that are available to them when the owners are private persons, instead of being required to invoke the diplomatic intervention of their governments.[12]

If the present rule of immunity, which makes no distinction between public vessels owned and operated by the state and ships owned and operated by it in private trade, is an established principle of international law and can therefore be altered only by international agreement reached through diplomatic negotiation or conference, as many courts assert to be the case, that should be done. The selection by the committee of jurists on codification, of this question as one upon which international agreement is urgently desirable, was most timely, and it is to be hoped that it may propose a rule that will prove acceptable to the community of states. The existing rule as applied by the courts is anomalous, out of harmony with actual conditions, and contrary to modern conceptions of the responsibility of the state.

J. W. GARNER.

CHINA AND THE POWERS

The relations of China with the other Powers during the last few months have assumed such an ominous aspect as to make it necessary for the Government of the United States to issue a public declaration of its policy in relation to Chinese affairs. The Secretary of State, the Honorable Frank B. Kellogg, utilized the occasion of his address before the annual meeting of the American Bar Association at Detroit on September 2, 1925, to make clear the attitude of the American Government. He declared that the policy of the United States "may be said to be to respect the sovereignty and territorial integrity of China, to encourage the development of an effective stable government, to maintain the 'open door' or equal opportunity for the trade of nationals of all countries, to carry out scrupulously the obligations and promises made to China at the Washington Conference, and to require China to perform the obligations of a sovereign state in the protection of foreign citizens and their property." [1]

The events which have led to the present situation started on May 30th last when a number of Chinese were killed and wounded by the foreign police of the International Settlement at Shanghai who attempted to break up a

[12] Compare in this sense Nielsen "Law and Practice of States with Regard to Merchant Vessels," this JOURNAL, Vol. 13, pp. 17 ff.; Walton, "State Immunity in the Laws of England, France, Italy and Belgium," *Jour. of Soc. Comp. Leg.* Ser. 3 (1920), Vol. II, pp. 252 ff., Rippert, 34 *Rev. Int. du Droit Maritime*, pp. 17 ff.; von Bar, *Rapport*, in 11 *Annuaire de l'Inst. de Droit Int.* 414 ff.; Despagnet, *Droit Int. Privé*, Sec. 179; Weiss, *Traité de Droit Int. Privé*, Vol. V. pp. 87 ff.; and Matsunami, *Immunity of State Ships* (1924). Compare also the Draft International Regulations on the Competence of Courts in Suits against Foreign States, Sovereigns or Heads of States (1891), *Resolutions of the Institute of International Law*, p. 91; and the resolutions of the International Maritime Committee adopted at its recent conferences at London and Gothenburg.

[1] Press notice of the State Department, Aug. 31, 1925.

riotous demonstration of sympathizers with Chinese strikers in a Japanese cotton mill, one of whom had also previously been killed. Led by students, the disorders at once developed into an anti-foreign agitation, Chinese merchants and shopkeepers closed their doors, strikes were called among the native employees of foreign industries, and the boycott invoked against foreigners, and especially British and Japanese interests. The disturbances rapidly spread from Shanghai to Canton, Hankow, and other Chinese cities. Mr. Kellogg stated in his speech that this recurrence of anti-foreign demonstrations in China has been the most serious since the Boxer Rebellion in 1900. The negotiations of a delegation from the diplomatic body at Peking, sent to Shanghai to investigate the occurrences and effect a settlement there, were abandoned owing to the extent of the Chinese demands. On June 24th, the Foreign Office at Peking presented two notes to the diplomatic representatives of the Powers. One of the notes transmitted thirteen demands originally framed by the Chinese Chamber of Commerce at Shanghai and previously presented to the diplomatic delegation which visited that city. The second note from the Foreign Office asked for a revision of the treaties which govern the relations between China and the Powers.[2]

The thirteen demands deal first with the shooting at Shanghai on May 30th. The Powers are asked to raise the martial law proclaimed at Shanghai, release all Chinese arrested in connection with the affair, punish all offenders, make compensation for the dead and wounded and for the damages sustained by laborers, merchants and students, reinstate all strikers with pay for the period of the strike, and to better labor conditions. The thirteen demands then set forth Chinese grievances against the International Settlement at Shanghai, and call for the return of the Mixed Court to Chinese control, as provided in the treaties and as existed before the revolution of 1911; the municipal franchise for Chinese tax-payers; the confinement of the foreign settlement to its proper boundaries, and the turning over to the Chinese Government of all roads constructed beyond those boundaries; the abandonment of proposed legislation by the municipal council relating to the censorship of the Chinese press and the increase of wharfage dues; liberty of speech and of publication and the right of assembly for Chinese residents; and the dismissal of the secretary of the municipal council.[3]

The treaties referred to in the second Chinese note chiefly concern the conventional tariffs and the extraterritorial rights of foreign residents in China. Since the treaty of 1842 with Great Britain, the import tariffs of China have been controlled by schedules annexed to the various treaties with foreign Powers. As Mr. Kellogg said in his speech of September 2, it has become evident that China regards these tariff schedules as a severe handicap upon

[2] This narration of events is taken from a summary contained in the China Weekly Review, Shanghai, July 25, 1925.

[3] Summarized from a verbatim reprint from the North China Herald in the Nation (New York) for September 23, 1925, pp. 339–340.

her ability to adjust her import duties to meet the domestic economic needs of the country. By way of explanation, the Secretary of State added:

> It must not be forgotten, however, that these tariffs were not adopted as a sinister means of controlling the fiscal policies of the Chinese Government but merely as a *modus operandi* devised to meet and remedy a condition which had become a fertile source of friction in the relations between China and the Powers due to the uncertainties connected with the rates and methods of collecting duties under the then existing tariffs. Schedules of those tariffs were seldom available for the information of foreign merchants, who were hampered in their business by the irregular and arbitrary methods adopted in the assessment and the collection of the duties. It is believed that these conventional tariffs were welcomed not only by the United States and the other Powers but by China as a happy solution of a question which for more than forty years had vexed the relations between China and the other countries.

The revision of the Chinese customs tariff was the subject of one of the treaties signed at the Washington Conference on February 6, 1922.[4] The treaty provided for a special conference to be called three months after ratification to consider the abolition of *likin*, a local transportation tax in China, and the granting in lieu thereof of certain surtaxes on imports into China. This special conference has not been held because of the refusal of France to ratify the treaty until a satisfactory agreement had been made with China regarding the payment of the Boxer indemnity in gold. An agreement on this latter subject was reached by France and China on April 12, 1925,[5] and on August 5, 1925, the nine signatories of the Treaty relating to the Revision of the Chinese Customs Tariff deposited their ratifications at Washington, and the treaty went into effect on that date in accordance with Article 10. At the same time, ratifications were deposited by the same Powers of the Treaty of Washington regarding the principles and policies to be followed in matters concerning China.[6]

To readers of the JOURNAL it is not necessary to explain the immunities from Chinese jurisdiction of the persons and property of foreigners in China vested in them under treaties beginning with the British treaty of Nanking in 1842, and which have become known as extraterritorial rights. As explained by Secretary Kellogg in his speech above referred to, "the account of the relations between resident foreign merchants in China and the Chinese authorities of that period [prior to 1842] is replete with incidents involving conflicting claims, the foreigner claiming exemption from Chinese law and the Chinese claiming jurisdiction over him and his property." The Government of the United States introduced the principle of extraterritoriality in its treaty of 1844 with China, as Mr. Kellogg says, "not for the purpose of hampering or otherwise limiting the sovereign rights of a friendly

[4] U. S. Treaty Series, No. 724; this JOURNAL, Supplement, Vol. 16, pp. 69–74.
[5] *L'Europe Nouvelle*, July 18, 1925, pp. 964–965.
[6] U. S. Treaty Series, No. 723; this JOURNAL, Supplement, Vol. 16, pp. 64–69.

nation, but merely as a *modus operandi* intended to remedy a vexatious condition which had for many years proved what seemed an almost insurmountable obstacle to the maintenance of friendly relations between the two countries. There was not then—and there is not now—any desire permanently to limit the sovereignty of China." In the commercial treaty of September 5, 1902, between China and Great Britain, and in the similar treaties of October 8, 1903, between China, the United States and Japan, those Powers expressed their readiness to relinquish extraterritorial rights "when satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations" warrant them in so doing. During the discussion of Pacific and Far Eastern questions at the Conference of Washington, the Chinese delegation on November 16, 1921, made a declaration to the effect that "immediately, or as soon as circumstances will permit, existing limitations upon China's political, jurisdictional and administrative freedom of action are to be removed," and on December 10, 1921, the nine Powers participating in that discussion adopted a resolution which provided for the appointment of a commission, to be composed of one representative from each government, to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and judicial system and the methods of judicial administration in China, with a view to reporting the facts and making recommendations to their respective governments as to the means of improving the administration of justice in China and assisting the Chinese Government in making such judicial reforms as would warrant the Powers in relinquishing their extraterritorial rights. Under the terms of the resolution the international commission should have been appointed within three months after the adjournment of the Washington Conference, that is to say, in May, 1922, but it was postponed for one year at the request of China. Since then, Mr. Kellogg stated, it has "proved impossible to obtain any unanimity on the part of the Powers as to a new date and no date has ever been fixed."

The thirteen demands are presumably under discussion at Peking.

Following conversations between the interested Powers pursuant to the Treaty of Washington of February 6, 1922,[7] identic notes were presented to the Chinese Foreign Office on September 4, 1925,[8] by the nine Powers party to the Washington Conference in reply to the Chinese note of June 24th requesting a readjustment of Chinese treaty relations with the foreign Powers. In these notes the Powers state that they are "now prepared to consider the Chinese Government's proposal for the modification of existing treaties in measure as the Chinese authorities demonstrate their willingness and ability to fulfill their obligations and to assume the protection of foreign rights and interests now safeguarded by the

[7] Treaty regarding the principles and policies to be followed in matters concerning China, Art. VII.

[8] Press notice of the State Dept., Sept. 3, 1925.

exceptional provisions of those treaties." The identic notes referred to the conditions, as briefly outlined above, which made necessary the conventional tariff and extraterritorial jurisdiction in China, and to the willingness of the Powers to abandon them when adequate fiscal and judicial reforms are made effective by China. Notwithstanding the inability of the Chinese Government during the past few years fully to enforce its mandate, the treaty Powers proposed that the most feasible method of dealing with the questions of the conventional tariff and extraterritorial rights is by a scrupulous observance of the obligations undertaken at the Washington Conference. To that end the Powers expressed their readiness to appoint delegates to the special conference on Chinese tariff matters provided for in the treaty of February 6, 1922. Furthermore, they expressed their willingness, either at that conference or at a subsequent time, to consider and discuss any reasonable proposal that may be made by the Chinese Government for a revision of the treaties on the subject of the tariff.

In regard to the question of extraterritoriality, the identic notes stated that before the Powers can form any opinion as to what, if any, steps can be taken to meet the desires of the Chinese Government, they desire to have before them more complete information than has heretofore been available, and they therefore proposed to send to China the international commission provided for in the resolution of the Washington Conference.

The special conference relating to the Chinese customs tariff has been called, upon the invitation of China, to meet in Peking on October 26, 1925. The United States will be represented by Mr. John V. A. MacMurray, American Minister to China, and Mr. Silas H. Strawn, lawyer of Chicago. On September 15th last, the State Department addressed a communication to the Powers signatory to the Washington resolution on extraterritoriality, namely, Belgium, the British Empire, France, Italy, Japan, the Netherlands, Portugal and China, and to the adhering Powers, namely, Denmark, Peru, Spain and Sweden, suggesting that the international commission provided by that resolution meet at Peking on December 18, 1925, and informing them that Mr. Strawn had been appointed the American commissioner.

The Secretary of State concluded his address of September 2d by pointing out that under the treaty arrangements which China now seeks to revise, thousands of Americans and foreigners have taken up their residence and carried on their business within that country. He undoubtedly expressed the sentiment of the people of the United States when he said that they "do not wish to control, by treaty or otherwise, the internal policies of China, to fix its tariffs, or establish and administer courts, but that they look forward to the day when this will not be necessary;" but the government owes to its citizens in China "the duty of adequate protection and the Chinese Government must have a realization of its sovereign obligations according to the law of all civilized nations." One of the most difficult questions, he said, in

the discussion and settlement of the problems relating to conventional tariffs, extraterritorial rights and foreign settlements in China, "is whether China now has a stable government capable of carrying out these treaty obligations." The nine-Power identic note of September 4th also admonished China of "the necessity of giving concrete evidence of its ability and willingness to enforce respect for the safety of foreign lives and property and to suppress disorders and anti-foreign agitations" as a condition for the carrying on of negotiations in regard to the desires which the Chinese Government has presented for the consideration of the treaty Powers.

GEORGE A. FINCH.

THE RUSSIAN REINSURANCE COMPANY CASE

In comments upon the later recognition cases, published in a recent issue of this Journal,[1] the present writer suggested that as an aid in determining the effect which courts may properly attribute to the acts, ordinances, or laws of an unrecognized *de facto* government, the formula that all matters of recognition are for the political departments to decide is of little use. Attention was directed especially to two recent opinions of the New York Court of Appeals[2] in which the formula's insufficiency had been indicated in language at once significant and illuminating. It was hopefully remarked that the realistic attitude revealed in these opinions would in all probability find expression sooner or later in a decision of sufficient importance to make a leading case. The comments containing the remark were hardly through the press before the anticipated decision had been rendered. The case was decided April 7, 1925, and is reported as Russian Reinsurance Company *v.* Stoddard and Bankers Trust Company.[3]

The facts in the Russian Reinsurance Company case were without precedent. The Reinsurance Company had been incorporated in Russia in 1899 under a special statute constituting its charter and by-laws. In 1906 it had obtained permission to do business in New York, depositing securities and funds of the company for the protection of local policyholders and creditors as required by New York law. In 1917 the revolutionary Soviet Government was established in Russia and seven of the eight persons constituting the company's board of directors were driven into exile. In 1918 Soviet decrees nationalized the company, confiscated its property, and apparently terminated its corporate existence.[4] Nevertheless, the exiled directors held meetings in Paris and continued to direct the company's

[1] "Recent Recognition Cases," this JOURNAL, Vol. 19, p. 263 (April, 1925).

[2] Sokoloff *v.* National City Bank, (1924) 239 N. Y. 158; Fred S. James & Co. *v.* Second Russian Insurance Co. (1925) 239 N. Y. 248.

[3] (1925) 240 N. Y. 149; 147 N. E. 703.

[4] In recent English cases it was argued before the House of Lords that Soviet nationalization decrees had terminated the corporate existence of Russian banks, but the House of Lords was not satisfied that the Soviet decrees were intended to have this effect. Russian Commercial and Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, [1925] A. C. 112;