permanent conciliation commission, and failing a settlement by that means either party may bring the dispute before the Permanent Court of International Justice, which may deal with non-legal disputes *ex aequo et bono*. Moreover, a dispute as to the interpretation of the conciliation and arbitration treaty itself may be carried before the Permanent Court of International Justice by either party. A treaty between Belgium and Denmark,[15] signed on March 3, 1927, goes almost as far, providing for the submission of all questions not otherwise settled to the Permanent Court of International Justice. Other treaties which go much beyond the scope of the Franco-American treaty are the following: France-Switzerland, April 6, 1925; Greece-Switzerland, September 21, 1925; Norway-Sweden, November 25, 1925;[16] Denmark-Sweden, January 14, 1926;[17] Denmark-Norway, January 15, 1926;[18] Finland-Sweden, January 29, 1926;[19] Denmark-Finland, January 30, 1926; Roumania-Switzerland, February 3, 1926;[20] Austria-Czechoslovakia, March 5, 1926;[21] Denmark-Poland, April 23, 1926;[22] Italy-Spain, August 7, 1926; Germany-Italy, December 29, 1926; Belgium-Switzerland, February 5, 1927.

The foregoing analysis and comparison seems to the writer to justify the conclusion that the United States has lost her share of the leadership in the movement for international arbitration, and that she is today lagging far behind other countries in the development of this means of peaceful settlement of disputes. One of the chief reasons for this situation is the fact that the United States has no part in maintaining and developing the permanent machinery of the League of Nations and the Permanent Court of International Justice, and is therefore precluded from a full utilization of such machinery in its arbitration treaties. At any rate, the preamble to the new treaty contains several statements which can only be read in other countries as irony.

MANLEY O. HUDSON.

THE SETTLEMENT OF WAR CLAIMS ACT OF 1928

On March 10, 1928, the President signed the Settlement of War Claims Act of 1928. It embraces subjects of great importance to international law and to American foreign policy.[1]

The Act provides in its main divisions for three distinct matters: (1) the payment of the American claims against Germany, Austria and Hungary; (2) the return of the property of nationals of Germany, Austria and Hungary,

[15] League of Nations Treaty Registration, No. 4542. [16] *Ibid.* [17] *Ibid.*, No. 1417.
[18] 51 League of Nations Treaty Series, 251.
[19] League of Nations Treaty Registration, No 1418.
[20] 49 League of Nations Treaty Series, 367. [21] 55 *Ibid.*, 91. [22] 51 *Ibid.*, 349.

[1] The full text of the Act will be found in the Supplement to this JOURNAL, p. 40.

held by the Alien Property Custodian; (3) payment by the United States for the private property of German citizens requisitioned during the war by the United States Government, mainly merchant ships and patents.

1. The American claims against Germany arise out of losses sustained by American citizens during the late war, the grounds of German liability being based upon Annex 1 to Article 232 of Part VIII (Reparation clauses) and upon Article 297 of Part X (Economic clauses) of the Treaty of Versailles. These articles in their relation to the claims of American citizens and to the awards of the Mixed Claims Commission, United States and Germany, were discussed in editorials in this JOURNAL (Volume 19, 133; Volume 20, 69). Inasmuch as many of these clauses, particularly so far as concerns war damage, impose liability without fault, it may be said that the decisions of the commission do not represent precedents as to liability recognized by international law, apart from the specific treaty under which the cases were decided. Although this is not the first time mixed claims commissions have had an umpire who was a national of one of the countries before the tribunal, it is probable that few umpires have performed their arduous and responsible task with as much skill and general approval from both sides as has Judge Parker. His work is a tribute to the institution of international arbitration and reflects credit upon his country.

American claims to an amount of nearly one and a half billions of dollars were submitted to the commission. Awards have been rendered to the amount of some 120 million dollars, exclusive of interest at 5 per cent for an average period of some eight years. This amount is likely to be increased somewhat by the submission of "late claims," that is, claims which were not submitted by April 9, 1923, in accordance with the terms of the original agreement of August 10, 1922. The Act requests the President to enter into negotiations with Germany to secure, if possible, an agreement for the submission of these "late claims." The ratio between claims and awards, notwithstanding the broad terms of the Treaty, is well within the average of past claims commissions.[2] Some twelve thousand claims have already been considered, a larger number than has ever been submitted to a mixed claims commission.

For some years the question of the method of paying these claims has been a source of doubt and difficulty to the two governments. The Knox-Porter Resolution of July 2, 1921, had provided that the sequestrated property belonging to German nationals was to be retained until "suitable provision" had been made for the satisfaction of the claims of American nationals against Germany. The Treaty of Versailles, however, by directing all of Germany's external payments through the channel of the Reparation Commission, had disabled that country from making any independent promise to the United States. Finally, after the London Agreement of 1924, known as the Experts' (Dawes) Plan and the Paris Agreement of January, 1925, among the "Allied and Associated Powers," a plan was devised for the dis-

[2] See Borchard, Diplomatic Protection of Citizens Abroad, pp. 857–858.

tribution of payments from Germany, by which the United States was to receive a priority payment of 55 million marks a year commencing September, 1926, on account of Rhine Army Costs, and an amount of 2¼ per cent of the German reparations, not to exceed 45 million marks a year, on account of claims. These sums have been regularly paid to date.

In the so-called Mills Bill of 1926, evolved in the Treasury Department, it was provided that the two sums above mentioned were to be used for the payment of American claims. Eight years would have sufficed to discharge the claims; and the private property was to have been returned outright to its owners. Democratic opposition in Congress interfered with this plan, so that the 1927 and 1928 sessions of Congress dealt with another plan which in substance is the basis of the present Act. The Act leaves out of account the Rhine Army Costs (see this JOURNAL, Volume 19, p. 359). The Act provides that the Special Deposit fund or account out of which the American claims are to be paid is to be made up from the following sources: 25 million dollars out of the "unallocated interest fund" arising out of interest accumulated prior to March 4, 1923, the date of the Winslow Act, on sequestrated cash funds held in the Treasury; 20 per cent of the principal of the German private property, estimated to amount to some 50 million dollars; one-half of the amount to be appropriated for the private property—ships, patents and radio station—requisitioned by the United States Government, a sum estimated to amount to some 50 million dollars (one-half of a maximum of 100 million dollars authorized for this purpose); and the receipts from the 2¼ per cent annual payment under the Dawes Plan. Payment of claims of the United States Government, amounting to some 60 millions of dollars, arising mostly out of the sinking of Shipping Board vessels and of vessels insured by the Federal War Risk Insurance Bureau, is postponed until the private claims are taken care of, in view of the fact that the private property was designated to be held only until "suitable provision" had been made for the satisfaction of private claims. The government, moreover, had derived substantial profits from its war risk insurance.

Some 60 million dollars of private claims awards are owned by insurance companies who appeared before the commission as subrogees of owners of ships and cargoes sunk during the war. Strong demands on the floor of the House and Senate to defer these claims until the end of the list of the American claimants were defeated by close votes, so that all the American claimants share alike. The Act provides for the immediate payment of all claims under $100,000, inclusive of interest, and for a payment of $100,000 on account of all the larger claims, no claimant, however, to receive more than one payment. The larger claims, now 178 in number, will then share *pro rata* the balance of the fund in the Special Deposit Account. It is estimated that during this year some 70 per cent of all the larger claims will have been paid off. Interest at 5 per cent is to run on all the unpaid balance until future sums to be received from Germany liquidate the account. When 80 per cent of the American claims have been paid, these future sums are to be

divided equally among the claimants, the German sequestrated private property owners and the ship and patent owners.

2. The bill in its title provides "for the ultimate return of all property held by the Alien Property Custodian." In the light of American tradition, the treaty of 1828 with Prussia, the promise of President Wilson, the well-settled rule of international law, and the terms of the Knox-Porter Resolution which contemplated the complete return of the property as soon as arrangements for the payment of American claims had been made, insistent demands had been made in Congress and throughout the country for the early return of the sequestrated property. In 1923, the Winslow Act had provided for the return of all trusts under $10,000 and of $10,000 on the larger trusts, together with all interest earned subsequent to March 4, 1923, up to $10,000 per annum. In 1925, the Treasury Department assumed an active interest in the subject, and after failure of the Mills Bill, suggested a plan by which the American claimants and the German owners, as the principal parties in interest, worked out the terms of an agreement by which the larger American claimants consented to the postponement of payment of some 20 per cent of their claims in return for the German owners' consent to the temporary retention for the present of 20 per cent of their sequestrated property and of the unallocated interest fund on condition of provisions for their future reimbursement. The Act carries this agreement into effect, so that the German owners are to receive now 80 per cent of their property in kind or cash, all interest earned since March 4, 1923, in full, and 5 per cent interest-bearing Participating Certificates in future payments to come to the United States under the Dawes Plan on claims account (45 million marks per annum) for the withheld 20 per cent of the property. For the 25 million dollars of unallocated interest fund, non-interest-bearing Participating Certificates are to be issued. An amendment of Senator King, accepted by the Senate, for the payment of interest on these latter certificates, was lost in conference. It is estimated that it will take about 25 years, in normal course, to pay off the Participating Certificates in full. Section 2 of the bill as it passed the House provided for a declaration of policy in favor of the full payment of the American claims and the return of all the sequestrated property in full. The Senate struck this section out. The words "ultimate return" in the preamble perhaps justify the belief that Congress will not permit the certificates to go to default, even if the Dawes Plan breaks down, but the Act expressly provides that "the United States shall assume no liability, directly or indirectly, for the payment of any such Certificates, or of the interest thereon, except out of the funds in the Special Deposit Account available therefor, and all such Certificates shall so state on their face." Should these funds some day prove inadequate, the provision would become inconsistent with the preamble of the bill above mentioned.

The Act provides for the complete return of all the property of Austrian and Hungarian citizens with interest or income from the time of seizure. This is to be done as soon as these countries deposit in the Treasury a sum

sufficient to take care of the American claims against these countries, now estimated not to exceed about four million dollars. Provision for such deposit, it is understood, is about to be made. Judge Parker is authorized to fix the sum at which the krone, where involved in awards arising out of debt claims of American citizens, is to be valorized. (See this JOURNAL, Volume 22, p. 142.)

3. The bill provides for the submission to an arbiter to be named by the President (who has since designated Judge Parker), of the claims of the German owners of merchant vessels, patents and a radio station, requisitioned by the United States during the war. The ships were taken over by the President under a joint resolution of Congress of May 12, 1917 (40 Stat. 75). The resolution provided for an appraisal to be made by the Navy Department as of the time of taking, which appraisal was to be "competent evidence in all proceedings on any claim for compensation." The owners of the vessels had brought claims for the 1917 value of the ships in the Court of Claims on the theory of an implied contract by the United States to pay for them. The court did not find any implied contract. The Naval appraisal for the 87 vessels requisitioned, amounting to some 600,000 tons, was about 34 million dollars, or about $50 per ton. Ordinary tonnage at that time had a market value of about $300 per ton. In the testimony of the principal appraiser before the Senate Finance Committee, it appeared that the Navy Board had taken 1914 values and from those had plotted a curve of depreciation. The sum mentioned was thus arrived at. This appeared to Congress to be an underestimate, so that the bill provides that the arbiter may make a new finding as to the value of the ships, not to exceed for ships, patents and radio station, 100 million dollars in all. Senator Smoot on March 3, 1927, expressed the view that 85 million dollars was to be allocated to ships. An amendment to reduce the maximum to 75 millions was lost in both House and Senate. The present Act provides that "Such compensation shall be the fair value, as nearly as may be determined, of such vessel to the owner immediately prior to the time exclusive possession was taken under the authority of such joint resolution, and in its condition at such time, taking into consideration the fact that such owner could not use or permit the use of such vessel or charter or sell or otherwise dispose of such vessel for use or delivery, prior to the termination of the war, and that the war was not terminated until July 2, 1921." This is a curious provision, for the reference to the disability of the owner to dispose of his vessel before July 2, 1921, is contrary to fact. Free trade was restored between the United States and Germany, and ship communication reëstablished on July 14, 1919, by virtue of an order of the War Trade Board. The owners could therefore have freely disposed of their vessels on July 14, 1919. The war terminated for different purposes at different times.[3] For trade purposes the war terminated July 14, 1919, not July 2, 1921.

[3] Hudson, M. O., "The Duration of the War Between the United States and Germany," 39 Harv. L. Rev. 1020.

It is also to be observed that the owners of this requisitioned private property are to receive only half of their awards in cash and the other half in interest-bearing Participating Certificates to be served out of the Special Deposit Account (Dawes payments) above mentioned.

Several features of the Act deserve comment. It has been the writer's opinion that one of the worst arguments in support of the ratification of the Treaty of Versailles was the contention that it would enable us to confiscate private property, as some of the European countries have in fact done. Senator Knox to a limited extent unwittingly yielded to this argument by incorporating in the Knox-Porter Resolution the provision that the sequestrated private property was to be retained until the payment of the American claims had been provided for. Senator Knox expected to bring about the return of the property as soon as the treaty with Germany had been ratified, but death cut short his plans. The compromise with principle brought a delay of nearly seven years. It was the Treasury Department, actuated in part by the possible effects of the precedent of confiscating private property upon the enormous American investments abroad, which initiated the Executive policy of return. In the process of education, Senator Borah played a prominent part. The plans were complicated by the provision for the satisfaction of the American claims against Germany, and only in 1926 was a plan definitely evolved for breaking the deadlock. The present Act is necessarily a compromise. Whether the payment of the 2¼ per cent, which the Allies permitted us to receive at Paris, in 1925, constitutes or not that "suitable provision" which the Knox-Porter Resolution contemplated, will remain a debatable question. The claims would ultimately have been paid off in instalments, and we have not heretofore, except for Jackson's threat against France, undertaken to lay hold of private property because a foreign government did not meet its national obligations either promptly or at all. The principle is dangerous and the world will await with interest the outcome of the precedent of confiscating private property, under Article 297 of the treaty, which several of the European countries have indulged. (See this JOURNAL, Volume 18, p. 523.) By undertaking to return the sequestrated property, the United States establishes itself again as a free money market and a safe place for foreign investments. But all danger of confiscation is not averted. The failure to pay interest on the unallocated interest fund, though excused as a refusal merely to pay interest on interest, the failure to pay interest from the time of the requisition of private property or for the use of private property down to July 2, 1921, the failure to make good such transactions as those involved in the Chemical Foundation,—all smack of confiscation. Unless the Participating Certificates are made good, there will be confiscation. The debates disclosed a remarkable unanimity against any purpose to confiscate, and some votes were cast against the bill because the provision for the temporary retention of 20 per cent seemed too greatly to resemble confiscation. The Participating Certificates could be

redeemed out of the Rhine Army Costs, which may well be devoted to that purpose.

On the whole, the bill may be approved as the best attainable compromise under so complicated a state of facts and so divergent a group of interests. To combine so many important matters, general and specific, in one bill, is of itself an achievement of draftsmanship. But if one lesson more than another emerges from these matters, it is that the United States, and indeed any other intelligent country, should not again sequestrate enemy private property. The possibility of injury to the nation is offset by the freedom of one's own property abroad. Such possibility of injury, however, is not commensurate with the danger of undermining the national morality by yielding to the temptation to spoliation. The Chemical Foundation transaction, and other "sales" of sequestrated property amounting to practical confiscation, were undertaken after the armistice, when confiscation of enemy property, just as killing the enemy, became internationally illegal. The consequences of war are often more harmful to civilized institutions than war itself. To the writer it has seemed that the apparent inability to resist the temptation to spoliate private property, now embodied in the Treaty of Versailles, is likely to prove one of the most costly of all modern retrogressive innovations. Perhaps the best way to check its effect as a precedent is to stipulate in treaties not merely that private property may not be confiscated, but that it may not even be sequestrated.

EDWIN M. BORCHARD.

THE NEW FRENCH CODE OF NATIONALITY

On August 10, 1927, a new law on nationality was promulgated in France. Like all important Acts of the French Parliament in these days, it was followed by a decree supplying the necessary details for its completion and execution. It was also accompanied by a circular of the Minister of Justice containing instructions to the prefects and *parquets* concerning the application of its provisions. Unlike the law of 1889 which it supersedes and which, for the most part, was incorporated in the Civil Code (Arts. 8–21), the new law was not inserted in the code but, like the nationality legislation of various other Continental European States, was proclaimed as a separate "code of nationality." It is composed of fifteen articles which deal in turn with the nationality of Frenchmen, *jure soli* and *jure sanguinis*, naturalization of aliens, the effect of marriage on the nationality of women, and the loss and recovery of nationality.

The general purpose of the new law was to remove certain defects in the law of 1889, to fill up the *lacunae* which it contained and to render it easier for aliens to acquire French nationality. The large influx of foreigners into France in recent years—the number is estimated to be actually more than