

MUSZKAT — SAWICKI — WILDER

**ONE LEGAL
ASPECT OF THE POLISH
REGAINED TERRITORIES**

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ONE LEGAL ASPECT OF THE POLISH REGAINED TERRITORIES

I. The Political Aspect of the Question.

This article deals only with some legal aspects of the Polish western frontier question, in the light of new tendencies in international penal law. The official political point of view on this subject was expressed in a speech made by the Polish Foreign Minister, Mr. Zygmunt Modzelewski, before the Parliamentary Committee for Foreign Affairs. Discussing the German question, Mr. Modzelewski quoted, inter alia, the following letter of the former Under-Secretary of State, Sir Alexander Cadogan, to Mr. Romer, former Minister in the London Polish Government:

November 2, 1944.

Dear Monsieur Romer,

I duly reported to the Prime Minister the conversation which I had with your Excellency and the Polish Ambassador on October 31, in the course of which you put to me three questions for the consideration of His Majesty's Government.

2. The Prime Minister, after consultation with the Cabinet, has now directed me to give you the following replies.

3. You asked in the first place whether, even in the event of the United States Government finding themselves unable to agree to the changes in the western frontier of Poland foreshadowed in the recent conversations in Moscow, His Majesty's Government would still advocate these changes at the Peace Settlement. The answer of His Majesty's Government to this question is in the affirmative.

4. Secondly you enquired whether His Majesty's Government were definitely in favour of advancing the Polish frontier up to the line of the Oder, to include the port of Stettin. The answer is that His Majesty's Government do consider that Poland should have the right to extend her territory to this extent.

5. Finally you enquired whether His Majesty's Government would guarantee the independence and integrity of the new Poland. To this the answer is that His Majesty's Government are prepared to give such a guarantee jointly with the Soviet Government. If the United States Government could see their way to join also, that would plainly be of the greatest advantage, though His Majesty's Government would not make this a condition of their own guarantee in conjunction with that of the Soviet Government. This Anglo-Soviet guarantee would, in the view of His Majesty's Government, remain valid until effectively merged in the general guarantee which it is hoped may be afforded by the projected World Organisation.

6. With regard to what you said in regard to anticipated difficulties in the way of negotiations in Moscow for a reformation of the Polish Government, The Prime Minister observes that the success of these nego-

tiations must depend on a solution of the frontier question. It is impossible to ignore the possibility that agreement might be reached on the frontier question and that it might nevertheless prove impossible to reach agreement on the other matter. That would, of course, be most unfortunate, but the Polish Government would be in a much better position if negotiations broke down on this point, on which they would have the support of His Majesty's Government and probably of the United States Government, than on the frontier question.

Yours sincerely,

ALEXANDER CADOGAN.

"In our opinion," said Mr. Modzelewski, "and in the opinion of experts in international law, this document still remains valid. Mr. Attlee, in signing the Potsdam Agreement, was in agreement with the obligations arising out of the letter under discussion, whereas Mr. Bevin, questioning our right to Szczecin, contradicted the letter of his own Government and also the Potsdam decisions."

There seems to be a tendency in some political quarters to create the impression that the Polish-German frontier, as finally established in the Potsdam Agreement, is something new which has been placed on the agenda of international politics and agreements only recently. H. M. Government's Note of November 2, 1944, signed by the Under-Secretary of State for Foreign Affairs. Sir Alexander Cadogan proves beyond any doubt that this problem was not only discussed as early as 1944, but that it was at this date already far beyond the limit of diplomatic exchange of views and had reached the stage of a concrete, definite and binding obligation by H. M. Government. This obligation has not since been cancelled, revoled or questioned by any member of H. M. Government.

The fact that it remained a concealed or secret document, access to which was denied to the Polish Government, as all archives of the former London Government were secured (or, using the wording of the Potsdam Agreement, alienated) by the Polish emigres, has not altered the

legally binding character of this unequivocal obligation. Nor can the thesis expressed in the House of Commons on June 4, 1947, when the existence of this concealed document became public and was officially confirmed, alleging that this document had been superseded by the Potsdam Agreement, be accepted. It has been pointed out already that no notification was given by H.M. Government's representatives between November, 1944, and June, 1947, that Sir Alexander Cadogan's letter was to be regarded as a piece of pure imagination.

In order to prove that after Sir Alexander Cadogan's Note, the question of Poland's Western frontier was developed in detail by most responsible members of the British Government, extracts from speeches by the Rt. Hon. Winston Churchill, then Prime Minister, and Mr. Ernest Bevin, Foreign Secretary, are quoted below.

A. — DECLARATIONS by the RT. HON. WINSTON CHURCHILL

I. — December 15 th, 1944

Mr. Churchill, Prime Minister of H.M. Government, in the House of Commons on December 15, 1944:

"I cannot accept the view that the arrangements which have to be proposed about the frontiers of the new Poland are not solid and satisfactory, or that they would not give to Poland that abiding home of which I spoke to the House in February. If Poland concedes Lvov and the surrounding regions in the south on the line known as "Curzon Line A." if she makes this concession and these lands are joined to the Ukraine, Poland will gain in the north the whole of East Prussia west and south of Koenigsberg, including the great city and port of Danzig, one of the most magnificent cities and harbours in the world, famous for centuries as the great gathering place of the trade of the Baltic and, indeed, of the world. Instead of the threatened and artificial corridor, which was built so laboriously after the last war, Poland will stretch broadly along the Baltic on a front of over 200 miles.

"The Poles are free, so far as Russia and Great Britain are concerned, to extend their territory at the expense of Germany to the West. I do not propose to go into exact details, but the extensions, which would be supported by Britain and Russia, are of high importance. Thus, they

gain in the West and North territories more important and highly developed than they lose in the East.

"The transference of several millions of people would have to be effected from the east to the west or north, and the expulsion of the Germans (because that is what is proposed — the total expulsion of the Germans) — from the area to be acquired by Poland in the west and north. For expulsion is the method which, so far as we have been able to see, will be the most satisfactory and lasting.

"There will be no mixture of populations to cause endless trouble as in Alsace-Lorraine. A clean sweep will be made. I am not alarmed at the prospect of the disentanglement of populations, nor am I alarmed by these large transferences, which are more possible than they ever were before through modern conditions. Nor do I see why there should not be room in Germany for the German population of East Prussia and of the other territories I have mentioned. After all, 6,000,000 or 7,000,000 Germans have been killed already in this frightful war, into which they did not hesitate, for a second time in a generation, to plunge all Europe. At the present time, we are told that they have 10,000,000 or 12,000,000 prisoners or foreigners used as slaves in Germany, who will, we hope, be restored to their own homes and lands when victory is gained.

"I must say, because I am most anxious the House should understand the whole position, speaking on behalf of H.M. Government in a way which I believe would probably be held binding by our successors that at that Conference we shall adhere to the lines which I am now unfolding to the House."

II. — February 27 th, 1945

Mr. Churchill, in the House of Commons, on February 27, 1945:

"The three Powers have now agreed that Poland shall receive substantial accessions of territory both in the North and in the West.

"In the North she will certainly receive, in the place of a precarious Corridor, the great city of Danzig, the greater part of East Prussia west and south of Koenigsberg, and a long, wide sea front on the Baltic. In the West she will receive the important industrial province of Upper Silesia and, in addition, such other territories to the east of the Oder, as it may be decided at the peace settlement to detach from Germany

after the views of a broadlybased Polish Government have been ascertained.

"We need not fear that the task of holding these new lines will be too heavy for Poland, or that it will bring about another German revenge or that it will, to use a conventional phrase, sow the seeds of future wars. We intend to take steps far more drastic and effective than those which followed the last war, because we know much more about this business, so as to render all offensive action by Germany utterly impossible for generations to come.

"The plan should be studied as a whole, and with the main common objective always in view. The three Powers are agreed that acceptance by the Poles of the provisions on the Eastern frontiers and, so far as can now be ascertained, on the Western frontiers, is an essential condition of the establishment and future welfare and security of a strong, independent, homogeneous Polish State. The proposals on frontiers are in complete accordance, as the House will remember, with the views expressed by me in Parliament on behalf of His Majesty's Government many times during the past year. The Western frontiers, which will involve a substantial accession of German territory to Poland, cannot be fixed except as part of the whole German settlement until after the Allies have occupied German territory and after a fully representative Polish Government has been able to make its wishes known.

B. — DECLARATIONS by the RT. HON. ERNEST BEVIN

I. — August 2nd, 1945

The Foreign Secretary, Mr. Bevin, in the House of Commons on August 20, 1945:

"... At Potsdam the Prime Minister and I found there was a kind of vacuum from which the Germans had been driven out between the Eastern and Western Neisse, and the administration of the zone had been largely handed over to the Poles. We came to the conclusion at the end of our discussions with the United States, Soviet, and Polish Governments that there was no escaping the course adopted so that the economy of the region might be restored and enabled to make its full contribution as soon as possible to provisioning a devastated Europe. The question where the final delimitation of the frontiers will rest depends to a very large extent on what populations return to Poland ...

"There was agreement, at least by inference, that the Poles should go to the Oder and the Eastern Neisse. The population of the territories to the West of that river on a pre-war basis amounted to little over 3,000,000, most of whom are said to have already gone; they have just been driven out. On the other hand, there are 4,000,000 Poles in the territory that has been ceded to Russia. Will they return to Poland, or will they remain in Russia?

"It all depends on what happens. It would not be right of the House to ask me to judge what will happen until I can see."

II. — November 23rd, 1945

Mr. Bevin in the House of Commons on November 23, 1945:

"Regarding the transfer of German populations, our aim has been to ensure that the Potsdam decisions on this subject are implemented. We do not seek to reverse or stop the necessary process of transfers. ..."

III. — February 21st, 1946

Mr. Bevin in the House of Commons on February 21, 1946:

"... We acceded to the Oder and the Western Neisse at Potsdam; and so all you can do for ... Poland ... you have done. You have done it in the war and immediately at the end of the war ..."

IV. — October 22nd, 1946

Mr. Bevin in the House of Commons on October 22, 1946:

"... We ... wish to be assured that the Poles are able to develop this territory so that its economic resources are properly used, and that it does not become a wilderness from which the Germans have been excluded but which the Poles are unable to populate".

V. — May 15th, 1947

Mr. Bevin in the House of Commons on May 15, 1947:

"... The territory between the Eastern and Western Neisse, it seems, has been filled up, but I am not so sure about the territory between Frankfurt and the Baltic, which is a great agricultural area. Before territory of this kind is finally handed over — and I pronounce no opinion as to what the final view of His Majesty's Government would be — one is entitled to have the facts before giving a final decision ..."

We have an open mind on the matter, but . . . we accept the view that Poland must be compensated for what was taken away from her by Soviet Russia in the East. The fact is that the Polish population has dropped from 35 million to 22 million, but there are, as I said the other day, a large number of Poles abroad and, if they come back and are given the land in the manner promised to us at Potsdam, it may create a different situation . . ."

(Probably Mr. Bevin when making the above statement had in mind the province of Western Pomorze. Mr. Bevin was right in saying that in May, 1947, this territory had not yet been "filled up" by population, but he did not mention in his speech how severely this very territory was devastated during the war, as it was there the retreating Germans created their last lines of resistance, and there was very hard fighting during the last months of the war. The result was that a considerable part of this territory resembled a desert when the Polish Authorities arrived. These were also the most densely mined areas. The value of the destroyed dwelling houses and industrial buildings amounted in this province to some L. 61,750,000 at pre-war prices. The number of destroyed farm buildings reached 22.5 per cent, of the total, of dwelling houses in the towns to 64 per cent, of the total, the destruction of industrial buildings is estimated at 83 per cent, of their total pre-war value.

It is no wonder that a country devastated by the war, and even more so by the German authorities during the occupation, to such a degree as Poland, could not during the first two years after the war repair all the destruction in this province. Thus Western Pomorze could not be "filled up" till May, 1947.

Regarding the second item raised by Mr. Bevin, namely the question of giving land to the Poles returning from abroad, it may be presumed that Mr. Bevin had in mind first of all the members of the former Polish Armed Forces who fought on the Western Front. It should be stated here that, according to the law of August 10, 1945, all Polish soldiers who took part in the war against Germany, regardless of where they fought, are entitled to a free of charge grant of 25 acres of farm-holdings of medium soil, they receive the highest priority in help for reconstruction of their holdings, for allocation of livestock and equipment. The members of the Polish Navy returning from Great Britain have the highest priority for receiving holdings, free of charge, in areas

surrounding the sea port. Up to November, 1946, they had received already 1,200 of such holdings. At that time it was estimated that 10 per cent, of all farm-holdings granted to the demobilised soldiers, including former members of the Underground Army, were received by those who returned from the West. More recent data is not yet available.)

"A similar position was taken by the Government of the USA, as expressed in the letter of President Roosevelt to the Prime Minister of the Polish Government in London, dated 17th November, 1944, and delivered personally by W. A. Harriman who stated that the support of America in the subject of the new Polish Western frontiers should be considered as a most large and complete".

II. German Views

While this article is being written, preparations for the settlement of the German problem are in progress. At the same time, the final delimitation of Poland's western frontiers becomes of particular importance in view of the revisionist tendencies not only in Germany, as might be expected, but even outside that country. Those who support the revision of these frontiers base their claims on humanitarian and economic grounds. The Germans themselves, though conceding their responsibility—which they cannot refute—for the losses and destruction inflicted on all the Allied Nations, Poland included (and though not objecting to the revindication of Allied property carried away to Germany) aim at rebuilding the German state within its pre-war — 1938 — frontiers.

The arguments put forward by the Germans in support of their attitude are:

1. The area of the present Western Territories constituted for many centuries part of the German state (historical argument).
2. The population of this area consists in its overwhelming majority of Germans. Their expulsion from these territories is contrary to the principle of self-determination of nations (ethnographical argument).
3. The expulsion of a population from a land which it has inhabited for so many years and the manner of this expulsion infringe the principle of justice and fairness (humanitarian argument).

4. Deprived of these territories, Germany will cease to be economically self-sufficient, and will not be able to pay the reparations imposed by the Allies. Such a Germany will upset the economic balance of Western Europe (economic argument).
5. Deprived of these territories, Germany, will not be in a position to feed her population: this in turn will cause the standard of life in Europe to be lowered to the nineteenth century level (demographic argument).
6. The democratic parties of Germany, having no means by which to raise the low standard of life, will find it difficult to gain influence amongst the German people and to bring about the denazification of the country. The resulting psychological attitude may degenerate into a chauvinistic nationalism and so become a threat to the peace of Europe (democratic argument).
7. The new frontiers of Germany have not yet been definitely established. Mr. Byrnes has suggested their revision. His suggestion should be considered at the peace conference (legal argument).

III. Some Polish Views

The Polish views can be briefly defined as follows:

1. The Western Territories regained by Poland had once been the cradle of the Polish state. This is borne out by the fact that notwithstanding the process of Germanization which lasted for many centuries these lands have still retained many traces of their Polish character (historical argument).
2. In spite of the denationalization policy carried out by the Germans, a considerable number of descendants of the former autochthons have remained in these territories. The joint decision which the Great Powers reached at Potsdam gave Poland the right to remove the German population from these territories. It was not necessary to secure the consent of the German state which had surrendered unconditionally after its defeat. The Potsdam decisions were put into force; the western territories, populated by Poles from the eastern areas of Poland ceded to the Soviet Union, have become entirely Polish. Any frontier changes carried

out now or in the future would be contrary to the right of self-determination of the Polish population already settled there (ethnographic argument).

3. The deportation of Germans was carried out in accordance with the decision of the Great Powers, under their control and in a manner as favourable as conditions allowed, so enabling the deportees to continue their existence within their new state frontiers (humanitarian argument).
4. The Western Territories give economic independence to Poland. At the same time they compensate Poland for the territorial losses in the east. Without these areas Poland would not be able to rebuild her economy, so severely damaged during the war. Poland's economic weakness would upset the economic balance of Europe (economic argument).
5. Jobs and homes must be provided for the Polish population from the eastern territories. In view of the terrible destruction of Polish towns and industry, it would be impossible to achieve this, without the Western Territories. Concentration of a relatively large population within a small area would only result in a further lowering of the standard of life of the Polish people, already below par because of war destruction (demographic argument).
6. Not being able to obtain a higher standard of life, the great majority of the Polish people would be prevented from having an adequate share in the social income and education: this in turn would hamper any social reform (democratic argument).
7. The Polish frontiers have been established definitely at the Potsdam conference, and what is required now is only their formal approval by the peace conference. According to Mr. Molotov, this is confirmed by the fact that the Four Powers have agreed to the transfer of populations (legal argument).

IV. Premises of Peace Treaties.

The object of this study is not to discuss the merits of the theses advanced by the two opposing parties. However, one cannot refrain from expressing the view that these theses remain in fact within the scope of traditionally accepted premises, which have been the basis of peace treat-

ties concluded in the past. Both parties make use of them, putting forward in turn historical, ethnographical, demographic, economic, and legal arguments.

In the course of history these premises were undoubtedly an expression of interest of those groups which scored military victories at different stages of the social and economic development of the two countries.

These classical arguments are not in keeping with the new trends in relations between states which have emerged from the last war. These trends are a proof of evolution in international law which, formerly based entirely on institutions of civil law, has moved towards conceptions of penal law. At present, therefore, every war of aggression is considered as a breach of law and a punishable offence, while according to former conceptions, war was considered as a prerogative resulting from sovereignty. In the event of defeat only damages and reparations for losses inflicted on the conqueror could have been demanded. Such a conception is based purely on civil law institutions.

Private law underwent great changes in the nineteenth century, assuming to some extent the characteristics of public law. Such a change of private law became possible only when it was realised that there existed interests hierarchically higher than the needs of a selfish individual. Thence the stress was laid on conceptions of public interest, public order, moral conduct, social purpose and thence high penalties for certain categories of offences.

The concept of liability for civil offences tends to give way to the increasingly broadening conception of penal responsibility for unintentional guilt.

In international law such a change could have taken place only after the conception of international community had gained ground and after it was realised that peace between states safeguards the existence of such a community.

Antiquity, based on a system permitting the defeated enemy to become a slave, could not create the consciousness of international interests. Wars between cities or governments in their ancient forms usually ended in the submission of the defeated adversary, the destruction of his settlements, the enslavement of his people and the imposition of a new order in the name of the victor's deity. The law of nations was at that

time built entirely on lines similar to those which the private law was based.

Relations between states in the feudal age remained almost the same. The state was identified with the feudal lord, that is, the owner of lands given him in feud together with the people. International agreements have thus the character of private contracts concluded between the various feudal lords. Slowly, in the struggle for supremacy in Europe between the Popes and the Roman emperors, and with the emergence of other sovereigns who aimed at hegemony in Europe, the conception of an inter-state community, higher than the interests of the various feudal lords, was born. It included at first only the Christian world over which the Emperor and the Pope struggled for supremacy.

This conception of community, which was just beginning to develop, was destroyed by the Treaty of Westphalia of 1648. The principle "*cuius regio eius religio*" left to the rulers complete freedom with regard to the domains subordinated to them. It reserved only respect for the absolute rights of other rulers. This thesis was not limited to the religious aims postulated. It helped to shape in a different manner states of a new type where secular interests were preponderant yet identified with the person of the absolute ruler. The Treaty of Westphalia has all the characteristics of an agreement based on institutions of private law. The conflict of interests of the various state organisms which were emerging at the time was defended by force. In time, when force itself had ceased to be a sufficient guarantee of power, the principle of balance of power was put forward as a further postulate; it is mentioned quite clearly in the preamble to the Treaty of Utrecht of 1713.

When England began to look for footholds overseas and wished to monopolise the sea routes to serve her own interests, Selden became her spokesman in those aspirations. He created the conception of "*mare clausum*" — the closed sea.

Selden's train of thought was also based on institutions of private law, that is, taking into possession by occupation of routes of great navigation. The conflicting interests of the Netherlands and of France and the simultaneous development of the theory of mercantilism on the Continent created in reply Grotius's doctrine of the "*mare liberum*" based on the contention that the sea and straits dividing two countries cannot

be state property. The conceptions of the two opponents were again based on institutions of private law.

The Congress of Vienna 1815 emphasized the triumph of the civil law conception in an especially striking manner. After the upheaval of the French Revolution an international agreement was concluded whose basis was the legitimistic principle, i.e. "restitutio ad integrum" of authority over a state to the former sovereigns.

The principle of self-determination of nations which is the basis of the Treaty of Versailles of 1918, is also a civil law conception. In place of a sovereign who has the right of ownership of a state, comes the Nation as a whole which in its majority inhabits the land or, in other words, owns it. Such a private law approach to problems was doubtlessly consistent at the time of its formulation with the prevailing conditions of the economic and social development of nations. The imperialistic phase of capitalism which created the terrorist doctrine of Fascism and justified a war of aggression as legal has shown that the aforementioned conceptions did not stand the test of time.

The League of Nations, at whose foundations lay, in spite of some limiting clauses, the unlimited sovereignty of states, based on an analogy with egoistic multilateral civil contracts, failed badly with regard to sanctions, stipulated in its statute.

The exclusive use of the traditional premises of international law would mean continuation along a road which had failed. One should aim at creating a legal system whose necessity would be clearly proved by the experiences of the last war. This means that in international law the civil law conception has given way to the conception of penal law. We believe, therefore, that it is not enough to expose the German arguments with regard to Poland's Western Territories within the framework of civil law premises of international law. The German arguments should be answered, in the interests of the international community, by arguments of the new law of nations, by arguments of penal consequences to be suffered by a state which would commit the offence of starting a war of aggression.

The principle of penal consequences for the breach of peace and the desire to secure international peace in the future are not egoistic principles of various nations, but a universal aim of the community of nations.

V. International Penal Law as an Instrument of Peace

International penal law, similar in its evolution to municipal penal law, recognises two types of offences: the individual and the state. A number of scholars have paved the way of development of this new conception. International law safeguards the individual against, and punishes him directly for, piracy, smuggling, blockade-running. The sentence passed by the International Tribunal at Nuremberg established the direct responsibility of the individual before international law for acts committed in his own name and in that of the state. It was thereby accepted that the individual may be directly the subject of an offence in the light of international penal law. In order to avoid any doubt, the Tribunal further established that the individual was responsible also when he acted on behalf of the state. In such a case the individual could not enjoy immunity, based on the so-called theory of "Acts of State". The sentence finally stated that the statute of the International Military Tribunal was in conformity with general international law and international penal law in force at the moment of setting up and signing the statute.

In our opinion, no doubt can exist today that the individual has become the direct subject of international penal law and that relation to this law did not arise through the intermediary of the "state cage" alone — as Politis once ironically said.

International penal jurisdiction and the responsibility of the individual for acts of state do not raise any reservations from the point of view of the law of nations and have already their own history.

The setting up of international and national tribunals for certain categories of such offenders had already been foreseen by the Treaty of Versailles.

In the inter-war period a number of scholars dealt with that problem, to mention only: Pella, Donnedieu de Vabres, Roux, Sotille, Carton de Viart, Caloyanni, Rappaport, Saldana, Lewin, Politis, Descamp. That problem was also the subject of discussion by international bodies such as the International Criminal Law Association, the International Law Association and the League of Nations which even went so far as to set up a special Committee to prepare a project of international law authori-

zing acts of reprisal. The project has later become the basis of a convention to combat terrorism.

The problem of penal responsibility of the state as a whole for acts committed by its organs does not raise any great reservations today. The theses of the penal responsibility of the state were accepted by the Inter-Parliamentary Union during its sessions in Washington in 1925, in London — in 1930, in Geneva — in 1932; by the International Law Association at its Congress in Vienna, in 1926, by the International Penal Law Association at its Congress in Brussels, in 1926 and in Bucharest, in 1929. The matter was also considered at the Congress at Palermo, in 1933 and in Paris, in 1937. The International Penal and Penitentiary Commission dealt with it at the Congress in Prague, in 1930 and in Berlin, in 1935; the Inter-Parliamentary Union at the Conference in London, in 1930 and in Geneva, in 1932, the Pan-European Union at the Congress at Basle, in 1932, the International Bureau for Peace at Brussels, in 1931 and 1932.

The Resolution of the first Congress of the International Criminal Law Association 1926 runs as follows:

"The permanent tribunal will consider the question of penal responsibility of states for unjustified aggression or any other breach of international law. Adequate penal means and preventive measures will be used against the guilty state".

The concept of responsibility of states ran parallel and consistently with the evolution of municipal penal law, which, in view of economic changes admits even more frequently the penal responsibility of groups as subjects of penal law.

The evolution of the principle of penal responsibility of a group, association, legal person, was of course extremely slow and has not been brought about without a number of hesitations and non-sequiturs in municipal law.

In a simplified outline, this could be presented thus: first, acts were technically defined as offences, consisting in omission, and later responsibility was extended also on *delicta per commissionem*. At first only groups being legal persons were responsible, but later also other bodies, even without a corporate form, if it was proved that they had a unity of will, aims, and methods of action.

The French Conseil d'Etat, the House of Lords, and the Federal Court of the United States realised in the second half of the nineteenth century the necessity of punishing groups and often made them legally responsible.

In Section 2 of the Interpretation Act, issued by the British Parliament in 1889, it is mentioned *inter alia* that in legal texts used as a basis for a written accusation or for the summing up in connection with a punishable contravention of the law, the word "person" used in every legislative act, before and after the 1st January 1890, means also corporate groups, unless the act specifies otherwise.

Thus, the penal responsibility of legal person in Britain received a broader legal basis and was not limited to cases of breaches of public safety, as was previously accepted by the judicature.

In the text of the resolution of the Second Congress of the International Penal Law Association of 1929, it is stated, among other things, that the extension of the meaning of legal persons has been recognised and it has been found that they have become a social power in modern life. As the legal order of every community may be disturbed owing to the fact that the activity of legal persons represents a violation of the penal law, it has been resolved:

1. Efficacious means of social defence against legal persons in case of violations with the aim of collective gain to these persons or by means provided by them which cause their responsibility, have to be introduced in the penal legislation.
2. The adaptation of protective means concerning a legal person should not exclude individual responsibility of physical persons in case of the same offence, especially when the management and direction of the legal person are in their hands, or in a case where they have committed the offence by means of a legal person.

A further resolution of the Congress deals with the application of sanctions to countries guilty of infringement of the Paris Briand-Kellog Pact of 1928, that is, guilty of aggression.

The recognition of the principle of penal responsibility of legal persons and of the state as a kind of legal person entails not only the possibility of considering states as guilty of unjustified aggression and other crimes,

but also makes possible the application of adequate preventive measures against such persons.

Dommedieu de Vabres was in favour of those measures when he made his report to the First International Congress of Penal Law and stated that, when applied, they "will be an expression of the feeling of international justice and solidarity."

Roux, who has warned against the danger threatening legal order on the part of legal bodies in the new economic and social set-up, was against the introduction of penalties, but in favour of applying preventive measures against legal bodies.

"The International Code of Repression", elaborated by Pella in 1935, and forming part of the "Plan général d'un code du droit mondial", edited by La Fontaine, contains in its first chapter a list of penal sanctions and preventive measures with regard to states.

The following are foreseen: as penalties: diplomatic sanctions (such as breaking-off relations), legal sanctions (confiscation of property, etc.), economic sanctions (blockade, embargo, etc.) and other supreme sanctions corresponding to the death penalty with regard to an individual.

As preventive measures are enumerated: forfeiture of armaments, prohibition of production for purposes of war, limitation of armed forces and armaments, complete disarmament, establishment of neutral zones of organs of control over the administration, etc.

It is obvious from the enumeration of these penal sanctions and preventive measures that the ways are varied by which, according to the degree of guilt, a penalty is meted out, which aims at safeguarding the legal order in relations between nations and at strengthening world peace.

Contrary to the traditional premises of international law which, by means of peace treaties, expressed the tendency to achieve a certain temporary defence of private interests of one country or another, or of a block of countries, the new trend in penal law safeguards the principle of the community of nations, ready to strike at any member of this community who is dangerous to peace and to safeguard itself from the possibility of his criminal relapse.

We realise that the latter sanction is of an exceptional character and could be decided on only after all other means had been exhausted.

To debar the aggressor from the bases of his armed potential and to hand these over either to an international community or to one of its members, in the first place the member for whom they would at the same time present a compensation for material losses suffered as a result of aggression, would be one of the most effective means of safeguarding an international community from a new aggression.

Thus the exclusion of certain areas of a state guilty of international crimes would grow into a means of safeguarding and preserving peace.

Such a cession is completely different from an annexation, partition or occupation, the object of which is to satisfy the interests of one state or a group of states as a result of their temporary military ascendancy.

The difference is fundamental. The point of gravity moves from the sphere of interest of one state in relation to be vanquished, to the general interests of the international community. Such a premise forms a basis which is universal and in accordance with the contemporary development of ethical and legal thinking. It will serve in future to prevent the greatest war crime, the start of a war of aggression.

VI. The Third Reich as Criminal Offender

The fact that the Third Reich has committed criminal offences cannot remain in doubt now, after the sentence of the International Military Tribunal at Nuremberg has been passed. It must be considered as proved unreservedly. The sentence states that Germany has broken inter alia the following international agreements:

1. The Hague Convention of 1899, which stipulates that before a state resorts to arms, it should, whenever possible, use the mediation of friendly powers;
2. The Hague Convention of 1907, containing similar decisions;
3. Articles 42 and 44 of the Treaty of Versailles which forbade the building of fortifications on the left bank of the Rhine;
4. Article 80 of the Treaty of Versailles stressing the duty of respecting the full independence of Austria;
5. Article 99 of the same Treaty — an undertaking by Germany to forego all privileges at Memel;

6. Article 100 of the same Treaty — on the establishment of the Free City of Danzig;
7. The Treaty of Mutual Guarantee, signed at Locarno in 1925;
8. The Polish-German Agreement of 1934;
9. The Briand-Kellogg Pact of 1928.

According to the Tribunal, the solemn renunciation of war as an instrument of state policy implies logically that a war of aggression is illegal. The start of such a war and its horrible, unavoidable consequences are criminal acts. A war of aggression is a lawless act and those guilty of it are subject to sanctions.

Sir Hartley Shawcross, one of the prosecutors in the International Tribunal, describing Germany's guilt, pointed out that modern history contests the opinion that a state cannot be an offender. On the contrary — the force of evil, when applied by a State in this era of development and scientific progress, demands a more severe and efficacious repression than in the case of the same offence committed by an individual.

At the outset of this article we outlined the Polish arguments as opposed to the German point of view. We said that it is not our purpose to discuss their relative merits. It seems to us, however, that the arguments do not exhaust the whole problem. The superiority of the Polish point of view lies, we believe, first of all in the moral and legal arguments, completely independent of the ideas of traditional international law based on the conceptions of civil law. Such an approach does not consist exclusively in the relationship of victor to vanquished. The clauses which will burden Germany, will have their source not only in the fact that Germany was beaten and that the victors can impose their will on her. The settling of international relations is not reduced exclusively to the principle of "non-continuation of war" and will not play into the hands of those who appeal for mercy for the vanquished and thus tend towards the restitution of Germany in her pre-war frontiers. Under the guise of raising the standard of life they would like to see restored there the domination of great monopolistic capital whose ideology might produce another Nazi movement and, in consequence, a third world war.

The German Reich was found guilty of international crimes. The German state has been defined as an offender. Relations with Germany

should be settled on the basis of postulates of international peace. This will be possible only if some preventive measures are applied to that state. The preventive measures consist, in this case, of ceding to Germany's neighbours the bases which had allowed Germany to start wars of aggression in the period of the last thirty years. The possession of those bases by the German state would create a certain danger to peace. The denazification of Germany is a job for generations. In the meantime, all attempts at demilitarisation would be frustrated. In the present state of technical development, the conversion of heavy industry from peace to war production is not a difficult problem.

The peace and security of the international community depend on the denazification and demilitarisation of Germany, and these are impossible to achieve without simultaneously depriving Germany of her bases of aggression.

The application of adequate preventive measures when concluding a peace treaty with the state which was found to be a criminal offender would make the demilitarisation of Germany effective.

The restitution of the Western Territories to Poland is therefore not a move dictated only by the wish of the Great Powers to grant a territorial compensation to the most wronged Ally. The merging of the Western Territories with Poland must be recognised also as the expression of new tendencies in relations between nations, which in order to safeguard peace —

1. put the interests of the international community before the interests of its members;
2. recognize the penal responsibility of a state;
3. recognize the admissibility of applying preventive measures towards a state which has committed offences.

The decision at Potsdam on the subject of Polish frontiers was undoubtedly a step towards the realisation of the new tendencies in international penal law and was made not only in the interest of Poland, but in order to defend the highest supra-national good — the peace of the world. Its basis was not the self-interest of one state, but a universal principle, concerning the whole international community. In the name of this principle, too, clauses have been included in the treaties with

the Axis satellites concerning the guilt of these states with regard to the crime of aggression.

At present, another step on this road is to be awaited. In the treaty with Germany as the "main war criminal" the recognition of guilt alone will not suffice, but a penal consequence should be proposed in the shape of adequate means of safeguarding peace.

Dr. J. A. Wilder

The part played by the Former Prussian Eastern Provinces in feeding Germany

One often comes across the statement that there is a danger of Germany starving as the result of depriving her of the provinces lying east of the Oder and the Western Neisse. There is no doubt that if the pre-war level of consumption were to be maintained in Germany, it would be necessary to increase somewhat the importation of food from abroad in consequence of the loss of the eastern provinces. It will be much more difficult for the Germans to bring into being their dream of self-sufficiency in the sphere of food consumption, — that dream of every individual who is preparing for war. But did these provinces really feed the Reich, and will their loss really cause starvation? To answer this question one has to discover what quantities of basic articles of food were supplied by the lands situated east of the Oder and Western Neisse, what percentage of the production and consumption of the rest of Germany these quantities represented. For these figures we must turn to German pre-war statistics, and the investigation has been greatly facilitated for us by the work of a German scientist who studied this problem and published the results of his research in 1930.*

All the figures given below are taken from this source, except where otherwise stated. We have made adjustments wherever necessary, as Volz uses the term "German East" to cover an area larger than that of the Regained Provinces.

Let us begin with wheat and rye. It appears that in the year 1927/28, for instance, the Reich consumption of wheat amounted to 4,895,500 tons*, whereas the production was 3,567,000 tons. Of this latter amount, 845,000 tons were grown in the eastern areas, including also 32,297 square kilometers situated west of the Oder and western Neisse / part of Lower Silesia, part of Brandenburg, and part of Pomerania /. These eastern districts supplied 50,260 tons of wheat grain to other parts of Germany, including Berlin. They also sent 104,320 tons abroad. So that altogether the export from these areas to other parts of Germany and

*) Volz, Wilhelm: Ostdeutsche Wirtschaft / East German Economy /, Berlin-Leipzig, 1930

abroad amounted to 154,580 tons. But during the same year 114,000 tons of wheat grain were imported into these areas from the central and western provinces of Germany; in other words, some 63,740 tons more wheat grain were imported from than were exported to other parts of Germany, while a further 6,000 tons were imported from abroad. Thus the total imports of wheat grain amounted to 120,000 tons, the surplus of export over import of wheat grain for these provinces thus being 34,580 tons.

In the same year Germany as a whole had a rye consumption amounting to 6,155,600 tons, while production amounted to 7,680,000 tons**, of which 3,200,000 tons were grown in the "East". The export from the "East" to other parts of Germany, including Berlin, amounted to 178,840 tons of rye grain, while 254,000 tons were exported abroad. So the area under discussion had a total export of 432,840 tons. But it must be remembered that during the same year 46,000 tons of rye were imported into this area from other parts of Germany, / so that it had an export surplus of 132,840 tons, within Germany / while a further 8,800 tons were imported from abroad. Altogether 54,800 tons were imported into the area, the export surplus of these provinces thus amounting to 378,040 tons.

Obviously, in order to get a complete and undistorted picture of the situation, these figures need to be corrected, by taking the turnover of flour into account. For it appears that in the year under discussion 293,600 tons of flour were exported from this area to other parts of Germany, including Berlin, while 101,700 tons were imported — the net export surplus thus amounting to 191,900 tons, so far as internal German turnover is concerned. 22,500 tons were exported abroad, but 4,100 tons were imported from abroad, so in this respect the export surplus amounted to 18,400 tons. Thus the total export surplus of flour from the eastern agricultural areas of Germany amounted to 210,300 tons net. As the local mills worked on a basis of 70% rye and 30% wheat, one can say with fair accuracy that the surplus of rye flour amounted to 147,210 tons, and of wheat flour to 63,090 tons. Since, after milling, rye has a 70% flour yield, while wheat has a 68% yield, the foregoing figures correspond to 210,300 tons of rye and 92,780 tons of wheat. It appears,

*) Statistisches Jahrbuch 1931, S. 319

**) *ibid.*

therefore, that the total export surplus of the German eastern provinces in grain and flour amounted to 127,360 tons of wheat / or 4.68% of the production of the rest of Germany / and 588,340 tons of rye / or 13.13% of the production of the rest of Germany/. But of this Berlin and the rest of Germany consumed only about 30,000 tons of wheat / or 1.18% of its own production/, and 333,140 tons of rye / or 7.4% of its own production. It is then not surprising that the German authority comes to the conclusion that "for the German Reich the east plays no role whatever as a supplier of wheat, and a quite insignificant role as the supplier of rye"*.

Further, as we have pointed out, these calculations were made in respect of an area some 32,297 sq.km. larger than that which Germany is losing in the East. This represents 27% of the area which was the subject of the German investigations. Therefore, assuming that the supply of grain to the rest of Germany came more or less equally from all parts of the former eastern areas, we can with fair accuracy reduce the figures given above by 27%. In considering the extent to which the Polish Regained Provinces supplied Germany with grain, we have to make a further reduction ** since they constitute rather less than 70% of the area to which the above quoted figure refers. It therefore transpires that the Polish Regained Provinces supplied Germany with some 22,500 tons of wheat and some 233,000 tons of rye. This constitutes 0.77% of the wheat production and 4.53% of the rye production of the rest of Germany. Moreover, it constituted 0.46% of the wheat and 3.78% of the rye consumed in the whole of Germany in the year 1927/28.

We now turn to the problem of the supply of potatoes to Germany by these former eastern provinces. In this case the German writer we are quoting drew up statistics relating to an area rather smaller than in the case of grain, and this area amounted to only 8,408 sq.km. more than the area Germany is losing in the East***. In the years under discussion

*) Volz, *op. cit.* p. 85

**) The whole territory covered by Volz has an area of 150,313 square kilometres, of which only 104,680 square kilometres fall to the Polish Regained Provinces. Obviously, in reckoning the extent to which these areas supplied Germany with food, we have not taken into account that part of East Prussia which has been incorporated with the U.S.S.R.

***) In Brandenburg he does not include the Potsdam district, while in Pomerania he leaves out the Stralsund district.

the consumption in Germany amounted to some 34,000,000 tons*, while production was some 40,000,000 tons. Of this, 12,700,000 tons were harvested in the areas with which we are concerned. However, the export of potatoes from the eastern provinces to Berlin and the rest of Germany amounted to not more than 750,000 tons / or 2.74% of the production in the rest of Germany, and 2.2 % of the total consumption in Germany /. It is not surprising, therefore, that Volz comes to the conclusion that the "Reich has no need whatever of the east / i. e. the eastern provinces / for its supply of potatoes"**. If we make the same adjustment for potatoes as we have made for grain, it appears that the Polish Regained Provinces supplied no more than 622,500 tons of potatoes / 2.27 % of the production of the rest of Germany, and 1.83 % of the total consumption / of the rest of the country.

Now let us consider the question of pigs and pork products. In this case the German writer gives figures for a larger area / exceeding the area lost to Germany by 32,297 square kilometre /. In 1928, 1,628,000 pigs and young pigs were sent from this area to the rest of Germany, including Berlin, but in return it received 302,500 head, so that in regard to internal turnover the export surplus over import was 1,325,500 head. But it must be remembered that a further 2,500 head were sent abroad, while 10,000 head were imported from abroad, so that the net export surplus of these areas was 1,318,000 head. Making the analogous adjustment to those made for previous items, it appears that the Polish Regained Provinces provided the rest of Germany with 927,500 head of swine in 1928, the net export surplus being 922,600 head. In the areas now remaining to Germany there were some 16,320,000 head, or approximately equal to the local consumption. Thus the Polish Regained Provinces sent some 5.68% of the local stock and consumption of the rest of Germany, or some 4.63 % of the total German consumption.

With regard to cattle from the same area as that dealt with above in respect of swine, 629,000 head were sent in 1928 to the rest of Germany, including Berlin, while 52,500 head were received. Thus the export surplus was 576,500 head. Since 13,000 head of cattle were imported from abroad during the same period, the net export surplus was 563,500 head.

* Statistisches Jahrbuch für das Deutsche Reich, 1931, p. 319.

** Volz, op. cit. p. 75

Making the usual the same period, the net export surplus was 563,000 head. Making the usual adjustment, we reach the conclusion that in 1928 the Polish Regained Provinces supplied the rest of Germany with 383,500 head of cattle, or some 2.75 % of its total*.

Here it must be pointed out that other German scientific works dealing with various aspects of the problem of food-supply, reach figures which closely approximate to those cited, and confirm the accuracy of our calculation**.

Therefore, seeing that before the war the Regained Provinces supplied Germany with only 0.77 % of the wheat produced in the areas left to Germany, and only 4.53 % of the rye, 2.27 % of the potato production, 5.68 % of the requirements in swine, and only 2.75 % of the cattle, it is impossible to say that the eastern areas fed the Reich. Even if we admit that all the German writers concerned with this problem took a propaganda attitude to it, and sought for political reasons to demonstrate that the Eastern, Prussian provinces were not adequately exploited in the state economy, it is impossible to ignore the testimony of these figures. We have, it is true, to add a certain quantity of frozen and smoked meat sent mainly to Berlin, and a certain quantity of dairy products / especially cheese /. But even this does not alter the actual fact that before the war the eastern provinces played a very insignificant part in feeding Germany. It follows that the assertion that, if Germany is deprived of the areas lying east of the Oder-Western Neisse line, this will have a catastrophic effect on food supplies to Germany, is quite unfounded — the more so if the living standards of the Germans are to be reduced by 30 % in accordance with Allied decisions.

*) According to the Statistisches Jahrbuch for 1931, Germany had, in 1928, 18,414,136 head of cattle; according to Polish calculations on the basis of various statistics there were 3,665,700 head of cattle in the Eastern Provinces before the war.

**) Cf. inter alia Krull, C: "Die Ostpreussische Landwirtschaft", Berlin, 1931, Ruda, A: "Die wirtschaftliche Verflechtung der Provinz Pommern", "Zeitschrift des Preussischen st. Landes-Amt", Berlin, 1930, Scheu, E.: "Deutschlands wirtschaftsgeographische Harmonie", Breslau, 1924, and works by Hurting Witt, etc.