certain immediate problems of economic and political security. The American Republics approach their task in a spirit of complete friendliness toward all nations demonstrating their will to conduct international relations on the basis of peace and friendship. The American Republics will deal with their problems realistically in the light both of emergency needs and broad objectives.[14]

ELLERY C. STOWELL

INTERPRETATION OF THE TERM "HIGH CONTRACTING PARTIES" IN THE AIR TRAFFIC CONVENTION

A recent decision of the House of Lords,[1] overruling the Court of Appeal, throws much-needed light upon the use of the term "High Contracting Parties" in treaties signed but not ratified. The decision also defines the term "international carriage" as used in the Convention for the Unification of certain Rules relating to International Transportation by Air, signed at Warsaw, October 12, 1929,[2] by over thirty states. The term "international carriage" determines the geographic scope of the convention. The decision is of particular interest also in this country, because the United States adhered to the convention on July 31, 1934, although not originally a signatory.

The term "High Contracting Parties" is of course a diplomatic formula for designating the parties to an international agreement. The question involved, reduced to its simplest terms, is whether the term refers only to the states which ultimately ratify a treaty, or whether the term embraces also the states which have signed it but which have not yet ratified it, or which never ratify it.

The appellants were a firm of bankers of Brussels, Belgium, who brought this action for damages against the Imperial Airways, Limited, to recover for the loss of a consignment of English and American gold coin of the value of £10,600 entrusted to the respondent on March 5, 1935, for transportation by air from London to Brussels. The respondent took the consignment to the Croydon Airdrome on the same day and there stored it overnight for transportation to Brussels on the following day. During the night, the gold coin was stolen from the vault in which it had been deposited. Action for the loss was begun more than six months but less than two years after the cause of action arose, and the respondent contended that the action was brought too late.

The carriage contract referred to the general conditions of carriage printed upon the back of the contract, which were those agreed upon by the members of the International Traffic Association, and which substantially embodied

[14] Department of State Bulletin, July 20, 1940, Vol. III, No. 56, p. 34.

[1] Philippson v. Imperial Airways, Ltd., [1939] A. C. 332; 108 L.J.K.B. 415; this JOURNAL, Vol. 33 (1939), p. 588; Lord Atkin, Lord Thankerton and Lord Wright for reversal, Lord Russell of Killowen and Lord Macmillan dissenting. The judgments of the courts below are reported in (1937) 53 T.L.R. 850 and (1938) 54 T.L.R. 523, respectively.

[2] For text of convention, see Supplement to this JOURNAL, Vol. 28 (1934), p. 84.

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the terms of the Warsaw Convention of October 12, 1929. The convention expressly provides that the carriage contract must mention the fact that transportation is subject to the régime of liability established by the convention. Among these general conditions are the following, substantially corresponding to Article 1, paragraph 2, of the convention:

> The special categories of international carriage . . . include all carriage by air in which according to the contract made by the parties the place of departure and the place of destination, whether or not there be a break in the carriage or a trans-shipment, are situated either within the territories of two High Contracting Parties to the Convention of Warsaw . . . upon which these conditions are based or within the territory of a single Contracting Party if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate, or authority of another Power even though that Power is a non-contracting Power.

England ratified the convention on February 13, 1933, but Belgium, although a signatory, did not ratify it until October 11, 1936. Accordingly the respondent contended that Belgium was not a high contracting party at the time of the contract and therefore the contract was not one of "international carriage." In Article 23 of the general conditions, corresponding to Article 29 of the convention, an action for damages under a contract for international carriage is limited to two years from the material date, whereas in respect of all other claims the limitation fixed by the conditions is six months.

Under the Carriage by Air Act, 1932, the King is given power by Order in Council to certify who are high contracting Powers to the convention. It was held that such action was not to be taken in construction of the convention because it did not give power to certify that certain states were not parties. It must be admitted that at least in this statute and with this application the term "High Contracting Parties" refers to those who have ratified a convention, otherwise the power to certify would have no meaning. On the other hand, the statute seems to be principally one of administration to aid in the proper enforcement of treaties, and not applicable here where rights are to be determined by a construction of the convention.

The Court of Appeal had decided that the term "High Contracting Parties" as used in this part of the convention meant only the parties bound by ratification or accession; and two of the four judges below were of the opinion also that the certificate contained in the Order in Council was conclusive as to which states were to be considered high contracting parties. The House of Lords reversed the Court of Appeal by the narrow majority of three to two, and held that all signatories were to be considered high contracting parties, at least in respect to those provisions of the convention which define the term "international carriage." Accordingly, the six-months' limitation was held not to apply.

It can scarcely be denied that the term "High Contracting Parties" refers

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to signatories before ratification in certain parts of the convention. Thus it is provided that the convention shall be deemed operative when it "shall have been ratified by five of the High Contracting Parties." As Lord Atkin well points out, this cannot mean five of the five who have ratified, but five of any of the signatories. There are also certain declarations to be made by "any High Contracting Party at the time of signature" (Article 40), thus indicating a diplomatic usage not restricted to ratification.

The dissenting opinion of Lord Russell of Killowen argues that unless the term "High Contracting Parties" be restricted to ratifying states, absurd results are likely to be reached. A contracting party which, in the language of diplomacy, is characterized as "high," would include a party who does not contract. If that be true, then, says Lord Russell, "lawyers and diplomats speak in different tongues" (p. 356). Perhaps they do, but it does not seem to be a necessary conclusion from the present case. Certainly a contractual relationship has been created at the time of signature and before ratification. There are indeed two contractual relationships, although greatly varied in scope. As Oppenheim well points out,[3] a treaty is concluded as soon as the mutual consent is manifest from acts of a state's duly authorized representatives, although its binding force is, as a rule, suspended until ratification is given. Furthermore, the reasoning of the majority of the law lords seems to be much more in harmony with the general purposes of the Warsaw Convention than that of the minority. The term "High Contracting Parties" as used in the part of the convention under consideration, does not determine which states are bound by the convention, but fixes the territory within which the terms of the convention shall apply. A distinction is drawn between international and internal carriage by air. The natural purpose of the convention was not to limit international carriage, but to extend it to the territory of the signatories, whether or not they eventually decide to become bound to make the provisions of the convention part of their domestic law.

The United States was not one of the original signatories of the Warsaw Convention. It deposited its adherence on July 31, 1934. The term "High Contracting Party" is expressly applied in the convention to states which later signify their adherence (Article 40). The interpretation given by the House of Lords would seem to be reasonable in respect to air traffic from or to the United States under the convention. Under the principles of interpretation accepted in the Draft Convention on the Law of Treaties elaborated by the Harvard Research in International Law (Article 19 a): "A treaty is to be interpreted in the light of the general purpose which it is intended to serve."[4] The general purpose of the treaty was not to restrict its application but to extend it, so as to make the conditions of air traffic uniform. A circumstance pointing in this direction is that the term "international carriage" is expressly made to include carriage on the territory of a

[3] L. Oppenheim, International Law (5th ed., 1937), §510, p. 711.

[4] Supplement to this JOURNAL, Vol. 29 (1935), p. 661.

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single high contracting party, if a stop is contemplated in a territory of another Power, even a non-contracting Power (Article 1, paragraph 2).

The fact that the interpretation of the term "High Contracting Parties" has caused such a widespread difference of opinion among the judges of the high courts of England, should serve as a warning that in the drafting of treaties particular care must be exercised to indicate whether the term is intended to be restricted to the ultimate ratifying Powers or is intended to embrace also all the signatories.

ARTHUR K. KUHN

AMERICAN MEMBERS OF THE PERMANENT COURT OF ARBITRATION DURING FORTY YEARS

Forty years have passed since the establishment of the Permanent Court of Arbitration. The Hague Convention for the Pacific Settlement of International Disputes of July 29, 1899, which first made provision for the Court, may be said to have entered into force on September 4, 1900, when ratifications were deposited at The Hague by seventeen of the twenty-six signatory states.[1] Even before that date, however, states began to appoint members of the Permanent Court of Arbitration, each of the contracting states being entitled to appoint four members. The convention provided (Article 28) that the Administrative Council of the Court should notify the contracting states of the constitution of the Court; this formality was not accomplished until April 9, 1901, on which date fifty-four members of the Permanent Court of Arbitration had been appointed by sixteen states. The existence of the Court may therefore be said to date either from the later months of 1900 or from the earlier months of 1901. Its continued maintenance was provided for in the Hague Convention for the Pacific Settlement of International Disputes of October 18, 1907. Some forty-seven states, parties to one or both of the Hague Conventions, have participated in the support of the Court during some or all of the intervening years.

Continuously during these forty years the Government of the United States has coöperated in the maintenance of the Permanent Court of Arbitration. The United States promptly ratified both the Hague Convention of 1899 and that of 1907; it has regularly appointed members of the Court, its diplomatic representatives at The Hague have participated in the work of the Administrative Council of the Court, and it has made annual contributions for meeting the expenses of the Court. On five occasions the United States has been a party to arbitrations which may properly be said to have been before tribunals of the Court.

In recent years the Permanent Court of Arbitration usually has about 150

[1] The convention contained no provision concerning the date of its entry into force; one of the signatories, Turkey, did not deposit its ratification until June 12, 1907. The convention was ratified by the President of the United States on April 7, 1900, and the ratification was deposited at The Hague on Sept. 4, 1900; but the convention was not proclaimed by the President of the United States until Nov. 1, 1901. 32 U. S. Stat., p. 1779.

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