polite conduct. The law must be re-oriented; it must now aim at the control of the use of war itself, and not merely at its polite regulation. It is no more than evasion to say that there are no changes, and that therefore the good old law is still good. The fears derided by Mr. Moore in his essay are not now illusions; they seem stark and naked and fearful in their reality today. And if they are not illusions, perhaps it is not an illusion "that we must forthwith create a sanction, and declaring war to be outlawed, be done with it." [7]

CLYDE EAGLETON

THE INTERNATIONAL RIGHTS OF MAN

The reference in President Roosevelt's message to Congress of January 6, 1941, to the four essential human freedoms to which he looked forward as the foundation of a future world—(1) freedom of speech and expression, (2) freedom of every person to worship God in his own way, (3) freedom from want, and (4) freedom from fear—recalls previous humanitarian hopes for and efforts toward what the President termed "a good society" conceived in the moral order. The work of the President's predecessor, Woodrow Wilson, at the Paris Peace Conference of 1919 in behalf of the protection of minorities comes readily to mind. The series of treaties concluded at the end of the World War contained a number of provisions of this kind. The basis for their inclusion was explicitly stated by M. Clemenceau in a letter of June 24, 1919, to M. Paderewski, transmitting the treaty for the protection of minorities which Poland was required to sign simultaneously with the Treaty of Peace with Germany on June 28, 1919. Said M. Clemenceau to M. Paderewski:

> This treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a state is created, or even when large accessions of territory are made to an established state, the joint and formal recognition by the great Powers should be accompanied by the requirement that such state should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received the most explicit sanction when, at the last great assembly of European Powers—the Congress of Berlin—the sovereignty and independence of Serbia, Montenegro, and Roumania were recognized.

The following passages from the protocol signed at Berlin on June 28, 1878, recalling the words then used by the British, French, Italian and German plenipotentiaries, to which M. Clemenceau called the attention of M. Paderewski, make interesting history in the light of more recent happenings:

> Lord Salisbury recognizes the independence of Serbia, but is of opinion that it would be desirable to stipulate in the Principality the great principle of religious liberty.
>
> . . . . .
>
> Mr. Waddington believes that it is important to take advantage of this solemn opportunity

[7] J. B. Moore, International Law and Some Current Illusions (New York, 1924), p. 36.

https://doi.org/10.2307/2192570 Published online by Cambridge University Press

to cause the principles of religious liberty to be affirmed by the representatives of Europe. His Excellency adds that Serbia, who claims to enter the European family on the same basis as other states, must previously recognize the principles which are the basis of social organization in all States of Europe and accept them as a necessary condition of the favor which she asks for.

. . . . .

Prince Bismarck, associating himself with the French proposal, declares that the assent of Germany is always assured to any motion favorable to religious liberty.

Count de Launay says that, in the name of Italy, he desires to adhere to the principle of religious liberty, which forms one of the essential bases of the institutions of his country, and that he associates himself with the declarations made on this subject by Germany, France, and Great Britain.

Count Andrassy expresses himself to the same effect, and the Ottoman plenipotentiaries raise no objection.

Prince Bismarck, after having summed up the results of the vote, declares that Germany admits the independence of Serbia, but on condition that religious liberty will be recognized in the Principality. His Serene Highness adds that the drafting committee, when they formulate this decision, will affirm the connection established by the Conference between the proclamation of Serbian independence and the recognition of religious liberty.

"The Principal Allied and Associated Powers," M. Clemenceau continued to M. Paderewski, "are of opinion that they would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition."[1]

The treaty of 1919 with Poland was used as a model for similar treaties for the protection of minorities concluded with Austria, Bulgaria, Czechoslovakia, Greece, Rumania, Turkey, and Yugoslavia. By these treaties, minorities were placed under the protection of the League of Nations, and this phase of the League's work has been the subject of a considerable special literature.

President Roosevelt's "Four Freedoms" are, of course, much broader than the protection of minorities, for they apply to all peoples "everywhere in the world," and include some rights of man which he is permitted to exercise only under the most liberal democratic governments. In this aspect, the "Four Freedoms" remind us of the "Declaration of the International Rights of Man," adopted by the *Institut de Droit International* at its session held at Briarcliff, New York, on October 12, 1929, which seems of sufficient present interest to reproduce in full:

DECLARATION OF THE INTERNATIONAL RIGHTS OF MAN

ADOPTED BY THE INSTITUT DE DROIT INTERNATIONAL AT ITS SESSION OF OCTOBER 12, 1929, BRIARCLIFF LODGE, BRIARCLIFF MANOR, NEW YORK

The Institute of International Law

Considering:

That the juridical conscience of the civilized world demands the recognition for the individual of rights preserved from all infringement on the part of the State;

[1] M. Clemenceau's letter to M. Paderewski is printed in this JOURNAL, Supplement, Vol. 13 (1919), p. 416.

https://doi.org/10.2307/2192570 Published online by Cambridge University Press

That the declarations of rights, written into a large number of constitutions and especially into the American and French Constitutions of the end of the 18th century, are ordained not only for the citizen, but for man;

That the 14th Amendment of the Constitution of the United States prescribes as follows: ". . . nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws";

That the Supreme Court of the United States has unanimously decided that by the terms of this amendment it is applicable within the jurisdiction of the United States "to every person without distinction of race, color or nationality, and that the equal protection of the laws is a guarantee of the protection of equal laws";

That, moreover, a certain number of treaties stipulate the recognition of the rights of man;

That it is important to extend to the entire world international recognition of the rights of man;

PROCLAIMS:

ARTICLE I

It is the duty of every State to recognize the equal right of every individual to life, liberty and property, and to accord to all within its territory the full and entire protection of this right, without distinction as to nationality, sex, race, language, or religion.

ARTICLE II

It is the duty of every State to recognize the right of every individual to the free practise, both public and private, of every faith, religion, or belief, provided that the said practise shall not be incompatible with public order and good morals.

ARTICLE III

It is the duty of every State to recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language.

ARTICLE IV

No motive based, directly or indirectly, on distinctions of sex, race, language, or religion empowers States to refuse to any of their nationals private and public rights, especially admission to establishments of public instruction, and the exercise of the different economic activities and of professions and industries.

ARTICLE V

The equality herein contemplated is not to be nominal, but effective. It excludes all discrimination, direct or indirect.

ARTICLE VI

Except for motives based upon its general legislation, no State shall have the right to withdraw its nationality from those whom, for reasons of sex, race, language, or religion, it should not deprive of the guarantees contemplated in the preceding articles.

The *Institut* is a private organization and its pronouncements accordingly have no validity except the prestige of authorship of its distinguished members, carefully elected from the authorities on international law in Europe, the Americas, and Asia, some sixty of whom were in attendance at the Briarcliff session. The significance of this Declaration was stated by an Editor of the JOURNAL shortly after its adoption as follows:

> This declaration drew its inspiration chiefly from American sources and contains intrinsic evidence of its American workmanship. It states in bold and unequivocal terms the rights of human beings, "with-

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> out distinction of nationality, sex, race, language and religion," to the equal right to life, liberty and property, together with all the subsidiary rights essential to the enjoyment of these fundamental rights. It aims not merely to assure to individuals their *international* rights, but it aims also to impose on all nations a standard of conduct towards all men, *including their own nationals.* It thus repudiates the classic doctrine that states alone are subjects of international law. Such a revolutionary document, while open to criticism in terminology and to the objection that it has no juridical value, cannot fail, however, to exert an influence on the evolution of international law. It marks a new era which is more concerned with the interests and rights of sovereign individuals than with the rights of sovereign states. It is specifically concerned with the status and rights of those who, like many Russians, may be in the unhappy state of being, not merely *heimatlos*, but also proscribed by their country of origin.[2]

The unhappy situation in which many Europeans have since been placed by the action of their governments in depriving them of those human rights which the founders of the American democracy declared to be "unalienable," was the subject of discussion at the recent annual meeting of the American Society of International Law. A perusal of those discussions suggests many interesting points for the consideration of international lawyers.

GEORGE A. FINCH

THE TRAIL SMELTER ARBITRATION — UNITED STATES AND CANADA

The Mixed Arbitral Tribunal constituted under the Ottawa Convention of April 15, 1935, to decide the controversy as to damage caused in the State of Washington by noxious fumes issuing from the smelter at Trail, British Columbia, reported its final decision on March 11, 1941.[1] It will be remembered that under its previous decision of April 16, 1938,[2] the Tribunal awarded an indemnity for damage occurring between January 1, 1932, and October 1, 1937, leaving still to be determined the question of subsequent damage, if any, as well as the fixing of a permanent régime for the operation of the smelter.

The Tribunal was requested on behalf of the United States to reconsider its decision not to allow the expenditures incurred by the United States in the preparation of its case. In its final decision, the Tribunal raised the question whether such a request can ever be entertained in international law unless special powers have been expressly granted to the arbitral tribunal. The Tribunal admitted that the convention did not deny power to grant revision, especially as the controversy had not been finally disposed of. However, the Tribunal emphasized the importance of the rule of *stare decisis* while admitting that arbitral decisions were not in agreement upon the point.

The reconsideration of the recent Sabotage cases, United States and Ger-

[2] Philip Marshall Brown, in this JOURNAL, Vol. 24 (1930), p. 127.

[1] Published in this JOURNAL, *infra*, p. 684.

[2] *Ibid.*, Vol. 33 (1939), p. 182; see editorial comment, *ibid.*, Vol. 32 (1938), p. 785.

https://doi.org/10.2307/2192570 Published online by Cambridge University Press