to the dispute. The Council held (June 1) that Article 15 should be applied, that the Chaco Commission had already furnished the investigation required, and that the parties should present the statements of their cases as promptly as possible. Concurrently, it ruled (June 7), in agreement with the parties, that the conciliation procedure under Article 11 should continue. This was followed (June 9) by Bolivia's formal request that the Council lay the dispute before the Assembly under Article 15. Paraguay (June 11) made reservations to this request on the ground that Article 15 did not apply to a state of war in progress. Nevertheless the Council (September 7) resolved to refer the dispute to the Assembly while continuing its duties under Article 11.[10] On going to press, the controversy still rests in the Assembly.[11]

One of the great difficulties in settling the dispute is that the Chaco has now become a political question between the two countries. It is no longer a purely legal question as to the title to the Chaco district, but also a question of the supremacy in this district of two neighboring countries who claim it as essential to their national life. A realization of this point of view explains the intensity of the controversy and the refusal of the disputants to yield on points which they deem vital. Paraguay insists on the suspension of hostilities, not a mere armistice, together with evacuation, demobilization and disarmament as guarantees of security, before a negotiation of a settlement of the substantive question by arbitration or other means. Bolivia, on the other hand, demands the negotiation of a settlement first as the best guarantee of peace and security, the suspension of hostilities and guarantees being matters for secondary consideration. There are also wide differences of view in respect of details of these main questions. And all the peace machinery in the world has so far failed to piece together a formula of reconciliation and settlement appropriate to the sensibilities and national interests involved.

L. H. Woolsey

THE LOCAL REMEDY RULE

During the war thirteen ships owned by Finnish shipowners were requisitioned in English ports to carry cargoes in the Allied cause. Most of the ships appear to have been used to carry British cargoes to France. In 1920, the Finnish Government, on behalf of the owners, made claim upon the British Government for compensation for the vessels taken. The British Government replied that the ships had been seized not by Great Britain but by a Russian committee, for whom British officials were merely agents for the physical seizure. They added that if there was a claim it could be made under the Indemnity Act of 1920 before the Admiralty Transport Arbitra-

[10] Meanwhile, according to the press, Argentina suggested to the United States and Brazil that they attempt mediation. This was apparently undertaken during the summer but came to no result. The documents of this mediation are not yet available.

[11] The official reports of meetings of the Council and Assembly in September are not available on going to press.

tion Board. The Finnish owners thereupon brought suit as requested, but were defeated, primarily on the ground that it was not a British liability, but a Russian liability, if any, and that Great Britain had given Russia credit in current account for the services rendered to Great Britain by the vessels.

This outcome did not satisfy the Finnish owners. Through their government they finally brought the issue before the Council of the League of Nations under Article 11 of the Covenant, on the ground that the difference threatened the good understanding between the two nations. Great Britain took the position that there was no basis for any international claim until the Finnish owners had exhausted their remedies in the British courts and that, inasmuch as an appeal lay from the decision of the Arbitration Board to the Court of Appeal and then to the House of Lords, and inasmuch as the owners had not taken this appeal, Finland had no standing to advance the claim in the international forum.

After long debates in the Council of the League and reference to a committee of jurists, it was finally agreed between the two governments to submit to an arbitrator, Judge Bagge of the Supreme Court of Sweden, the question whether the Finnish owners had sufficiently exhausted their local remedies in Great Britain.

This raised the two questions whether there were local remedies in Great Britain and, if there were such remedies, whether, if invoked, they would have been effective to secure redress. An affirmative answer would doubtless have made the failure to resort to them a bar to the international claim.

It was agreed that the Court of Appeal had jurisdiction of an appeal from the Arbitration Board on questions of law, and the bulk of the arbitrator's opinion of 136 pages is confined to an examination of the decision of the Arbitration Board and the effort to find the distinction between findings of law which would and findings of fact which would not have justified an appeal. This is followed by an inquiry whether an appeal would have been practically effective.

Certain preliminary questions had to be disposed of. The British Government appears to have taken the view that an appeal is excused only if it would be futile on formal or jurisdictional grounds, but that there is no justification for refusing to appeal because it would be futile on the merits. The arbitrator, however, took the view that, assuming a *prima facie* valid claim, if an appeal would in all probability be futile on the merits in obtaining a reversal of the judgment below, recourse to appeal is excused. This seems sound.

Another important question was the extent to which Finland could bring before the arbitrator new arguments that the owners had not brought before the Admiralty Transport Arbitration Board under the Indemnity Act, and whether they could withdraw before the arbitrator arguments advanced before the Council of the League and the Board. The theory evidently was that the validity of the dismissal would have to be judged on the arguments

originally advanced by Finland and that every argument which involved a question of law on which the Board had passed would have to be passed upon by the arbitrator to determine whether the ruling was appealable.

The Board had found, on the strength of an agreement of May, 1916, and supplementary correspondence, that there was no intention on the part of Great Britain to requisition the vessels, but that, on the contrary, it was the British intention that the Russian committee in London, in constant communication with Petrograd, should take the vessels and then turn them over to Great Britain for use in the Allied cause. One of the principal issues before the arbitrator turned on the question whether the Board's finding that the Russian Government had seized the vessels was a finding of fact or a finding of law, for findings of fact were not appealable and the failure to appeal from them, therefore, justifiable.

The arbitrator found, in part supporting the British position, that there were, among others, at least five rulings on questions of law which the Board had made and which were appealable: (1) the construction of the agreement of May, 1916; (2) the validity of certain supplementary agreements between Great Britain and Russia; (3) the effect of the authority of the Russian committee to requisition ships in England; (4) the legality under Russian and Finnish law of making seizures in England; (5) the legal possibility of Russia's exercising jurisdiction over ships in British ports.

On the other hand, he came to the conclusion that none of these appealable points of law could have served to change the decision on the fundamental fact found by the Board that the seizure and taking were Russian acts. The Finnish owners leaned heavily on the argument that under the agreement between Great Britain and Russia their ships should have been used only in the White Sea munition traffic, whereas, in fact, most of the ships were used in quite different traffic and by the British Government for British purposes. This question may ultimately become a vital point in the case. The arbitrator also found that the owners had no effective remedy under the War Compensation Act for interference with private property, or by petition of right, on the theory of a contract, express or implied. He therefore concluded, on the question submitted, that the Finnish owners had "exhausted the means of recourse placed at their disposal by British law."

The decision is of importance in the law of international claims, because it is one of the most exhaustive discussions, in the light of an actual case, of the scope and effect of the local remedy rule. That rule was never meant to constitute a mechanical formula designed to impose hardships or a futile proceeding on a claimant who had sustained a provable injury in violation of a treaty or of a definite rule of international law. It is a highly practical rule having for its purpose the effort to make certain that a claimant had done what he reasonably might be expected to do to secure local redress for his grievance and thus make unnecessary an international claim. The rule is designed to avoid premature international claims, for premature diplo-

matic intervention is an affront to the independence of the local sovereign, who in first instance must have the opportunity to examine in his own courts disputed questions of law and fact which most claims exhibit. Only when this local examination discloses abuses characterizable as a denial of justice, does an international claim under such circumstances usually arise. This is generally a delicate proceeding charged with difficulties, which doubtless accounts for the fact that in certain recent claims treaties, such as those with Mexico and Panama, the exhaustion of local remedies as a condition of an international claim, has been dispensed with.

But this very principle points the necessity for distinctions. Where there is no doubt or dispute about the facts, or where the injury—in this case a requisition of foreign vessels for public use—is commanded by the highest authorities of the government, there is but little to investigate by the local courts and but little scope for the rule that respect for the local sovereignty requires that the international claim be deferred until the facts can be sifted and until it can then be determined whether there is any basis for a claim. Most claims do not arise in this clear fashion. They generally have their origin in some isolated disturbance, event or incident compounded of disputed facts and law, which on that very account cannot normally give rise to an international claim until the local courts have had a chance to investigate the case and by denial of justice have laid the foundation for a formal claim. But where a local sovereign intentionally proceeds to requisition or confiscate private property, the scope of the local remedy rule is limited to the reasonable opportunity which may be afforded the local sovereign to make good the injury and thus make unnecessary an international claim. Not nearly so much consideration or restraint on the part of the foreign claimant's sovereign is here necessary. It is even doubtful how long he needs to wait to enable the local sovereign to make compensation to the injured national.

Where there is a reasonable chance that the local courts may set aside as illegal an administrative or even a legislative act giving rise to the claim, it is hardly doubtful that the effort should be made. But where there is no such reasonable chance, it would be an empty form and a futility to require the effort. For example, where a prize seizure under Orders in Council has been made, and the claim rests not on administrative departure from the law but on the illegality of the law or Order in Council itself, it would in most cases be perfectly hopeless to expect a municipal court to set aside the law or Order in Council as illegal. Even prior uniformity of decision may serve to make further judicial recourse hopeless and therefore unnecessary.

Judge Bagge has made a useful contribution in clarifying the distinction between the opportunity to appeal as a matter of form and the opportunity to appeal with hope of effective redress in reversing the decision below, administrative or judicial. Only the latter possibility can be considered under the head of "local remedy," for a remedy implies redress, and redress implies practical results. Unless an appeal can be deemed reasonably to offer an

opportunity of securing a reversal of the decision below, it is not an effective remedy which needs to be resorted to. Judge Bagge was drawn by counsel into the metaphysical labyrinth of the distinction between questions of fact and of law in English jurisprudence, but worked his way out by concluding that the appealable legal grounds were ineffective to secure a reversal of the Board's finding of "fact" that the requisition and taking were Russian acts.

The disposition of the preliminary question on the exhaustion of local remedies will now presumably prepare the way for the determination of the substantive question whether Great Britain is liable for the seizure or use of the vessels; and here the claimants will presumably have to show before an international tribunal that the seizure or taking was not Russian but British, or if the taking was Russian, that the use was British and that hence Great Britain is under a duty to make compensation.

EDWIN M. BORCHARD

THE RUSSIAN SOVIET UNION AND THE LAW OF NATIONS

The diplomatic representative of Russia at a certain European capital when asked his views concerning international law replied enigmatically that "it would be better if the world were under one system." The views on this subject of the Russian Ambassador to the United States, Mr. Alexander A. Troyanovsky, as adumbrated in his address before the American Society of International Law at its annual banquet in Washington on April 28, 1934, are of special interest. He, too, was enigmatic, though the following excerpts from his address may serve to indicate the drift of his argument.

> International law is a collection of the rules directing the relations among nations. These rules are effective only in so far as the nations themselves accept them, of their own will. The source of the regulating lies in the nations, and not in a superforce acting from above the nations.
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> . . . . . .
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> I think that only very precise international treaties duly signed can give us an acceptable basis for international relations, and consequently for international law. Vague ideas and general rules can constitute a very good stimulus for the further development of treaties and international law, but the world situation badly needs exact formulas and determined obligations.
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> . . . . . .
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> Public opinion, the press, statesmen, diplomats, must not spare their efforts to create coöperation of the Powers for support of existing international law in the form of signed treaties and obligations, along with necessary changes of obsolete agreements.[1]

It is obviously true that international law is not imposed on nations by legislation: "its rules are effective only in so far as the nations themselves accept them, of their own will." But if it be implied thereby that any

[1] Proceedings, Am. Soc. Int. Law, 1934, pp. 195–197.