attempt to insist on so general a doctrine, particularly as the Soviet Government was doing most of the renunciation. In the draft clauses of the present treaties the international effects of the Soviet economics are carried further, diminishing private rights previously held inviolate by the canons of international law.

The Paris Conference is faced with the ineluctable task of effecting a working symbiosis, at the international level, between sharply differing, if not always frontally opposed, conceptions of public—and private—international law. The ultimate grist of this protracted milling may well determine whether the two systems are or are not compatible with the basic concepts on which the United Nations Organization was established.

MALBONE W. GRAHAM

THE ADMINISTRATIVE PROCEDURE ACT AND THE STATE DEPARTMENT

The Administrative Procedure Act [1] was signed by President Truman on June 11, 1946, having passed both the Senate and the House of Representatives without a dissenting vote. It became effective as to most of its provisions on September 11, 1946. This important piece of legislation will have significance not merely for internal administration but also for many administrative agencies whose business it is to regulate our international intercourse in its various manifestations. The ever growing extension of administrative rules and regulations has been reflected also in the complexity of the relations of both the citizen and the alien with the authorities of the Government. Agencies having to deal with the determination of citizenship, the interpretation and application of treaty provisions, the enforcement of immigration laws, and many other matters will be affected by the new law.

The people of the United States are brought face to face with new forms and methods of government at the same time that executive power, often uncontrolled, is growing by leaps and bounds in many foreign countries. While Constitutional safeguards remain inviolate, the scope of administrative activity has grown so rapidly that the individual is often no longer able to inform himself readily of the nature of the rules and orders applicable to his conduct. Officials of government are themselves often unable to find their way in the labyrinth of regulations accumulated in different bureaus without adequate systematic registration or publication.

The provisions of the new Administrative Procedure Act clearly apply to many of the functions within the jurisdiction of the State Department, and it is, therefore, of great importance in the conduct of our foreign affairs. It is not our purpose here to review the Act as a whole. A brief outline will suffice. Its provisions apply to every "agency" of government, which is defined as "each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the possessions and Territories, or the District of Co-

[1] (1946) Public Law 404, 79th Congress.

lumbia." Military and naval authorities and war authorities functioning under temporary or named statutes are, of course, excepted.

Every agency is required to state, and currently publish in the Federal Register, a description of its organization and the places where the public may secure information and make submittals or requests, the requirements of formal and informal procedures and the substantive rules and general policy adopted by the agency.

Perhaps the most important provisions of the Act are those which relate to the right of judicial review. Section 10 (a) provides as follows:

> Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

The statute does not apply where legislation otherwise precludes a judicial review or where an agency has acted in a matter confided to its discretionary power. The statute does not, however, abridge any Constitutional rights or remedies which would otherwise be enjoyed. It would be difficult to appraise at this early date the scope of the Act with reference to administration within the jurisdiction of the State Department. The language of the statute is very comprehensive. It is manifest that many rules and regulations contained in isolated records or departmental circulars will have to be stated and currently published in the Federal Register so as to be accessible to the public.

Even though it was not the intent of Congress to take away discretionary power formerly enjoyed it is reasonable to conclude that Congress intended a wider measure of control than has heretofore existed. For example, the function of the State Department with reference to the issuance of passports must not be arbitrary or capricious or exercised in a manner not in accordance with the law. Even where the power is discretionary the facts upon which it is based must be supported by substantial evidence. A judicial review is certainly indicated where there has been an erroneous interpretation of a law or treaty. The Supreme Court has held that it would not undertake by *mandamus* to compel the issuance of a passport, or to exercise judicial control by a declaratory judgment on a matter within the discretion of the Secretary of State. On the other hand, where the refusal of a passport had been made solely on the ground that the applicant had lost his or her status as a native-born American citizen, the court would assume jurisdiction where this conclusion was found not warranted by law.[2]

Under the provisions of the Administrative Procedure Act, the courts are required to determine all relevant questions of law and the meaning or applicability of any agency action. The courts are also expressly enjoined to act affirmatively so as to compel action unlawfully withheld or unreasonably delayed. They must hold unlawful any action which they find to be arbitrary or in abuse of discretion or otherwise unlawful upon the facts or the law.[3]

[2] *Perkins, Secretary of Labor et al. vs. Elg* (1939), 307 U.S. 325, 327–328, 349–350.

[3] See *American Bar Association Journal*, July, 1946, p. 377.

One is reminded of the many cases in which arbitrary acts of immigration authorities have caused extreme hardship without recourse to the courts. Under the guise of administrative power persons claiming to be native-born citizens of the United States have been excluded after a temporary sojourn abroad without recourse to the courts on the status of their citizenship, essentially a question of law.[4] Another effect of the new statute may be the adoption of a policy of implementing many of our treaties by the elaboration and publication of administrative regulations. It has been pointed out that this is a function too often neglected by reason of the peculiar character of our fundamental law which declares all treaties made under the authority of the United States to be "the supreme law of the land." The scope and effect of many treaties are thus left in doubt by reason of the reliance upon their self-executory character. This is particularly unfortunate with respect to some multipartite treaties.[5]

The effect of the new statute will be welcomed as a salutary reform of our procedure in the conduct of foreign affairs, as in all other branches of the Federal administration. De Tocqueville pointed out that "the true friends of liberty and the greatness of man ought constantly to be on the alert to prevent the power of government from lightly sacrificing the private rights of individuals to the general execution of its designs."[6] The unanimous adoption of the new statute by Congress proclaims the firm intent of the American people, notwithstanding the jungle-growth of administrative regulation, to insure the maintenance of "a government of laws and not of men."

ARTHUR K. KUHN

THE LEGAL POSITION OF THE SECRETARY GENERAL OF THE UNITED NATIONS

The intervention by Secretary General Trygve Lie of the United Nations in the Iranian case, pending in the Security Council, has brought up again the problem of the range of his competence under the Charter. The problem is not only important as far as the UN is concerned but also interesting from the point of view of the development of international organization. As the makers of the Charter carefully took into consideration the law and the experience of the League of Nations it may be helpful to start with a brief sketch of the legal position of the Secretary General of that organization.

The Secretary General of the League of Nations was primarily the chief administrative officer of the League. He had, first, to organize the Secretariat, and to act as its chief. In this capacity he had broad powers. He was the superior of all the staff members. He made all appointments to the staff; the approval of the Council, under Article IV, par. 3, of the Covenant,

[4] *United States vs. Ju Toy* (1905), 198 U.S. 253. See *Proceedings of the American Society of International Law*, 1911, pp. 210–212.

[5] See Henry Reiff, "The Enforcement of Multipartite Administrative Treaties in the United States," this JOURNAL, Vol. 34 (1940), p. 661.

[6] A. De Tocqueville, *Democracy in America*, Chap. VII.