The members of the United Nations have pledged themselves to take joint and separate action, in coöperation with the organization, for the promotion of universal respect for and observance of human rights and fundamental freedoms. It is not to be expected that the respective pledges can be carried out by a single proclamation or decree. The fulfillment of the obligation by each state must in many cases be a matter of time. In large part the execution of the pledge must be left to the individual state, acting through its own constitutional procedures. Only where there is a threat to the peace is it to be expected that the Security Council of the United Nations will be called upon to take action. Here the problem will be one of degrees of danger. Apart from cases of fanatical nationalism, where the international community would be justified in taking prompt action, the most urgent situation is that of relieving the tension between states due to suspicion and distrust. To this end the channels of communication must be kept open and access to the sources of information kept free. This is not a counsel of perfection, but an obligation under existing law. The obligation is one which can not be deferred or qualified, for upon it depends the possibility of developing a sufficient degree of mutual confidence to make military disarmament possible. In this connection the American Republics have already led the way with the resolution of the Conference on Problems of War and Peace, held at Mexico City in 1945, which recommends: "That the American Republics recognize their essential obligation to guarantee to their people free and impartial access to the sources of information," and that measures be taken "to promote a free exchange of information among their peoples."

The urgency of the problem of moral disarmament gives to the program of the United Nations Educational Scientific and Cultural Organization a high political as well as a social character. UNESCO can not be expected to meet acute or overt threats to the peace. That problem, if unhappily it should arise, must remain for the Security Council of the United Nations. But the new agency, assuming universal membership in due time, should be able, in collaboration with the Commission on Human Rights of the United Nations, to accelerate greatly the progress of states in removing the barriers to mutual understanding. The constitution of the agency emphasizes significantly that a peace based exclusively upon the political and economic arrangements of governments would not be one that could obtain the sincere support of the peoples of the world and that a lasting peace must be founded "upon the intellectual and moral solidarity of mankind."

CHARLES G. FENWICK

SOVEREIGNTY IN ANTARCTICA

The recent sending of a large United States expedition to Antarctica has revived interest in the complicated legal problems relative to the acquisition

of sovereignty in such areas.[1] British Commonwealth, Norwegian, French, Argentine, and Chilean claims vie with those of the United States. The basic problem of acquisition of sovereignty is complicated by a new claim which was recently made by the Argentine Government.[2] In a decree issued on October 9, 1946 the Argentine Government claims sovereignty over the Argentine continental shelf and the waters covering it. The decree invoked as precedents the United States and Mexican Governments' orders of a similar character. The United States precedent evidently refers to the Presidential Proclamations and Executive Orders of September 28, 1945, which have already been analyzed in this JOURNAL by Professor Borchard, who refers also to the comparable Mexican decree.[3] The United States claim related to the right to exploit the submarine resources of the continental shelf and the fisheries superjacent thereto. Although the specific claim was not then envisaged, the legality of the exploitation of resources lying under adjacent waters finds support in the writings of two Argentinian jurists.[4] The Antarctic as a potential source of petroleum for the satisfaction of Argentine needs, seems to have been under consideration for some time.[5]

Obviously, however, such a claim with reference to submarine lands and to waters adjacent to the Antarctic continent must find basic support in the maintenance of a claim to sovereignty over the land itself. Both the Argentine and the Chilean claims seem to rely partly on the sector principle and partly on various assertions of their claims and overt acts of exploration and administration.[6] The Chilean claim was stated in a decree of November 6, 1940, asserting sovereignty over all the lands, islands, islets, reefs, pack-ice, and the appurtenant territorial sea lying in the area bounded by the meridians of 53° and 90° East longitude.[7] The Argentine Government, upon being notified of this decree, reserved all its rights. It referred to its claim as being based on effective and continuous occupation since 1904 and to subsidiary bases of title such as geographic propinquity. It concluded by suggesting that the only possible general international solution was to convene a conference of the states interested. The Argentine note also referred to the Falkland Islands, the sovereignty of which has so long been in dispute between that State and Great Britain.[8] One of the

[1] The problems are well explored in Smedal, *Acquisition of Sovereignty Over Polar Areas*, 1931, and in Hyde, C. C., "Acquisition of Sovereignty Over Polar Areas," in *Iowa Law Review*, Vol. 19 (1934), p. 286.

[2] See document in Supplement, below, p. 11.

[3] This JOURNAL, Vol. 40 (1946), p. 53.

[4] Ruiz Moreno, *Derecho Internacional Publico*, Vol. 2 (1940), p. 49; A. Podestá Costa, *Manual de Derecho Internacional Publico*, 1943, p. 99.

[5] Carlos Rodriguez, *La Republica Argentina y las Adquisiciones Territoriales en el Continente Antartico*, 1941, p. 31.

[6] See Pinochet de la Barra, *La Antártida Chilena*, 1944.

[7] Same, p. 23.

[8] Same, p. 157. Compare Goebel, *The Struggle for the Falkland Islands*, 1927.

principal British antarctic claims is that to the Falkland Islands Dependency, based on the sector theory and resting upon the projection of longitudinal lines outward from those islands.[9]

Should it become apparent that the resources of Antarctica or its air-strategical potentialities are of great importance, it will no doubt become necessary to settle the conflicting claims to sovereignty. Any decision in regard to that area would obviously be a powerful precedent for the settlement of comparable claims in the Arctic despite the physical differences between the two areas. It is possible that the matter could be adjusted by a conference such as that which produced the Berlin Act of 1885 concerning Africa. On the other hand it would facilitate the work of such a conference if there were first a decision by the International Court of Justice regarding the applicable law. The decision of the Permanent Court of International Justice in the Eastern Greenland case is evidence that such a question can be handled judicially. The matter might well be referred to the Court for an Advisory Opinion by the General Assembly of the United Nations in the interest of peace and of the progressive development of international law. It might equally be referred to the Court by any two states whose claims in Antarctica conflict. In the latter case one might anticipate that other interested states would ask leave to intervene under Article 62 of the Statute.

PHILIP C. JESSUP

REVOLUTIONARY CREATION OF NORMS OF INTERNATIONAL LAW

Law is a dynamic system of norms which, in continuous concretization and individualization, develops from the basic norm above to the last act of mere execution below. Law is a normative system which itself regulates the creation of its own norms. The legal order must, therefore, establish norms which give determined organs the power to create, change, abolish, apply, and execute the norms of a particular legal order. Such power we call competence or jurisdiction. The order of competences of a particular legal community we call its Constitution. The Constitution must define what persons shall act as organs, what their competence is, and by what procedure it is to be exercised. It may, in addition, prescribe, positively or negatively, certain contents. A legal norm is, therefore, valid if it has been created by the Constitutionally prescribed procedure and (or) is in conformity, as to contents, with the Constitution or the immediately higher norm. It remains valid as long as it has not been changed or abolished by a procedure also provided for by the Constitution. The Constitution may also contain norms for its own change, perhaps prescribing particular procedures for such action.

But law can also be changed or created otherwise than by the Constitutionally prescribed procedures, this also "illegally": *ex injuria jus oritur.*

[9] G. H. Hackworth, *Digest of International Law*, Washington, 1940–, p. 462.