an additional condition to the issuance of Recognition.

(2) The Doctrine of Non-recognition also constitutes a measure of international sanction against an unlawful fact or an unlawful Recognition.

(3) The developments of the Stimson's and the League's Doctrine of Non-recognition prove further its universality and its legally binding force imposed upon either Members of the League, or non-Member-States. It was through such documents and principles as the Stimson Declaration, the League's Resolution, the Lamas Pact, the Covenant of the League, the Kellogg Pact and other existing pacts or resolutions of the same nature and the principle of the divineness of treaty obligations and promise that the Doctrine of Non-recognition has become a universally international law, not only a law of practice, but also a law of convention. It has a binding force almost to every State. (59)

(4) It has given rise to another kind of Recognition---the Recognition of international facts, situations or treaties, though it is only a logical extension of a traditional principle.

(5) It has overthrown the traditional principle that an old State may, at its discretion, grant to a new State Recognition without consideration to its lawful or unlawful origin. It definitely prevents all States from recognizing a new State resulted from a breach of the Law of Nations. It helps the establishment of an international society under the rule of law.

^{In short,}
~~To sum up,~~ the new facts and new practices since the First World War, have enlarged the scope of Recognition and made more fruitful its principles, among which the Doctrine of Non-recognition of 1932 played the most considerable rôle.

Chapter III.

Notes:-

41. Fauchille, tome I, i, pp. 311-316.
Le Fur, "Precis de Droit International Public", 1939, p. 366.
Georges Scelle, "Precis de Droit des Gens, Principes et Systematique." 1932, tome I, pp. 99-100.
42. Fauchille, I, i, p. 329.
Erich, dans Recueil des Cours, tome 13, where the views of Fauchille on the withdrawal of the Recognition of Finland by France were corrected.
Fauchille considered the Principal Allied and Associated Powers' refusal to negotiate peace with the delegates of German Imperial Government as also an example of the withdrawal of Recognition. See I, i, p. 329.
43. Erich, dans Recueil des Cours, tome 13, p. 494.
Fauchille, I, i, p. 333.
44. Graham, "The League of Nations and the Recognition of States", 1933, p. 38.
45. Such as Switzerland, Belgium, Holland, vs. Russia after 1934; Uruguay vs. Russia after 1935; Yugoslavia vs. Esthonia, Latvia between 1921-1926.
See Oppenheim, Vol. I; Le Fur, p. 364.
46. Prof. S. R. Chow, "The Development of the Organization off the League of Nations", Social Sciences Quarterly of National Wu-Han University, China, Vol. IV, No. 4, 1934. (周鯨生教授, "國聯組織之考述", 武漢大學社會科學季刊)
47. Hervey, "Legal Aspects of Recognition in International Law". 1933.
Briggs, "Law of Nations". 1938
Oppenheim, "International Law", 1937 Vol. I, by Lauterpacht.
Jaffe, "Judicial Aspects of Foreign Relations, in particular of the Recognition of Foreign Powers", 1933.
48. For facts, see Prof. S. R. Chow, "The New Progress of International Law" 1934, last four chapters. (周鯨生教授, "國際公法之新發展", (商務); Willoughby, "Sino-Japanese Controversy and the League of Nations", 1935; Official Journal, 1931-33; Royal Institute, Survey of International Affairs, 1931-33.
49. This view was also approved in Revue de Droit International, 1934, No. I, p. 578.
See the same view in the Letter of The United States' Minister at Berne to the Secretary General of the League of Nations, (O. J. Vol I, p. 90, 1932, Special Session of Assembly, /see also Chapter VI.)
This view was also expressed by the Secretary General of the League in his letter of June 14, 1933 (O.J. special Assembly Records, 1933, Vol. V. p. 12.) to the United States and other non-Member-States, which ran: "In regard to the [redacted] or, the Renunciation of War (Pact of Paris), the Government [redacted] the United States of America might be looked upon as occupying a position similar to that of the Governmenta of those States Members of the League with which Conventions have been deposited."
50. Lawrence, "Documents Illustrative of International Law". 1914, pp. 47-49.
51. McNair, "The Stimson Doctrine of Non-Recognition", B.Y.I.L., 1933, pp. 65-74. See also the examples cited: pp. 84-85 of this book.
52. Williams, Recueil des Cours, tome 44.

53. McNair, B.Y.I.L., 1933.
Gooch and Temperley, "British Documents on the Origin of the War", 1898-1914, Vol. V, p. 398.
54. Williams, dans Recueil des Cours, tome 44.
55. Williams, dans Recueil des Cours, tome 44.
56. P. C. Jessup, "The Saavedra Lamas Anti-War Draft Treaty," A.J.I.L., 1933, pp. 109-114.
57. J. W. Garner, "Questions of State Succession Raised by the German Annexion of Austria", A.J.I.L., 1938, p. 421.
58. Royal Institute, Documents on International Affairs, 1936.
O. J. of the League of Nations, 1936.
59. Prof. S. R. Chow, "The Problem of the Recognition of the so-called "Manchoukuo"", p. 20.

Chapter IV.

RECENT THEORIES

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Now we turn to visit the modern international jurists. In this twentieth century, the theories, being influenced by the new facts and practices, are much more fruitful than before. The notable writers are Professor S. R. Chow, etc. in China, Profs. Oppenheim, Hall, Lawrence, McNair, Lauterpacht, Brierly, Higgins, Smith etc. in Great Britain, Profs. Fauchille, Consentini, Scelle, Le Dur, etc. in France, Profs. Politis, Spiropoulos, etc. in Greece, MM. Diena, Cavaglieri, etc. in Italy, MM. Kelsen, Verdross, etc. in Austria, MM. Moore, Hyde, Garner, Wright, ^{Hudson,} Alvarez, De Bustamante, etc. in America, and Rev. Professor Bergeron in Canada. Other writers who have given valuable opinions on this Doctrine, will be also mentioned later.

These jurists of different countries have formed many different schools and made many important contributions, of which I propose to introduce here the following three:

The first is relative to the most complicated problem, the nature of Recognition. There are three main schools of theorists in dealing with this problem, each of which is further divided into several sub-schools.

I. The School of "Theories Constitutives":

This School comprehends mostly the Positivists and is further divided into two Sub-Schools:

(I) The School of "Théorie Constitutive à l'État".

The notable writers of this School are MM. Jellinek, Sander, Gemma, Trièpel, Charles de Visscher, Le Normand, etc.. (60) Their

common views may be described as follows:

(A) Law is the product of the will of State. International law is the product of the common will (always called by English writers as "common consent") of States. The world society is simply a natural society, a natural fact, without any legal sense or legal international relations, if there were no such common agreement among of States. The appearance of a new State through its formation, is also a social fact, without any legal status in the international society. It could have a legal status or juridical international relations only through an act of other States, by which they express their will as to regard the new State as a Member of their legal international society. It is this act of expressing such will called Recognition.

(B) Recognition is creative to State, not only on the international point of view, but also on the internal point of view. Before Recognition, a State does not juridically exist, but is political-sociological in sense.

(C) Therefore, Recognition may be defined as an act of the States, by which they express their liberal will to change the natural fact of the existence of a new State into a juridical one. A law can only operate between two States by way of their mutual Recognition of each other's juridical international personality.

(D) Recognition is neither a right for the new State, nor an obligation imposed upon the old State.

(E) Recognition can be conditional.

(F) Recognition cannot be retroactive in its effects. Because before Recognition, the State does not exist and has no way to execute judicial decision.

(G) Recognition is revocable. Because Recognition is a matter

of free will. The old State is arbitrary in dealing with Recognition.

(2) The School of "Théorie Constitutive ^{de} la Personnalité internationale".

This theory, based upon the distinction between State and international personality, is held by Profs. Phillimore, Oppenheim, McNair, Lauterpacht, Fiore, Consentini, Strupp, S. R. Chow, Caviglieri, Anzilotti, Wright, etc. (61) They held:

(A) Recognition is not creative to State, but creative to internationality ^{personality} or, in other words, to the membership of the international society.

As an explanation, Oppenheim said: (62) "As the basis of the Law of Nations is the common consent of the civilized States, Statehood alone does not imply membership of the Family of Nations. There are States in existence, although are not, or not fully, members of that family, because their civilization, if any, does not enable them and their subjects to act in conformity with the principles of International Law. Those States which are members are either original members because the Law of Nations grew up gradually between them through custom and treaties, or they are members which have been recognized by the body of members already in existence when they were born. For every State that is not already, but wants to be, a member Recognition is therefore necessary. A State is, and becomes, an International Person through Recognition only and exclusively.-----There is no doubt that Statehood itself is independent of Recognition. International Law does not say that State is not in existence as long as it is not recognized, but it takes no notice of it before its Recognition. Through Recognition only and exclusively a State becomes an International

Person and a subject of International Law; and thereby acquires the capacity to enter into diplomatic relations, and make treaties with the States which recognize it, in particular, it acquires immunity of jurisdiction, except by its consent, in the courts of law of those States.---"

For the same opinion, M. Cavaglieri said:(63)

"----ils ne peuvent être de nature juridique. L'Etat non reconnu n'a pas de personnalité juridique." "--l'existence du nouvel Etat constitue seulement une situation de fait qui ne peut se convertir en situation de droit que moyennant l'intervention de la volonté des autres Etats, qui se fait jour par la Reconnaissance. Celle-ci est donc nécessairement constitutive."

M. Anzilotti said: (64)

"La Reconnaissance est----la manifestation de la volonté de considérer comme légitime un état de choses donné, une prétention donnée."

M. Strupp said:(65) Recognition is the basis of a capacity for claiming such rights and obligations as embodied in International Law. No legal rights in International Law can be obtained without Recognition'.

Prof. S. R. Chow said:(66)

"As International Law is based upon the common consent of Nations, Statehood itself cannot automatically become a member of the international Society.----When States which are not yet members of the international society, want to join in that society, Recognition is necessary. Through Recognition only, a State can become an inter-

national Person." ("國際法之根據，在於文明列國之公認，僅以國家之資格，不能即為國際社會之一分子。---一如國家之尚未為國際社會之一分子而欲加入者，則承認之手續為必要的，國家惟依承認乃能成為國際人格者。")

And MM. Fiore, Consentini and Le Normand said:

"L'Etat, tout en étant soumis au droit international dès qu'il existe juridiquement, ne peut cependant assumer la qualité de personne dans la société internationale, avoir la jouissance et l'exercice de ses droits internationaux vis-à-vis des autres Etats, qu'autant qu'il est entré en relations avec eux ou a été reconnu par eux."(67) "Avant la reconnaissance il n'y a pas de personnalité légale internationale de l'Etat."(68)

(B) Thus, the nature of Recognition is legal. It is legal in two-fold: on the one hand, it is constitutive to international personality, by which a State can be qualified to live under the protection of the Law of Nations. On the other hand, it operates as a judicial agent of International Law with a "task of ascertaining whether the conditions of Statehood as laid down by International Law exist in any given case." For "in recognizing a new State as a member of the international community the existing States declare that in their opinion the new State fulfils the conditions of Statehood as required by International Law. The thus acting, the existing States perform, in the full exercise of their discretion, a quasi-judicial duty. In the absence of a special organ competent to fulfil that function, they are entrusted by International Law with the task.---" "---This is in itself, apart from what is believed to be the weight of practice, an additional reason why it is difficult to admit that it is a discretionary act governed by political considerations of self-interest."(69)

(C) Recognition is retroactive in its effects. "The Recognition of a new State should date back in its effect to the time at which the new community first satisfied the requirements of Statehood.

It is believed that no tribunal has yet been called upon to make a pronouncement to that effect, but practice affords instances of the recognizing State treating its Recognition as having retroactive effect. That the Recognition of a new Head or Government has retroactive effect and relates back to the moment at which that Head or Government definitely established itself in power has been affirmed by municipal tribunals more than once." (70)

(D) Recognition of Government is revocable. Recognition of State is irrevocable. "Recognition will, as a rule, be given without any conditions whatever, provided the new State is safely and permanently established. Since, however, the granting of Recognition is a matter of policy, and not of law, nothing prevents an old State from making the Recognition of a new State dependent upon the latter fulfilling certain conditions.---The meaning of such conditional Recognition is not that Recognition can be withdrawn in case the condition is not complied with. The nature of the thing makes Recognition, if once given, incapable of withdrawal. But conditional Recognition, if accepted by the new State, imposes the internationally legal duty upon such State of complying with the condition; failing which a right of intervention is given to the other party for the purpose of making the recognized State comply with the imposed condition." "There are no instances of withdrawal of the Recognition from a Government unaccompanied by the Recognition of another Government, but assuming that such withdrawal of Recognition is permissible, the obvious method of withdrawing Recognition from the Government of another State is to send it a note or declaration to that effect. This would be accompanied by a rupture of diplomatic relations and the withdrawal of diplomatic representatives, but it seems that

the mere rupture of diplomatic relations does not of itself involve or constitute withdrawal of Recognition." (71)

II. The School of "Théories mi-constitutives, mi-déclaratives":

There are four sub-schools embodied in this School;

(I) The School of "Théorie mi-constitutive, mi-déclarative en droits souverains".

This School used to be called Italian School; for most supporters of it are Italian writers, such as MM. Miceli, Romano, Fedozzi, Salvioli, etc.. Some German, Austrian, Swiss and other Italian writers such as MM. Kelsen, Verdross, Kunz, Guggenheim, Cavaglieri, etc. also expressed this view occasionally. (72) The basic ideas of this theory are the necessity of "minimum de sécurité juridique" and something derived from the thought of Positivists.

They explained: (73)

(A) "Supposons---que sur un territoire jusque là inhabité, s'établissent deux groupes sociaux, détachés de leur passé et remplissant les conditions requises pour constituer des Etats.----Leur volonté est source du Droit, les promesses qu'ils échangent sont l'objet de l'étude du Droit International.----Chaque Etat procède à cette détermination, essentiellement variable suivant l'Etat qui la fait, conformément à sa conviction particulière.---"

(B) "--dans les relations entre les deux groupements constitués: (a) Un Etat a promis une chose à un autre Etat; s'il agit à l'encontre de cette promesse, il commet un acte illicite.---(b) Un des Etats n'a rien promis, mais il commet un acte qui lèse son voisin; il envahit son territoire. Aux yeux de l'envahisseur, son action ne sera pas illicite, parce qu'elle ne va pas à l'encontre d'une promesse formelle, sans qu'il puisse affirmer son caractère licite.---un acte

dommageable commis par un Etat envers un autre peut n'être pas illicite, formellement, quand il ne va pas à l'encontre d'un engagement exprès, mais sans présenter pour cela un caractère licite.

(c) La Promesse internationale est une manifestation de volonté unilatérale, émise de façon irrévocable. C'est une déclaration d'adopter une conduite déterminée et de ne pas la modifier sans le consentement de celui à qui elle est faite.--"

(C) "C'est cette promesse, la volonté de l'Etat qui s'oblige, qui constitue la source du droit international,---cette obligation est vraiment positive et concerne les droit inhérents à la vie de l'Etat non reconnu. Ce dernier est sujet de droit, parce qu'il a reçu une promesse."

(D) "Les droits de l'Etat non reconnu seront peu nombreux, mais auront un contenu fondamental qu'on ne peut ignorer: celui de sa personnalité juridique.---la concession à l'Etat nouveau, avant même la Reconnaissance, d'un minimum de sécurité juridique qu'elle lui accorde le droit de conservation, le droit de se défendre contre les agressions, d'exercer les pouvoirs essentiels de la souveraineté."

(E) "---le rôle de la Reconnaissance, elle sera mi-déclarative, mi-constitutive. Simplement declarative à l'égard des droits dont l'Etat non reconnu était déjà nanti, elle sera aussi constitutive, en conférant à ce dernier des droits dont il ne jouissait pas auparavant, elle étendra sa sphère d'activité juridique, et aura une mission de clarté."

(F) "Reconnaissance des Etats formés à l'intérieur de la communauté internationale, ----elle ne peut être que déclarative.---car---pas nécessairement.---"

In other words, this School held that a new State may have two groups of sovereign rights, of which one group is invested with

before Recognition, by the unilateral promise of the old States, and by reason of the necessity of minimum security; the other group is invested with after Recognition, through which it becomes an international person. To the first group, the Recognition is declarative; to the second group, constitutive. It is remarkable that they treated international law as mutual promise, a law only among the contracting parties. Yet they also insist ^{upon} that the non-recognized State, being not a such party, is entitled to be an international person, by reason of the parties' unilateral act of promise. Furthermore, a non-recognized State has the liberty to invade into old States, without any sense legal or illegal, because it had not made any promise. The old States would be legally prevented from invading into the unrecognized State, because they had made a promise, even which was not declared toward the unrecognized State.

(2) The School of "Theorie mi-constitutive, mi-declarative par formation".

This School was opened by M. Gidel, with the theory that international persons may be classified into two groups, one as a result of nature, the other as a result of human artificial product, such as a product of international congress. To the former, Recognition is declarative; to the latter, Recognition is constitutive. For in the latter case, an artificial State cannot stand without Recognition.

They explained: "---la reconnaissance n'est pas toujours nécessairement declarative et qu'elle peut être parfois constitutive. ---à côté des personnes normales du droit international que sont les États, il y a une autre catégorie de personne du droit international dites artificielles, qui, tout en ne répondant pas à la définition de l'Etat, se trouvent cependant régies, dans une mesure

plus ou moins large, par les règles du droit international et, pour les personnes de cette dernière espèce, la reconnaissance doit être attributive de personnalité internationale; les personnes artificielles ne pouvant pas, comme les personnes normales, dans leur essence même leur valeur internationale, elles ne doivent d'exister qu'à valeur que leur accordent artificiellement les États qui les reconnaissent." (74)

(3) The School of "Théorie mi-déclarative, mi-constitutive par l'indépendance".

This is the opinion of Prof. Erich, who, while approving the theory of "declarative", explained that in case a political collectivity, being able to self-govern, but still living under a superior authority, such as semi-sovereign States, Dominions, etc., demands other States' granting Recognition as an independent State, Recognition here granted, is constitutive to that new State. (75)

(4) The School of "Théorie mi-Constitutive, mi-déclarative par l'admission dans la Société des Nations."

As the League of Nations has a function of admission of new State, some writers such as MM. Graham, Gonsiorowski, etc. held that the Recognition by the League is mi-constitutive, mi-declarative. For "admission, a collective decision of a given majority, is in fact an act by and on behalf of the entire membership of the League, declaring that the candidate possesses the requisite qualifications for membership and at the same time constituting the applicant a Member." (76) Therefore, "the admission of new members is not only, as is the recognition of States, a declarative act, but that it may also have, in a certain measure, a constitutive character.--" (77)

III. The School of "Théories déclaratives":

The "Théories" "déclaratives" is in favour of many writers. It is based upon the theory of Law of Nature. Its supporters, therefore, are mostly Naturalists. There are four sub-schools standing under this School:

(I) The School of "Théorie déclarative absolutiste".

This School holds that a State is by nature a State, an international person, with sovereign rights. Recognition is only an evidence declaring this fact. A State may even become an international person without Recognition. The writers of this School are MM. Mackintosh, de Louter, Duguit, Kunz, Salvioli, Reglade, Heilborn, Pillet, Diena, Pradier-Fodere, etc.. The Institut de Droit International, Brussels, and the Commission des juristes, Rio de Janeiro, 1927, also support this view. (78)

They explained:

(A) "Theoretically a politically organized community enters of right---into the family of States and must be treated in accordance with law, so soon as it is able to show that it possesses the marks of a State." (79) "--de même que, dans l'ordre interne, les individus physiques, sujet de la société interne, sont investis de la personnalité par leur nature même, possèdent par eux-mêmes des droits et sont soumis à des obligations," ~~il n'y a pas de droit international~~ "le Droit International ne crée pas, mais trouve des sujets comme personnes juridiques." (80)

(B) Therefore, State is only a product of historical facts.

"L'existence de l'Etat souverain est indépendante de sa reconnaissance par les autres Etats. Cette reconnaissance est la constatation du fait accompli." "Ainsi, la reconnaissance est simplement déclarative et non pas constitutive, créative ou attributive de personnalité internationale." (81) "The existence of a new State

with all juridical effects which are attached to that existence, is not affected by the refusal of Recognition by one or more States."

(82) "c'est en effet, en vertu d'une règle positive de droit international, d'une règle coutumière, que chaque Etat possède la personnalité juridique, dès le moment où il existe." "L'Etat non reconnu possède d'après lui les droits et la capacité que le droit international reconnaît aux Etats. Il faut renoncer au principe que le droit international est fondé uniquement sur la volonté des Etats." "Il faut rejeter nettement la théorie créative, contraire à la pratique qui admet le caractère rétroactif de la reconnaissance. Pour lui, depuis le moment où l'Etat se forme de manière stable, même avant la Reconnaissance, il est investi de droits déterminés envers les Etats tiers, droit de conservation; notamment, qui supposent que l'Etat par le seul fait de son existence est doué d'une personnalité juridique." (83) Recognition is only the necessary evidence that the right has been acquired.

(C) "L'Etat nouveau a droit à être reconnu, et c'est une obligation pour les Etats anciens de le reconnaître." (84)

(D) "La reconnaissance peut et doit logiquement rétroagir jusqu'au jour où l'Etat s'est formé, en tant que personne juridique, munie du pouvoir de décision, pouvant exercer une activité juridique régulière". (85)

(E) "La reconnaissance ne peut être conditionnelle. Elle ne peut qu'enregistrer le fait tel qu'il est." (86)

(F) "on ne peut imaginer le rétrait de la Reconnaissance. On ne supprime pas un fait qui s'impose." (87)

(2) The School of "Théorie déclarative de l'Etat".

This School is different from the former School by the point ~~that~~ of only rejecting Recognition as constitutive to State, without

mention of whether it is constitutive to juridical international personality. They explained:

"--Le Droit International presuppose la co-existence d'Etats, non pas des Etats actuels, mais de tous les Etats qui peuvent naître."(88) "--C' est le Droit International qui determine les conditions auxquelles un Etat existe, et qui le reconnaît dès que ces conditions sont réalisées. L'effet d'une Reconnaissance postérieure, par la déclaration de volonté d'Etats anciens ne peut donc être dépourvu de toute signification juridique."(89) "The State is an historical and political fact, the creator rather than a creature of law."(90) "From philosophical and historical view, State comes to existence independent of recognition."(91) Thus, "--'cet Etat", as wrote M. de Martens, may be "considéré comme personne morale, est également susceptible d'un double genre de droits et de devoirs, savoir: (a) la relation intérieure qui s'établit entre ses membres; (b) sa relation extérieure envers les étrangers;" (92) but no mention had been made of its legal status.

The writers of this School are MM. de Martens, Le Fur, Scelle, Jones, Kelsen, Heffter, Foignet, Erich, de Bustamantes, Gonsiorowski, Lawrence, Wheaton, Hershey, Brown, Baty, and Rev. Prof. D. Bergeron. MM. Verdross, Salvioli and Guggenheim also expressed this view occasionally. The courts of law of different countries, especially of Great Britain and the United States, approve this view too.(93)

(3) The School of "Théorie déclarative de la jouissance de la souveraineté."

MM. Rivier, Fiore, Consentini, Despagnet, Hyde, Moore, Marshall, Rich, Hervey, Hall, Brierly, and Prof. S. R. Chow are the writers of this School. MM. Fauchille and Calvo, while holding that external sovereignty is derived from Recognition, also approve

this view.(94) Their theories are based upon the distinction between the "jouissance " and the "exercice" of sovereignty. They reject ~~that~~ Recognition is constitutive to the "jouissance" (Propriety) of sovereign rights; they consider Recognition as constitutive to the "exercice" (exercise) of sovereign rights. A State has by nature the jouissance of sovereign rights, but can "certainly" exercise them with assurance only through Recognition.

They explained: "La reconnaissance implique un engagement formel de respecter dans la personne nouvelle du droit des gens les droits et les attributions de la souveraineté. Ces droits et ces attributions lui appartiennent indépendant de toute reconnaissance, mais ce n'est qu'après avoir été reconnu qu'elle en aura l'exercice assuré."(95) "Si la jouissance de la souveraineté appartient à l'Etat dès qu'il est né, l'exercice de celle-ci, c'est-à-dire sa mise en action, n'est possible que quand le nouvel Etat a été reconnu."(96) "L'existence politique d'un Etat est indépendante de toute reconnaissance. Par conséquent, l'Etat, même s'il n'est pas reconnu, a la jouissance des droits fondamentaux et se trouve lié par les obligations fondamentales de la société internationale."(97) "The rights and attributes of sovereignty belong to it (State) independently of all Recognition, but it is only after it has been recognized that it is assured of exercising them."(98) "Recognition is necessary before a State or Government can assert its fundamental rights of independence, existence and international intercourse through diplomatic channels or through the courts of foreign States.---Before a State, or a Government, may exercise, or claim the right to exercise, these so-called fundamental rights, it must be accorded Recognition individually by each of the members which constitute the international family.

An adoption into the family must take place. In this respect Recognition is important because it confers upon a State, or a Government, the legal right to exist. Prior to Recognition it can claim the right to exist only so far as its subjects are concerned. Subsequent to Recognition it not only can claim, but can demand, the right to exist as a member of the "family of Nations. From the moment of Recognition a State is entitled to all the rights of an international personality." (99)

In a word, "a State, before Recognition, has rights with its existence, but cannot exercise them internationally. In other words, A State, before Recognition, has the capacity of the jouissance of sovereign rights, but has not the capacity of the exercise of sovereign rights. In practice, the courts of different countries seem, as a principle, not to recognize the non-recognized State's right to sue and its immunity of not being sued. The acts or decrees of the unrecognized State or Government is also not recognized by foreign courts in case of application." (102)

（“國家在未
被承認之前，亦有其自具之權利，不過不能在國際上行使
耳。換句話說，未被承認之國家，仍有權利能力，但無行為能力耳。
事實上各國法庭實例，似大都不承認未被承認國有原告權及
被告權。法令行其亦似不為外國法庭所承認適用。”）

"Recognition of a State de facto carries with it Recognition of its enjoyment of sovereign rights, but not until it has been recognized de jure can its exercise of them be fully assured." (100)

"L'État non reconnu a la jouissance, mais non l'exercice, de la souveraineté extérieure, qui lui est conféré par la Reconnaissance." (101)

(4) The School of "Théorie déclarative de formalisme."

This is M. Cavaré's theory (103), with a view to improve the

Absolutist-Declarativist Theory and make it nearer to practice.

According to his opinion, "la Reconnaissance s'opère en deux étapes, l'une qu'on peut qualifier de sociologique, l'autre qu'on peut appeler politique.---- La Reconnaissance sociologique ---est automatique ---se borne à constater la personnalité juridique du nouveau groupe; elle ne possède donc aucun caractère créateur. Elle constituera seulement la condition pour que l'activité juridique de l'Etat s'exerce.---La Reconnaissance politique est la Reconnaissance officielle,---en vertu d'un formalisme,---c'est une sorte de salut qui lui adresse.---Elle confère un caractère d'authenticité à la formation du nouvel Etat.---Elle facilite l'exercice des droits et la mise en oeuvre des obligations déjà obtenus ou réalisés par la Reconnaissance sociologique. leur procure un sécurité appréciable; d'autre part, elle permettra au nouvel Etat d'exercer tous les autres droits, présent et à venir,---moins vitale pour l'Etat nouveau que la reconnaissance sociologique, la reconnaissance politique sera accordés surtout pour des raisons d'ordre politique.--chaque Etat, avant de procéder à la Reconnaissance, se placera au point de vue de ses convenances. Il appréciera notamment les intérêts de son groupe,---d'après des raisons d'opportunité."

Thus, social Recognition is a matter of right and obligation; political Recognition is a matter of policy. Social Recognition is unconditional; political Recognition might be conditional. Social Recognition is not retroactive in effect; political Recognition is retroactive in effect. M. Cavara seemed to have done his work of completion of this "declarative" theory.

In a comparative study, each of the above Schools is exposed to appreciation and critic. The different opinions seem to have

made the nature of Recognition a very complicated problem. In my opinion, such complications seem only due to the basic attitude of many Western writers in their study. Those Western writers seem always inevitable to consider the modern international law as the very world law, though many eminent writers such as Mr. Lorimer, Williams, Oppenheim, Hershey, Lawrence, Hall, Fauchille, etc. at the same time admit the origin of modern international law as regional and artificial. (104) The truth seems easier to be found by the writers of other than European-American Nations. For in view of historical facts and justice, the nature of the so-called International Law, in particular of the principle of Recognition, seems much clearer to the eyes of Far Eastern writers. Prior to a fair conclusion, I propose to expose the following objective observations:

I. International Law is essentially a product of modern history. Before its appearance, there existed States, such as China, Turkey, etc. in East, and Roman Empire, Holy Empire, etc. in West. During its development, there were "original members" of the Family of Nations, the European Christian States. Therefore, State exists before, and independent of, Recognition as well as International Law.

II. As Professor Hall well- explained, the universalization of the so-called International Law was in reality a result of the "European States" being "obliged, partly by their sense of honour, partly by their interests, to be guided by their own artificial rules in dealing with semi-civilized (so spoke by M. Hall) States." (105) As a matter of fact, the so-called International Law was an artificial product of the European State system, originally applying only to European Christian States. It was regional, produced by

a part of the world States, ~~made to be~~ universal chiefly with imperialism and invasionism. Other States, are, by nature, of right to determine freely whether to join in or not. When a State does not wish to join in, or when it limits its function to its domestic administration, without any necessity of foreign relations, it may, as its own right, not join in. (106) Therefore, the International Law is in character a regional law, similar to the regulations of a particular association in a domestic society. It has no right to be a universal law, automatically applying to all States of the world. The States other than original members, also have no right to participate automatically in it.

Prior to 1842, China was proud of her longest civilized history, considering herself as the master of world, without any intention to establish a law of nations based upon the principles of common consent and equality. She did not trust the existence of another group of civilized States and a matter of law of nations, even after the European merchants came over. She did not feel necessary to enter into the European family of nations; she did refuse to join ⁱⁿ on the grounds that she did not like and that she had not the ambition of invasion into other State, only wishing to keep her peace and free mind, by way of non-intercourse and mutual non-aggression. Such grounds were in accordance with the principles of the Law of Nations, though she eventually yielded to the British aggressive force and accepted the sincere invitation. Another State, Turkey, was also outside the sphere of the application of European International Law till 1856.

On the other hand, "intent" being considered as a ^{nt} determinative element of Recognition, as confirmed by ~~MM~~. Oppenheim, Smith, moore, Briggs, Hudson, Erich, Roosevelt, Foignet and the writers of the

Peru	Uruguay	Egypt
Ethiopia	Japan	Liberia
Afghanistan	Iran	Iraq
Nepal	Siam	Kingdom of Hedjaz and Nejd
Yemen		(Saudi-Arabia)

The Holy See (State of Vatecan and Spiritual World Empire)

(Annex) The half-sovereign States:

Andorra	San Marino	Danzig
Tunis	Morocco	Annan (Indo-China)
Korea	Formosa	(the last three were formerly Chinese)

Dominions and the alike:

Canada	South Africa	Australia
New Zealand	Irish Free State	India

Mandates:

Mandate A:	Palestine	Syria	Lebanon
Mandate B:	British Cameroons	French Cameroons	
	British Togoland	French Togoland	
	Tanganyika	Ruanda Urundi	
Mandate C:	South West Africa	Samoa	
	Nauru		
	Other Pacific Islands south of the Equador		
	Pacific Islands north of the Equador		

The non-sovereign States, or political collectivities, though may occasionally become a subject in International Law, but are not International Persons. They may have, to a certain extent, intercourse with the juridical international society, as a domestic association having some relations with the people outside that association, but, legally speaking, are still living in the natural international society, outside the juridical international society, or constituting part of the territory of an International Person.

Thus, new States still may happen in the future. They will also appear in the natural international society first and join, if wishing, in the juridical international society next.

IV. As a result of the distinction between natural inter-

national society and juridical international society, the so-called international personality has to be divided into two kinds: the natural international personality and the juridical international personality. Many writers seem to have neglected this distinction. (IIIO) The confusion of terms seem to have caused the confusion of theories. A State has by nature, with its existence, its natural international personality. Between State and natural international person it *appears* ~~has~~ almost no difference. But a State's having its juridical international personality depends upon its own will on the one hand, and upon the will of the members of the "Association" (juridical international society) on the other. The juridical international society may have certain liberty to determine whether to grant approval or not, same as a person's entering into a domestic association.

Furthermore, the so-called/modern International Law is based upon the common consent of Nations, not based upon a superior world sovereign authority; therefore, the juridical international society is merely a common-consent-juridical-international-society, not a sovereign-juridical international society. No such entrance could be effected except through Recognition. Thus, the juridical international society is artificial, not natural, that is, not identical *with* ~~to~~ State. It has to depend upon the will of those member-States. Recognition here, ~~is therefore,~~ is inevitable, except in case a State is "original", or in case a State is fond of isolation or going to produce another system of international law without the intent to join in the existing European Law of Nations.

V. Owing to the sources ~~of International Law~~ comprehending States' practices, other than common-consent-treaties, the International Law is not strictly allow, especially without any sovereign

power. It has more moral binding force except in case treaty-laws and promises would have a legal binding force to all contracting ~~or destined~~ parties. Thus the so-called juridical international society is not a perfect society; there is no discipline, no universal authority of laws. Every State reserves, to a large extent, the liberty in action, which, therefore, made the juridical international society full of legal contradictions. That is why we should not be surprised to the fact that "the new international person exists for one State and not for another." (III)

It is originally a result of the disorder of the so-called juridical international society---the individual liberty of States in granting Recognition. The responsibility for this ridiculous phenomanon falls upon the "sincere" ^{legislators} ~~makers~~ of the so-called modern International Law, which should include the invasionist nations and absolute-sovereignty-theorists. What we can do is only to confirm this fact, not wrongly to explain this very fact. We have to consider the juridical international society as a domestic association; we also have to consider it as a society not so perfect as the juridical municipal society. It is in reality an imperfect association of a part of States in the natural world community. Its laws apply only to all its members who gave such consent. Its membership is given by way of Recognition, which is in principle granted freely and separately by the consent of individual member. The legal effects of Recognition operate only between the recognizing and the recognized States, ^{having} with nothing to do with their relations with third States. (II2)

(In such a juridical international society, ~~there would be~~ ^{The legal contradictions} inevitable to happen legal contradictions, not only ^{happen} in the grant of Recognition, but also in International Law as a whole, such as

in the co-existence of the laws of peace settlement and of war, (II3) the co-existence of the facts of aggression and of withdrawal of sanction, (II4) and the co-existence of the theories of internationalist and of absolute-nationalist. (II5) There can be no logic found in its every corner. The writers in dealing with international problems, could only follow the written laws of nations (based on common consent, such as treaties, promises, resolutions and codified international laws.) first, and follow the practices and theories of different countries next. All contradictions in question which are the proud achievements of European-law-makers, ^{be regarded as having} ~~are~~ nothing to do with the very nature of Recognition---the condition to the entrance into the juridical international society, to the juridical international personality. The writers have no reason to make an artificial logic theory at the sacrifice of facts. They are desirable to turn their efforts to urge the perfection and authority of International Law rather than in disguise to explain the nature of Recognition.

VI. Before being influenced by the International Law, the world was a natural international society. Strictly speaking, it was not a world "society", but a group of States living in the same world, without any international organisation and without a rule or a standard of States' conduct. Every State was with an unlimited sovereignty, both internal and external. Thus, before the rising of international law, a State had had its natural rights including any right as it would claim, which are derived from nature, that is, from itself, its sovereignty. It could resist external aggression on the one hand, as exercising its right of existence. It could also invade and conquer the outside world as exercising its right of expansion, on the other. International Law marked such terms as

aggression, intervention, delinquency, illegality, etc. Yet the natural law marked nothing other than the will, the freedom, of State. Therefore, Great Britain's resisting Napoleon I's invasion was considered as right; Great Britain's invasion in the shape of colonization was also to be considered as right; China's resistance to Britain's invasion in 1840 was right; China's conquering Western Asia and Eastern Europe six hundred years ago was also right. What is important is that every State had such natural right. Every State could only depend its success upon its own strength. Its friendly States might give it help; but such help was purely liberal, not obligatory. It could claim any natural right, but it could not impose upon other State obligation, that is, a State could claim against other States no legal right.

VII. Therefore, it was inevitable always to bring about conflicts and wars, which would eventually compel the exercise of external sovereignty to end. For there was no rule among nations to co-ordinating their external conducts. ^{Thus} ~~That was why~~ there had developed the thoughts, practices and conventions, forming the so-called international law. ^{the of Nations} The arguments of M. Grotius's Mare liberum versus Mr. Selden's Mare clausum chiefly marked this meaning; the importance of the Peace of Westphalia and the Treaty of Vienna as to the international law also proved this meaning. It is quite remarkable that, as M. Williams excellently said, the first function of International Law was to furnish a rule, or a procedure, or a limit, for the exercise of States' external sovereignty and for international change and development, in order to avoid the possible conflicts and wars arising from the unlimited exercise of external sovereignty. (II6) Thus, the propriety of sovereign rights is derived from Nature; the ~~exercise of~~ exercise of sovereign rights is derived from international law.

VIII. To sum up, a State enters ^{by nature} with its existence into the natural international society ~~by nature~~ and becomes a natural international person with natural rights. After being accepted into the juridical international society, a State becomes a juridical international person and has legal rights, the right of exercise of natural rights, against other member-States. In other words, the right of exercise of natural rights can be obtained only by a juridical international person; and the juridical international personality can be obtained only by way of Recognition. Recognition is a condition to a new State's juridical international personality and to the exercise of its natural sovereign rights.

IX. Furthermore, attention should be drawn to the distinction between the granting of Recognition, the nature of Recognition and the effect of Recognition. The grant of Recognition is to a certain extent a matter of policy. The effect of Recognition is juridical, for Recognition once granted would give rise to the legal status of a State. The nature of Recognition is also juridical, for it defines the scope of the jurisdiction of the Law of Nations, it does not create State, but it does create juridical international personality. It also acts as a judicial agent of International Law, invested with the function of its execution, by which, therefore, the discretion in granting Recognition is originally limited.

X. Finally, it is generally admitted as a principle of International Law that the promise made between two States in the juridical international society is applicable only to the two parties. (II7)
 Not only unrecognized States which are in the natural international society, are not applied, but also other States in the juridical international society are not applied. For International Law is based upon common consent; there is no law existing between or

against non-parties. An unrecognized State being without any legal right as an juridical international person had, is even *to be* considered as non-existence by the juridical international society.

Based upon the above observations, the value of the different theories appears clear. The School of "Théorie constitutive à l'Etat" ignored the oldest civilized Chinese Empire as the best evidence to State's existence independent of Recognition. They ignored also the status of the original members of the Society of Nations. The School of "Théorie mi-constitutive, mi-déclarative en droits souverains" ignored the status of an unrecognized State in the natural international society and its relations with the juridical international society. They also ignored the nature of the rights of State. The School of "Théorie mi-constitutive, mi-déclarative par formation" seemed to have been reaching the truth, yet it is also an illusion. For international convention as well as international law can not but acknowledge a fact of State. State is not a creature of law, but the creator of law. (II8) The stipulations of International Law are used by member-States as a criterion for distinguishing whether a collectivity can be regarded as a State, not as an instrument for creating a State. International convention can do only the same as the member-States do in such aspect, that is, can only admit, or acknowledge, or make a statement of an accomplished fact of State. State is a result of history; the independence and sovereignty of a State should depend upon that State itself, not upon other States or international convention; otherwise such independence and sovereignty would be ~~un-fully~~ and ^{not} ~~in-~~complete; it would not be objectively a State, but a political collectivity, despite any pretension made by its interested parties.

(119)

For instance, Poland and Czechoslovakia were recognized by Powers in the Treaties of Peace, 1919, in which their territories were stipulated. Yet before the Treaties of Peace, the States of Poland and Czechoslovakia had already existed: they had population, they had the territory where they were living, they had a sovereign Government, and they had already become co-belligerents of the Allies. The Treaties of Peace only made an acknowledgement and a record of this fact. The territories as stipulated there may be larger than they actually occupied; but the territorial changes do not affect the status of a State. (120) Moreover, they are the signatories of these Treaties, the signatories should exist before the conclusion of treaty. This view is also approved by the Permanent Court of International Justice, ~~which needs no more arguments.~~ (121)

On the other hand, the writers of this School may take Congo Free State in 1884-1885 and Albania in 1913 as the evidence to their theories. Yet these two cases just furnished the evidence to the contrary. As many writers criticized, (122) these two States were only "figure-organizations, not real States. Therefore, they disappeared soon. In a word, "State is a natural collectivity. Neither could a State transform a figure-organization into a State by means of Recognition; nor could an international conference produce a State by way of resolution or convention. A State resulted from such sources, can exist only on paper, without any substance or permanence." In other words, "a State which is in reality a State, cannot be regarded as not a State through the refusal to grant Recognition by other State; an organisation which is in reality not a State, cannot be a State through the Recognition accorded by other State." (123) ("國家必須是一個實在的個體, 不但某國

家的一個特殊的承認行為，不能使一個虛構的組織成國家，
 就是一個國際公會的決議或國際公約也不能產生國
 家。國家之如此產生者只是一種虛構的組織，只是存在於紙上，
 缺乏生機而不能持久。"如果一個組織本來非國家，決不能因為外國
 承認而變成國家，反之如果國家的存在，已為事實，亦決不會因為外國拒絕承認而失其國

By the same reason, the School of "Théorie mi-constitutive, ^{家的} mi-declarative par Indépendance" has also to be criticized. A ^{資格} semi-sovereign State's transferring to a fully sovereign State should have actually done before Recognition. Such Recognition as granted to a State which has not yet got a fully sovereign position instead of its former semi-sovereign status, would be waste. Take Morocco as example, Suppose that Morocco has won its civil war against France and was then recognized by Great Britain, as a State, Morocco's being a fully sovereign and independent State took place before Recognition. Suppose that France voluntarily emancipated Morocco and satisfied Morocco's will of independence, the will and fact of independence and emancipation of Morocco, or of both sides, took place before any mode of Recognition made by France or any other State. Suppose that Great Britain has granted the Recognition of the independence of Morocco and that Morocco has not yet obtained full sovereignty and independence with the consent of France, such Recognition would be waste and cannot affect Morocco's legal status in French territory, except in case of intervention or aggression, which constitutes another question.

Then, the School of "Théorie mi-constitutive, mi-déclarative par l'admission dans la Société des Nations" may be regarded to have made a sound explanation to the admission into the League of Nations, but the writers of this School did not apply their theory to the Recognition in International Law as a whole. The School of "Théorie declarative absolutiste" misunderstood the nature and origin of the

so-called modern International Law and confused the terms: "State" and "personality". The School of "Théorie déclarative à l'Etat" partly reached the truth, but is not complete. The School of "Theorie declarative de formalisme" failed also to mind the nature of the so-called international society and the legal significance of Recognition.

The truth seems represented by the Schools of "Theorie constitutive a la personnalité internationale" and of "Théorie déclarative de la jouissance de la souveraineté", which are supported by such eminent authorities as Profs. S. R. Chow, D. Bergeron, Phillimore, Oppenheim, McNair, Lauterpacht, Fiore, Consentini, Nys, Cavaglieri, Rivier, Wright, Hyde, Moore, Hall, Brierly, Despagnet, Hervey, Rich, Marshall, Fauchille, Calvo, etc., though both Schools had not made a clear statement upon the distinction between natural international society and juridical international society, and between natural international personality and juridical international personality.

In conclusion, the truth seems as follows:

I. The Family of Nations under the modern International Law is in character an artificial and regional association in the natural world society, composed of a part of the world States. The International Law should not be confusedly regarded as an originally universal law, made by Nature, and applying automatically and implicitly to all States of the world. This fact is especially clear to the eyes of the Far-Eastern writers.

2. Recognition is declarative to State, but constitutive to juridical international personality..

3. Before Recognition, a State has natural rights. After Recognition, a ^{state} has legal rights, that is, the right of exercise of natural rights, by which a State may claim, or assert, or demand,

rights against, and impose obligations upon, other States of the juridical international society. (I24)

4. Either the writers of the School of "Théories constitutive" or the writers of the School of "Théories déclarative" agree that "Recognition is necessary to enable every new State to enter into official intercourse with other States," (I25) that "Recognition is necessary before a new State can demand intercourse with other States," (I26) and that the Recognition of an object as an International Person should be accorded only to a real State which has satisfied the requirements of statehood as embodied in International Law. (I27)

5. The nature of Recognition is a juridical procedure, a necessary condition to juridical international personality, and a judicial agent of International Law. (I28)

6. The effect of Recognition is also juridical. Without Recognition, a State cannot live with legal rights, under the protection of the Law of Nations.

7. The grant of Recognition is political. (I29) It is not a matter of right or of obligation. It is based upon the policy, interest, and will of the recognizing State, subject to the conditions embodied in International Law, such as: the qualifications of Statehood, (I30) the treaty obligations, (I31) the new State's wishing to enter into the juridical international society and willing to accept International Law, (I32) and the new State's appearance not as a result of illegal fact. (I33)

8. Recognition may be conditional. It does not mean that Recognition is conditional, but that the recognizing State ^{might} express, at the time of granting Recognition, a wish on the part of the recognized State to fulfil certain obligations after Recognition

This practice, as stated by MM. Jones, Hervey and the writers of the Institut de Droit International, Brussels, /is derived from international comity and facility, not from law. Secondly, its retroactive effect operates back to the beginning of the existence of State, which is in accordance with that "State", being the chief subject of International Law with full sovereignty, is treated by other States with immunities and that State exists before Recognition. (I38)

II. Government (the representative of State), Belligerent, Insurgent and Nation (these acting as a State) are secondary objects of Recognition, which will be explained in the following chapter.

The above statements are to show the first aspect of the contributions made by recent international writers.

The second aspect is the admission of the Status of insurgency. Traditionally, the principle of Recognition in International Law is considered to be applicable to three objects, namely, new State, new government of an old State and belligerency. (I40) But in modern times the question has arisen whether Recognition of a condition midway between belligerency and mere unauthorized and lawless violence might not be given advantage. Suppose, for instance, a fleet revolts unsupported by a province or port, and its carry on the ordinary operations of naval warfare without making the slightest attempt to hoist the black flag and depredate on the sea-borne commerce of the world. They cannot be looked on as regular belligerents, because belligerency and territory are inseparably connected. Nor ought they, on the other hand, to be classed as denationalized rovers of the seas, liable to be attacked and destroyed by the warships of any State, for their operations

have a political object, and are limited to hostilities against the government they are seeking to overthrow.. Recognition of independence is out of the question. Common sense and humanity condemn the idea of treating them as pirates. There comes the necessity of the Recognition of insurgency. Such case had first happened in 1891, in the insurrection of the Chilean Congressional Party which finally overthrew President Balmaceda, beginning with a revolt of the fleet. It happened again in 1893, in the revolt of the Brazilian fleet, which for seven months occupied the inner harbor of Rio de Janeiro, till in March 1894, it surrendered to the government.(141) In both cases foreign States showed a strong tendency to assign to the insurgents the position we have just indicated, but they made various reservations and exceptions which showed that their governments had not clearly thought out the legal consequences of the principles they had adopted. It was Prof. Lawrence who first suggested to treat such case as a new object of Recognition--the Recognition of insurgency.(142)

The third aspect is the relations between Recognition and the admission of the League of Nations. Prof. Scelle had for the first made a discussion in its "Le Pacte des Nations", 1919, prior to the formation of the League of Nations. The admission of Albania into the League in 1920 and that of Lithuania in 1921 further rendered hot arguments. The opinions of writers are divided into two Schools: one is led by M. Scelle, named the School of Broad Constructionists, holding that the Assembly is an organ of political rather than judicial character; therefore, it may not strictly follow the stipulations of the Covenant and may have a power of discretion. Thus the admission into the League is a matter at the disposal of the Assembly,

despite the candidate's having satisfied the conditions embodied in the Covenant. (I43)

The second school is led by MM. Rougier, Coucke, Gonsiorowski, Graham and Fauchille, named the School of Legal Formalisms. They maintained an opposite view against M. Scelle, denying that the League Assembly has any power of discretion outside the stipulations of the Covenant and holding that "aux termes du Pacte, il n'est pas indispensable de constituer un État pour devenir membre de la Société des Nations, il va de soi qu'on ne saurait exiger comme condition d'admission une reconnaissance d'État, de jure ou de facto." (I44)

The view of the second school was adopted by the Assembly in 1931 and 1932 where it "formally indicated that it accepts as set forth in Article I of the Covenant for the admission of Mexico, and as set forth in Arts. 22 and I for the admission of Iraq". (I45) The Assembly's practice also adopted Alvarez's Principle that "la reconnaissance antérieure, une reconnaissance plus ou moins général, n'est pas considérée comme étant une condition indispensable pour l'admission." (I46)

In view of the development of the Law of Nations, the Covenant of the League and the theories of most writers, the following conclusions may lead to a sound settlement of the relations between Recognition and the admission of the League membership:

(I) The Recognition in International Law and the admission of the League membership are two different things. (I47) Their modes and legal effects are not the same. The latter is specially restricted by Arts. I and 22 of the Covenant and effects more or less obligations than the former. The candidates applying for membership are not limited to fully sovereign and independent States. The regulations in the Covenant regarding Recognition including its

scope, object, effect, nature, etc., are far from perfection.

There are only one or two Articles which may be supposed to represent any intention to codify the international law of Recognition.

Therefore, the admission into the League has not yet been capable of to replace the Doctrine of Recognition in International Law.

(2) Yet it is no doubt that the admission of "State" into the League constitutes a mode of Recognition, the express and collective mode, provided the candidate should be an independent State in the sense as required in International Law. (I48) For most members of the League are independent States; the Assembly may be deemed as an international congress; the votes or resolutions which approve admission may be considered as express declarations with the intent of Recognition. It might be reminded that the international congresses and conferences as held in 1856, 1878, etc., which comprehended much less parties than the League's Assembly, constituted a source of the modes of Recognition. Thus "Il faut se limiter à la question plus speciale de savoir si l'admission dans la Société des Nations d'un candidat dont la qualité d'Etat souverain est constatée entraîne eo ipso sa reconnaissance de jure---car il ne peut ici être question que de cette espèce de reconnaissance---et s'il s'agit alors d'une reconnaissance collective qui produit des effets, soit pour les membres de la Société, soit seulement pour ceux qui ont vote pour l'admission de l'Etat ayant présenté sa candidature." (I49) It is reasonable to propose that the admission of "State" into the League should bring about twofold legal effects, one specially of the Covenant and the other generally of Recognition, while the admission of non"States" could only have the effects limited by the Covenant. Otherwise it would be in contradiction to ~~the spirit of the Covenant~~ the spirits of both International Law and the Covenant including the stipulations of

Article I, which run as follows: "Any fully self-governing State -----may become a Member of the League if its admission is agreed to by----the Assembly, provided that it shall give effective guarantees of its sincere intention to observe international obligations---."

(3) The resolutions of the Assembly on admission, being without the requirement of unanimity, have a legal effect binding all Members of the League, either voting for or against it. (150) On the other hand, ~~as having been remarked,~~ Recognition and official intercourse are two different things. (151) The Members who did not vote for an admission, are obliged to have noticed the existence of a new State and to follow the Resolutions of the League expressing the League's readiness, on behalf of all Members, to establish official relations with it. But such Members may withhold the realization of such intent, though they have to live thereby together with the new State under the protection of the same International Law. This obligatory nature of Recognition had been illustrated by Yugoslavia's Recognition of, and its establishment of diplomatic relations with, Latvia and Esthonia. In 1921, the League Assembly passed a resolution to grant Latvia and Esthonia admission. Yugoslavia, while being obliged to follow the League's resolution, withheld the establishment of her diplomatic relations with them for a duration of five years. On September 7th, 1926, M. Momtilo Nincic, the Foreign Minister of the Kingdom of the Serbs, Croats, and Slovenes sent identical Notes to M. Wilis Schumans, the Foreign Minister of Latvia, and M. Driedrich Akel, the Foreign Minister of Esthonia, indicating Yugoslavia's intention to establish dipplomatic relations with these two States. In the Notes, he said: "J'ai l'honneur de déclarer à Votre Excellence que cette décision

du Gouvernement Royal implique tout naturellement la reconnaissance juridique de la République de Lettonie (Estonie) par le Gouvernement du Royaume des Serbes, Croates et Slovenes étant donné que la Lettonie (Estonie) en sa qualité de membre de la Société des Nations est déjà reconnue comme Etat indépendant et souverain par tous les Etats membres de la Société des Nations." (I52)

(4) The nature of Recognition through such mode, is similar to that through other modes. It is declarative to the existence of the candidate State and constitutive to its juridical international personality. In such case, there would not happen that a new State becomes a juridical international person against one State and at the same time does not become such as against another State. Because the League of Nations, being a legal international society, is not so imperfect as the Family of Nations. The so-called Family of Nations, bearing a character of legal organization, but ~~being~~ insufficient and imperfect, therefore, made its nature inevitably ridiculous.

Chapter IV.

Notes:-

60. Jellinek, "Die Lehre von den Staat enverbindungen", pp. 92---.
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 D. Anzilotti, "Corso di diritto internazionale", tome I, 1912.
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 "Rivista di diritto internazionale, 1921-22,
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62. Oppenheim, 1937, Vol. I, pp. 119-121.
63. Cavaglieri, "Rivista", 1921-22; 1932. Cavare. p. 48.
64. Anzilotti, "Cours de droit international", 1929, p. 347.
65. Strupp, p. 78.
66. Prof. S. R. Chow, "A Treatise on International Law", pp. 41-42.
67. Fiore. p. 48. Cosentini, p. 35.
68. Le Normand, "La Reconnaissance internationale et ses diverses
 applications", 1899.
69. Oppenheim, I, pp. 121-122.
70. Oppenheim, I, p. 127.

71. Oppenheim, I, pp. 124-125.
72. Miceli, Rivista, 1927, p. 169. "Il Problema del riconoscimento nel diritto internazionale".
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73. Salvioli, Rivista, 1926.
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74. Gilbert Gidel, R. D. I. P., tome XVIII, p. 64 et s..
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75. Erich, Recueil des Cours, tome 13.
76. M. W. Graham, 1933, p.38.
77. M. Gonsiorowski, "Societe des Nations et Probleme de la Paix", 1927, tome I. livre I, Partie I, Chap. V. (organisation internationale d'après le Pacte de la Societe des Nations) p. 186.
78. Sir James Mackintosh's speech in British House of Commons, 1824, in his "Miscellaneous Works", p. 749, 1851, Hazard New Series, XI, 1397,
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79. Hall, 1938, p. 103.
80. Louter, p. 217. Cavare, p. 63. Erich, Recueil des Cours, t, 13.
81. Rivier, "Principes du droit des gens", tome I, p. 57.
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82. Resolutions, Institut de droit International, Brussels, 1936.
see also A.J.I.L., Supp., 1936, p. 185.
83. Cavare, p. 64. (re Heilborn, Diena, Kunz, Salvioli).
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85. Cavaré, p. 65.
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94. A. Rivier, "Principes du droit des gens", 1896.
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Hall, p. 103.
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Prof. S. R. Chow, Letter to the Author, September 17, 1940.
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95. Rivier, I, p. 57.

Prof. M. O. Hudson, in the British Year Book of International Law of 1935, did offer another list of nations. It is remarkable that some small States had been refused to enter into the League. Iceland is also not a State; in 1940, the status of Iceland as part of Danish territory had been more than once mentioned. Another point should be remarked that under the rule of International Law, all facts relative to international relations should be observed and criticized in view of law, not of fact. Therefore, all illegal and aggressive facts should not be counted. Otherwise the status and value of International Law be denied.

- II0. Some writers did mention the distinction between State and international person. See Oppenheim, I, p.119. Erich, Recueil, t 13. Moore, I, p.74: "A State may be recognized as a sovereign State without being recognized as a member of the society of nations. Such was the case of Turkey before 1856; such is still the case with divers Asiatic States, with which Europe and America entertain continual and more and more intimate relations, while refusing, rightly or wrongly, to comprehend them in the international community."
- III. Brierly, p. 104.
Williams, 47 Harvard Law Review, 1933-34, pp. 776-794, 779.
- II2. Oppenheim, I, p. 124.
Lawrence, Principles, p. 90.
Jones, B.Y.I.L., 1935, pp. 42-55.
Fauchille, I, i, pp. 317-318.
Erich, dans Recueil des Cours, t. 13, ch. III.
- II3. The Covenant of the League and the Kellogg Pact vs. 1899 and 1907 Hague Laws of War.
- II4. The Japanese invasion of China. 1931, 1937; the Italy's invasion of Abyssinia, 1935-6 and the Germany's invasion of Austria, Czechoslovakia, Poland, Denmark, Holland, Belgium, Norway, France, Roumania, etc., since 1939, vs. the League's raising sanction (Art. XVI) in 1936 and its weakness in applying Covenant.
- II5. Most international jurists, such as M^{me}. Triepel, Heilborn, Oppenheim, Anzilotti, Strupp, Duguit, Krabbe, Lansing, Kelsen, Verdross, Kunz, Prof. S. R. Chow, etc., vs. M^{me}. Smith's Letter, Cavare, p. II, Jellinek, Zorn, Bergbohm, Kaufmann, Wenzel, etc. see Prof. S. R. Chow, "The New Progress of International Law", 1934, ch. II, pp. 67-69, "International Law and Municipal Law".
- II6. Williams, Recueil des Cours, tome 44.
- II7. M.O. Hudson, "World Court Reports", 1934, Vol. 1922-1926, pp. 528-529.
Jones, p. 42--
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Lawrence, Principles, pp.83, 90.
Oppenheim, I, p. 124.
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118. Hershey, p. 199.
119. For facts, see Fauchille, I, i, pp. 311 et s..
Scelle, I, pp. 99-100.
120. Moore, I, p. 248.
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121. Bruns, Fontes Juris Gentium, series A, sectio I, tomus I,
(Digest of the Decisions of the Permanent Court of International
Justice, (1922-1930) 1931, p. 8.
Hudson, "World Court Reports", I, 1922-26, pp. 221, 266, 572, 243,
528-9.
122. Erich, Recueil, t 13, pp. 448-449.
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Hall, pp. 110-113.
123. Prof. S. R. Chow, in Social Sciences Quarterly of National Wu-Han
University, China, Vol. 5, No. 1, p. 12.
Erich, Recueil, tome 13, pp. 460-462.
124. Williams, Recueil, tome 44.
Cosentini, p. 35.
Oppenheim, I, p. 119.
Hervey, p. 7.
Anzilotti, "Cours de droit international", 1929, p. 347.
125. Oppenheim, I, p. 120.
126. Hervey, p. 8.
127. Erich, Recueil, tome 13.
Wright, A.J.I.L., 1933, pp. 509-516.
Fauchille, I, p. 306.
Prof. S. R. Chow, "The Problem of the Recognition of the so-called
"Manchoukuo", pp. 2-3.
Brierly, p. 102.
Lawrence, Principles, pp. 54-57.
Hall, pp. 20, 103.
Cosentini, p. 34.
Hervey, p. 24.
See also the Resolutions of the League's Permanent Mandates
Commission, 1931, (Sept. 4), referring to the requirements of
statehood for Mandates.
Oppenheim, in his Vol. I, pp. III-III8, 124, offered the excellent
theory of the distinction between subject of International Law
and International Person, saying that: "The conception of Inter-
national Persons is derived from the conception of the Law of
Nations. As this law is the body of rules which the civilized
States consider legally binding in their intercourse, every
State which belongs to the civilized States and is therefore
a member of the Family of Nations, is an International Person.
There are, however, as will be seen, full and not-full sovereign
States. Full sovereign States are perfect, not full sovereign
States are imperfect, International Persons, for not-full
sovereign States are for some parts only subjects of International
Law." (Vol. I, pp. III-III2.) It should be remarked that the
Author do not agree with his terms "imperfect international per-
son" and "not-full sovereign States". For International Person

cannot be imperfect, and not-full sovereign States are not "States".

- I28. Oppenheim, I, p. I2I.
- I29. De Martens, 'Traite', I, s.64.
 Lawrence, Principles, p. 83.
 Strupp, Recueil des Cours, tome 47, 1934, pp. 422-452.
 Liszt, ~~Das~~ "Das Volkerrecht", 1898, 12th ed. 1925.s.7, IV.
 Briggs, "the Law of Nations", p. 67.
 McNair, B.Y.I.L., 1921-22, pp. 57-74.
 Jones, B. Y. I. L., 1935, pp. 42-55.
 Brierly, pp. 104-105.
 Spiropoulos, "Die de facto Regierung im Volkerrecht", 1928, pp. 164-8
 Anzilotti, Cours, pp. 156, 168, 347.
 Hyde, "International Law," I, s. 36, 39, 40, 43.
 Noel Henry, "Les gouvernements de fait devant le juge", 1927,
 pp. 174-179.
 Wheaton, "Commentaries", I, pp. 204 et s..
 Oppenheim, I, pp. I20, note, I23, note, I24.
 Mackintosh, Miscellaneous Works, p. 749.
 Cavaglieri, Rivista, XXIV, 1932, pp. 305-345.
 Hershey, p. 199.
 Fauchille, I, i, pp. 317-318, 319.
 Le Fur, pp. 259-260, 364.
 Le Normand, "La Reconnaissance internationale", 1899.
 Hervey, p. II.
 Rich, judge, in Wulfsohn vs, Russian Republic Case, see Hervey,
 p. 12.
 Smith, I, pp: 77-78.
 Moore, I, p.72.
 Rivier, I, p.57.
 Jaffe, p. I2I.
 The writers who take the grant of Recognition as a matter of
 right and obligation, are MM. Bluntchli ("Das moderne volkerrecht
 der civilisirten staaten als Rechtsbuch dargestellt", Art. 35,
 French trad. by Lardy, 5th ed. 1895.), Hall (pp. 20, 103),
 Piedelievre, No. 122. Pomeroy, s. 215. ~~Rivier~~ Ullmann, s. 30, p.
 Fodere, I, No. 144. (see Oppenheim, I, pp. 92-99, for I25.
 Cosentini, p. 35. ~~their works~~)
- I30. See Note I27.
~~Williams, dans Recueil des Cours, tome 44, pp. 105, 107~~
- I31. Oppenheim, I, pp. I20, I22, I23, notes.
 Fauchille, I, i, pp. 318-319, 335.
 Le Fur, p. 364, note.
 Graham, p. 34, & note: No. 88.
 Covenant of the League of Nations.
- I32. Prof. S. R. Chow, "International Law", p. 41--
 Lawrence, p. 83, (Principles).
 see Notes: I04, I06, I07.
- I33. Williams, dans Recueil des Cours, tome 44, pp. 105, 107.
 Cosentini, pp. 34, 36, 37.
- I34. The following writers approve that Recognition may be conditional:
 McNair, B.Y.I.L., 1921-22, p. 74.
 Erich, dans Recueil, tome 13.
 Hall, p. 113.
 Moore, I, p. 73.
 Hudson, "World Court Reports", 1922-26, v. 243.

Institut, 1936, Art. 3. Briggs, p. 77.
 Lawrence, Principles, p. 89.
 Fauchille, I, i, pp. 321-322. (Recognition of State may be conditional; Recognition of government is not conditional.)
 Foignet, p. 116.
 Jaffe, p. 121.
 Oppenheim, I, p. 124.
 The following writers approve that Recognition is unconditional:
 Baty, A.J.I.L., 1936, p. 377.
 Williams, dans Recueil, t 44.
 Cosentini, p. 35.
 Scelle, I, p. 101.
 The following writers hold that, when new State fails to observe the conditions attached to its Recognition, it would constitute only an act violating international obligations:
 Resolutions, L'Institut de droit international, Brussels, 1936,
 Art. 6. Briggs, p. 77.
 Oppenheim, I, p. 105.

- I35. Institut, 1936, Art. 5, Briggs, p. 77.
- I36. Oppenheim, I, 123.
 Moore, I, 151.
 H.M. Wriston, "Executive Agents in American Foreign Relations", 1929, p. 508.
 Jaffe, p. 98.
 Baty, A.J. 1936, p. 381.
 Smith, I, 80.
 Erich, dans Recueil, tome 13.
 Williams, dans Recueil, tome 44.
 Le Fur, p. 364.
 Brierly, p. 104.
 Briggs, A.J.I.L., Jan. 1940, p. 52.
- I37. The writers who hold the theory of "irrevocable", are:
 Baty, A.J., 1936, p. 377.
 Oppenheim, I, 125.
 Scelle, I, p. 102.
 Williams, dans Recueil, t 44.
 Erich, dans Recueil, t 13.
 Brown, A.J., 1936, pp. 689-694.
 Institut, 1936, Art. 5.
 Wheaton, "International Law," 1836. (Elements).
 Foignet, p. 116.
 Cosentini, p. 35.
 The writers who hold the theory of "revocable", are :
 Fauchille, I, i, pp. 328-329. whose view on the French withdrawal of Recognition from Finland in 1921 has been corrected by H. Erich dans Recueil, tome 13.
 Higgins in Hall, s.66##.
 The writers who hold the theory of "mi-revocable", are:
 Charles De Visscher, "Les gouvernements etrangers en justice: Reconnaissance internationale et immunités. La Reconnaissance des Etats et leur admission dans la Société des Nations", pp. 166-170. (R.D.I.L.C. serie 33, 1922, pp. 149-170.) see also Oppenheim, I, p. 125. M. De Visscher draws a distinction between the grant of Recognition to a State dont l'existence indépendante parait définitivement assurée, which is irrevocable and the grant of

Recognition to States encore en voie de formation, which is provisional and revocable.

- I38. Jones, B.Y.I.L., 1935, pp. 42-55.
 Hervey, p. 86.
 Briggs, p. 79.
- I39. Brown, A.J., 1936, pp. 689-694.
 The writers who hold the theory of retroactive effect, are:
 Institut, 1936, Art. 7.
 McNair, B.Y.I.L., 1921-22, pp. 57-74.
 Jones, B.Y., 1935, pp. 42-55.
 Smith, I, p. 79.
 Hervey, p. 82.
 Jaffe, pp. 97n, 178, 220, 221.
 Oppenheim, I, p. 127.
 Foignet, p. 116.
 Erich, dans Recueil, tome 13.
 Briggs, pp. 68, 78, 93, 97ff, 108, 110.
 Selaisse Case, A.J.I.L., July 1939.
 China vs. Fire Assurance Co. Case, Briggs, pp. 67-68.
 Verdross, "Die Verfassung der Völkerrechtsgemeinschaft", p. 125 et s.
 Salvioli, see Cavare, pp. 58, 64.
- I40. Williams, dans Recueil, tome 44.
 McNair, B.Y.I.L., 1933, pp. 65-74.
 Erich, dans Recueil, tome 13.
- I41. Lawrence, "Recognition of Belligerency considered in relation to
 Naval Warfare", pp. 10-18, Journal of the Royal United Service
 Institution, Jan, 1897.
 Moore, I, pp. 201-205, II, pp. 1107-1120.
- I42. Lawrence, Principles, 1895, pp. 354-356.
- I43. Scelle, "L'admission des nouveaux membres de la Société des Nations
 par l'Assemblée de Genève", Revue Générale de droit international
 public, 28, p. 122-138, 1921.
- I44. Rougier, "La première Assemblée de la Société des Nations", R.G.D.I.P.
 28, pp. 197-391, 222-242.
- I45. Verbatim Record, Ninth Plenary Meeting, p. 8.
- I46. Erich, dans Recueil, tome 13, p. 494.
- I47. J. Couke, "L'admission dans la Société des Nations et reconnaissance
 de jure", R.D.I.L.C., 1921, pp. 321, 326.
 Erich, Recueil, tome 13, p. 334.
 Fauchille, I, i, p. 336.
- I48. Fauchille, I, i, p. 334.
 Oppenheim, I, 122 note.
 Scelle, I, 104.
 Graham, pp. 34--
 McNair, "Law of Treaties", 1938, pp. 75-76.
- I49. Erich, dans Recueil, tome 13, p. 495.
- I50. Graham, pp. 37, 39. Le Fur, p. 364.
 Fauchille, I, i, p. 335.
 Scelle, I, p. 104.

I51. See Note I3^b.

I52. Graham, p. 34. note 88.

Moore, I, pp. 73---

see some other precedents:

Before Recognition, France received American diplomatic agents in paris for unofficial intercourse. Holland did the same. Between Spain and Prussia, between Spain and Austria, between Spain and Russia, between Spain and France, the unofficial intercourse also took place before Recognition.

In 1865, The United States received the Representative of the Revolutionary Government of Salvador for unofficial intercourse before Recognition.

Chapter V.

"CODE" OF RECOGNITION

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Based upon the above observations and discussions, we may try to make a survey of the principles as embodied in the so-called Doctrine of Recognition. As stated above, the so-called modern International Law is not yet strictly a perfect law; the so-called modern Family of Nations is not yet strictly a perfect juridical international society. It can hardly be expected to appear a simultaneous and collective action among all nations, that is, among all juridical international persons. It is impossible now to see a legal and logical results in every aspect of international affairs and the Law of Nations. For the sources of International Law are treaties, practices and theories, of which treaties are based upon the common consent of nations and are binding only the contracting parties. The practices and theories are essentially private or national, based upon national interests, policies and personal opinions. Therefore, one national practice may be incompatible with another national practice; one international practice may be incompatible with another international practice. In theories, about the same. The International Law is not derived from a logically abstract argument. There is no definite legal logic, nor there is identity or harmony among its principles, which flowed from international facts, treaties, practices, and theories, one by one, and once by once. That is why we should never mind the theoretical contradictions as may happen among those principles, though we do not give up the possible arrangements for co-ordinating their explanations. (153) We just keep in mind that international conventions, Pacts, resolutions, international judicial decisions and arbitral

awards are so far the most perfect and lawlike sources of the Law of Nations, upon which, therefore, the work of such codification is desirable to be based. The international practices, such as from declarations, Notes, municipal court decisions, governmental and jurists' opinions, which have been nearly agreed by nations, are serving as the secondary foundations.

In the following articles, the points which have been discussed or explained or noted in the preceding chapters, will not be re-explained.

INTRODUCTION

Art. I. The Doctrine of Recognition is the first important principle of International Law, by which the sphere of the jurisdiction of International Law is extended and limited, and a State's juridical personality in International Law is granted. (154)

Note:- I do not agree with Prof. Lorimer's theory of "trois spheres distinctes"; for it falls into an abstract illusion of theory, which has little substantial influence in the juridical society. International Law can either apply to the juridical international society, or not apply at all to the non-juridical international society. When a political collectivity has satisfied the requirements of statehood and has been recognized to enter into the juridical international society, it becomes immediately a juridical international person with full rights and obligations given by the Law of Nations. All juridical international persons should follow treaty obligations and have their discretion in following practices. There appear no different degrees in this aspect.

Mr. Lorimer seems to have confused "international personality" with "subject of international law". As a matter of fact, ^{the/} ~~two~~ ^{first} cases as said by Mr. Lorimer in his theory are the same in their status and effects as a juridical international person should be. The third sphere, including Mandates, should fall into the category of "subject of International Law", which can only to a certain extent live under the protection of the Law of Nations. Prof. Oppenheim, as well as Profs. McNair, Lauterpacht and Consentini seem to have shared this view. (I55)

In the second place, I do not agree with Mr. Lorimer's basing his theory upon the type of civilization, which is a matter of domestic affairs. As a principle of International Law, no intervention here is permitted. A State may adopt any kind of institution and any type of civilization at its own will. No regional discrimination is stipulated or tolerated in the application of International Law. A State's entering into the Family of Nations, or the grant of Recognition, does not depend upon the degree or type of its civilization, but upon both the recognizing and recognized States' intent and the latter's being a real State, not being a result of illegal fact. A State of European-type-civilization might live outside the juridical international society. A State of non-European-type-civilization may keep its own civilization after Recognition. China entered into the juridical society since 1842, but she keeps her ~~her~~ ^{own longest} advanced civilization forever. Japan, partly son of China, keeps her own civilization too. Mr. Lorimer is so wonderful as to put China in the second sphere and Japan in the first sphere. In reality, Mr. Lorimer's and

M. Fauchille's theory only serves as evidence to the artificial and regional character of the juridical international society.

Art. 2. The objects of Recognition include new States, the new governments of old States, belligerency, insurgency and nation.

Note:- Traditionally, the objects of Recognition include three: new States, the new governments of old States and belligerency. Since Mr. Lawrence, insurgency was added thereto. After the First World War, nation became the fifth object, as suggested by M. Fauchille. (I56)

MM. Oppenheim, McNair and Lauterpacht seemed to have accepted "new territorial titles" and "international situations" as additional objects. (I57) Mr. Williams seemed to have treated "treaties" as another new object too. (I58) Some writers, such as Mr. Foulke, (I59) gave the Doctrine of Recognition a broad definition--"an outward and visible manifestation of the mental comprehension of an existing fact or state of affairs in international life, including the existence of a state of war, membership of a body politic in the community of States or internal changes in State life, such as a turnover in government within the State." According to this definition, the "droit de postliminie" and "individual" should become additional objects too.

In the Author's opinion, the Doctrine of Recognition, the Doctrine of Recognition of States as International Persons, is based upon the conceptions of juridical international personality and the Law of "Nations" (States) (I60). It determines the status of State in international community; it defines the scope of the operation of International Law; it introduces

additional legislators to the same international society, and it confines the rights and obligations of International Persons, or of quasi-International Persons. The Recognition of Government means that of the representative of an International Person; the Recognition of Belligerency, of Insurgency, or of Nation, means that of an independent collectivity acting as an International Person within a certain limit. Therefore, they are considered as embodied in the Doctrine of Recognition; and most writers used to discuss this Doctrine in the chapter of "Persons of International Law". (I61) The suggested additional objects such as international changes, international facts (including the sphere of influence, but not including the appearance of new State, which is to be included in the category of the Recognition of State,) treaties, droit de postliminie and individual, ^{have} ~~are~~ nothing to do with the status of an international person; they are desirable to be classed into such categories as "Modes of Acquiring State Territory", "State Responsibility" for International Delinquency", "Effect, Voidance, Cancellation of Treaties," "Fin de la guerre", "Subject of International Law", etc. (I62)

There are other writers, such as M. Consentini (I63) do not agree with taking "nation" as an object of Recognition, for "les Nations ne peuvent être réputées de plein droit personnes dans la société internationale, et par suite ne peuvent être sujettes de droits et d'obligations internationales qu'autant qu'elles sont politiquement organisées, c'est-à-dire- qu'elles se présentent sous la forme d'un Etat constitué juridiquement."

We may agree with this opinion in case of a nation within a State in time of peace, such as Minorities ~~and~~ Mandates, which can only be a subject of international law, similar to the position of

individual, with certain rights and obligations, but without a status of State (International Person), nor being an international legislator.

Yet in case a nation in time of war, such as Poland and Czechoslovakia in the First World War, becomes an independent collectivity and a co-belligerent, its status should be considered to be different from the former; at least its status should be considered to be similar to the belligerent in civil war. Therefore, it is not desirable to accept M. Consentini's opinion.

RECOGNITION OF NEW STATE

Art. 3. The Recognition of a new State is the conditionally free act by which one or more States acknowledge the existence on a definite territory of a human society politically/organized, independent of any other existing State, capable of observing the obligations of International Law, resulted from a fact not infringing International Law, and desiring to join in the existing juridical international society, and by which they manifest therefore their intention to consider it a member of the juridical international society with all rights and all obligations as determined to statehood by the Law of Nations. (164)

Art. 4. The Recognition of new State is in character declarative to the existence of a new State and constitutive to its juridical international personality in the existing Law of Nations. Through Recognition only and exclusively a State becomes a juridical international person and a subject of International Law.

As a judicial agent of International Law, Recognition declares a State's having satisfied the qualifications of statehood

as determined by International Law and therefore expands the scope the application of the Law of Nations.(I65)

Art. 5. New juridical International Persons may arise in consequences of the following events:(I66)

(A) The entrance of States which are not original members of the European christian juridical international society, into the juridical international society.(I67)

(B) The division of an existing juridical international person in several separate international entities. (I68)

(C) The union of a number of juridical international persona into a confederacy, or federal State, or real union, or a single State(I69)

(D) The erection of a new political collectivity in a region where previously no civilized State exists, and its entrance into the juridical international society.(I70)

(E) The Recognition of insurgent political communities which have revolted from the parent International Person.(I71)

Art. 6. The granting of Recognition to a new State is within the discretion of the recognizing State; it is a matter of policy, of will, of self-interest and of opportunity, not of law; it is neither a right of the new State, nor an obligation upon the old State.

But it is also not a matter of arbitrary will and must be given or refused in accordance with/legal principles of International Law, which may be summed up as follows:

(A) The new State should have satisfied the following requirements of statehood determined by International Law: (a) a definite territory; (b) a settled and automatically organized people; (c) a central government supported by the majority of ~~people~~ liberal people(d)

a sovereignty being the highest internally and independent externally, that is, free from any other State's control, influence or intervention; (e) being with substance and permanence; (f) being able to resist or to cancel, by its own force, its mother State's attempt to recover ~~the~~ lost territory.

(B) The rising of the new State should not be a consequence of an illegal fact, such as intervention, aggression, or other fact infringing the Law of Nations, made by another State in the juridical international society. The above stated illegal facts include the results of the following acts:

(a) Acts contrary to existing treaties or conventions;

(b) Acts contrary to the Kellogg Pact of 1928: 1. War used as an instrument of national policy; 2. War or any other non-pacific means used for the solution of an international dispute.

(c) Acts contrary to the Covenant of the League of Nations, 1919: 1. The possession of armaments, without the concurrence of the Council, in excess of the limits formulated by the Council and adopted by the several governments. (Art. 8 of the Covenant). 2. External aggression. (Art. 10). 3. Resort to war until the expiry of three months after an award or judicial decision or a report by the Council (Art. 12). 4. Resort to war against a Member of the League complying with an award or decision (Art. 13 (4)). 5. Resort to war against a party to a dispute which complies with the recommendations of a report by the Council (Art. 15 (6)). 6. Resort to war disregarding the procedure and stipulations embodied in the Arts. 12, 13 or 15 of the Covenant (Art. 16 (1)). 7. Resort to war disregarding Art. 17 of the Covenant (Art. 17). 8. Acts contrary to the Mandate Regulations embodied in Art. 22 of the Covenant (Art. 22). 8. Acts contrary to the treaty-regulations embodied in Art. 20 of the Covenant (~~in~~ Art. 20).

(C) The recognizing State's act of Recognition should not be contrary to its own treaty obligations.

(D) The ~~new State~~ desires to enter/^{into} the juridical international society and will follow the principles of the existing International Law.

(E) The new State is capable ~~of~~ fulfilling its international obligations. (I72)

(F) Premature Recognition, improper Recognition and the withholding of Recognition (untimely and precipitate) would take place when the above conditions failed to be satisfied and, therefore, constitute illegal intervention, unfriendly act or international delinquency. (I73)

Note:- I. The cases which are always condemned as the examples of premature Recognition are as follows: A. The Recognition of the United States of America by France in 1778, shown by Art. II of their Treaty. B. The Recognition of the Kingdom of Italy by Great Britain before Francis II. C. The Recognition of Greece by Powers in 1827. D. The Recognition of Belgium by Powers in 1830. E. The Recognition of Cuba by the United States of America in 1898. F. The Recognition of Panama by the United States in 1903. G. The Recognition of Panama by Colombia in 1903. (H. The Recognition of Franco-Rebellion Government by Germany and Italy in 1936. I. The Recognition of the South Confederation by many States during the Civil War of the United States. ----These last two are the examples of the premature Recognition of government which, being mentioned here, will not be mentioned again in dealing with the Recognition of government.)

2. The cases in which a State refused to grant Recognition by reason of untimeliness, are as follows: A. The Government of the United States refused in 1849 to recognize the Independence of Hungary. B. The Government of the United

States refused in 1875 to recognize the Independence of Cuba. C. The Government of the United States refused in 1835 to recognize the Independence of Texas. D. Great Britain refused to recognize the South Confederation as a State during the American Civil War.

3. The cases of improper Recognition: A. The Recognition of the Independent State of Congo by the Congress of Berlin, 1884-1885. B. The Recognition of Albania in 1913.

4. The cases of delay-Recognition, a long interval between the formation of a State and its Recognition by other States: A. The Swiss Confederation had been an actually independent State for almost two centuries before it was officially recognized as such by the Empire in 1648. B. Spain recognized in 1648 the Independence of the Northern Low Countries, which had existed also for a long time before that Recognition. C. Spain recognized in 1668 the Independence of Portugal, which had been separated from her since 1640. D. Greece was recognized by the guaranteeing States in 1827, but by Turkey in 1832. E. Belgium was independent since 1831, but was not until 1839 recognized by Holland. F. Spain recognized Peru seventy-five years after its independence and recognized the other States of Latin ~~America~~ America, in particular of Mexico, more than fifty years after the United States and Great Britain had done so. (Spain recognized Chili in 1844, Venezuela in 1846 and Nicaragua in 1850.) G. Portugal also recognized the States of Latin America many years after the United States and Great Britain had done so. H. Great Britain recognized the United States only in 1782, while the United States of America's Independence took place in 1776.

5. The cases of States, never recognized by certain States: A.

Great Britain never recognized the Napoleonic Kingdoms of Italy and Westphalia. B. By a Note of August 10, 1920, from the Secretary of State of the United States to the Italian Ambassador at Washington, the United States declared her intention to refuse to recognize any new State as a result of the separation of Russian Empire, except Poland and Armenia.

6. The cases in which the unrecognized States took the measures of reprisal against the other State which withheld Recognition: A. When, after the formation of the Kingdom of Italy, certain German States persisted in refusing to recognize it, Count Cavour withdrew the exequaturs of their consuls. Recognition was then accorded.

7. The cases of sound Recognition: A. The Recognition of Texas by the United States in 1837, one year ~~after~~ after Mexico had ceased all attempts to recover her lost territory. B. The Recognition of the United States by the States other than France after 1782, when Great Britain herself recognized the Independence of the United States. C. The Recognition of Southern American Republics, formerly Spanish Colonies, by the United States in 1822, when it became apparant that Spain, although she still kept up her claims, was not able to restore her sway. (The South American Republics declared Independence in 1810,---Buenos Avres in 1816, Chili in 1818, Colombia in 1825.) D. The Recognition of South American Republics by Great Britain in 1824 and 1825. E. The Recognition of the Independence of Brazil by King John VI of Portugal in 1825. F. The Recognition of Norway in 1905.

8. The cases of Recognition accorded disregarding the attitude of the mother State, but complying with the conditions as above

stated: A. The Recognition of the Independence of Spanish South Americas by the United States in 1822. B. The Recognition of the Independence of Spanish South American Republics by Great Britain in 1824 and 1825. C. The Recognition of the Kingdom of Italy by Great Britain prior to that by France, Prussia and Austria.

9. The cases of Recognition obligatory, as a result of treaty obligation: A. The Recognition of Poland by Germany in 1919 as an obligation upon Germany stipulated in Art. 87 of the Treaty of Versailles, June 28, 1919. B. The Recognition of Czechoslovakia by Germany in 1919 as an obligation upon Germany stipulated in Art. 81 of the Treaty of Versailles, June 28, 1919. C. The Recognition of Estonia by Yugoslavia as an obligation upon Estonia from the Covenant of the League of Nations, in 1921. D. The Recognition of Latvia by Yugoslavia in 1921 also as an obligation from the Covenant. (E. The Recognition of Soviet Russia by Belgium in 1934, F. The Recognition of Soviet Russia in 1934 by Holland, G. The Recognition of Soviet Russia in 1934 by Switzerland. ----these last three cases are the examples of the Recognition of government, which will not be mentioned again in dealing with the Recognition of Government.) (174)

"The admission of a new State to the League of Nations constitutes Recognition of a new State by all the other Members of the League"
 "---Ici la majorité doit lier la minorité,----il n'est pas douteux que dans ces cas tous les membres se trouvent liés;----la Société elle-même comme entité distincte."-- (175)

Art. 7. Recognition is given either expressly or implicitly. If a new State asks formally for Recognition and receives it in a formal

declaration of any kind, individual or collective, separated or involved in a treaty or in a convention, it receives express Recognition. On the other hand, Recognition is impliedly and indirectly given when an old State enters officially into intercourse with the new State, be it by sending or receiving a diplomatic envoy, or by negotiating or concluding a treaty, or a convention or by issuing an exequatur to the consul despatched from the new State, or by any other act through which it becomes clear that there is an intention to treat the new State as an International Person. (176)

Note:- I. The cases of Recognition in the form of a unilateral declaration by the recognizing State: A. British Recognition of Finland and the Finnish Government on May 6, 1919. B. The Recognition of the Independent State of Congo by the United States in 1884. C. The Recognition of Norway by Sweden in 1905. D. The Recognition of Texas by Great Britain in 1840. E. The Recognition of the Republic of China (after the Revolution of 1911) in 1912 by the United States. F. The Recognition of the National Government of China (after the Second Revolution of 1926) in 1927 by Great Britain. G. The Recognition of Soviet Russia by Great Britain in 1924. H. The Recognition of the Republican Government of Greece by Great Britain in 1924. I. The Recognition of the Republican Government of Portugal by Great Britain in 1911. J. The Recognition of the Republican Government of Spain by Great Britain in 1931. K. The Recognition of the new King of Afghanistan by Great Britain in 1929. L. The Recognition of the Central and Southern American revolutionary governments by Great Britain. ---the last eight belong to the Recognition of Govern-

ment which will not be mentioned again in dealing with the Recognition of Government).

2. The cases of Recognition in the form of a provision in a treaty, or a convention: A. Art. 53 of the Treaty of Peace with Austria of 1919. B. The Recognition of the Independent State of Congo by Germany in 1885. C. The Recognition of Roumania, Serbia and Montenegro in the General Act of the Congress of Berlin in 1878. D. The Recognition of Belgium in the Conference of London in 1830. E. The Recognition of Greece in the Treaty of Andrianople in 1829. F. The Recognition of Turkey in the Treaty of 1856. G. The Recognition of Brazil by Great Britain in 1825. H. The Recognition of Lithuania by Russia in Art. I of the Peace Treaty of Moscow, 1920. I. The Recognition of Latvia by Russia in the Peace Treaty of 1920, Art. XI. J. The Recognition of Esthonia by Russia in the Arts. 2 and 5 of the Peace Treaty of 1920.

3. The cases of Recognition in the form of a collective note or declaration by a group of recognizing States: A. The Recognition of Latvia by a decision of the Supreme Council of the Allies on January 26, 1921. B. The Recognition of Esthonia by Supreme Council on Jan. 26, 1921. C. The Recognition of Georgia by Supreme Council on Jan. 12, 1920. D. The Recognition of Armenia by Supreme Council on Jan. 12, 1920. E. The Recognition of Azerbeidjan by Supreme Council on Jan. 12, 1920.

4. The cases of Recognition in the form of the admission to the League of Nations: A. The Recognition of Iraq in 1932.

5. The cases of Recognition in the fact of the admission to an international congress or conference: A. The formal admission of Poland's plenipotentiaries to the Peace Conference of Paris in

Jan^y 18, 1919. B. The Recognition of the Independent State of Congo in the Conference of Berlin in 1885. C. The formal admission of Czechoslovakia in the Peace Conference of 1919. D. The Recognition of Hadjaz in the Peace Conference of 1919.

6. The cases of Recognition in the fact of sending or receiving a diplomatic agent from the recognized State: A. The Recognition of the Republic of Texas by the United States in 1837.

7. The cases of Recognition in the mere fact of the conclusion of a treaty between the recognizing and the recognized States: A. The Treaty of Amity and Commerce between France and the United States of America in 1778. B. The Recognition of Chinese Empire by Great Britain in 1842 by the conclusion of the Treaty of Nanking. C. The Recognition of the United Provinces of Rio de la Plata by Great Britain in the Treaty of Amity, Commerce and Navigation of 1825. D. The Recognition of Colombia by Great Britain in 1825 (in ~~a treaty of the same~~ title as referred in "C", the following six also the same.). E. The Recognition of Mexico by Great Britain in 1826. F. The Recognition of Peru by Great Britain in 1837. G. The Recognition of Chile by Great Britain in 1839. H. The Recognition of Uruguay by Great Britain in 1839. I. The Recognition of Bolivia by Great Britain in 1840. J. The Recognition of Paraguay by Great Britain in 1853. K. The Recognition of Soviet Russia by Great Britain in 1924. L. The Recognition of Soviet Russia by France in 1924. M. The Recognition of Soviet Russia by Italy in 1924.

8. The cases of Recognition in the mere fact of the conclusion of a collective treaty between a group of Recognizing States and the recognized State: A. The Recognition of German Empire in the Conference of London, in 1871.

9. The cases of Recognition in the fact of issuing an exequatur to a consul despatched from the recognized State: A. In 1865 the United States refused the appointment of consul by a foreign non-recognized Government to the United States.

10. The cases of Recognition in the fact of the exchange of ~~notes~~ notes: A. The Recognition of Norway by Great Britain in 1905.

The mere fact of formal appointment of a consul to the recognized State does not constitute Recognition. In 1823, Great Britain appointed consuls to the South Americas for protection of British residents and for inquiring in the situations. In 1932 and 1933, Soviet Russia established a number of consulates in "Manchukuo", with a Declaration that she was not in a position to recognize the new State de facto or de jure. This principle should be considered to have been officially confirmed by the Resolution of the Advisory Committee of the League of Nations in 1933, which comprehended the majority of the States of the juridical international society. That Resolution may be quoted as the following: "The despatch of consuls under the circumstances does not imply Recognition of "Manchukuo" as those agents are appointed for the purpose of keeping their Governments informed and protecting their nationals." Therefore, such opinions as held in Mr. Oppenheim's work, that the formal appointment of a consul to the recognized State constitutes Recognition, seems not complying with international practice and international formal decision.

The cases of Recognition in the fact of issuing exequatur to a consul despatched from an unrecognized State seem rare and are ~~being discovered.~~ still in discovering.

The judicial Recognition does not constitute a distinct species of Recognition. For according to the practice of nations, at

least to the practice of English and American courts, Recognition by a court of law of the recognizing State is conclusively bound by the opinion of the Executive, which may be communicated to them in a number of different ways. Recognition dates from the first public act in which it is either expressed or necessarily implied. (177)

Art. 8. The recognizing State may make the recognition of a new State dependent upon the latter fulfilling certain condition as a mode of Recognition. But the conditions attached thereto ^{have} ~~are~~ nothing to do with the Recognition itself. The failure of fulfilling the conditions does not affect the status of Recognition and can only be dealt with as an ^{act of} international delinquency.

Note:- The cases of conditional Recognition are as follows:

1. The Recognition of Montenegro, Serbia and Roumania by the Treaty of Berlin, 1878, Arts. 27, 35 & 44, subject to the conditions that the complete freedom of enjoyment of all civil and political rights irrespective of religious creeds and similar freedom for the exercise of all learned professions and of all forms of worship should be to form the basis of their public law.
2. In the Treaty of Versailles Czechoslovakia and Poland undertook to enter into treaties for the complete protection of life and liberty of all inhabitants in their territories, without distinction of language, race, or religion, and for the protection of freedom of transit and for equitable treatment of the commerce of other nations.
3. In the Agreement of Berlin of 1920, Germany recognized Latvia provided one of the Principal Allied and Associated

Powers of the Treaty of Versailles recognizes Latvia first.

4. In 1920, the Recognition of Ukrain by Germany, Austria, Hungary and Bulgaria was with the condition of following the stipulations as embodied in the Treaty of Brest-Litovsk.

5. The Recognition of Belgium in 1831 was with the condition of its perpetual neutrality.

6. The Recognition of the Independent State of Congo in the General Act of the Conference of Berlin in Feb. 26, 1885, was with the condition of commercial freedom.

7. The Recognition of Switzerland in 1815 in the Congress of Vienna, was with the condition of perpetual neutrality. (178)

There are writers, taking de facto Recognition as a mode of provisional and limited Recognition, therefore, made a distinction between the Recognition de jure of State and the Recognition de facto of State. (179)

Such theories can not stand. Because the requirements of statehood are definitely laid down and the Statehood is an objective fact. As stated above, the granting of Recognition is a free act within certain limit. A Recognition which does not follow that limit, would constitute a premature or improper Recognition; a Recognition which followed that limit constitutes a normal Recognition. There can be no reasonable interval between these two extremes.

The reasons for the distinction between de jure Recognition and de facto Recognition are held to be that "circumstances occur (particularly when a new State is emerging from the international melting-pot as in 1918 and 1919---) in which prudence dictates to other States the more non-committal course of granting de facto Recognition only, that is to say, Recognition which is

provisional and without prejudice to what the future may bring forth, while the grant of de jure Recognition is reserved until a later date, /and that "---doubt as to the stability of a de facto regime, fear of resentment by --- the mother country, or dislike of the political ideology of the de facto regime." (I80) (I81) These reasons would disappear, if the recognizing State were convinced of the international principle of non-intervention in foreign domestic affairs and takes the above stated limit as the basis of granting Recognition.

Those writers also held that the legal effects of de facto Recognition and de jure Recognition are the same, /which, according to their opinion, naturally should include the legal right of inviolability. (I82) Yet their theory of de facto Recognition is based upon the "doubt as to the stability", the "fear of resentment" and "the threat of Russian reestablishment of the status quo ante"; therefore, "de jure Recognition of these States was delayed". (I83) In other words, the recognizing States will not approve the insistence of ~~the~~ ^{upon its} fundamental legal rights, by ~~the~~ ^{the} de facto recognized State, ~~a~~ ^{that means, a} de facto recognized State can have no legal right of resisting "the threat of Russian reestablishment of the status quo ante". This explanation is not only in contradiction to their theory that the legal effects of de facto and de jure Recognition are the same; but also in a position to deny the de facto recognized State as an International Person of the juridical international society. Thus, de facto Recognition of State does not in nature constitute the Recognition of State, which must make a new State a juridical International Person with all rights and obligations in the Law of Nations.

Other reason for the distinction between de jure and de facto

Recognition ~~is not~~ may be found that "there had been interference with British interests, and the difficulties called for direct negotiations with Burgos or Salamanca, but the machinery was lacking.---"(184) This opinion is unsound too. It is of no necessity to take such measure as de facto Recognition in the disguise of Recognition. There had been many instances, such as the United States against Venezuela in 1863, against Salvador in 1865, Great Britain against South Americas in 1823, etc., in which informal intercourse is tolerated for protection of commercial interests and so forth.(185)

Furthermore, so far as we know, there have never happened yet such stipulations or cases of de facto Recognition of State. Some writers took the cases of the British de facto Recognition of Esthonian National Council in 1918, the British de facto Recognition of Lithuania in 1919, the British and Belgian de facto Recognition of Latvia in 1918, the Belgian and German de facto Recognition of Esthonia in 1920, the French de facto Recognition of Georgia in 1920, and the British and French and Italian de facto Recognition of Azerbeidjan in 1920 as the examples of the de facto Recognition of State. (186) This view also cannot stand. The cases given were either of no necessity to have a de facto Recognition or involving no existence of real State. In the first place, the Recognition of Baltic States in 1918-1920 by some other States were not the Recognition of States, but that of political collectivities of independent bodies. Take the so-called British de facto Recognition of Esthonia as an example: It was that the British Foreign Office recognized the Esthonian National Council "as a de facto independent body" which was held to be such a Government as could set up a prize court and send informal diplomatic represent-

atives. (187)

Such cases are similar to that of the British Recognition of Polish National Committee as "an official Polish organisation" in 1917, and that of the British Recognition of Czechoslovakia "as an allied nation," in 1918, (188) where no de facto Recognition of "State" took place.

On the other hand, ^{had} ~~if~~ the Baltic States ~~had~~ satisfied in 1918 the requirements of statehood and the fundamental conditions of the Recognition of State as stated above, they should then be granted normal Recognition of State. ^{Thus} They should not be considered to have been recognized as independent States before 1921-1922 by the Supreme Council.

In the second place, the de facto Recognition of such States as Georgia and Azerbeidjan in 1920 are similar to that of Congo in 1885 and of Albania in 1913. There involved no real State, but figure-organisations. The most powerful evidence is that these States, together with Armenia, Ukraine, Lichtenstein, San Marino and Monaco, did apply, but were refused, to enter into the League of Nations as Member-States. The reasons were that their political status was not stable (the first ^{four}) and their territory was unreasonably small (the last three) (189). It would mean that more than forty International Persons in the juridical international society had announced those States' not being qualified to be "States". This international formal announcement is certainly quite more respectable than a few writers' private opinions.

Furthermore, in international practice, foreign offices and diplomats frequently employ the term "de facto", as many writers do, ⁽¹⁹⁰⁾ to describe the nature of the Recognition accorded to foreign Governments. The formula frequently used is that a particular government is "recognized

as the de facto Government of X". A Government may also occasionally be accorded in terms "full de jure Recognition". The expression "de facto Recognition" is seldom employed. (I9I) It goes without saying that no official expression such as "de facto Recognition of State" ever happened. It also goes seemingly that "Partly by inventing an ambiguous 'de facto Recognition', partly by confusing Recognition with intercourse, and skillfully transferring the name and consequences of the former to the latter, Statesmen are doing their best to destroy the principle that a State which has vindicated its independence is actual fact." (I92)

Art. 9. The Recognition of new State brings about the following legal effects:

- (A) The recognized State becomes a juridical international person in the international society of International Law.
- (B) The existing International Law begins to apply to the recognized State.
- (C) The official intercourse may take place between the recognizing and recognized States.
- (D) The recognized State acquires all rights and all obligations for statehood as embodied in International Law, of which the following are the most important:

(a) Rights:- I. The recognized State acquires the right of exercise of its natural sovereign rights, that is. it can claim and assert and demand its rights against, and the obligations upon, other States, subject to the limit made by the Law of Nations. 2. It can live under the protection of International Law and become an additional legislator of the International Law on the basis of equality with

other members. 3. It acquires immunity of jurisdiction, except by its consent to give up, in the courts of law of the recognizing States; that is, the recognized State acquires the right to sue and the right of not being sued in the courts of law of recognizing States. 4. The laws, acts, and decrees, of the recognized State is entitled to be applied, when necessary, to cases in the courts of law of recognizing States. 5. It acquires the capacity to enter into diplomatic relations and conclude treaties with the recognizing State. 6. All obligations can be imposed upon the recognized State only through its consent. 7. The Recognition of a new State should date back in its effect to the time at which the new community first satisfied the requirements of statehood. It is desirable that this date should be definitely indicated in the act of Recognition. And it validates all the official acts of the recognized State, which have been performed within its jurisdiction since the commencement of its existence.

(b) Obligations:- I. The recognized State's external conduct against all members of the juridical international society, should be subject to all obligations as embodied in the International Law. 2. The effects of Recognition operate only between the recognizing and recognized States, not affecting third States. 3. All rights and obligations as conferred to all members of the juridical international society by International Law, are under the spirit of equality and reciprocity. (I93)

Note:- Most writers and court decisions approve this statement.

The principle of retroactive effect, same as conditional Recognition, is a result of international practice, not of law. It is based upon courtesy, comity, facility and the principle that every sovereign State is bound to

respect the independence of every other sovereign State. The retroactive effect dates back to the date when the declaration of independence was proclaimed.

The date or definite time of Recognition is to be determined by the first document of any kind by which the Recognition is involved. (I94)

Art. 10. An act of Recognition made not in accordance with the conditions as embodied in the above Article VI, is not permitted. Such a Recognition, if made by one of the States in the juridical international society, should not be recognized by all other States in the same society. An untimely or improper Recognition can be replied with reprisal or war or other means of sanction, such as economic and military measures. The conditions attached to Recognition, if failed to be followed, may render a lawful intervention. (I95)

Note:- In 1778, France accorded a premature Recognition to the United States of America which had been replied by Great Britain with a Declaration of War against France. When, after the formation of the Kingdom of Italy, certain German States persisted in refusing to recognize it, Count Cavour withdrew the exequaturs of their consuls, Recognition was then accorded. Great Britain never recognized the Napoleonic Kingdoms of Italy and Westphalia. By a Note of August 10, 1920, from Secretary of State to the Italian Ambassador at Washington, the United States declared her intention of refusing to recognize any new State as a result of the separation of Russian Empire except Poland and Armenia.

Other cases have been mentioned in Chapter III.

Some writers, such as M. Foignet, hold that the refusal to grant Recognition may be considered as an act of hostility and, therefore, constitutes a cause of war.

This view should be based upon morality, not upon law; for before Recognition, no legal right can be asserted by a State in the natural international society. Mr. Hyde seems to have expressed this opinion. (I96)

Art. II. The Recognition of new State is irrevocable, so long as it satisfies the requirements of the above Art. VI. (I97)

Note:- M. Fauchille took the withdrawal of Recognition from Finland by France in 1918 as an example of the revocable character of Recognition of State. M. Erich made a correction on it.

Art. I2. An unrecognized State is not a juridical international person. It may be considered as having natural rights and moral status, but cannot have a legal status in this international society and enter into official intercourse with other States. It may have such rights as conferred by the members of the juridical international society in view of facility or morality. Its informal intercourse with all other States is permissible for private purposes. (I98)

RECOGNITION OF NEW GOVERNMENT

Art. I3. The Recognition of the new government of an old State which has been already recognized, is the conditionally free act by which one or several States acknowledge that a person or a group of persons of a recognized State with the title which they chose, are

capable of binding that State with the support of the people of that State which they claim to represent, and witness their intention to enter into official relations with them. ~~(1927)~~

Art. 14. The Recognition of the new government of a recognized State is in character declarative to the existence of the new government and constitutive to its capacity ~~of~~ ^{acting} as the representative of a recognized State in the juridical international society.

Art. 15. New governments of recognized States may rise in consequences of the following events: (A) Constitutional succession of Heads. (B) Constitutional re-organisation of government. (C) Coup d'Etat. (D) Revolution through the course of civil war. (E) Restoration from revolution to status quo ante. (F) The erection of a new State which is being recognized to be a juridical international person. (G) The change of the title of State.

Art. 16. The granting of Recognition to the new government of a recognized State is within the discretion of the recognizing State; it is a matter of policy, of will, of self-interest and of opportunity, not of law; it is neither a right of the new government, nor an obligation upon the old State.

But it is also not a matter of arbitrary will and must be based upon the fact that the government being recognized should be a government, not as a result of intervention or external aggression or a breach of International Law, but really being supported by the majority of the people of that State and capable of ruling as a central government internally and ~~to~~ ^{following} International Law externally; in other words, that new government should be shown to be able to act as the sole representative of that International Person.

The recognizing State should not mind the internal source of the new government which is a matter of domestic affairs.

As its legal nature, the Recognition of new government constitutes also a judicial agent of International Law.

Premature or improper Recognition of new government constitute intervention, or unfriendly act or international delinquency.

Art. 17. The Recognition of new government is given either expressly or impliedly similar to that of new State.

The Recognition of new State involves the Recognition of the first new government of that State.

Art. 18. The Recognition of new government may be granted de facto prior to de jure. De facto Recognition is conditional, not including whole official intercourse, or provisional, that is, revocable. De jure Recognition is complete and irrevocable, that is, only disappearing with the disappearing of that qualified government. The legal consequences of de jure Recognition and, while it lasts, of de facto Recognition upon actual transactions with the Government recognized are the same.

Art. 19. The grant of Recognition, or the refusal to grant Recognition, of a new government has nothing to do with the Recognition of State itself. If a foreign State refuses to recognize a new Head or a change in the form of the government of an old State, the latter does not thereby lose its Recognition as an International Person, although no official intercourse is henceforth possible between the two States as long as Recognition is not given either expressly or tacitly. If Recognition of a new title of an old State were refused, the only consequence is that such State cannot claim any privilege connected with the new title.

The Recognition of new government, which is regarded as the Representative of a recognized State, effects the exercise of ^{and judicial immunities} all legal rights and obligations/of that recognized State.

The Recognition of a new government should date back its effect to the time at which the new government first satisfied the capacity of government, or at which it was de facto recognized. It is desirable that this date should be definitely indicated in the act of Recognition. It validates all official acts of the recognized government, which have been performed within its jurisdiction since the commencement of its existence.

The Recognition of new government does not affect the status of treaty.

Art. 20. An act of Recognition made not in accordance with the conditions as embodied in the above Article XVI is not permitted. Such Recognition, if made by one or more of the States in the juridical international society, should not be recognized by all other States in the same society. An untimely or improper Recognition can be replied with reprisal or war, or other means of sanction such as economic and military measures.

Note:- Some writers, such as M. Foignet, hold that the refusal to grant Recognition may be considered as an act of hostility and therefore, constitutes a cause of war. This view should be based upon morality, not upon law. For an unrecognized government can assert no legal right against other State. See Note under Art. X.

Art. 21. The Recognition of new government, which is an established fact and is regarded as the Representative of a State, is

irrevocable, provided that it satisfies the requirements stated in Art. XVI. The de facto Recognition of a government, which is not originally recognized as the fully capable Representative of a State, is ^{therefore,} revocable.

Art. 22. An unrecognized government may have a moral status in its external relations, but without official intercourse and legal status. It may have such rights as conferred by the members of the juridical international society in view of facility or morality. Its informal intercourse with all other States is permissible for private purposes. (I99)

Note:- The cases of the Recognition of new government are as follows: (A) China, 1912, 1927. (B) France, 1792, 1815, 1830, 1848, 1852, 1875. (C) Montenegro, August 29, 1910, from Principality to Royaume. (D) Portugal, Oct. 5, 1910, from Royaume to Republique. (E) Peru, after Feb. 3, 1912, government always in change. (F) Russia, 1917. (G) Germany, in 1918. (H) Greece, always after First World War (I) Mexico, always. (J)

The cases of the withdrawal of Recognition of government:

(A) France recognized the Finnish Government on Jan. 4, 1918, withdrew in October 1918, and granted Recognition again in 1919. (B) The Recognition of the German Imperial Government was revoked by the Allies after the First World War. The reason was the breach of its obligations in International Law. The Allies turned to recognize the German Revolutionary Government as the Representative of Germany and entered into the negotiations of Peace with it.

The cases of the retroactive effect of Recognition: (A) A.M. Luther v. James Sagor & Co., 1921. (B) Dougherty v. Equitable Life Assurance Society, 1934. (C) The United States v. Bank of New York & Trust Co., 1935. (D) Ware v. Hylton Case, 1796. (E) Kennett v. Chambers, 1852. (F) Wright v. Nutt Case, 1788. (G) Oetjen vs. Central Leather Co., 1918. (H) Ricand vs. American Metal Co., 1918.

The cases of the immunity of jurisdiction of a recognized government, including the right to sue, the immunity of not being sued and the effect of decrees and laws in foreign courts of law: (A) Republic of China v. Merchants Fire Assurance Corporation of New York, 1929. (B) A. M. Luther v. James Sagor & Co., 1921. (C) Dougherty v. Equitable Life Assurance Society, 1934. (D) United States v. Bank of New York & Trust Co., 1935. (E) Hullett & Co. vs. King of Spain, 1827. (F) U. S. A. vs. Wagner, 1867. (G) Duke of Brunswick vs. King of Hanover, 1844. (H) South African Republic vs. La Compagnie France Belge du Chemin du Fer du Nord, 1897. (I) The Sapphire Case, 1871. (J) Jones vs. U.S.A., 1890. (K) The Exchange Case, 1812. (L) Kawanankoa vs. Poly blank case, 1906. (M) Wulfsohn vs. R.S.F. S. R., 1923.

The cases of the status of unrecognized governments: (A) Wulfsohn v. R.S.F.S.R., 1923. (B) R.S.F.S.R. v. Cibrario, 1923. (C) Lehigh Valley Railroad Co. v. State of Russia, 1927. (D) Sokoloff vs. National City Bank, ~~1922~~ 1922.

The cases of de facto Recognition of government: (A) British Recognition of Franco Government in 1937 as de facto Government of Spain, in 1938 as de jure. (B) British Recognition of Soviet Government as de facto Government of Russia in 1924, de jure in 1924. (C) The United States' Recognition of the de facto Government

of Mexico in 1915, de jure in 1917. (D) British Recognition of Estonian National Council as de facto Government in 1918, de jure in 1921.

The cases of the legal effects, upon foreign courts of law, of de facto and de jure governments: (A) The Republic of Peru vs. Peruvian Guano Co., 1887. (B) United States vs. Rice, 1819. (C) Keene vs. McDonough, 1834. (D) Thorington vs. Smith, 1869. (E) A. M. Luther vs. James Sagor & Co., 1921.

RECOGNITION OF BELLIGERENCY

Art. 23. Recognition of Belligerency is the conditionally free act by which the legitimate government of a State or one or more foreign States in the juridical international society declares that there has taken place a state of civil war to which that legitimate government is a party, and that by reason of the civil war affecting the interests of the interested foreign States, the civil war is going to be treated as a war stated in International Law.

Art. 24. Recognition of Belligerency is in character declarative to the state of civil war and constitutive to the status of the belligerents as that in International Law. Legally speaking, it has nothing to do with International Law. As a belligerent community is not itself a legal person, a society claiming only to be belligerent and not to have permanently established its independence, can have not rights under International Law. It cannot therefore demand to be recognized upon legal grounds, and Recognition, when it takes place, either on the part of a foreign Government, or of that against which the revolt is directed, is from the legal point of view a concession of pure grace. The term "Recognition" of belligerency does not mean

the acknowledgement of the existence of a pre-existing status, but only through Recognition is the status created.

Art. 25. The grant of the Recognition of belligerency is within the discretion of the legitimate government and foreign States. It is not a legal right or an obligation. But it is also not a matter of arbitrary will. It must be based upon the following conditions: (A) a State of civil war. (B) the interests of foreign States are affected by the civil war. (C) the existence of a de facto political organisation of insurgents sufficient in character, population, resources and territory to constitute it, if left to itself, a State among the nations, reasonably capable of discharging the duties of a State; the actual employment of military forces on each side, acting in accordance with the rules and customs of the International Law of War.

Art. 26. Recognition of belligerency should be given by foreign States expressly, indicating the date from which the attitude of neutral in war will be taken up. and may be given either expressly or impliedly by the legitimate government, which involves the capture of vessels for breach of blockade or carriage of articles contraband of war and all other acts constituting sufficient evidence of the existence of war with an intention to throw the duties of neutrality upon foreign States.

Art. 27. The legal effects of the Recognition of belligerency are as follows: (A) In case such Recognition is accorded by a foreign State: (a) to give the belligerent community rights and duties identical with those attaching to a State, for the purposes of its warlike operations as between it and the country recognizing its belligerent character. (b) to compel the legitimate government at war with it to

treat the recognizing country as a neutral between two legitimate combatants.

(B) In case such Recognition is accorded by the legitimate government: (a) the legitimate government puts itself under an obligation to treat its revolted subjects as enemies and not rebels or pirates until hostilities are ended. (b) the legitimate government asserts its intention on the ground of the existence of war to throw upon other countries the duties, and to confer upon them the rights of neutrality. So soon as Recognition takes place the legitimate government ceases to be responsible to such States as have accorded Recognition, and when it has itself granted Recognition to all States, for the acts of the insurgents, and for losses or inconveniences suffered by a foreign State or its subjects in consequences of the inability of the State to perform its international obligations in such parts of its dominions as are not under its actual control. (c) The Recognition of belligerency by the legitimate government does not compel foreign State to grant such Recognition.

(C) The Recognition of belligerency involves the rights, for the insurgents as equally as for the legitimate government, of blockade, visitation, search and seizure of contraband articles on the high seas, and abandonment of claims for reparation on account of damages suffered by the citizens of foreign States from the prevalence of warfare and all other rights and privileges and duties of a State so far as the conduct of the war is concerned.

But diplomatic relations between neutrals and insurgents should be unofficial or informal in character and should be strictly confined to matters affecting the private and business interests of the nationals of both parties. Consuls may be sent or may continue to perform their duties among the insurgents when belligerency has been

recognized, but no exequatur should be granted to a consul sent by an insurgent belligerent community. It goes without saying that there must be no treaties or exchange of diplomatic agents. Previous to such Recognition, the insurgents are merely violators of their municipal law, whether or not they affected adversely the rights of other States. After such Recognition, they will be guilty of violating International Law if they fail to observe the International Law of War.

Art. 28. Premature Recognition of belligerency may be regarded ~~in~~ the light of an unfriendly act against the legitimate government, though it should not be looked upon as an act of intervention. The non-Recognition of belligerency renders the non-responsibility of the insurgents for their acts.

Art. 29. Recognition of belligerency, when once it has been accorded, is irrevocable, except by agreement, so long as the circumstances exist under which it was granted. (200)

Note:- The cases of the Recognition of belligerency may be mentioned as follows: (A) The Recognition of South Confederacy as belligerent in the American Civil War, 1861-1868, by Great Britain, France, etc.. (B) The Recognition of Cuba as belligerent by the United States in 1869 and 1896. (C) The Recognition of the various States of Spanish Americas as belligerents by the United States and Great Britain. (D) The Recognition of Greece as belligerent by Great Britain in 1825. (E) The Recognition of Texas as belligerent by the United States in 1836.

RECOGNITION OF INSURGENCY

Art. 30. Recognition of insurgency is the Recognition of a condition midway between belligerency and mere unauthorized and lawless violence in a State in the juridical international society by its foreign States in the same society, by which a group of insurgents with political ideal be treated by foreign States not as pirates.

Art. 31. Recognition of insurgency is declarative to the fact of revolt within a State in the juridical international society and constitutive to the status of insurgency. It is based upon the principle of non-intervention in the domestic affairs of a foreign State and upon that common sense and humanity condemn the idea of treating them as pirates.

Art. 32. The insurgents may be freely recognized as having the status of insurgency by foreign States; but such Recognition should be subject to the fact that a group of rebels have not yet occupied a territory and limited to hostilities against the government they are seeking to overthrow, with a political object.

Art. 33. The effects of the Recognition of insurgency are as follows: (A) The foreign State will interfere in no respect with the struggle between them and the loyal forces of their own country, as long as they refrain from injury to the persons or property of subjects of other powers. The insurgents are not to be treated as pirates, and are not to be classed as denationalized rovers of the seas, liable to be attacked and destroyed by the warships of any State. (B) The insurgents cannot be allowed to exercise the right of search on board quasi-neutral vessels, or to blockade against them the ports of the mother country, or to capture them for carrying contraband

or engaging in unneutral service. Nor may they bombard those quarters of the mother country's coast towns which are largely inhabited by subjects of other powers or full of property belonging to such persons. (C) In all other respects than that stated in the preceding paragraph, the operations of insurgents, such as the right to prevent access of supplies to their domestic enemy, and the right to collect duties on goods exported from ports in their possession, should be left unrestrained and regarded as regular warfare. The legitimate government is bound by the full responsibility for all acts of the insurgents. (D) The foreign States should not help the insurgents in the civil war against the legitimate government, otherwise it would constitute intervention. They can even promise to help the legitimate government to fight off the rebels, which is not forbidden by International Law. The admission of insurgency does not place the foreign State under new international obligations as would the Recognition of belligerency, though it may make the execution of its domestic laws more burdensome. (E) The protestation submitted to the insurgents by foreign States does not constitute an implied Recognition of their belligerency. (F) The foreign States have the right to protect the lives and property of their subjects. (G) The act of blockade against the insurgent port by the legitimate government constitutes an implied Recognition of belligerency.

Art. 34. The Recognition of insurgency, when once it has been accorded, is desirable to be irrevocable, except by agreement, so long as the circumstances exist under which it was accorded. (201)

Note:- The cases of the Recognition of Insurgency may be mentioned as the following: (A) In 1891, the insurrection of the Chilean Congressional Party which finally overthrew President

Balmacela began with a revolt of the fleet, and some little time elapsed before land forces and provinces joined in the movement. (B) In 1893, the Brazilian fleet revolted and for seven months occupied the inner harbor of Rio de Janeiro, till in March 1894, it surrendered to the Government.

RECOGNITION OF "NATION"

Art. 35. The Recognition of "Nation" is a conditionally free act by which one or more States in the juridical international society acknowledge the existence of a "nation" with an ^{automatic} movement of independence in its mother State in the juridical international society and accept it as a co-belligerent during the war against that mother State, in order to help it to become an independent State.

Art. 36. The Recognition of Nation is in character declarative to the existence of "nation" and constitutive to its Status as a nation in the juridical international society. It is also based upon humanity and policy.

Art. 37. The Recognition of "nation" may be granted freely under the following limits: (A) the existence of a nation which constitutes a minority within a recognized State. (B) there is an ^{automatic} movement of independence in the "nation" against the State in which that nation lives. (C) That "nation" wishes to be an independent State, but it cannot for the time, erect as a State on the territory where it lives. And it has to establish a political organization within another State to join in its already declared war against that nation's mother State. (D) ~~Such a co-belligerent~~ relation should be based upon mutual willingness.

Art. 38. The Recognition of nation is given expressly.

Art. 39. The effects of the Recognition of nation are as follows:

(A) The nation may act as a State in time of war. (B) The nation becomes a co-belligerent of a State. (C) The "nation" can send official representatives, but not diplomatic representatives, to its co-belligerents' governments and can conclude particular and provisional treaties with them. (D) The "nation" has not the status of State as a juridical international person, but may be admitted as a subject of International Law, with certain rights and obligations.

Art. 40. The Recognition of nation, when once granted, is desirable to be irrevocable, except by agreement, so long as the circumstances exist under which it was granted. (202)

Note:- The case which cannot fall into this species is, that of Cuban Insurgents in New York.

The cases of the Recognition of Nation are that of Polish, Czechoslovaks, Yugoslaves and Jews in the First World War. These nations were with National Councils in the territories of Great Britain, France and Italy and were their co-belligerents fighting against Germany and Austro-Hungary.

The Recognition of Czechoslovaks as nation by France took place on June 29, 1918, when the French Foreign Minister, M. Pichon, in a letter to Mr. Beneš, directeur du comité tchéco-slovaque, declared that a nation has a right of independence and that "reconnut les tcheco-slovaques comme nation".

On Aug. 11, 1918, British Foreign Secretary, Mr. Balfour, made a declaration that "Great Britain regards the Czechoslovaks as an allied nation, and recognizes the unity of the three Czechoslovak Armies as an allied and belligerent army

waging regular warfare against Austria-Hungary and Germany." The United States, Italy, Japan and Serbia also granted such Recognition in the same year.

On September 28, 1918, the Government of French Republic and the Conseil national tcheco-slovaque concluded a treaty regulating the status of the Czechoslovak Nation in France. The Independence of Czechoslovakia was formally proclaimed by Prof. Masaryk at Washington on the ^{18th} October 1918. British and French military missions were sent to Prague on the 15th November, and on the 4th December de facto Recognition was granted to the Czechoslovak Government, which was authorized by the Allies to occupy and administer its territory. De jure Recognition is implied in the participation of Czechoslovakia in the Peace Conference and Peace Treaties of 1919. Polish National Committee was Recognized as the "official Polish organisation" by British Foreign Office on 15th October 1917 and recognized as de facto Government by France on Feb. 23, 1919.

Jewish people were recognized as nation in the Conference de San Remo in April 1920.

Chapter V.

Notes:-

- I53. MM. Oppenheim and Cosentini seem to have adopted this attitude. M. Cavare represents the contrary.
- I54. Lorimer, livre II, p. 69.
Fauchille, tome, I. i, pp. 31-33.
- I55. Oppenheim, I, pp. III-II2.
Cosentini, p. 34.
- I56. Fauchille, I, i, p. 311 et s..
- I57. Oppenheim, I, i, p. 139 et s..
MacNair, B.Y., 1933.
Le Normand, "Reconnaissance internationale", 1899.
Jones, B.Y. 1935, pp. 42-55.
Williams, dans Recueil, t 44.
- I58. Williams, dans Recueil, t 44.
- I59. R.R. Foulke, "International Law", Vol. I, pp. 112-113.
- I60. The use of the words "Nation" and "State" seem to be frequently and traditionally confused. The word "international" actually means "interstate". The terms "international law" and "law of nations" and "family of nations" actually mean "interstate law" and "family of States". In this article, the Author is with no intention to regularize such usage, but purposely adds quotation marks to the word "nation", when it is strictly referred, such as in case of the Recognition of "Nation". In the Chinese language, such terms are soundly used, such as: "nation"----民族; "State"----國家; "international law"----國際法; not 民族間法. "family of nations"----國際社會; not 民族間社會. "the Recognition of "Nation"----民族之承認;
- I61. Fauchille, I, i, p. 312.
Cosentini, p. 34., who even objects to treat "nation" as an object of Recognition, which, as also approved by Fauchille, applies only to candidates for International Persons.
- I62. Subh distinction between subject of international law and international person is approved by MM. Oppenheim, McNair, Lauterpacht, Cosentini, etc.,
The subjects of International Law, other than sovereign States and the alike, which have only a certain position in International Law with certain rights and obligations, may be classed under two categories: (A) half sovereign collectivites; (B) individuals. The latter is a result of the recent development of International Law; and its status in International Law is not only asserted by such writers as MM. Diena and Cavaglieri in Italy, Schucking and Wehberg in Germany, Kelsen and Verdross in Austria, Saldana in Spain, Basdevant and Duguit, de Lapradelle, Scelle, Fauchille, Le Fur and Akzin in France, Krabbe in the Netherlands, Mandelstam in Russia, Alvarez, Garner, Ralston, Brown and Bagleton in America, Politis and Spiropoulos in Greece, McNair and Lauterpacht in Great Britain, Prof. S. R. Chow in China, etc., but also has been admitted

by the Permanent Court of International Justice and some international organs and some other international tribunals and municipal courts, through their judicial decisions and practices, such as:

- (a) the punishment of individual conduct---as pirates, persons who violated blockade or the regulations of submarine; criminal of war, (see Treaty of Versailles, 1919), etc..
- (b) the protection of individual rights---as Minorities, Mandates, International Labour Organization, prohibition of slaves, plebiscite in case of the self-determination of nations, etc..
- (c) the right to sue in the Permanent Court of International Justice---as recognized by the draft-statute of the Cour internationale des prises of the Hague Peace Conference, 1907.
- (d) the regulations of some international organs---as those regulations constituting part of "droit international lato sensu" directly applying to individuals.
- (e) the international effect of individual conduct,---as boycott, organized or not organized, see the League Assembly Report of Feb, 24, 1933, referring to the Sino-Japanese dispute. The Assembly (including more than fifty nations) recognized the Chinese organized boycott as a reprisal in International Law, which has constituted another new principle of International Law. see: Prof. S. R. Chow, "The New Progress of International Law", 1934, Ch. IV, V, pp. 112-167. Politis, "Les Nouvelles Tendances du Droit International", 1927, Chap. II, pp. 55-94. Prof. S.R. Chow, "Modern Problems of International Law", National Wu-Han University Series, China, 1931, Ch. XII, pp. 259-272. (周鯉生教授, "現代國際法問題" 武漢大學叢書). Lauterpacht, "Boycott In International Relations", B. Y. I. I., 1934. Hwai-Chun Lu, "Boycott in International Law", National Wu-Han University Press, 1935, (拙著, "排貨在國際法上地位", 一九三五年學士論文).
- (f) Art. I, Covenant of the League of Nations, recognizing some colonies as subjects of International Law. As regards the international status of Dominions and colonies, see McNair, "The Law of Treaties", 1938, Smith, "Great Britain and the Law of Nations", 2 vols. 1932. Oppenheim, Vol. I. Prof. S. R. Chow, "Modern Problems of International Law", 1931, ch. XIII. British North America Act, 1867. The Westminster Statute, 1931.

- I63. Cosentini, p. 34.
- I64. See the arguments in the preceding chapters. See also: Institut, 1936, Art. I. Cosentini, p. 35. Briggs, Law of Nations, pp. 65-77. Oppenheim, I, pp. 119-122. Prof. S. R. Chow, "International Law", 1937, pp. 41-42. Fauchille, I, i, p. 307.
- I65. See the arguments in the preceding chapters, See also: Oppenheim, I, pp. 120-121.
- I66. See the arguments in the preceding chapters. See also: Hershey, p. 20. Prof. S. R. Chow, "International Law", pp. 42-45. Official Journal, 1923, the Admission of Abyssinia.
- I67. Such as Russia in Eighteenth Century under Peter the Great; China, Turkey, Persia, Japan, etc., in Nineteenth Century.
- I68. Such as 1905, Norway; 1825. Brazil.

169. Such as the United States; German Empire, 1871; North German Confederation, 1866; Switzerland (Swiss Confederation), 1848.
170. Such as the Transvaal or South African Republic, 1852-1902; Liberia, 1847; Ethiopia, 1923; (Congo, 1885); etc.
171. Such as the United States, 1776; the South American Republics, 1810, 1825; Panama, 1903; Belgium, 1831; Greece, 1827, and other Balkan States, 1878.
172. See the arguments in the preceding chapters; see also:
 Oppenheim, I, 121-122; 112-124.
 Brierly, 104-105; 76-77.
 Prof. S. R. Chow, in National Wu-Han University: Social Sciences Quarterly, Vol. V, No. 1, 1934, pp. 3-4.
 Lawrence, Principles, 55; 83; 87-88.
 McNair, B.Y. 1933.
 Verdross, dans Recueil des Cours, tome 50, p. 325.
 Erich, dans Recueil des Cours, tome 13, pp. 444-445, 448-449, 463, 474-476.
 Redslob, "Reconnaissance de l'Etat comme sujet de droit international", dans Revue de Droit International, 1934, No. 2, pp. 443-444.
 Strupp, "Elements du droit international public", 1930, tome I, p. 80.
 Stowell, "International Law", 1931, p. 37.
 Hershey, pp. 158-159.
 Cosentini, pp. 34, 36.
 Scelle, "Organisation internationale et Le Conflits Sino-Japonais", dans l'Annuaire de l'Institut International de Droit Public, 1933, pp. 743-746.
 Covenant of the League of Nations, 1919.
 Kellogg Pact of Paris, 1928.
 League Assembly Report of 1933 (Feb. 24).
 Stimson Doctrine, in Stimson Note of Jan. 7, 1932, to China and Japan.
 Le Fur, pp. 364-365.
 Resolutions of the League's Permanent Mandates Commission, 1931, (Sept. 4.).
 Brierly, p. 102, who considers Boers in 1836 and Liberian Republic in 1847 as the examples of the States not having satisfied the requirements of statehood.
 Prof. Wright does not agree with the limitation of armament as one of the requirements for according Recognition; for no practical measures have been taken for carrying out the principle embodied in Art. 8 of the Covenant.
173. Fenwick, "International Law", 1934, p. 109.
 Oppenheim, I, 125-126.
 Liszt, "Le Droit International", 1913, French trad. 1928, p. 54.
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 Verdross, dans Recueil des Cours, tome 13, p. 530.
 Erich, dans Recueil, t 13, p. 62.
 Le Fur, pp. 365-366.
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 立作太郎 "平時國際公法" 現代法學全集. Vol. 16, p. 248.
 See also Cas d' Haute-Silesie (Recueil des Arrêts No. 7 de la Cour permanente de justice internationale) re relations of Armistice of 1918 (Nov. 11) and Protocol de Spa with Poland.
- 174.

- I74. See cases illustrative in the following books:
 Moore, I, pp. 73, 98, 72.
 Holland, "Lectures on International Law", 1933, pp. 93-94.
 Fenwick, p. 110.
 Hershey, pp. 208-209.
 Lawrence, pp. 88-89.
 立作太郎, p. 248.
 Erich, pp. 448-449. (Recueil des Cours, tome 13)
 Redslob, dans Revue de droit international, 1934, No. 2, pp. 444-5.
 Brierly, p. 110.
 Williams, Recueil, tome 44.
 Prof. S. R. Chow, "The Problem of the Recognition of the so-called
 "Manchoukuo".
 Prof. S. R. Chow, "International Law".
 Smith, Vol. I, pp. 151-152, 77-260.
 McNair, "The Law of Treaties", pp. 75-496.
 Hall, pp. 105, 108-110, 110 note, 113.
 Oppenheim, I, pp. 121-122, 126-127, 120, 123.
 Fauchille, I, I, pp. 306-331, 318-319, 335.
 Foignet, pp. 114; 144.
 Le Fur, pp. 365, 364 note.
 Hyde, "International Law", Vol. I, p. 62.
 Graham, p. 34 and note 88.
 Covenant of the League of Nations, 1919.
- I75. Oppenheim, I, p. 122.
 Fauchille, I, i, p. 335.
- I76. See above notes: I07 & I74.
 See also Oppenheim, I, pp. 122-124, & note.
 Smith, I, p. 245.
 Hudson, "International Legislation". (treaties relative to these cases)
- I77. See note I76.
 See the works of Moore, Vol. I, Hershey, Williams, Prof. S. R. Chow, Brierly, Smith, Vol. I, Lawrence, McNair, "Law of Treaties", Hall, Oppenheim, Vol. I, Erich, Fauchille, I, i., Foignet, Le Fur, Graham, etc. (re cases). Jaffe, pp. 105-106.
 Official Journal, 1933, Vol. V, p. 13.
- I78. See the arguments in the preceding chapters. See also: note I74.
 Oppenheim, I, 124-125.
 The Recognition of Bulgaria as an "autonomous and tributary Principality under the suzerainty of the Sultan by Powers in Art. I of the Treaty of Berlin, 1878, was not a Recognition of State; therefore, it fails to be mentioned as a precedent of conditional Recognition here.
- I79. Oppenheim, I, pp. 135-136.
 Hershey, pp. 210-"I".
 Hervey, p. 14.
 Fauchille, I, pp. 307-308.
 Institut, 1936, Arts. 3, 9, 14, 15.
 Briggs, pp. 77-79.
 Cosentini, p. 36.
 Scelle, Recueil des Cours, tome 46, 1933, p. 389.
 Erich, Recueil, tome, 13, pp. 483, 486.
 Williams, p. 262. (Recueil, tome 44).
 A. Raestad, "La Reconnaissance internationale des nouveaux Etats et des Nouveaux gouvernements," R.D.I.L.C., 1936, 3rd serie t I7, pp. 257, 303ff.

- K. Strupp, "Les Regles generales du Droit de la paix", Recueil des Cours, 1934, tome 47, p. 451.
180. Oppenheim, I, p. 136.
181. H. W. Briggs, "De facto and de jure Recognition: The Arantzazu Mendi", A.J.I.L., Oct. 1939, Vol. 33, No. 4, p. 690.
182. Briggs, A.J.I.L., Oct. 1939, p. 610.
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 Williams, Recueil, tome 44, p. 262.
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 H. Kelsen, "Theorie generale du Droit International public", 1932, Recueil des Cours, tome 42, p. 287.
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 Oppenheim, I, pp. 136-137 and note.
 Hervey, p. 14.
 Fauchille, I, i, pp. 307-308.
 Briggs, "Law of Nations", p. 101.
183. Erich, Recueil, tome 13, p. 483.
 Briggs, A.J.I.L., Oct. 1939, pp. 690-691.
184. Foreign Secretary Eden's Statement, Hansard, 5th ser., vol. 328, col. 1386.
 Briggs, A.J.I.L., Jan. 1940, p. 48.
185. Moore, I, pp. 206---
 Briggs, A.J., Jan. 1940, pp. 52. et s..
186. Oppenheim, I, p. 136.
 Hershey, p. 21f.
 Erich, Recueil, tome 13, p. 483.
 Briggs, A.J., Oct. 1939, p. 691.
 Fauchille, I, i, pp. 330-331.
187. Hershey, p. 21f.
 Erich, Recueil, tome 13, p. 483.
 Briggs, A.J., Oct. 1939, p. 691.
188. Smith, Vol. I, pp. 234-237.
189. Hudson, in A.J.I.L., 1924, pp. 443-450.
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190. Cosentini, p. 36.
 Briggs, A.J., Oct. 1939.
 Enile Selassie v. Cable & Wireless, Ltd., Case, A.J. I.L., July 1939, pp. 580---
 Salvioli, Recueil, 1933, tome, 46, p. 48.
 Scelle, Recueil, tome 46, 1933, p. 389.
 Brierly, p. 110. Prof. S. R. Chow, "International Law", pp. 47-48
 The Recognition of Estonia and of Czechoslovakia prior to 1919, as stated in the documents, was atmost a Recognition of governement.

191. Briggs, A.J., Oct. 1939, p. 690.
192. Baty, A.J., 1936, p. 381. His view seems contrary to the British Practice in 1823. see also: Oppenheim, I, 124. Eden, Wright. '33
193. See the arguments in the preceding chapters. See also:
 Oppenheim, I, pp. 120-121. 127.
 Briggs, "Law of Nations", pp. 77-79. 82, 84, 97-III, 402.
 Hervey, pp. 82-III.
 Erich, Recueil, tome, 13, chap. VI.
 Institut, 1936, Art. 7.
 Jones, B.Y., 1935, pp. 42-55.
 Foignet, p. 166.
 Oetjen v. Central Leather Co. 1918, U.S. A.
 Cas d' Haute-Silesie, Recueil des Arrêts No. 7, de la C.P.J.†.
194. See Notes 138, 139.
 Erich, Recueil, tome 13, Ch. VI.
 Hervey, pp. 86, 157.
 The Case of Chinese steamship "Kwang-Yuan" (in San Francisco) may be an example of the treatment of immunity.
195. See the arguments in the preceding chapters. See also: Note 134.
 Oppenheim, I, p. 125.
 Cosentini, p. 35.
 Institut, 1936, Art. 6.
 Fauchille, I, i, p. 316.
 Stimson's and The League's Doctrine of Non-Recognition.
196. Foignet, p. 144.
 Hyde, "International Law," 1922,
197. See Notes 135, 136, 137. See also:
 Oppenheim, I, p. 125.
 Fauchille, I, pp. 328-329.
 Cosentini, p. 35.
 Institut, 1936, Art. 5.
198. See the arguments in the preceding chapters, and note 136.
 Hervey, pp. 54-81, 139-155.
 Wright, A. J. 1933, pp. 509-516.
 Oppenheim, I, 120.
 Briggs, "Law of Nations", pp. 79-97.
 As a practice of many States, Courts of law always follow what the political department has decided in matter of Recognition. Some writers, such as those of the Institut de droit international, Brussels, put this practice in their draft-code of International Law (Art. 2, 1936, Resolutions).
 In the Author's opinion, the relation between the domestic court and the political department of the same State falls into the category of domestic affairs, which is quite desirable not to be regulated in International Law.
199. See the arguments in the preceding chapters, and "the Recognition of State". See also:
 Institut, 1936, Arts. 10-17.
 Cosentini, Arts. 31-52.
 Briggs, "Law of Nations", pp. 65-115.
 Hervey, pp. 54-160.
 Oppenheim, I, 119-141.
 Prof. S. R. Chow, "International Law", pp. 48-
 Fauchille, I, i, pp. 319-324.
 Brierly, pp. 109-III, 125.
 McNair, "Law of Treaties", pp. 384-388, 465.

Hershey, pp. 209-211.
 Moore, I, 119-163.
 Jaffe, pp. 124-232.
 Scelle, I, pp. 100-103.
 Foignet, pp. 143-144.
 Smith, I, pp. 77-260.
 Erich, Recueil, tome III, pp. 431-505.
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 McNair, B.Y., 1921-22, pp. 57-74.
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 Jones, B.Y., 1935, pp. 42-55.
 McNair, B.Y., 1933, pp. 65-74.
 Briggs, A.J., Jan. 1940, pp. 47-57.
 Briggs, A.J., July 1939, pp. 580-582.
 Briggs, Oct. 1939, pp. 689-699.

200. See the arguments in the preceding chapters. See also:
 Hall, pp. 36-46.
 Hershey, pp. 203-207.
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 15 Foreign Affairs, 1937, pp. 260, 272.
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 Fauchille, I, i, pp. 309-311.
201. See the statements in the preceding chapters. See also:
 Lawrence, pp. 354-356.
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 Hershey, pp. 202-203.
 Briggs, pp. 743-749. (Law of Nations.)
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 H. Silvanie, "Responsibility of States for Acts of Insurgent
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 Moore, I, s. 74.
 Edwin Dickinson, "The Closure of Port in Control of Insurgents",
 A.J. 1930, pp. 69-78.
202. See the statements and arguments in the preceding chapters.
 See also: Fauchille, II, i, pp. 311-316.
 Scelle, I, 99-100.
 Smith, I, pp. 234-237.
 Le Fur, p. 366.
 Hudson, "World War Reports", Vol. I, 1922-26, pp. 221,
 243, 528, 529, 572.

Chapter VI.

THE PROBLEM OF THE RECOGNITION OF SO-CALLED "MANCHOUKUO"

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Through the preceding chapters, we have observed the historical development and recent progress of the first important doctrine in International Law. We have also discussed the different theories and important contributions of recent writers and tried to make a survey of the existing principles of the Doctrine with a view to draft a "code" of Recognition.

Now we may turn to examine ^{most} the/ important case of this Doctrine --- the Recognition of the puppet-State "Manchoukuo". The necessity for this discussion, as stated in the first chapter, is not from a doubt in its legal status as already judged and determined by an officially international decision, but from the facts that a few writers have made open objection, to, ~~no~~ doubt of, the continuous obligation of non-recognition, and that one or more States have tried to accord such Recognition at the sacrifice of their solemnly legal obligations. This trend of change is not impossible actually to affect the general attitude of States, though the legal nature of the obligation of non-recognition is quite a question out of dispute.

This problem concerns three legal aspects: the first is the Doctrine of Recognition in International Law; the second is the international treaties interested; and the third is the Covenant and Resolutions of the League of Nations. It is desirable to proceed the discussion by this order.

I. THE DOCTRINE OF RECOGNITION IN INTERNATIONAL LAW AND THE RECOGNITION OF SO-CALLED "MANCHOUKUO".

In this aspect, we should first mention the following principles

of International Law as above stated:

(1) Recognition is necessary for a State to enter into the juridical international society under the jurisdiction and protection of International Law.

(2) Recognition is in character declarative to the existence of State. A State cannot be produced through Recognition.

(3) The granting of Recognition is a matter of policy and discretion, but premature and improper Recognition can lead to legitimate reaction, such as reprisal, war, etc..

(4) The fundamental conditions to the Recognition of State are as follows: (A) The real existence of a State which should have satisfied the following requirements of statehood as regulated in International Law: (a) ^{automatically} an/organized population. (b) a definite territory. (c) Sovereignty and government which should include the following characteristics: 1. The erection of the State should be made by the people themselves of that State through an automatic independence movement. Thus the government of that State should be able to be respected and obeyed by the people voluntarily. 2. The State and its government should be independent of any intervention or influence from foreign State. 3. The State and its government should be essentially stable and permanent. 4. The State and its government can resist with own force the mother State's attempt to restore status quo ante, in case the rising of that State is resulted from coercive separation. (B) the existence of a State should not be a result of the breach of International Law.

(5) The new principle of the obligation of non-recognition has become a Law of Nations with universally binding force.

(6) Whether or not a new political collectivity has satisfied the requirements of Recognition as above stated, is a matter of fact.

The fact such as concerning the puppet-State "Manchoukuo" can be known best only by China. For such fact happened in a place which is part of Chinese territory. As a neutral observation is judicially required, the Lytton Report of 1932 and the Assembly Report of 1933, therefore, must be taken as the only authoritative. No private person other than Chinese is completely qualified to give any comment or opinion upon it. Because no such private person could have so strong and fair sources and data as the Lytton Commission had,

According to those Reports, the facts concerning the so-called "Manchoukuo" are as follows:

(1) The so-called "Manchoukuo", being established after the beginning of the Sino-Japanese Conflict in 1931, is not the result of an automatic independence movement, but an artificial product of Japanese armed force, made for Japan. "The evidence received from all sources has satisfied the Commission that, while there were a number of factors which contributed to the creation of "Manchoukuo", the two which, in combination, were most effective, and without which, in our judgement, the new State could not have been formed, were the presence of Japanese troops and the activities of Japanese officials, both civil and military. For this reason, the present regime cannot be considered to have been called into existence by a genuine and spontaneous independence movement." (203)

(2) There is no real State in existence. The Report says: "As regards the "Government" and the public services, although the titular heads of the Departments are Chinese residents in Manchuria, the main political and administrative power rests in the hands of Japanese officials and advisers. The political and administrative organisation of the "Government" is such as to give to these officials and advisers opportunities, not merely of giving technical advice, but also of

actually controlling and directing the administration.----in the case of all important problems, these officials and advisers, some of whom were able to act more or less independently in the first days of the new organization, have been constrained more and more to follow the direction of Japanese official authority. This authority, in fact, by the reason of the occupation of the country by its troops, by the dependence of the "Manchoukuo Government" on those troops for the maintenance of its authority both internally and externally, in consequence, too, of the more and more important role entrusted to the ---- commander-in-chief of the army of occupation.---there is no general Chinese support for the "Manchoukuo" Government", which is regarded by the local Chinese as an instrument of the Japanese." (204)

In other words, there is no spontaneous independence movement. The so-called "Manchoukuo" has no internal and external sovereignty, depending upon Japanese troops, controlled by Japanese officials, not being supported by the people, but being an instrument of Japanese policy, without any character of permanence and independence. ~~When~~ **As soon as the withdrawal of Japanese troops takes place, the so-called "Manchoukuo" would be crushed by the Chinese forces. Thus, "in International Law, "Manchoukuo" is not a State.---In law, it does not exist and its territory is part of China.----The "Government" of "Manchoukuo" seems to be a "local de facto Government", or "Government of paramount force",---with powers similar to those of a military occupant.** (205) The Chinese Government from the beginning considered the territory of her Eastern Four Provinces, so-called Manchuria and the Province of Jehol, as in a status under the occupation of enemy army, without independent personality, and had announced those citizens approving the puppet organization as rebels. She once and again protested the Japanese act of aggression and never declared any

intention to give up her integral territorial sovereignty. In 1934 the National Government of China had made a Declaration referring to its un-changeable attitude as stated above against the Eastern Three Provinces (The provinces of Liao-Ning, Chilin and Helongkang, which are also informally called Manchuria) and the Province of Jehol of China. In 1940 Prime Minister and Generalissimo Chiang Kai-Shek had further declared his eternally determined mind to ^{recover} ~~get back~~ the Chinese Eastern Four Provinces and to drive off all enemy troops from any part of Chinese territory. (206)

Based upon the principles and facts as stated above, we may thoroughly understand that the so-called "Manzhoukuo" is not a State. In the North-Eastern part of Chinese territory, there is no new State appearing. The Eastern Four Provinces of China are only in a status of local de facto government under enemy occupation. The Recognition by foreign State cannot creat a State. Such Recognition is waste. International conference cannot produce State too. No act of Recognition here can bring about any positive legal effect except leading to a Chinese legitimate reprisal or international sanction. For such Recognition would constitute an act infringing International Law and unfriendly against China. That is why the Recognition by Japan and Salvador could not have mattered much. That is also why all States in the juridical international society are bound by an obligation to refuse to grant such Recognition. Even the Japanese writer, Prof. 立花 太郎, had himself declared the truth that "to grant the Recognition of State to such a political collectivity as having not yet firmly established with permanence and having not yet satisfied the requirements of statehood, should constitute an act of illegal intervention against the mother country," (207) which would render a legitimate reprisal or war on

the part of the mother country.

II. INTERNATIONAL TREATY OBLIGATIONS AND
THE RECOGNITION OF SO-CALLED "MANCHOUKHO"

In the second place, we should refer to the obligations in such treaties as to which both China and Japan are parties. It may convince us whether or not the so-called "Manvhoukuo" is the result of a breach of written International Law and whether or not all States are with particular treaty obligations on the matter of such Recognition. According to the general principle of International Law, treaty is the first important instrument for determining the nature of a dispute, for its binding force upon States is the most definite and powerful among those in the Law of Nations.

The treaties which are here interested, are the Covenant of the League of Nations, 1919, the Nine Power Treaty of Washington, 1922, and the Kellogg-Briand Anti-War Pact of Paris, 1928.

In the Covenant of the League of Nations, two Articles are of particular concern: one is Article X, which runs: "The 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 other is Article XII, which runs: "The Members of the League 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 judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council. In any case under this Article, the award of the

arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

As to the significance of the Article XII, it is desirable to mention also the Article XVI, which runs: "Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not. 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 of the League shall severally contribute to the armed forces to be used to protect the covenants of the League. The Members of the League agree further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League."

In the Nine Power Treaty, Article I is particularly concerned, which runs: "The Contracting Powers, other than China, agree: (I)

To respect the sovereignty, the independence, and the territorial and administrative integrity of China;---" As a result of the obligation in Art. I, the Article II further runs: "The Contracting Powers agree not to enter into any treaty, agreement, arrangement, or understanding, either with one another, or, individually or collectively, with any Power or Powers, which would infringe or impair the principles stated in Article I."

As an official explanation, the involvement of the Article I relating to the nature and scope of sovereignty may be deemed as part of what the "political independence" in Art. X of the League Covenant involves. The term "administrative integrity" does mean nothing but to qualify the nature and scope of sovereignty more accurately and more definitely, which comprehends that China may within her discretion conduct her domestic affairs without any restriction or influence from any foreign State, except her treaty obligations made at her own liberty. (208)

In the Kellogg Anti-War Pact, ("Treaty for the Renunciation of War") Articles I and II may be mentioned: Art. I: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." Art. II: "The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever origin they may be, which may arise among them, shall never be sought except by pacific means." (209)

The important principles involved in the Covenant of the League and the Kellogg Pact have been explained in Chapter V.

The Japanese action of aggression ^{upon} ~~toward~~ China is commonly admitted as having violated the above three treaties. Japan's

resorting to war since September 18, 1931, without any regard to the pacific means in dealing with the Sino-Japanese Dispute, constitutes an act infringing the principles of peaceful settlement and renunciation of war as an instrument of policy, as embodied in the League Covenant and the Kellogg Pact. The Japanese military occupation of the Chinese Eastern Four Provinces in the disguise of creating the artificial puppet-State "Manchoukuo" and her invasion in other parts of Chinese territory constitute an act of external aggression upon the Chinese territorial integrity, infringing the obligations embodied in the League Covenant and the Nine Power Treaty.

Among official statements, Secretary of State Stimson had on Jan. 7, 1932, issued . . . identical Notes to China and Japan, declaring that: "in view of the present situation and its own rights and obligations therein, the American Government -----can not admit the legality of any situation de facto.---" On Feb. 26, 1932, the League Council had despatched a Note to Japan, urging her to manage her action in conformity with the stipulations in the Kellogg Pact, the Article X of the League Covenant and the Article I of Nine Power Treaty, and declaring that the League resolutely does not recognize any political and territorial change resulted from a breach of the above treaties or from an act of external aggression. On March 11, 1932, the Resolutions of the League Special Assembly declared again the principle of guaranteeing the territorial integrity as embodied in Art. X of the League Covenant, the principle of peaceful settlement as embodied in the Kellogg Pact, and the determination not to recognize any situation resulted from a violation of the League Covenant and Kellogg Pact. On Feb. 24, 1933, the League Assembly Resolutions adopted the Lytton Report and reminded the former attitude of the League. All these Notes, declarations and resolutions definitely

prove that not only the so-called "Manchoukuo" is purely the result of a breach of written International Law, but also all other contracting States are bound by their treaty obligations not to grant such Recognition.

It is interesting here to investigate the grounds held by Japanese Government and a few writers who tried to seek for an excuse for the Japanese action of external aggression.

In the first place, it was held that the Incident of September 18, 1931 and the Japanese actions subsequent to that Incident do not constitute a breach of Kellogg Pact, for those actions were not acts of war, but of self-defence. To this argument, the Lytton Report of 1932 and then the Assembly Report of 1933 had replied that "The Japanese---had a carefully prepared plan to meet the case of possible hostilities between themselves and the Chinese. On the night of September 18th-19th, this plan was put into operation with swiftness and precision. The Chinese---had no plan of attacking the Japanese troops, or of endangering the lives or property of Japanese nationals at this particular time or place. They made no concerted or authorized attack on the Japanese forces and were surprised by the Japanese attack and subsequent operations.---- The military operation of the Japanese troops during this night,----can not be regarded as measures of legitimate self-defence." (210)

In the second place, it was held that the erection of "Manchoukuo" does not infringe the obligation of respecting the territorial integrity of China; for Manchuria never constituted part of the integral China. This argument is more ridiculous. Japan herself used to open negotiations with China concerning her interests in Manchuria; the notable "Twenty-one Demands" in 1915 serves as an example. Even to-day, Japan still insists to demand China's approval and permission

M. Cavaré seemed to
~~Lytton Commission did,~~ ^{very little} knowing ~~nothing~~ about the ^{and,} great Empire of China;
 therefore, ^{he} they offered some opinions so ridiculous and childish as
 quite easy to be suspected as being a money-exchanged tongue of Japan.
^{He} They seem ^{to} have known even ^{little} ~~nothing~~ about ^{his} their own country, France.
 For, according to ^{was} ~~their~~ observations ^{and} and opinions, France should not
 be a State, but a group of small States; because France had passed
 through the "Revolutionary" Years of 1789, 1815, 1830, 1848, 1852, 1870
 and 1940; and because France had been many political parties with
 different ideals and different attitudes and always fighting one an-
 other. Again, because Germany had occupied Alsace-Lorraine in 1871;
 therefore, Alsace-Lorraine itself is an independent State even after
 1919. Because there are different races ^{of people} / in the French colonial empire,
 therefore, France is but a geographical name, under which there are ma-
 ny independent States. Because Germany ~~have~~ conquered France by occupy-
 ing a large part of the so-called French territory; therefore, the
 occupied France was originally not French territory, upon which Germany
 may reasonably at her will create a puppet State which would be natural-
 ly regarded by ~~the French people~~ ^{le Professeur M.} Cavaré, as a "spontan-
 eous and originally independent State"; at the same time, ^{according to his opinion,} France
 should not be entitled to make comment upon Japan's occupying Indo-China
~~China~~. And the ~~French~~ ^{M.} opposition between Pétain and de Gaulle ~~constitutes~~
 furnishes another evidence to the existence of many States in France.

The same conclusion of ^{M. Cavaré's opinions} ~~these French people~~ may be also applied
 to Mexico, Greece, Peru, Germany (1918), Russia (1917), Montenegro
 (1910), Portugal (1910), the United States (1861-1868) and British
 Empire. ~~Prof. Cavaré, etc., may be believed to have some knowledge~~

~~in the theories of Renan, etc., and his observations and~~
~~ridiculous conclusions drawn from his theory, etc., etc.~~
~~he has~~

[REDACTED]

Such wonderful opinions appear to be little different from that in the pamphlets produced by Japanese aggressors.

[REDACTED]

The truth is that the situations in China (never⁷ reached even the degree of disorder like that happened in France, many real, learned writers and official circles have shown to understand it. That is why the Lytton Commission fairly concluded that "---Manchuria is ---unalterably Chinese,-----For two thousand years a permanent foothold has been maintained.-----The independence declared by Marshal Chang tso-lin at different times never meant that he or the people of Manchuria wished to be separated from China. His armies did not

invade China as if it were a foreign country, but merely as participants in the civil war. Like the war lords of any other province, the Marshal alternately supported, attacked, or declared his territory independent of the Central Government, but never in such a way as to involve the partition of China into separate States. On the contrary, most Chinese civil wars were directly or indirectly connect with some ambitious scheme to unify the country under a really strong Government. Through all its wars and periods of "independence", therefore, Manchuria remained an integral part of China."(211) The Assembly Report of the League, that means, the identical opinion of more than fifty Nations, further confirmed this conclusion that "through all its wars and periods of "independence", Manchuria remained an integral part of China", and added that " it is, however, indisputable that, without any declaration of war, a large part of Chinese territory has been forcibly seized and occupied by Japanese troops and that, in consequence of its operation, it has been separated from, and declared independent of the rest of China;" and that Manchuria's constituting part of China had even never been denied before the League by Japan.

(212)

In the third place, it was held that even though the separation of Manchuria from China made by Japanese army constitutes a violation of the territorial integrity of China, it can not be deemed as an external aggression as mentioned in the Article X of the Covenant; for the organization of so-called "Manchoukuo" is a result of the will of the inhabitants. This point has been replied by the statements in the first Part, as approved by Lytton Commission, who said: "Since September 18th, 1931, the activities of the Japanese military authorities, in civil as well as in military matters, were marked by essentially political considerations. The progressive military

occupation of the Three Eastern Provinces removed in succession from the control of the Chinese authorities the towns of Tsitsihar, Chinchow, and Harbin, finally all the important towns of Manchuria; and following each occupation, the civil administration was reorganized. It is clear that the Independence movement, which had never been heard of in Manchuria before September 1931, was only made possible by the presence of the Japanese troops. A group of Japanese civil and military officials, both active and retired, who were in close touch with the new political movement in Japan to which reference was made in Chapter IV, conceived, organized and carried through this movement, as a solution to the situation in Manchuria as it existed after the events of September 18th. With this object, they made use of the names and actions of certain Chinese individuals, and took advantage of certain ----inhabitants, who had grievances against the former administration. It is also clear that the Japanese General Staff realized from the start, or at least in a short time, the use which could be made of such an autonomy movement. In consequence, they provided assistance and gave direction to the organizers of the movement. The evidence received from all sources has satisfied the Commission that, while there were a number of factors which constituted to the creation of "Manchukuo"; the two which, in combination, were most effective, and without which, in our judgment, the new State could not have been formed, were the presence of Japanese troops and the activities of Japanese officials, both civil and military. For this reason, the present regime cannot be considered to have been called into existence by a genuine and spontaneous independence movement."(213)

Thus, it is simply that the Japanese Government attempts to make use of ~~her~~^{its} own artificial puppet organization as a disguise of her action of external aggression. The so-called "Manchoukuo" would

be immediately overthrown, if the Japanese troops retreat.

Lastly, it was held that the League Covenant should not apply to the Sino-Japanese Dispute; for China is "not an organized State" or "is in a condition of complete chaos and incredible anarchy". To this opinion, Lytton Report had also replied by saying that: "In this connection, it may be useful to remember that an altogether different attitude was taken at the time of the Washington Conference by all the participating Powers. Yet even at that time China" was not as much centralized as at present; "those, among others, were doubtless the reasons which induced the Assembly of the League of Nations last September to elect China to the Council." (214)

It may be added that whether or not China is an organized State is purely a matter of domestic affairs, which is out of foreign concern. The key point is that China, being a Member of the League of Nations, is, therefore, entitled to enjoy the guarantee of territorial integrity stipulated in Art. X of the League Covenant. We have never heard of any law of differential application of the Covenant to different regions or to different countries.

Furthermore, as a matter of fact and of common knowledge, ^{as already mentioned above,} China ^{of the world} is the oldest unified State with an advanced civilization of ^{more than} ~~the~~ ^{five thousand years.} ~~world.~~ Before the Revolution of 1911, the Chinese Empire was one of the most centralized State of the world; only Russian Empire and the French Empire under Napoleon I had its similarity. The prestige and power of ~~the~~ Chinese Empire were specially understood by the ancient fathers of ~~the~~ Japanese, Hungarians and Eastern Europeans from their experiences. When China began to be an organized State, the world was not convinced yet of many States which are existing to-day; it goes without saying the ^{young barbarian nation,} Japan.

Three thousand years ago, the political

thought, the thought and institution of law and the theory and institution of army had already developed and constituted excellent part of Chinese culture. The most notable philosophers and jurists and statesmen were MM. Kung Chou, 孔 Meng Ko, 孟 Han fei, 韓 Kuan chung, 韓 Wei Yang, 衛 Sun, 孫 Wu, etc.. Every citizen should be absolutely loyal first to Emperor (State or country or Nation), and second to father (head of family) ^{and to teacher,} Every body would like to die for Emperor first and for ^{and teacher} father ^{second}. The Emperor and his royal family should do everything in accordance with justice and law. "Under law, prince and citizen are the same." All officials, either civil or military, were in principle come through strict civil service examinations or military service examinations. That was why the Chinese Empire could have stood and kept so stable, so advanced and so powerful. That was also why the organization and stability of Chinese society was so appraised and appreciated by the famous ^{French} economist, M. Le Play, saying that only English society had such similarity.

Since the Revolution of 1911, China had to live in the inevitable chaos and anarchy which are the normal situations of revolution in any revolutionary country, either France or Russia or Germany or the United States. As a principle of justice and of International Law, foreign States should not profit by such situation to carry out their plan of aggression. That was why the United States led some other States to conclude the Nine Power Treaty of Washington in 1921-1922, as she always did in case revolution happened in some Americas. After the Revolution of 1926, China has been gradually restored to order and unity as the former Empire. If China were not qualified as an organized State, France should be the more unorganized, for she had the Days in 1789, 1815, 1830, 1848, 1852, and 1870. The duration of revolution in France ⁽¹⁷⁸⁹⁻¹⁸⁷⁵⁾ seems to be the longest among that in other

countries. ~~_____~~
~~_____~~
~~_____~~

Other countries which, according to these ~~_____~~ ^{opinions}
~~_____~~, should be also regarded as unorganized
States, are Russia (1917), Germany (1919), Turkey (1919), Spain (1810,
1936), the United States (1861-), Mexico, Peru, etc.. The British Emp-
ire, ~~_____~~ ^{considered as} ~~_____~~ ^{an unorganized State,} ~~_____~~ ^{for there happened rebellions}
~~_____~~ in Ireland (in 1917), in South Africa and in India;
and there are many independent States ^{(according to those opinions,} in this Empire. Generally
speaking, all countries, which have different parties, ^{or colonies,} should be
regarded as unorganized. Especially Japan's foreign ministry and
war ministry in the same government always made different attitudes
to the same matter externally, which had never happened in China
even in the time of Revolution. The different external attitudes
of President Wilson and the American Senate in 1919, referring to
the relations between the United States and the League of Nations,
and the different attitudes expressed by the different units of
the British Empire in the League of Nations also prove these two
States ^{(according to those opinions,} being unorganized States.

I made the above statements without any intention to criticize
the domestic affairs of any foreign country. I just purposely show
how funny ^{and terrible} those opinions, ^{as} held by some writers such as M. Cavaré, are.
Therefore, if China were criticized as unorganized, all other States
should be the same, or even more unorganized, that means, no organized
State exists in the world. ~~_____~~

~~_____~~ ^{Those writers ignored the fact and principle that}
~~_____~~
~~_____~~

~~_____~~ the relations between States in the
juridical international society, are only regulated by treaty and

International Law, not by the conditions of their domestic situations. All countries which observe and fulfil the Law of Nations and their treaty obligations, are friends. No unorganized collectivity could be qualified to be recognized as an International Person, and as an internationally contracting party. There are three treaties valid among Japan, China, and many other contracting parties. The Dispute be first judged by the valid treaties. The condition of domestic affairs does not matter. According to the above three treaties, the so-called "Manchoukuo" is but a result of Japanese unlawful act of war and external aggression which violates all the three treaties. The other contracting parties are bound not to grant it Recognition; for all these treaties demand them to respect and guarantee the territorial integrity of China and to condemn any act of war or of external aggression.

III. THE RESOLUTIONS OF THE LEAGUE OF NATIONS AND THE RECOGNITION OF SO-CALLED "MANCHOUKUO"

In the third place, we have to observe the express Resolution of the Doctrine of Non-Recognition adopted by the League of Nations on March 11, 1932 and On February 24, 1933.

As stated in the preceding chapters, the Doctrine of Non-Recognition has become a principle of International Law with universally binding force, for the League of Nations had embodied almost all States of the world and the only important non-member State was the United States, yet which was the first initiator of this principle. The co-existence of the League Covenant and the Kellogg Pact also logically binds all contracting parties to these two treaties to act simultaneously and collectively not to recognize any fact violating the common principles of these two treaties. (215) This was not only the significance of Stimson's Declaration, but also confirmed by the

on behalf of his country.
 United States' Minister at Berne, Mr. Hugh R. Wilson, / In his reply dated March 12th, 1932, on behalf of his Government, to Mr. Eric Drummond, the Secretary General of the League, he said:

"I acknowledge the receipt of your letter of March 11th, enclosing, for the information of the American Government, the text of a resolution relative to the Sino-Japanese dispute which was adopted yesterday afternoon by the Assembly of the League of Nations.

"I am instructed by my Government to express to you its gratification at the action taken by the Assembly of the League of Nations. my Government is especially gratified that the nations of the world are united on a policy not to recognize the validity of results attained in violation of the treaties in question. This is a distinct contribution to international law and offers a constructive basis for peace." (216)

Thus the act violating this Doctrine should constitute an act violating international obligations, which was also expressly declared by the League Assembly on February 24th, 1933:

"---It has been shown how anxious Japan has shown herself to keep Manchuria apart from the Government of the rest of China,----the administration of these provinces has more than once been declared by their rulers to be independent of the Central Government of China, yet no wish to be separated from the rest of China has ever been expressed by their population, which is overwhelmingly Chinese. ----It is a fact that, without declaration of war, a large area of what was indisputably the Chinese territory has been forcibly seized and occupied by the armed forces of Japan and has, in consequence of this operation, been separated from and declared independent of the rest of China. The steps by which this was accomplished are claimed by Japan to have been consistent with the obligations of the Covenant

of the League of Nations, the Kellogg Pact and the Nine Power Treaty of Washington, all of which were designed to prevent action of this kind.----From what we have said in the two preceding chapters, the maintenance and recognition of the present regime in Manchuria does not appeal to us compatible with the fundamental principle of existing international obligations."--(217)

Furthermore, the League Members are bound by two special obligations under the Covenant, each of which caused the Members to have no liberty to grant such Recognition.

The first is the obligation under the Article X of the Covenant. In this connection, Professor Erich, ^{early in 1926,} explained: "Nous savons que l'article 10 du Pacte oblige les Membres de la Société à respecter et à maintenir l'intégrité territoriale et l'indépendance politique de chaque Membre contre toute agression extérieure. Même au cas où la Société n'aurait pas réussi à repousser une agression et à empêcher une occupation, peut-être totale, du territoire d'un Membre, les autres Membres ne doivent pas reconnaître ce changement de fait comme définitif et valable en droit. Si l'une des conséquences directes de cette agression illicite a été l'établissement d'un nouvel Etat, les Membres de la Société des Nations devraient, à ce titre, refuser de reconnaître cet Etat nouveau dont l'existence se trouve en contradiction avec les biens suprêmes dont l'article 10 veut garantir l'inviolabilité; ils devraient même faire leur possible pour remettre les choses dans l'état antérieur à l'agression. Or, il pourrait arriver que l'agression, dont le Membre en question a été victime, n'ait été, au point de vue de la formation du nouvel Etat, que d'une importance secondaire et accidentelle, et qu'elle y ait seulement contribué. Il faut par conséquent un examen impartial de toutes les circonstances pour juger si le maintien du nouvel Etat est compatible

ou non avec les intentions de cette disposition primordiale qui garantit l'intégrité et l'indépendance des Membres de la Société des Nations." (Erich, p. 456) "Il ne faut pas manquer de formuler ici des réserves fondées sur l'article 10 du Pacte de la Société des Nations, selon lequel une agression extérieure dirigée contre le statut politique ou territorial d'un État ne saurait avoir pour effet un changement tel que la formation d'un nouvel État au détriment du premier." (Erich, p. 474) (218)

"Under the stipulations of Art. X," further explained by M. Ray, "the League Members are bound by two obligations: one is not to violate the political independence or the territorial integrity of other Member-States; the second is to prevent the political independence and territorial integrity of the Members from external aggression; The term "aggression" comprehends all acts and attempts of conquest, annexion, or permanent occupation; According to the spirit of the Article 10, not only an act of forcibly modifying foreign frontier is not permitted, but the disguised annexion and the assistance given for the separation movement of another State are also prohibited." (219)

In another occasion, even a Japanese writer, M. 土井大郎, expressed the same opinion: "In case State B helps the separation movement in State A, with its armed force, such act constitutes a violation of the obligation of non-intervention in International Law and the obligation of respecting territorial integrity in Art. X. It also constitutes an act of aggressive attack against State A. State A is entitled by Art. X to demand other Member-States for help." (220)

In other words, when a State is established by means of violation of the principle as embodied in the Article X of the Covenant, all Members of the League are at least bound with the obligation of non-Recognition.

The second is the obligation under the Assembly Resolution of the League on Feb. 24, 1933, which declared that "--in adopting the present Report, the Members of the League intend to abstain, particularly as regards the existing regime in Manchuria, from any act which might prejudice or delay the carrying out of the recommendations of the said Report. They will continue not to recognize this regime either ~~de~~ jure or de facto. They intend to abstain from taking any isolated action with regard to the situation in Manchuria." (221)

Some writers held that this Resolution cannot bind the Members with the obligation not to recognize "Manchoukuo"; for this Assembly Report, brought about through the procedure embodied in the Article 15 of the Covenant, is of a character of recommendation and, therefore, has no legally binding force as ^{ai} against the Members other than disputing parties, though that Report was unanimously adopted.

To this opinion, at least two replies can be offered: First, though this Report is in character a recommendation, yet the recommendation has been adopted and approved by all Members of the League unanimously. The unanimous adoption itself should bring about a legal obligation. All Members may not be bound by a recommendation, but have to be bound by a resolution. Any Member should act in accordance with the spirit and word of the Resolution; at least it is bound with an obligation to avoid any action which may prevent the execution of the Resolution, that is, any Member is at least bound not to recognize the present status of Manchuria, the "Manchoukuo". It would be unreasonable that a Member, while having approved the Resolution, takes action contrarily. Secondly, the Assembly Resolution of non-recognition is in reality not a creation of a new law, but a confirmation, a declaration, of an old principle which had been already embodied in the Article X of the League Covenant, in the Nine Power Treaty,

in the Kellogg Pact, as well as in the general Law of Nations. For "the erection of "Manchoukuo" itself has constituted a violation of the existing international treaties; its origin has already constituted a breach of law. It is legally impossible to recognize this new "State," either de facto or de jure. For any act itself violating a positive law, cannot produce a new legitimate status at all." (222)

Therefore, both the legal procedure of unanimous Resolution and its substantial contents are legally binding all the League Members.

Some other writers held that the League of Nations' Resolutions cannot deprive States of their inviolable sovereignty, that is, the action or attitude of State may be independent of ^{the} League' resolutions. Such surprising opinion was also that of Mr. Smith, the imperfection of which is doubtless, so long as the British Government solemnly keeps its loyalty to what it and its State promised. For such opinion had already happened in the earlier period of the development of International Law and constitutes a fundamental problem relative to its *raison d'être*. As a principle generally admitted by writers and Governments either approving or objecting the theory of priority of international law, the theory of priority of municipal law is not favourable; a State should at least not escape from the binding force of an international promise, in which it itself participated. (223)

If, as Mr. Smith argued, the League of Nations' Resolutions were not able to compel the British Crown to give up his independent right of recognizing "Manchoukuo", it would be that treaties and the law of nations participated by it, cannot bind its external conduct. It would mean a return to the world dominated by the theory of priority of municipal law, a denial to the existence of international law and a backward depression of European civilization. (224)

Furthermore, some writers seem to hold two other grounds for

the possibility of recognizing "Manchoukuo". One is to request the League Assembly to abolish its Resolution of Non-Recognition; the other is to urge the League Assembly to issue an admission to "Manchoukuo" as a Member. In our opinion, ^{both} these two grounds are ~~both~~ unable to stand and impossible to be carried into effect.

In the first place, the League of Nations cannot adopt such abolition either in accordance with its political prestige or with its legal procedure.

The League of Nations used to be respected as the most important product of First World War and as so far the only perfect instrument of peace, justice and the law of nations. Its prestige was increasing during the first ten years since its existence, when it had made many achievements in dealing with international disputes. The important ones were the Polish-Lithuanian Dispute on Vilna in 1920, the Finnish-Sweden Dispute on Aland Islands in 1921, the German-Polish Dispute on Upper-Silesia in 1921, the Italian-Greek Dispute on Corfu Island in 1923, the Greek-Bulgarian Dispute in 1925 and the Bolivian-Perun Dispute in 1930. Other achievements in the functioning of the Permanent Court of International Justice, the conclusion of treaties on arbitration and mediation, the registration of treaties, the success of Kellogg Pact, the international cooperation and the adjustment of frontiers between some countries such as Polish-Czechoslovakia, Czecho-Hungary, Polish-Lithuania, Yugo-Hungary, etc., are also quite appreciable.

Yet since 1931, the League of Nations failed to take effective measures to put the Covenant-breaking States into the rule of law; on the contrary, it let those Covenant-breaking States safely leave, it raised the sanction which was carried on against the aggressor, and it tolerated the British Recognition of Italian occupation of

Abyssinia which was doubtless a breach of the British obligations and the Resolutions of the Assembly on July 4, 1936. Owing to the League's weakness in dealing with the Sino-Japanese Conflict in 1931, Germany followed in 1935/^{and 1936} with her unilateral denunciation of the Treaties of Versailles and Locarno. Looking at the safe role played by Japan and Germany, Italy came to action. The conquest of Abyssinia (1936) and the intervention in Spain (1936) were soon followed by the disguised formation of Triple Alliance (1936, 1937). Japan, therefore, became to be more brave, brave in destroying covenants and international laws. The League still dared to take the actions of no action. The application of Art. XVI of the Covenant operated from weak to dead. Then, the wonderful Sino-Japanese War goes on on the one hand, and came the fate of Austria and Czechoslovakia on the other. Then came the death of Poland, Denmark, Holland, then Belgium, then Norway and France. The League of Nations, being neglected by almost all nations, escaped from Switzerland to France, quietly and gently.

The ~~wonderful~~ ^{aggressive} German victory in conquering six nations within a few months, may be not ignored by historians, yet it marks a depression of European civilization. For preserving world peace and justice, the League of Nations be still kept in mind, either now or after the War. The goal of the League system is ever right. The depression of its prestige has cost so dear; we, the peoples of the world, would rather choose the way of strengthening its prestige. For its own status, the League/^{itself} is also desirable not to abolish what it had achieved for ~~world~~ peace, justice, and interna-^{the}tional law of nations.

As to the legal point of view, the adoption of the Assembly Report on Feb. 24, 1933, was passed through the procedure given by

Art. 15, (7-10) of the Covenant, in which case the requirement of unanimity excludes the representatives of the parties to the dispute. If one made an appeal for abolishing the Resolution of Non-Recognition as adopted on Feb. 24, 1933, such appeal should be made and dealt with through the procedure stipulated in the Article XI of the Covenant. Yet any resolution, reached through this procedure, is bound to require a unanimous vote, including the representatives of the parties to the dispute, that is, including the representative of China (Arts. XI, V). It is doubtless that the representative of China would not give such approval. Therefore, as Prof. S. R. Chow said, the abolition of the Resolution of Non-Recognition by the League itself through the procedure as enacted in the existing Covenant, is legally impossible. (225)

In the second place, the admission of "Manchoukuo" by the League Assembly also would fall into the political and logical contradictions as above stated. In addition, the puppet State "Manchoukuo" has not yet satisfied the requirements as embodied in the Article I (2) of the Covenant. Not only it is not a "fully self-governing State," but also it is not qualified yet to be a "fully self-governing Dominion or colony;" for "The main political and administrative power in the "Government" of "Manchukuo", the result of the movement described in the previous paragraph, rests in the hands of Japanese officials and advisers, who are in a position actually to direct and control the administration; in general, the Chinese in Manchuria, who, as already mentioned, form the vast majority of the population, do not support this "Government" and regard it as an instrument of the Japanese." (226)

Through the above investigations, it may be understood that the so-called State "Manchoukuo" does not exist, either in fact or in law. Even the Recognition of it by other States cannot alter its status.

For Recognition is declarative to the existence of State and cannot create State. A collectivity which is not a State, remains still as not a State, even after a premature or improper Recognition. The so-called "Manchoukuo" is simply a result of illegal act, external aggression and international delinquency and would be upset as soon as the Japanese troops leave off. The Doctrine of Non-recognition, being adopted by the League of Nations and being in accordance with the spirit and word of the Covenant of the League, the Nine Power Treaty, the Kellogg Pact, as well as the general principles of International Law, has become already a universal positive law of nations. All States in the juridical international society are bound by the obligation of non-recognition of "Manchoukuo", especially those are the Member States of the League of Nations. The weakness and ineffectiveness of the Law of Non-Recognition are not ignored, yet the legal obligation of Non-Recognition and its negative and positive effects should also be not ignored. Without Recognition, "Manchoukuo" cannot become a juridical international person, living under the protection of International Law; Without Recognition, it can have no legal rights or obligations; it can have no official intercourse with other States; it "cannot be admitted to the Universal Postal Union, or other general international organisations"; its "stamps cannot be honoured for the delivery of mail abroad." (227) Without Recognition, ~~the~~ Japan ~~cannot~~ could never get a legal guarantee for her gains from aggression. It would ever be a dream for the aggressor to prevent the Chinese from legitimate restoration.

Chapter VI.

Notes:-

203. Lytton Report, 1932, the League of Nations edition, p. 97. This puppet State of Japan was declared to be "independent" on Feb. 18, 1932 and to be a "State" on March 9, 1932. Japan granted Recognition on Sept. 16, 1932. Salvador granted Recognition on May 19, 1934. Other States have maintained the attitude of non-Recognition firmly. For the facts of the Sino-Japanese Dispute, see : Prof. S. R. Chow, "The New Progress of International Law", 1934, Chap. XIV-XIX, pp. 391-554. Willoughby, "The Sino-Japanese Controversy and the League of Nations", 1935.
204. Lytton Report, pp. 106, III.
205. Wright, A.J., 1933, pp. 509-516. Prof. S. R. Chow, "The Problem of the Recognition of the so-called "Manchoukuo"", p. II.
206. Sept. 17, 1932, the Chinese Delegation submitted to the League of Nations a letter, protesting the formation of the puppet State and the Recognition made by Japan. On Sept. 20, 1932, the Chinese Government made a declaration relative to its attitude against the same new fact. On March 1, 1934, the Chinese Government made another declaration of the same character. On Sept. 18, 1940, the Chinese Prime Minister and Generalissimo, Chiang Kai-Shek, made a Declaration again, showing the eternal determination of maintaining and restoring the Chinese territorial integrity, including Manchuria, all lost territories.
207. 土作太郎, "平時國際公法", 现代法学全集 Vol. 16, p. 248.
208. Hudson, "International Legislation", Vol. I. White Book, Ministry of Foreign Affairs, China, No. 26, pp. 34-38
209. International Legislation, Vol. IV. (中日問題之真相)
210. Lytton Report, p. 71. Prof. S. R. Chow, "The Incident of Our Eastern Provinces and the League of Nations", in "The New Progress of International Law" the last six chapters.
211. Lytton Report, pp. 25, 28-29.
212. Assembly Report, 1933, (Feb. 24,), pp. 71, 73. (League's edition).
213. Lytton Report, p. 97.
214. Lytton Report, p. 17. Chailley, "La Creation et la Reconnaissance du "Manchoukuo"", R. D. I., 1934, No. I, pp. 160-163.
215. Revue de Droit International, 1934, No. I, p. 578. Prof. S. R. Chow, "The Problem of the Recognition of the so-called "Manchoukuo", pp. 20-21. 1935.
216. Official Journal, Records of Assembly, Special session, Vol. I. March 1932, p. 90; O.J. Feb. 1933, Vol. V, p. 12. Revue de droit international, 1934, No. I, p. 578.
217. Lytton Report, pp. 126-128. Assembly Report, p. 76.

218. Erich, p. 456, 474.
219. Ray, "Commentaire du Pacte de la Societe des Nations," 1930, pp. 344, 356-362.
220. 佐作太郎, "國際聯盟規約論", pp. 158-159.
221. Official Journal, 1932, Special session, /Vol. IV, p. 76.
Assembly,
222. Scelle, "Organization internationale et Le conflits sino-japonais" l'Annuaire de l'Institut international de droit public, 1933, pp. 743-746.
223. Prof. S. R. Chow, "The New Progress of International Law", Chap. II, pp. 37-96.
224. Prof. S. R. Chow, dans Social Sciences Quarterly of National Wu-Han University, China, Vol. V, No. I, 1935, p. 23.
225. Prof. Chow, Social Sciences Quarterly, 1935, p. 24.
226. O. J. Special session, /1932, Vol. IV, p. 72. Lytton Report, p. 106.
Assembly
227. Wright, A. J., 1933.
O. J. Special session, 1932, Vol. V, pp. 12-13. (Assembly)
The Advisory Committee established by the League Assembly on Feb. 24, 1933, had adopted, on June 7, 1933, a plan of "Measures on the non-recognition of "Manchukuo", which includes:
- I. (A) "Should "Manchukuo" manifest its intention of acceding to certain general international conventions, they would take all steps in their power to prevent such accession."
 - II. (B) "all postal service in Manchuria has been temporary suspended. ----all stamps issued by the puppet Government will be invalid."
 - III. (C) "Governments should pass legislation prohibiting transactions in "Manchukuo" currency".
 - V. (D) "a Government could not regard as a passport a document issued by authorities dependent on the "Manchukuo" Government", and could not, therefore, allow any of its own agents to visa such a document."
 - VI. (E) "The despatch of consuls under the circumstances does not imply recognition of "Manchukuo" as those agents are appointed for the purpose of keeping their Governments informed and protecting their nationals. --- they should do nothing which could be interpreted expressly or by implication as a declaration that they regard the authorities established in Manchuria as the proper Government of the country."
 - VII. (F) "applications for the export to "Manchukuo" territory of opium or other dangerous drugs should not be granted. --- Governments should refrain from forwarding second copy of the export authorization to "Manchukuo", since such action might be interpreted as a de facto recognition of "Manchukuo". " O. J. 1933, Vol. V. Special Assembly, pp. 11-13.
- This plan had been communicated to both the League Member-States and non-Member-States, on June 14, 1933, by the Secretary General.

Chapter VII.

CONCLUSION

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In conclusion:

(1) The existing International Law is not the product of a world sovereignty, but of an agreement with common consent. It can not determine the scope of its jurisdiction by itself. It has to operate only between mutually recognized States. It is originally artificial and regional, upon which, therefore, the Doctrine of Recognition is based.

(2) The Doctrine of Recognition, same as other principles of International Law, is not unchangeable; it is always improved with new developments.

(3) The contents of the Doctrine of Recognition have been recruited with new facts, new practices, new theories and new treaties, especially after the First World War, the most important of which is the Doctrine of Non-Recognition. There had never been a principle of International Law, either old or new, being so universal and so binding as the Doctrine of Non-Recognition; for there had never been a principle of International Law produced through the approval of so many States and through a procedure so legislative.

(4) Based upon the historical development, the different theories, and the new progress, of this Doctrine, I have tried with caution to ^{draft} ~~make~~ a code of Recognition, which ^{seems to have not yet} ~~had never~~ been tried in so ^{purposefully} ~~complete~~ a scheme by other writers. I do not believe that this attempt has been perfectly realized. It is surely waiting for further amendments and supplements. The term "code" means a systematic group of laws which is made written, express and definite in order to be a common standard of external conduct for all juridical

persons, with a legally binding force. The existing International Law is derived from many sources other than treaties. The explanations and opinions of nations to the same principle of International Law may be different from one another. Its legally binding force is also lacking, so long as it is based upon practice. The result would be inevitably a prejudice to its prestige and to the order of law. That seemed to be why the movement of codification of International Law took place. My sketching this "Code" of Recognition is also based upon this consideration.

(5) Yet this Code still is a collection of the international principles existing up to date; and these principles are still imperfect. This has been already shown by the case of "Manchoukuo". Therefore, it is not without reasons that some writers have tried to make a reaction to the existence of the Doctrine of Non-Recognition, by blaming it for its ineffectiveness in preventing the continuous existence of illegal facts and for its only affecting the interests of non-recognizing nations. (228)

(6) Fairly speaking, the favourable results of the new development of this Doctrine have been shown by the clear distinction between lawful and unlawful conceptions and by the fair and definite method and rule used for dealing with the facts of such opposite natures. Such new progress constitutes an unprecedented contribution to the Doctrine of Recognition. Yet its unfavourable aspects are just shown by such contribution, that is, imperfection. It lacks other effective and powerful measures for bringing about positive sanction and effects. Thus the existence of illegal facts does not disappear through the simple act of non-recognition, which even reversely effects a venture of aggressions and more wars. The international situations since 1933 have proved this truth; and in

history, we may remember that the Russo-Turkish Treaty of San Stefano in 1878, which violated the Treaty of Paris, 1856, was ^{eventually} overthrown by the resolute ^{the} intention of armed intervention of all/non-recognizing States. (229)

(7) Yet it would be unjust to abandon the Resolution of Non-recognition by reason of its ineffectiveness. The right way should be to ^gstrengthen it. And in International Law as a whole, it does not appear that no measures of sanction can be found; it also does not appear that other parts of International Law can not be connected with it. Take the Covenant of the League of Nations as an example. The Covenant may be regarded as the first international code of a general character. The number of its contracting parties and the scope of its functions are much more and wider than that of such Conventions as of 1815, 1830, 1831, 1856, 1878, 1885, 1899 and 1907. One important principle in it is the principle of amicable settlement (Arts. 12, 13). Another important principle is the principle of economic and military sanction in case of not resorting to peaceful measures, but of resorting to war. In Art. X of this Covenant, there are stipulations also comprehending some effective measures such as "the Members' obligations in positively preventing a situation of partition of a Member-State resulted from an external aggression," that is, other Members are bound to help the attacked Member to fight off the troops of an aggressor." (230) In fact, such cases as of the Sino-Japanese Conflict and of "Manchoukuo" are quite possible to be satisfactorily ^{ct}settled by the means as embodied in this Covenant. For instance, when the Assembly Report of Feb. 24, 1933, resulted from Art. XV, (9-10), was refused to accept by Japan and Japan resorted to war against China who complied with the Report (Art. XIII), the economic sanction as stipulated in Art. XVI (1) should be adopted

immediately. When economic sanction fails to sweep off all facts made by Japanese armed action, the military sanction and the arrangement of mutual aid as stipulated in Art. XVI (II,III) should be resolutely adopted. Then no State would dare to depend its aggressive ambition upon its own force. Then the human civilization may be saved from running back to the ancient stage of anarchy. If the situations in 1933 were dealt with as such, the Treaty of Versailles might not be ~~out~~^{off,} Japan would not be so brave in provoking so great a war and so brave in kicking out the Western influences of Far East, Italy would also have to be with care in her attitude toward Abyssinia, and, in turn, Hitler would not be so brave in conducting the Second World War. Yet the most nations failed to make up their minds to do what they were, and still are, bound by their treaty obligations to do. The fierce Sino-Japanese War has entered into its fourth year; the Second World War has entered into its second year; the League of Nations fled to France with its secretary-general resigned and civil service broken. It is very obvious that the existing International Law does not lack the effective measures of sanction; what it does lack is the loyalty of the Members.

(8) Thus, in regard to the Doctrine of Recognition, there are two important problems: one is how to recruit the measures for executing this Doctrine; the other is how to carry out this Doctrine definitely and effectively. For the former, we may refine the old measures or create new ones. For the latter, it would be relating to the basis of International Law. By tradition, the basis of International Law is common consent, from which nations have too much freedom; in consequence, the international community can hardly be kept from anarchy; the contradictions both in the theory and in the execution of this Doctrine become inevitable; and much of the writers' arguments

are waste. Its real settlement should depend upon the determination, faith and loyalty of nations. Through such spirits and mutual cooperation, the realization of the status and prestige of International Law as that of municipal law and the logic appearance of its theory and its application are possible to be achieved. Then the recruiting of the measures of execution can be usefully considered.

(9) Therefore, we should first sincerely approve the Pope's peace proposal, made before the Second World War, of strengthening the structure of the League of Nations. (231) The number of the League Members had reached in 1934 around sixty. Almost all States had had the Membership except the United States, and the United States was one of the founders of the League, having participated in many parts of the League's organizations and activities. (232) She is also ^{morally} bound to cooperate with the League by the instruments of Kellogg Pact and Pan-American Agreements which are in the same position as the League. If all nations were convinced of their duty to human civilization and their benefits in mutual cooperation and in a society of law, the United States should first join in the collective efforts of the League to improve and strengthen the League's structure and to make the International Law as a really universal law with perfect legal binding force. The First World War did convince the peoples of the world of their way and offered the League Covenant. Yet the experiences during the past twenty years have proved that such convince was not enough. The immediate hope is fully depended upon this second world struggle.

(10) Secondly, the best way to recruit the measures of the execution of this Doctrine is to make use of the old measures. Among the old measures, we have had already two: one is reprisal, the other is non-recognition. These two measures may be further supplemented by the following:

- (A) Economic sanction;
- (B) Military sanction;
- (C) Regional and mutual assistance;
- (D) individual assistance;
- (E) The judicial non-recognition by the Permanent Court of International Justice, the refusal to grant protection or immunity by this World Court;
- (F) The judicial non-recognition by municipal courts;
- (G) The refusal to enter into social intercourse or cooperation by States and by international institutions;
- (H) Declaration of war;
- (I) The rupture of official relations;
- (J) International collective boycott and national boycott; (233)
- (K) other measures which are effective for punishment and for crashing illegal facts and restoring status quo ante.
- (L) All efforts serving the explanation and progress of International Law should be directed to maintaining and strengthening the prestige and severance of the rule of law.

(II) So far as the European type of International Law remains valid, China is entitled to take the following measures in regard to the Japanese puppet State "Manchoukuo":

- (A) China keeps her right to ^{recover} ~~take back~~ her Eastern Four Provinces, the seat of the so-called "Manchoukuo", at any time, without any restriction, by her own force. (234)
- (B) In case of (A), China has a right to demand the other contracting parties to her treaties relative to the case for military aid in addition to economic aid.
- (C) China has a right to prevent all the other contracting parties to her treaties relative to the case from taking any action violating

~~their treaty~~ obligations, such as the Recognition of "Manchoukuo".

(D) In case her treaty contracting parties violated their treaty obligations and granted Recognition to "Manchoukuo", China has at least such rights as the following: (a) to demand other contracting parties to act collectively or individually to punish the treaty breaking States; (b) to demand other treaty contracting parties cooperating with China, not to recognize any illegal result as produced by the new treaty-breaking States. (c) solemnly to declare not to recognize any result produced by ^{the} all/treaty-breaking States in question, despite the attitudes of other States. After ^{having recovered} ~~taking back~~ her Eastern Four Provinces, China will not recognize all facts and foreign rights in those provinces produced without the consent of ^{the} Chinese ^{legitimate} Government after September 18, 1931. (d) to demand indemnity or compensation of all treaty-breaking States in question; (e) to take the measure of boycott, either unorganized or organized, against the treaty-breaking States; (f) to resort to war against the treaty-breaking States at any time, either now or after hundreds years, which would be never forgotten by Chinese people and their children; (g) to reserve the right to create puppet States in the treaty-breaking States as an instrument of China, either by force or by other means; (h) to take any measure as she deems proper, for reprisal against the treaty-breaking States.

(235)

(I2) If, after this Second World War, nations were to ^{have} no sincere intention, and to ^{have} ~~show~~ no sign, of approving, and being loyal to, the international order of law, the guarantor of justice and peace, and if the Resolution of Non-recognition were unjustly and unlawfully abolished, in any form, it would need not to wait for another "twentieth year". It would be a terrible tragedy of European civilization which is never desirable; though we do not forget our Father and our tradition

duty.



Chapter VII.

Notes:-

228. See Note 8.
See also Prof. S. R. Chow, Vol. V. No. I, 1935.
229. McNair, B. Y. I. L., 1933, pp. 65-74.
230. See Note 220.
See also Prof. S. R. Chow, Vol. V, No. I, p. 19. 1935.
231. Pope's Peace Proposal made before the Second World War,
August 1939.
232. See International Conciliation,
Official Journal.
233. For the status of boycott, see Note I62 (e) re Assembly
Report, 1933, Lauterpacht, Hwai-Chun LU.
234. McNair, B. Y. I. L., 1933, p. 5.
235. See also:
Prof. S. R. Chow, "The New Aspect of Diplomacy in the Far
East", Lok-Chia Monthly, National
Wu-Han University, China, Vol. II,
No. I, 1934, pp. 553-560.
(周鯁生教授講: "遠東外交之新局面",
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