ment of State, but unfortunately, it appeared to be too late in the legislative calendar to have this estimate considered upon its merits, as it, together with the other deficiency recommendations of the Department of State with which it was grouped, failed to receive the approval of the Director of the Budget on the ground, it is understood, that they were not appropriate for inclusion in the general deficiency bill. The Society's Committee, consisting of Messrs. William C. Dennis, Chairman, Henry W. Temple, and Charles Henry Butler, then made efforts to have the item inserted in the bill by the Appropriations Committee of the Senate, and Mr. Temple was granted a hearing before the Senate Committee, upon a proposed appropriation of $42,420 "for the purpose of expediting the publication of the foreign relations of the United States, for the preparation of a new edition of the treaties and agreements of the United States, for the initiation of an information service on current diplomatic subjects, and for the publication of arbitral proceedings to which the United States is a party;" but the attempt was again unsuccessful for legislative reasons.

It is the intention of the Society's Committee, in collaboration with the Committee of the Teachers' Conference, to make an effort in the Fall to support the recommendation of the Department of State before the Bureau of the Budget and the Appropriations Committees of Congress. The enlargement of the scope of the publications of the Department of State will be in the interest not only of the work of the teachers, for whom Professor Hudson made a special plea, but of all members of the American Society of International Law, who are associated together, in the words of the Constitution of the Society, "to foster the study of international law and promote the establishment of international relations on the basis of law and justice." Since its organization, the Society has supplied the readers of its JOURNAL with the texts of important official documents so far as available, and will continue to do so within its limited space. The present proposal to enlarge the scope of the publications of the Department of State is therefore in direct line with the work of the Society, and it is hoped that all members who may have an interest in such publications will manifest it by communicating with their representatives in Congress, urging them to give their support to this much needed appropriation for the Department of State.

GEORGE A. FINCH.

ARBITRATION OF ATTORNEYS' FEES UNDER THE SETTLEMENT OF WAR CLAIMS ACT OF 1928

The American Commissioner* on the Mixed Claims Commission between the United States and Germany, the awards of which Commission are now being paid pursuant to the recent Act of Congress entitled "Settlement of War Claims Act of 1928," has been authorized and requested by Congress, in

* Honorable Chandler P. Anderson.

Section 9 of that Act, to take jurisdiction in cases of disagreement between claimants and their attorneys, or agents, as to the fees to be paid for services rendered on behalf of claimants in whose favor awards have been made by that Commission. He is to act in the capacity of an arbiter or umpire in such cases, and is authorized to fix the fees for whatever amount is reasonable in his judgment for the services rendered.

The heading of Section 9 of this Act is "Excessive Fees Prohibited," and the purpose of this legislation is to protect claimants against the exaction of excessive fees for legal services. The American Commissioner's authority to fix such fees is contingent upon a request by the claimant that this action be taken, but he is authorized to fix fees in such cases whether or not such fees have previously been fixed under any contract or agreement between claimants and attorneys.

The only limitation imposed is that no fee shall be fixed under this Act unless written request therefor is filed with the American Commissioner before the expiration of ninety days after the date upon which a notice of the provisions of the Act was mailed to the claimant.

The Act also provides, as a penalty, that after a fee has been fixed thereunder any person accepting any consideration (whether or not under a contract or agreement entered into prior to the enactment of the Act), the aggregate value of which (when added to any consideration previously received) is in excess of the amount so fixed for services in connection with the proceedings before the Mixed Claims Commission, or any preparations therefor, or with the application for payment, or the payment, of any amount awarded, shall upon conviction thereof be punished by a fine of not more than four times the aggregate value of the consideration accepted by such person therefor.

An interesting feature of this legislation is that the American Commissioner is not directed or required by Congress to fix the fees of attorneys or agents. He is merely authorized and requested to do so if so requested by claimants in accordance with the provisions of the Act.

Furthermore, the Act does not impose upon the American Commissioner any mode of procedure for carrying out the arbitration thus authorized, except the requirement that a notice of the terms of the Act, as therein specified, be mailed to claimants. Apart from that specification the American Commissioner is free to proceed in accordance with whatever mode of procedure he may adopt for fixing a reasonable fee in each case.

As rapidly as possible, after the passage of this Act, the required notices were mailed to each claimant on whose behalf an award was made by the Mixed Claims Commission, amounting in all to upwards of 3,500 claimants. These notices were sent by registered mail in order to make an official record in each case of the date of mailing, which date is the beginning of the ninety days period within which the written request by the claimant that fees be fixed must be filed with the Commissioner.

In response to these notices about ten per cent of the claimants have filed requests that fees be fixed. Many of these requests, however, have been made in cases where either no attorneys or agents were employed or under a mistaken understanding of the meaning of the provisions of the Act.

In many cases the Act has been misinterpreted to mean that the Treasury Department would pay a fee for the services of attorneys or agents, and also reimburse claimants for expenses in presenting their claims, in addition to the amount of the award. This misinterpretation may be attributed in *some cases to avarice, and in some cases to a careless reading of the terms of* the Act. In a number of cases the fees referred to have been understood to mean fees to be paid as compensation to the American Commissioner, or to the American Agent, or to other governmental officials who have been concerned in the proceedings before the Mixed Claims Commission. This misinterpretation is obviously without the slightest justification. In a surprisingly large number of cases the attorneys themselves have assumed that the request to have their fees fixed could be made by them, and they have made such request. Their explanation in most cases is that if their fees were not deducted by the Government from the award, before payment to the claimants, they may not be able to collect their fees at all, but the Act makes no provision for any such deductions from the awards.

None of the cases above mentioned comes within the jurisdiction of the American Commissioner under the provisions of this Act, and their elimination will substantially reduce the extent of the arbitration. In any event, however, this arbitration will involve the fixing of reasonable fees in upwards of 250 separate cases, which is an undertaking of considerable magnitude and of unusual importance when measured by the standards of previous claims commissions.

The second step in the procedure adopted by the American Commissioner in organizing this arbitration has been to notify each claimant, who has filed a request that the fees of his attorney or agent be fixed, that each case must be dealt with separately, because no general rate for fees can be fixed applying equally to all claims. The question of what amount would be a reasonable fee will depend in each case upon the character and value of the services rendered in obtaining the award, as well as on such other facts as are properly to be taken into consideration in determining an agent's or attorney's compensation, as to all of which the agent or attorney, as well as the claimant, will be entitled to a hearing.

In the great majority of the cases to be considered, the fees asked by the attorneys are for an amount equivalent to a percentage of the award, which in some cases runs as high as fifty per cent. In practically every case where an agreement has been made between claimants and attorneys, the payment of the fee is made contingent upon securing an award, but the agreements vary as to whether or not the contingent fee should include the expenses

and disbursements involved in the presentation of the claim, which may have an important bearing upon the reasonableness of the agreement.

This basis of compensation is one with which the legal profession is entirely familiar, but when applied to the prosecution of claims before an international commission a new element is introduced which is not found in cases prosecuted in a court where the attorney has the entire responsibility for the conduct of the litigation. This new element is that the Government of the United States has taken the full responsibility and control in the presentation of all claims before this Commission. Attorneys for claimants have not been permitted to appear before the Commission and they have been allowed to file briefs only with the approval and endorsement of the American Agent. The Government not only has established by the Treaty of Peace with Germany the right of recovery, where such right exists, but it has also established a governmental organization for the presentation of these claims, and has borne all the expenses of such organization, and the organization thus established has taken full control over the presentation of claims and performed the major part of the work involved in their prosecution, and in many cases has done everything connected therewith except the production of evidence, and not infrequently it has been obliged to instruct the claimants' attorneys as to what evidence was needed to establish the claim, and also to assist them in procuring it.

The action of Congress in authorizing the nullification of service agreements previously made by claimants with attorneys or agents suggests an inquiry into the circumstances in which such agreements were made. In many instances these agreements were made before Germany's financial obligations to make compensation for damages suffered by American nationals during the war were defined by the Treaty of Peace with the United States, or before the Mixed Claims Commission was organized and its jurisdiction over these claims established.

In these cases, as well as in many others, the claimants, and probably the attorneys also, were not well informed as to the scope and character of the services to be rendered, and their agreements were based upon expectations and assumed conditions which did not develop as anticipated, and which perhaps contemplated a greater amount, or a different character, of work for the attorneys than was actually required or performed.

Whatever the reason may have been, by this Act of Congress the American Commissioner is requested to determine the reasonable value of the services actually rendered by attorneys or agents in each case irrespective of the terms of any service agreements which they may have entered into.

The next step in the procedure adopted by the American Commissioner is to request the claimants and their attorneys or agents to furnish such evidence as may be necessary and appropriate to enable him to determine what is a reasonable fee in each case.

A precedent for Congressional legislation authorizing the fixing of attor-

neys' fees for services rendered in an international arbitration is found in the Act of Congress approved June 23, 1874, for the creation of the "Court of Commissioners of Alabama Claims" for the distribution of a part of the Geneva award. Section 18 of that Act provides that "at the time of the giving of the judgment the court shall, upon motion of the attorney or counsel for the claimant, allow out of the amount thereby awarded, such reasonable counsel and attorneys' fees" as the court shall determine "is just and reasonable," which allowance shall be entered as part of the judgment in such case, and shall be made specifically payable "to the attorney or counsel, or both."[1]

It will be observed that the present Act does not strictly conform to the precedent furnished by the earlier Act, because their purposes are distinctly different. The authority conferred upon the Alabama Claims Court was designed to protect attorneys by insuring the payment of their fees, as fixed by the court, out of the awards to claimants, whereas in the present case the evident purpose of Congress is to protect claimants against "excessive fees" for attorneys, and no provision is made for securing the payment to attorneys of their fees as fixed by the American Commissioner.

CHANDLER P. ANDERSON.

TREATMENT OF ENEMY PRIVATE PROPERTY IN THE UNITED STATES BEFORE THE WORLD WAR

In a scholarly article published in the April issue of this JOURNAL (Vol. XXII, p. 270), Mr. Edgar Turlington remarked (p. 291) that "It cannot be said that there was in the United States, prior to 1914, any established usage of exempting the property of non-resident enemies from confiscation." This conclusion is reached from the premise that the "function of declaring the law of nations on appropriate occasions devolves under our Constitution upon the courts" (p. 276). By calling attention to certain dicta of the United States Supreme Court, in which the privilege of confiscation was apparently on occasion asserted, though no actual confiscation of private property on land was in any of these cases sustained, the learned author arrives at the conclusion mentioned in the first sentence. The evidence of American policy derived from some forty treaties is dismissed as unsatisfactory and inconsistent, and the practice of Congress and of the Executive is practically left out of consideration.

Without any intention of impugning the author's learning or ability, it must with deference be submitted that in confining his source material of American policy to judicial declarations, the author has not drawn upon the most important sources; and that his conclusion, therefore, seems to the writer unsustainable. It is impossible in the course of an editorial to exam-

[1] Report of John Davis, Clerk of the Court, to the Secretary of State, p. 25.