

the main difficulties in the matter of military service of persons possessing two nationalities, it is nevertheless a source of gratification that the principle of single military service has now received the imprimatur of an international convention. Probably other ratifications and accessions will follow. And in the meantime, the municipal law of such countries as France and Italy has relaxed some of its claims to the military service of those who, even without consent, have acquired another nationality. In spite of the current era of military inflation, the climate of opinion in the matter of military claims on technically dual nationals is changing.

The third convention now in force is a protocol relating to a certain case of statelessness,<sup>5</sup> to the effect that in countries not conferring nationality *jure soli*, a person born of a mother who is a citizen and of a father without nationality or of unknown nationality shall have the nationality of the country of birth. This protocol, adopted by Brazil, Great Britain, India, Poland, China, Chile, Australia, Salvador, South Africa, and The Netherlands, represents the present law of the United States. A fourth proposed protocol, requiring signatories to receive their former nationals who are or have become stateless and have become permanently indigent or criminally convicted abroad,<sup>6</sup> has been accepted only by Brazil, Great Britain, Australia, South Africa, India, China and El Salvador, and is therefore not yet in force.

These first tangible results of the Codification Conference of 1930, achieved in the face of much discouragement, give promise of the eventual expansion of the movement for the coöperative reconciliation of conflicts of municipal law in fields which impinge on international relations. EDWIN BORCHARD

#### IMMUNITIES OF THE BANK FOR INTERNATIONAL SETTLEMENTS

The measures recently taken for extending the immunities of the Bank for International Settlements afford a striking example of the innovations which have been introduced in the process of international legislation during the past years.

The basic provisions for the establishment of the Bank for International Settlements were embodied in Articles 6 and 10 of the agreement concerning the complete and final settlement of the question of German reparations, signed at The Hague on January 20, 1930.<sup>1</sup> A convention signed at The Hague on the same date<sup>2</sup> incorporated the constituent charter of the Bank, and its Statutes<sup>3</sup> were annexed to the convention. The Statutes came into force on February 26, 1930, and the Bank began its operations on May 17,

<sup>5</sup> This JOURNAL, Supp., Vol. 24 (1930), p. 206.

<sup>6</sup> *Ibid.*, p. 211.

<sup>1</sup> 5 Hudson, *International Legislation*, p. 135; this JOURNAL, Supp., Vol. 24 (1930), p. 262. See the writer's comment in this JOURNAL, Vol. 24 (1930), p. 561.

<sup>2</sup> Hudson, *op. cit.*, p. 307; this JOURNAL, *ibid.*, Supp., p. 323. Switzerland was a party to the convention.

<sup>3</sup> Hudson, *op. cit.*, p. 314; this JOURNAL, *ibid.*, p. 326. For an analysis of the Statutes, see the writer's comment in this JOURNAL, Vol. 24 (1930), p. 561.

1930. Ratifications of the Hague Agreement were duly deposited by Australia, Belgium, Canada, France, Germany, Great Britain, Greece, India, Italy, Japan, New Zealand, Poland, Portugal, Rumania, South Africa, and Yugoslavia.

Article 10 of the Hague Agreement of January 20, 1930, provides for the privileges and immunities of the Bank, as follows:

The Contracting Parties will take in their respective territories the measures necessary for securing that the funds and investments of the Bank, resulting from the payments by Germany, shall be freed from all national or local fiscal charges.

The Bank, its property and assets, and also the deposits of other funds entrusted to it, on the territory of, or dependent on the administration of, the Parties shall be immune from any disabilities and from any restrictive measures such as censorship, requisition, seizure or confiscation, in time of peace or war, reprisals, prohibition or restriction of export of gold or currency and other similar interferences, restrictions or prohibitions.

Fuller provisions were contained in the Constituent Charter granted to the Bank by Switzerland,<sup>4</sup> in accordance with the provisions of the Convention of January 20, 1930. Paragraphs 6, 7, 8, and 9 of the Charter deal with immunity from Swiss taxation, in detail; paragraph 10 adds the following provision:

The Bank, its property and assets and all deposits and other funds entrusted to it shall be immune in time of peace and in time of war from any measure such as expropriation, requisition, seizure, confiscation, prohibition or restriction of gold or currency export or import, and any other similar measures.

On July 19, 1933, at a meeting of the technical subcommittee of the Second Monetary Subcommittee of the Monetary and Economic Conference at London, the Chairman (M. Kienbock) called attention to the second paragraph of Article 10 of the Hague Agreement, and to the "fact that a number of Governments had not acceded" to the agreement. The fact was in no way surprising, for no invitations to accede had been issued. The Chairman then suggested that

in view of the fact that the Second Sub-Commission, on the Sub-Committee's proposal, had adopted a resolution on the function of the Bank for International Settlements, it would be well to remind Governments which had not yet acceded to that agreement of the desirability of as many countries as possible acceding to it. A letter on the subject would be addressed by the appropriate body to the Governments concerned.

This suggestion was adopted as a recommendation by the technical subcommittee.

<sup>4</sup> 46 *Recueil officiel des lois et ordonnances* (1930), pp. 67, 305.

To ensure "uniform decision on the part of the various Governments which may be prepared to give effect to the Sub-Committee's recommendations," the Bank for International Settlements drew up the following draft relating to the privileges in question: <sup>5</sup>

Whereas the Bank for International Settlements has been constituted and is functioning for certain purposes of general interest and utility and in particular for the purpose of promoting the co-operation of Central Banks and providing additional facilities for international financial operations;

Whereas in order to allow such purposes to be achieved by and during the functioning of the Bank for International Settlements certain immunities were granted to it by the signatory Governments of the principal Hague Agreement dated 20th January, 1930 and also by the Swiss Confederation;

Whereas the Sub-Committee for Permanent Measures of the Monetary and Financial Commission of the Monetary and Economic Conference sitting in London in June and July, 1933 unanimously approved the suggestion made by the Chairman of the Sub-Committee that as many countries as possible should join the signatory Governments of the said Convention and Switzerland in the action taken by them in regard to such necessary immunities;

Whereas the Government of ..... desires for its part to comply with this suggestion;

Now therefore

The Government of ..... hereby confirms that

(1) The Bank for International Settlements, its property and assets and also the deposits or other funds entrusted to it on the territory of, or dependent on the administration of, ..... shall be immune from any disabilities and from any restrictive measures such as censorship, requisition, seizure or confiscation, in time of peace or war, reprisals, prohibition or restriction of export of gold or currency and other similar interferences, restrictions, or prohibitions.

(2) Any dispute between the Government of ..... and the Bank for International Settlements as to the interpretation or application of this present shall be referred to the Arbitral Tribunal provided for by the said Agreement of January 20th, 1930.

The ..... Government shall appoint a member to sit on the occasion of such dispute, the President having a casting vote.

In having recourse to the said Tribunal the Parties may nevertheless agree to submit their dispute to the President or to a member of the Tribunal chosen to act as sole Arbitrator.

On August 29, 1933, the Secretary General of the League of Nations, acting as Secretary General of the Monetary and Economic Conference, transmitted to governments the text of the suggestion made at London on July 19, enclosing the above draft at the request of the Bank, and asked to be informed of any action that might be taken.<sup>6</sup> In a further communication of June 29, 1934,<sup>7</sup> the Secretary General stated that "as regards the procedure to be followed in connection with the grant of the privileges referred to, it is clearly a matter for each individual Government to determine the requisite internal measures in conformity with the constitutional law of the country." He added, also, at the suggestion of the Bank, that the latter had defined

<sup>5</sup> League of Nations Document, C.L.173.1933.II.A.

<sup>6</sup> *Ibid.*

<sup>7</sup> C.L.124.1934.II.A.

the scope of the privileges accorded under Article 10 of the Hague Agreement, in the following terms:

The question was raised whether these privileges have the effect of exempting the Bank for International Settlements from ordinary civil and commercial proceedings on the part of its creditors or from the accompanying penalties of execution. It is the opinion of the Bank for International Settlements that this cannot be either the object or the effect of the proposed privileges. Attachment and other forms of compulsory execution are in no sense prohibited by Article 10 of the Hague Agreement. The Statutes of the Bank for International Settlements, moreover, explicitly provide in Article 57 that, apart from the exceptional cases to which Article 56 relates or cases for which special provisions have been laid down with regard to arbitration, the Bank may be "proceeded against in any court of competent jurisdiction."

The action taken by governments in response to the suggestion was embodied in various forms.

In Austria, a federal law of July 12, 1934,<sup>8</sup> followed the text of paragraph (1) of the Bank's draft, and as to arbitration it provided as follows:

The Federal Government is empowered to submit any dispute between it and the Bank for International Settlements as to the interpretation or application of Article 1 to an Arbitral Tribunal to which each Party shall appoint a member. In the event of the two members of the Arbitral Tribunal being unable to agree in the election of a President, the Austrian Federal Government shall recognise as President whoever is nominated for the purpose by the President of the Permanent Court of International Justice at The Hague.

In Bulgaria, a legislative decree of June 4, 1934<sup>9</sup> followed verbatim the substantive parts of the Bank's draft. In China, a decision of the Government<sup>10</sup> was published on May 6, 1935, which contained the substance of paragraph (1) of the Bank's draft and a provision on arbitration similar to that in the Austrian law. On behalf of the Free City of Danzig, the Polish Government on October 9, 1934, made a formal declaration,<sup>11</sup> following the Bank's draft verbatim.

Denmark, by a royal resolution of May 3, 1935,<sup>12</sup> subject to approval by the Rigsdag, accepted the provisions in paragraph 2 of Article 10 of the Hague Agreement, but reserved the right to denounce this clause on twelve months' notice. Egypt, by a decree-law No. 14, 1936,<sup>13</sup> provided for the Bank's immunity in terms substantially similar to those in paragraphs (1) and (2) of the Bank's draft. In Finland, the House of Representatives adopted a law<sup>14</sup> on December 5, 1935, reading in part as follows:

<sup>8</sup> *Bundesgesetzblatt*, 1934, II, p. 328; League of Nations Document, C.L.206(a).1934.II.A. Annex.

<sup>9</sup> C.L.31(a).1935.II.A. Annex.

<sup>11</sup> C.L.206(a).1934.II.A. Annex

<sup>13</sup> C.L.86(a).1936.II.A. Annex.

<sup>10</sup> C.L.122(a).1935.II.A. Annex I.

<sup>12</sup> C.L.93(a).1935.II.A. Annex.

<sup>14</sup> C.L.2(a).1936.II.A.

Paragraph 1. The Bank for International Settlements, its property and assets, and also the deposits or other funds entrusted to it, shall be immune from any measures such as expropriation, seizure or confiscation, in time of peace or war, prohibition or restriction of exports or imports of gold or currency, and other similar administrative measures.

Paragraph 2. The competent authorities shall refrain from taking any measures of such a nature as to encroach upon the privileges granted to the Bank for International Settlements in paragraph 1.

Paragraph 3. Any dispute between the Government of Finland and the Bank for International Settlements as to the interpretation or application of paragraph 1 shall be referred to an arbitral tribunal. Such tribunal may be, as the Government chooses, either the arbitral tribunal provided for by Article 15 of the Hague Agreement of January 20th, 1930, or another arbitral tribunal constituted for the purpose, to which each of the parties shall appoint one member, the two members electing their chairman. Should the two arbitrators be unable to agree upon the choice of a chairman, the latter shall be appointed by the President of the Permanent Court of International Justice.

Iceland's action, in a royal resolution of June 19, 1935,<sup>15</sup> was in terms similar to that of Denmark. By a letter addressed to the Secretary General on January 30, 1934, the Government of the Grand Duchy of Luxemburg stated that it "accepts by the present communication the Hague Agreement" with respect to the Bank's immunities;<sup>16</sup> this letter does not seem to have been followed by any further communication. On November 27, 1933, the Netherlands Government replied to the Secretary General that it "accepts the draft" drawn up by the Bank.<sup>17</sup> On July 16, 1935, the National Congress of Nicaragua adopted a decree<sup>18</sup> which followed the Bank's draft verbatim. On July 13, 1935, the Norwegian Government made a declaration<sup>19</sup> following substantially paragraph (1) of the Bank's draft, and containing the following provision on arbitration:

Any dispute between the Norwegian Government and the Bank for International Settlements as to the interpretation or application of the present declaration shall be referred to an Arbitral Tribunal composed of three members. Each of the Parties shall appoint a member to sit on the Tribunal and the umpire shall be chosen by agreement between the two Parties. Should the two Parties not agree on the choice of the umpire, the President of the Permanent Court of International Justice shall be requested to make this appointment.

The Norwegian Government retained the right to denounce the declaration on twelve months' notice.

The affirmative action taken by the various governments raises interesting legal questions, particularly as to the juridical character of such declarations as that made by Norway, and as to the extent of the obligation to submit to arbitration in consequence of a provision in such a national law as that of Finland.

<sup>15</sup> C.L.146(a).1935.II.A. Annex.

<sup>16</sup> C.L.124.1934.II.A. Annex.

<sup>17</sup> *Ibid.*

<sup>18</sup> C.L.186(a).1935.II.A. Annex.

<sup>19</sup> C.L.122(a).1935.II.A. Annex II.

Several other governments replied to the Secretary General's communications. By a letter of March 6, 1934,<sup>20</sup> the Estonian Government expressed a willingness to accord to the Bank "the privileges contained in Article 10 of the Hague Agreement," but no further action seems to have been taken. On the other hand, two governments expressed an inability to give effect to the recommendation adopted at London. On November 10, 1933, the Government of the United States of America stated<sup>21</sup> that as Article 10 of the Hague Agreement "provides, among other things, that gold or currency belonging to the Bank . . . should be immune from prohibition or restriction," executive orders in effect in the United States would not permit the grant of such immunity; under the executive order of August 28, 1933,<sup>22</sup> it was stated, gold earmarked before April 20, 1933, "would be exempt from restrictions and would be exportable," but "no earmarking of gold after that date or export of gold earmarked after that date is permissible." However, the United States expressed a willingness to reconsider its position "when and as circumstances may change." On November 22, 1933, the Government of Siam stated<sup>23</sup> that, as Siam had no central Bank, the question did not arise for Siam.

Meanwhile, a more formal step has been taken by certain of the parties to the Hague Agreement and Switzerland. On July 30, 1936, a protocol was opened for signature at Brussels,<sup>24</sup> with respect to the immunities of the Bank. The preamble to this protocol states that the second paragraph of Article 10 of the Hague Agreement and paragraph (called article) 10 of the Constituent Charter "only imperfectly express the intention of the Contracting Parties and are liable to give rise to differences of interpretation"; it declares the purpose "to define the scope of the said articles and to substitute for the terms employed expressions which are clearer and more capable of assuring to the operations of the Bank for International Settlements the immunities which are indispensable to the accomplishment of its task." To this end, Article 1 of the protocol provides:

The Bank for International Settlements, its property and assets, as well as all the property and assets which are or will be entrusted to it, whether coin or other fungible goods, gold bullion, silver or any other metal, precious objects, securities or any other objects the deposit of which is admissible in accordance with banking practice, are exempt from the provisions or measures referred to in paragraph 2 of Article X of the Agreement with Germany and in Article X of the Constituent Charter consecutive to the Convention with Switzerland of the 20th January, 1930.

The property and assets of third parties, held by any other institution or person, on the instructions, in the name or for the account of the Bank for International Settlements, shall be considered as entrusted to the Bank for International Settlements and as enjoying the immunities laid down by the articles above mentioned by the same right as

<sup>20</sup> C.L.124.1934.II.A. Annex.

<sup>21</sup> *Ibid.*

<sup>22</sup> U. S. Code (1934 ed.), p. 363.

<sup>23</sup> C.L.124.1934.II.A. Annex.

<sup>24</sup> British Treaty Series, No. 25 (1937), Cmd. 5489.

the property and assets which the Bank for International Settlements holds for the account of others, in the premises set apart for this purpose by the Bank, its branches or agencies.

The Brussels Protocol, to which there were some thirteen signatories, came into force for Belgium on July 30, 1936, for Yugoslavia on September 18, 1936, for New Zealand on December 5, 1936, and for the Union of South Africa on December 21, 1936; and ratifications of the Protocol have been deposited at Brussels by France (April 3, 1937), and by Great Britain (April 6, 1937).

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