THE LEGALITY OF THE OCCUPATION OF THE RUHR

By ARNOLD D. McNAIR, C.B.E., M.A., LL.M.,

Fellow and Lecturer of Gonville and Caius College, Cambridge, and Lecturer in International Law at the London School of Economics and Political Science.

THE following remarks consist of an attempt to state the issues of international law which are raised by the present occupation by France of the territory lying east of the Rhine usually known as the Ruhr Valley. The legal and political issues are inevitably somewhat interconnected, and I have done my best to disentangle them and confine myself to the former. It is perhaps right to add that I have not had access to any documents other than those which have been published.

When one State is found in occupation of the territory of another, there are various ways in which the occupation may have come about and grounds on which it may be justified; for instance, as an incident to warfare, or as a measure of reprisals not intended to amount to war, or under a lease or a pledge, or in pursuance of a treaty stipulation authorizing the occupation as a guarantee for the fulfilment of the treaty. We are concerned with the last.

The French Government definitely rely [1] upon Annex II to Part VIII (Reparation) of the Treaty of Versailles and in particular upon paragraphs 17 and 18 which read as follows. Both the French and English texts are made authentic by the Treaty, but it is desirable to quote them both—particularly as in this instance they reveal a slight discrepancy.

17. In case of default by Germany in the performance of any obligation under this Part of the present Treaty, the Commission will forthwith give notice of such default to each of the interested Powers and may make such recommendations as to the action to be

17. En cas de manquement par l'Allemagne à l'exécution qui lui incombe de l'une quelconque des obligations visées à la présente Partie du présent Traité, la Commission signalera immédiatement cette inexécution à chacune des Puissances

[1] For the very good reason that " Germany agrees not to regard as acts of war " measures falling within paragraph 18.

taken in consequence of such default as it may think necessary.

18. The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

intéressées en y joignant toutes propositions qui lui paraîtront opportunes au sujet des mesures à prendre en raison de cette inexécution.

18. Les mesures que les Puissances alliées et associées auront le droit de prendre en cas de manquement volontaire par l'Allemagne, et que l'Allemagne s'engage à ne pas considérer comme des actes d'hostilité, peuvent comprendre des actes de prohibitions et de représailles économiques et financières[1] et, en général, telles autres mesures que les Gouvernements respectifs pourront estimer nécessitées par les circonstances.

Accordingly, in the note which the French and Belgian Governments dispatched to the German Government dated January 10, 1923,[2] the occupation of the Ruhr Valley was specifically based upon certain defaults in the delivery of timber and coal to France, which we are about to discuss, and upon paragraphs 17 and 18 of Annex II quoted above. On January 11, 1923, French and Belgian troops proceeded to occupy the Ruhr Valley, with the moral support of Italy, evidenced by the participation of a body of Italian engineers.

I propose to examine the meaning of paragraphs 17 and 18 under the following headings :

I. The provisions for the interpretation of the Treaty.
II. " The interested Powers."
III. " The respective Governments."
IV. The taking of the measures.
V. " And in general such other measures."
    (*a*) The *ejusdem generis* rule.
    (*b*) The construction of the Treaty as a whole.
VI. The argument based on Estoppel.
VII. Summary of conclusions.

[1] Mr. David Hunter Miller, one of the legal advisers of the American Peace Commission, has pointed out that the word *financières* was inserted on the motion of M. Klotz, and qualifies the word *représailles*. (*New York Evening Post*, August 21, 1923.)

[2] *The Times*, January 11, 1923.

I.—The Provisions for the Interpretation of the Treaty.

Article 233 of the Treaty clothes the Reparation Commission with certain powers contained in Annexes II to VII for the enforcement of the reparation clauses. Paragraph 12 of Annex II contains the following relevant passage:

"The Commission shall have all the powers conferred upon it, and shall exercise all the functions assigned to it, by the present Treaty

The Commission shall in general have wide latitude as to its control and handling of the whole reparation problem as dealt with in this Part of the present Treaty *and shall have authority to interpret its provisions.*" [1]

Paragraph 13 of Annex II prescribes the method by which the Commission is to arrive at its decisions and states that "unanimity is necessary" on certain questions, including "(f) Questions of the interpretation of the provisions of this Part of the present Treaty." [2] The paragraph continues as follows:

"All other questions shall be decided by the vote of a majority.

In case of any difference of opinion among the Delegates, which cannot be solved by reference to their Governments, upon the question whether a given case is one which requires a unanimous vote for its decision or not, such difference shall be referred to the immediate arbitration of some impartial person to be agreed upon by their Governments, whose award the Allied and Associated Governments agree to accept."

A formal interpretation of paragraph 17 was made by the Reparation Commission at their meeting on December 26, 1922, to the following effect: [3]

"The Reparation Commission in the exercise of its powers of interpretation under paragraph 12 of Annex II, Part VIII, of the Treaty of Versailles, decided that the word 'default' in paragraph 17 of the said Annex had the same meaning as the expression 'voluntary default' in paragraph 18 of the same Annex."

[1] Italics mine.

[2] It should be noted (*Report on the Work of the Reparation Commission from 1920 to 1922*, published by H.M. Stationery Office in 1923, p. 13) that an arbitration clause was subsequently added which reads as follows:

"13 *bis.* In case of differences of opinion between the Delegates on the interpretation of the stipulations of this part of the present Treaty, the question will be submitted by the unanimous agreement of the Delegates to arbitration. The Arbitrator will be selected unanimously by all the Delegates or in default of unanimity will be nominated by the Council of the League of Nations. The finding of the Arbitrator will be binding on all the interested parties." So far as I can ascertain, France has declined to sign the necessary protocol embodying this amendment, so that the statement in the *Report on the Work of the Reparation Commission* referred to above that the terms of the Treaty have been modified is incorrect if my information is correct.

[3] *Report on the Work of the Reparation Commission*, p. 263.

Upon this interpretation the delegates to the Commission as then constituted were unanimous, as was necessary to make the interpretation effective.

Before we discuss the merits of the controversies that have arisen upon the meaning of paragraphs 17 and 18, namely what is meant by "interested Powers" in 17, "respective Governments" and "such other measures" in 18, two preliminary objections arise, resting upon the requirement of unanimity in the "interpretation of the provisions of this Part of the present Treaty." Not until we have disposed of these objections can we pass to the substance of those paragraphs.

The first objection arises on clauses 53 to 57 of the minutes of the meeting of the Reparation Commission on December 26, 1922,[1] which read as follows:

53. (1) *The Commission notes that Germany has not executed in their entirety the orders passed under Annex IV, Part VIII, of the Treaty of Versailles, for deliveries of timber to France during 1922.*

54. Sir John Bradbury, M. Louis Barthou, Signor d'Amelio, and M. Delacroix voted in favour of this proposal, *which was in consequence adopted unanimously.*

55. The Chairman then put to vote the second proposal:

56. (2) *This non-execution constitutes a default by Germany in her obligations within the meaning of Paragraph 17 of Annex II.*

57. M. Louis Barthou, Signor d'Amelio, and M. Delacroix voted for this proposal. Sir John Bradbury voted against. *The proposal was thus adopted by a majority.*

It will be noted that on the pure question of fact put in clause 53 the delegates were unanimous, but that upon the question of interpretation in clause 56, namely, whether this fact constitutes a "default" within the meaning of paragraph 17 of the Treaty or not, the delegates were not unanimous.

I must confess to a little surprise that Sir John Bradbury did not at once claim that clause 56 of the minutes raised a question of interpretation on which unanimity is essential. He does not appear from the minutes to have taken this line, and doubtless had good reasons for not doing so.[2] I should be sorry to be

[1] *Ibid.*, p. 260. The italics are not mine.

[2] Interpretation = "the action of interpreting or explaining" or "the way in which a thing ought to be interpreted: proper explanation: hence, signification, meaning." (*The New English (Oxford) Dictionary*). See Wharton's *International Law Digest*, § 133, II, 36. "'Construction' is to be distinguished from 'interpretation.' 'Construction' gives the general sense of a treaty and is applied by rules of logic; 'interpretation' gives the meaning of particular terms to be explained by local circumstances and by the idioms the framers of the treaty had in mind." (Cited Moore: *Digest of International Law*, § 763.)

thought to raise the point in any critical spirit, for his masterly handling of an exceedingly difficult and delicate situation compels admiration.

The second preliminary point was raised by Sir John Bradbury by way of anticipation earlier in the course of the same meeting. From paragraph 38 of the same minutes [1] it appears that he claimed that—

"The interpretation of paragraph 18 [of Annex II] depended on the Commission which had received a mandate by the contract of the Allied Powers with Germany to interpret the portion of the Treaty in which it figured. Very grave difficulties had arisen in connexion with the interpretation of this paragraph, and certain Powers had maintained that the words 'and in general such other measures which the respective Governments may determine to be necessary in the circumstances,' were to be read absolutely at large as enabling any Allied Power, notwithstanding the definite provisions in other portions of the Treaty limiting the extent of the territories to be occupied, to extend the area of military occupation. This was a question of vital importance for the peace of Europe, which could only be decided by a unanimous decision of the Commission. The Commission ought not to allow the question to escape out of its control until it had definitely laid down, as it alone could, the definite and authoritative interpretation of that paragraph."

The Chairman, M. Louis Barthou, indicated (paragraph 43)—

"that his opinion as to the interpretation of paragraph 18 differed from that of Sir John Bradbury; he considered that this interpretation was not within the competence of the Commission." [2]

There the matter appears to rest, and, so far as I can ascertain, the Commission has never proceeded to an interpretation on this point.

II.—"The Interested Powers."

Turning to paragraph 17 of the Treaty, who are the "interested Powers?" This question is answered for us in the case of the timber default by clause 78 of the minutes of the meeting of the Commission on December 26, 1922:

78. "*It was decided on the present occasion to understand by the phrase 'interested Powers' in paragraph 17 of Annex II, Great Britain, France, Italy and Belgium. A copy of the letter addressed to these four Governments would be despatched to the Government of the United States of America.*" [3]

[1] *Report on the Work of the Reparation Commission*, p. 257.

[2] It will be noted that M. Barthou differed from Sir John Bradbury not on the question whether the matter was one of interpretation or not, but on the question of the proper authority invested with the power to interpret.

[3] *Ibid.*, p. 263. Italics not mine.

Notice, however, from clause 53 of the minutes already quoted, that the default recorded was in deliveries of timber *to France*. So " interested Powers " means something more than beneficiary or recipient Powers.

The coal default was recorded by the Reparation Commission on January 9, 1923, and is believed to have been similarly notified to the same four Powers. And on January 16, 1923, when Germany suspended reparation deliveries to France and Belgium, notice of these defaults was given to the same four Powers.

III.—" The Respective Governments."

Coming to paragraph 18, we find that the right of taking action upon a voluntary default is vested in " the Allied and Associated Powers." They have the " right to take " measures which " may include economic and financial prohibitions and reprisals." If those measures do not suffice, it is then for " the respective Governments " to determine what other " measures " are " necessary," whereupon " the Allied and Associated Powers " have the " right to take " them.

Is it possible to extract a meaning from this loosely drawn paragraph? We can, I think, safely say that the military occupation of the Ruhr does not fall within the scope of the expression " economic and financial prohibitions and reprisals," and the French text makes it clearer that the reprisals contemplated are not all the kinds of reprisals recognized by international law but only those which are economic and financial — " *des actes de prohibitions et de représailles économiques et financières.*" Nor does M. Poincaré contend that his operations fall within that expression: in his speeches on January 12, 1923, in the Chamber and the Senate he relied upon the words " telles autres mesures que " as being " aussi générale, aussi compréhensive, aussi large que possible." [1] We are justified therefore in turning to an examination of the term " the respective Governments." " Respective " is a word which requires careful handling, as English draftsmen know, and a word which the inexperienced draftsman is apt to scatter about as it were with a pepper pot. According to the *Concise Oxford Dictionary* it means *each's own, proper to each, individual, several, comparative,*

[1] Cited in *Right and Wrong in the Ruhr Valley* (British Periodicals Limited, 1923), p. 14.

e. g. go to your respective places. It is used in conjunction with a plural noun to indicate a reference to or connexion with some other plural noun, and moreover to indicate that the connexion is not higgledy-piggledy, promiscuous, but involves an exact correspondence. For instance, the members of a football team when they enter the field take their respective places. What then is the plural noun to which the term " the respective Governments " refers? Whose are " the respective Governments "? Two possible claimants must be considered: (i) " the Allied and Associated Powers " in paragraph 18; and (ii) " the interested Powers " in paragraph 17. I think (i) is unlikely for the following reasons: (*a*) because such an interpretation would involve the concurrence of twenty-six Governments before anything could be done; (*b*) because at least three of the signatory Powers had suffered no damage in " respect of which reparation was due from Germany "; [1] (*c*) because, if " the respective Governments " means the Governments of the Allied and Associated Powers, the word " respective " seems devoid of meaning. Why not simply say " their Governments " or " the Governments of the Allied and Associated Powers "? If " the respective Governments " referred to be those of all the Powers, it is surprising not to find the word " their " used.

If, however (which I do not think is the case) interpretation (i) is right, then I think it is clear from the Treaty that that group is throughout it regarded as the united group of parties with whom Germany has contracted, and that joint and not individual action is contemplated. Moreover for purposes of action the group have delegated their authority to a smaller and more efficient instrument which is in the matter of reparation the Reparation Commission.[2] Paragraph 12 of Annex II reads as follows:

" The Commission shall have all the powers conferred upon it, and shall exercise all the functions assigned to it, by the present Treaty.

The Commission shall in general have wide latitude as to its control and handling of the whole reparation problem as dealt with in this Part of the

[1] Bolivia, Haiti and Peru (*Report on the Work of the Reparation Commission*, p. 43).

[2] The following passage occurs in the memorandum enclosed in the reply (dated June 16, 1919) of the Allied and Associated Powers to the observations of the German Delegation on the conditions of peace:

" In short the observations of the German Delegation present a view of this [the Reparation] Commission so distorted and so inexact that it is difficult to believe that the clauses of the Treaty have been calmly or carefully examined. It is not an engine

present Treaty and shall have authority to interpret its provisions. Subject to the provisions of the present Treaty, the Commission is constituted by the several Allied and Associated Governments referred to in paragraphs 2 and 3 above as the exclusive agency of the said Governments respectively for receiving, selling, holding, and distributing the reparation payments to be made by Germany under this Part of the present Treaty."

If on the other hand interpretation (ii) is accepted, namely that " the respective Governments " are the Governments of " the interested Powers " referred to in paragraph 17, these difficulties seem to me to disappear, and the word " respective " receives a meaning. From clause 78 of the minutes of the meeting of the Reparation Commission on December 26, 1922, we learn that " the interested Powers " for the purpose of the timber default are Great Britain, France, Italy and Belgium, and for the purpose of the coal default " the interested Powers " are the same. It was therefore for the Governments of these four Powers to determine what " other measures " should be taken against Germany; and, there being no provision making a majority vote effective, it was necessary for all four to concur in the determination, which did not in fact take place, for the British Government dissented from the measures proposed.

IV.—The Taking of the Measures.

Even supposing that " the respective Governments " of the four Powers mentioned had concurred in the " other measures " to be taken against Germany, the fact remains that it is " the Allied and Associated Powers " who are to take these measures. It can hardly be expected that all the twenty-six are to take them, and the reasonable view is that they are to act through some common organ such as the Supreme Council or the Reparation Commission. The case of Roumania in 1919 is in point. That country in August 1919 set out to collect reparation from Hungary " on her own " by occupying Hungarian territory and removing Hungarian assets. Thereupon the Roumanian Government was reprimanded by the Supreme Council of the Allies in a note signed by M. Clemenceau as chairman of the Peace Con-

of oppression or a device for interfering with German sovereignty. It has no forces at its command; it has no executive powers within the territory of Germany. . . . Its business is to fix what is to be paid; to satisfy itself that Germany can pay; and to report to the Powers, whose Delegation it is, in case Germany makes default." (*Cmd.* 258, 1919, Misc. No. 4, p. 33.)

ference and dated August 23, 1919. By that note Roumania was told that it was—

" obvious that if the collection of reparation were to be allowed to degenerate into individual and competitive action by the several Allied and Associated Powers, injustice [would] be done and cupidity aroused, and, in the confusion of unco-ordinated action, the enemy [would] either evade or be incapacitated from making the maximum of reparation."

Accordingly Roumania was called upon to recognize—

" that the assets of enemy States are a common property of all the Allied and Associated Powers,"

and that the Reparation Commission is—

" the exclusive agency for the collection of enemy assets by way of Reparation." [1]

This incident has a negative value by indicating that the Treaties of Peace contemplate collective and not individual action in the recovery of reparation, though it does not throw any very definite light on the question what the common organ for that purpose should be.

V.—" And in general such other measures."

M. Poincaré, as we have seen, regards his operations in the Ruhr as coming within this expression. These are general words, and the construction of general words is notoriously a matter of difficulty and doubt, upon which an opinion can only be advanced with caution. The words in the same paragraph (18): " and which Germany agrees not to regard as acts of war," while indicating that drastic action is contemplated within that paragraph, cannot be construed as having any special reference to the military occupation of territory, for there are many reprisals and other methods of compulsion which without necessarily amounting to war may nevertheless be treated as acts of war by the State against whom they are directed.

(a) *The* ejusdem generis *Rule of Construction.*

Leaving on one side for the moment the question how far the rules of English jurisprudence can be imported into an international document, let us attempt to construe this clause as if it occurred in an English contract. Mr. Beal [2] states the rules

[1] See *Right and Wrong in the Ruhr Valley*, p. 30, where this incident is discussed.
[2] *Cardinal Rules of Legal Interpretation* (3rd ed., 1924, by A. E. Randall), p. 179.

governing the construction of " General and Special Words " as follows :

> " Doctrine of *Ejusdem Generis* or *Noscitur a sociis. Generalia verba sunt generaliter intelligenda.* 5 Inst. c. 21. *Verba generalia restringuntur ad habilitatem rei vel personae.*
> General words of a deed are *prima facie* to be taken in their usual sense.
> General words of a deed are to be restrained by the other parts of a deed, if the intent so to restrain them be apparent.
> General words in a deed following special words are *prima facie* to be taken in their general sense unless the reasonable interpretation of the deed requires them to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before.
> Where general words are followed by special words the special words limit the general words.
> If the particular words exhaust the whole *genus*, the general words refer to some larger *genus*."

It is argued by some that paragraph 18 is a case in which the *ejusdem generis* rule must be applied and that the result of applying it is to limit the general words under discussion—" in general such other measures "—to measures of the same class as " economic and financial prohibitions and reprisals." Let us examine this argument. There is no presumption in favour of the *ejusdem generis* rule.[1] It is not a canon of construction but merely an indication which may in certain cases be helpful. (Moreover, the use of the word " include " (*comprendre*) must not be overlooked.) Is there a *genus* ? I think so. International law already recognizes a number of so-called " pacific " measures for the enforcement of international obligations, for instance, reprisals, embargo (a species of the former), pacific blockade (sometimes also a species of reprisals, sometimes an act of intervention) ; Article 16 of the Covenant of the League has added to these the economic boycott, and it is obvious that other non-military methods of obtaining reparation can be devised, for instance the reparation levy under the German Reparation (Recovery) Act, 1921, or the impounding of the property of German nationals in allied territory which is provided for by Article 297 (b) of the Treaty. The dominant and co-ordinating idea which underlies all such measures and which indicates their *genus* seems to me to be that they are mainly non-military. They are economic, financial, commercial; they are for the most part put in force by the civil arm of the State, and do not, unless resisted,

[1] *Maglnild* (S.S.) v. *McIntyre Bros. and Co.* [1920] 3 K.B. at p. 327.

involve the employment of naval, military, or air forces. This is an important consideration, but the mere use of special words enumerating a number of things belonging to one genus, followed by general words, is not enough to attract the application of the *ejusdem generis* rule. One of the best discussions of the rule will be found in *Anderson* v. *Anderson* [1] (a case of a marriage settlement) where a settlor assigned to trustees " all and singular the household furniture, plate, linen, china, glass, and tenant's fixtures, wines, spirits and other consumable stores, and other goods, chattels and effects in, or upon, or belonging to " certain leasehold premises which comprised coach-houses and stables containing carriages, horses, harness and stable furniture. It was sought by the executors to exclude from the operation of the settlement the carriages, horses, &c., on the ground that as the result of the operation of the *ejusdem generis* rule the words " other goods, chattels and effects " were limited to things *ejusdem generis* with household furniture, plate, linen, &c. The Court of Appeal rejected this contention and held that the carriages, horses, &c., passed under the settlement. Lord Esher M.R. said :

" Nothing can well be plainer than that [referring to a previous citation from an earlier case] to shew that *prima facie* general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before. . . . I reject the supposed rule that general words are *prima facie* to be taken in a restricted sense."

Lopes L.J. pertinently remarked that " the doctrine of *ejusdem generis* is a very valuable servant, but it would be a most dangerous master." It is therefore very far from being certain that the *ejusdem generis* rule of construction would be applied to the words " and in general such other measures," even if we were at liberty to treat them as if they occurred in an English contract; and for the reasons indicated in a note printed on another page of this volume [2] I do not think that an international tribunal would feel itself bound to apply this rule.[3]

[1] [1895] 1 Q.B. 749.

[2] See note on p. 181.

[3] The very numerous cases on the *ejusdem generis* rule will be found collected and discussed in Stroud's *Judicial Dictionary, sub title* "Other." A recent illustration of the application of the rule will be found in *A. G.* v. *Brown* [1920] 1 K.B. 773 (a statute), and of a refusal to apply the rule in *Maghnild* (S.S.) v. *McIntyre Brothers and Co.* [1920] 3 K.B. 321 ; [1921] 2 K.B. 97 (a charter party).

(b) *The Construction of the Treaty as a Whole.*

I have discussed the *ejusdem generis* rule at some length because so many persons who have taken the trouble to look at paragraph 18 of Annex II have too readily assumed that the *ejusdem generis* rule applies and that that concludes the legal argument against the French action and view. I do not think it does conclude the matter, but I am about to submit that a wider examination of the provisions of the Treaty inspired by a desire to give effect to the Treaty as a whole will drive us to the same conclusion, namely, that the words "and in general such other measures, &c." are intended to have a restricted meaning.

There is one general rule for the construction of documents which seems to me to be so much the embodiment of the common sense and experience of mankind as to justify its application to an international document. Put very shortly, it is that a document must be construed *as a whole.* In the civil law the rule occurs as follows: *incivile est nisi tota lege perspecta una aliqua particula ejus proposita judicare vel respondere.*[1] Vattel[2] citing this rule renders it as follows:

Il faut considérer le discours tout entier, pour en bien saisir le sens, et donner à chaque expression, non point tant la signification qu'elle pourrait recevoir en elle même, que celle qu'elle doit avoir par la contexture et l'esprit du discours.

Or, to give it a more modern form, in the words of an American Secretary of State in a diplomatic note:

"There is no rule of construction better settled either in relation to covenants between individuals or treaties between nations than that the whole instrument containing the stipulations is to be taken together, and that all articles *in pari materia* should be considered as parts of the same stipulations."[3]

Applying this rule to the Treaty of Versailles, surely it cannot be denied that Part VIII dealing with Reparation and Part XIV dealing with Guarantees are *in pari materia.* Part XIV (Articles 428–32) contains the provisions for the Allied occupation or reoccupation of German territory.

Article 428 provides as follows:

"As a guarantee for the execution of the present Treaty by Germany, the German territory situated to the west of the Rhine, together with the bridge-heads, will be occupied by Allied and Associated troops for a period of fifteen years from the coming into force of the present Treaty."

[1] *Digest.* I, 3. 24.

[2] Liv. II. Chap. XVII. § 285. See also Phillimore: *International Law*, Vol. II, Ch. VIII. § lxx.

[3] Moore: *Digest of International Law*, § 763.

Article 429 successively restricts the occupation stipulated in Article 428 by providing for partial evacuations after five and ten years respectively " if the conditions of the present Treaty are faithfully carried out by Germany."

Article 430 provides as follows :

" In case either during the occupation or after the expiration of the fifteen years referred to above the Reparation Commission finds that Germany refuses to observe the whole or part of her obligations under the present Treaty with regard to reparation, the whole or part of the areas specified in Article 429 will be re-occupied immediately by the Allied and Associated forces."

I read the meaning of these clauses in relation to reparation as follows : if Germany makes default in the matter of reparation, then, in addition to the non-military powers conferred upon the Reparation Commission by Part VIII of the Treaty, the Allied Powers may exploit their position as occupants of the territory " west of the Rhine together with the bridgeheads " referred to in Article 428, and further may reoccupy under Article 430 any part of that territory which may have been evacuated under Article 429. The reference in Article 430 to Article 429 seems to me to limit the area of German territory which can for purposes of obtaining reparation be occupied or reoccupied under the Treaty. It is only German territory situated to the west of the Rhine together with the bridgeheads which can be occupied or reoccupied *under the Treaty*, and it is under the Treaty that France claims to be acting. (The Ruhr Valley lies, of course, to the east of the Rhine.) Whether quite apart from the Treaty there is an unlimited right of occupation of the territory of a defaulting party, or whether on the principle *expressum facit cessare tacitum* Part XIV exhausts the rights of occupation of territory for default, are questions we need not consider here, for France bases her occupation of the Ruhr on the Treaty. It should, however, be noted that the letter which the Allied Powers addressed to the President of the German Delegation at the time of the signature contains the following sentence : " Il est bien entendu qu'en dehors des sanctions du traité subsistent toutes les sanctions du droit des gens, du droit commun, et que nous pourrons y recourir." [1]

[1] Fauchille : *Droit International Public*, Tome II (*Guerre et Neutralité*), § 1709[4] M. Fauchille, *loc. cit.*, while asserting that paragraph 18 of Annex II " autorise les puissances alliées en cas d'inexécution par l'Allemagne de ses obligations, à edicter, de la manière la plus large et sans aucune espèce de restrictions, des actes de

The conclusion, therefore, to which I find myself driven is that under the Treaty recourse to occupation as a means of enforcing a default in reparation is limited to the existing occupation or, in so far as it may be evacuated, the future re-occupation, of the territory specified in Article 428 above quoted. It is argued by Mr. George A. Finch [1] that Part XIV cannot bear this restricted interpretation and that the words " such other measures as the respective governments may determine to be necessary in the circumstances " must be extensively construed, because any other construction leads to the practical futility of the Treaty; and he refers to Vattel [2] as quoted by an American Secretary of State to the effect that—

" the interpretation which would render a treaty null and inefficient cannot be admitted; that it ought to be interpreted in such a manner as that it may have its effect, and not prove vain and nugatory."

Phillimore [3] (citing Digest XLV. i. 80 *Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi, quo res, qua de agitur, in tuto sit*) expresses the rule thus:

" When a provision or clause in a Treaty is capable of two significations, it should be understood in that one which will allow it to operate, rather than in that which will deny to it effect."

prohibitions et de représailles économiques et financières et, en général, telles autres mesures que les gouvernements respectifs pourront estimer nécessitées par les circonstances " proceeds to argue that if the military occupation provided for by Articles 429 and 430 is not effective to secure the execution of the treaty, the common law rules of international law must be applied, and that these rules justify resort to any measures necessary to overcome the resistance of the recalcitrant party, one of such measures being the occupation of its territory. He cites amongst other authorities Vattel, *Droit des Gens*, Liv. II, Ch. XVIII, § 342; Grotius, *De Jure Belli ac Pacis*, III, Cap. II, § IV; Bluntschli, *Droit International Codifié*, art. 500; and Oppenheim, *International Law*, I, § 156, and II, § 34. Herein it seems to me that M. Fauchille's case differs radically from the official French argument which seeks to justify the occupation within paragraph 18 of Annex II, presumably in order to get the benefit of Germany's undertaking in that paragraph not to regard measures taken within it as acts of war. It cannot be denied that reprisals are available for non-compliance with treaty obligations (Oppenheim, *op. cit.*, II, § 34), but that is not the same thing as saying that when a body of Allied States have agreed amongst themselves and with their enemy upon certain machinery for the joint enforcement by them of a treaty, any one, two, or three of those Allies can, while keeping the treaty in existence, embark upon measures for its enforcement which, though recognized by international law as measures of self-help, are not contemplated by the treaty. (Reference may also be made to a note by the late M. Edouard Clunet in *Journal du droit international*, Vol. 49, p. 333).

[1] *American Journal of International Law*, October, 1923, p. 728.

[2] Liv. II, Ch. XVII. § 283.

[3] *Op. cit.*, Vol. II, Ch. VIII, § lxxiii. See also Oppenheim: *International Law*, Vol. I, § 554 (12).

But, unless I misinterpret Mr. Finch, this part of his argument amounts to this: one undoubted object of the Treaty was to get reparation from Germany; the occupation of the Rhineland under Part XIV has not in fact produced the amount of reparation required by the Treaty—

"therefore, an interpretation of Part XIV which would restrict the liberty of action under the clause 'such other measures as the respective Governments may determine to be necessary in the circumstances' in paragraph 18 of the reparation clauses so as to impede the collection of the amount of reparations due under the treaty, would do violence to the plain intentions of the contracting parties and would seem to be inadmissible." [1]

This argument appears to me to rest on the assumption (not admitted and not being demonstrated by the result) that the present French action in the Ruhr is the best way to get reparation.[2]

VI.—The Argument based on Estoppel.

If the matter rested there, I should have little hesitation in submitting the opinion not merely that Germany is right in her contention that the French measures are illegal under the Treaty but further that Great Britain is justified in subscribing to the German contention as she does in the Note to France of August 11, 1923. But the case is not quite one of first impression. The slate is not clean. Another issue is raised. It is argued by the French Government that, whatever may be the true interpretation of paragraph 18 of Annex II, Great Britain at any rate is precluded from advancing her present interpretation by reason of her concurrence in the French interpretation, both by her declarations and by her active participations in occupations and threats of occupation of German territory in the past. This argument makes it necessary for us to consider: (i) the circumstances alleged to raise an estoppel; (ii) the nature of estoppel and its scope in international law; (iii) the conclusions to be drawn from (i) and (ii) as being relevant to our present case.

(i) In the interests of brevity I shall summarize the various earlier incidents which, it is argued, throw light upon the interpretation of paragraph 18.

[1] *loc. cit.*

[2] See also Phillimore's warning (*op. cit.*, § lxx) as to the need of sparing and cautious recourse to "the rule of having regard to the consequences, to the justice or injustice, advantage or disadvantage, which would ensue from affixing a particular meaning to the doubtful expressions."

(*a*) Early in April, 1920,[1] France acting alone occupied Frankfort, Darmstadt, Homburg, and Hanau, on the ground that Germany in the course of suppressing Communist disturbances in Westphalia and the Ruhr had sent into those areas more troops than was permitted by the Treaty.

(*b*) In July, 1920, the Principal Allied Powers secured Germany's acceptance of the Spa Agreement by jointly threatening to invade Germany. That agreement related to reparation.

(*c*) In October, 1920, Great Britain notified her Allies that she had renounced the right to seize the property of German nationals in this country in the event of default by Germany in respect of her reparation obligations, and the Chancellor of the Exchequer stated in the House of Commons (October 28, 1920)[2] that "the words of the paragraph [18] clearly leave it 'to the respective Governments' to determine what action may be necessary under the paragraph." The ground of the decision he stated to be that the effect of this threat of seizure was "to keep business away from London and to make Germans keep their balances in neutral currencies."[3] With respect, I cannot accept this interpretation of paragraph 18. If Great Britain were the only Power interested in the seizure and the liquidation of the property of German nationals, then it might be argued that she could renounce her right. *Quilibet renunciare potest juri pro se introducto.* "L'état qui a obtenu des droits en vertu d'un traité, peut toujours y renoncer."[4] But, as I read the Treaty, the proceeds of the liquidation of such property would have to be brought into the general reparation account.

(*d*) In March, 1921, the Allies (Belgium, France and Great Britain) occupied Duisburg, Düsseldorf, and Ruhrort (all east of the Rhine) in spite of the protest of the German Government on the ground of the illegality of the threatened occupation. In handing to the German Government the ultimatum of March 3, 1921, the Allied Powers charged Germany with default in three respects, the delivery of war criminals for trial, disarmament, and non-payment of instalments of reparation.[5]

(*e*) In May, 1921, the principal Allied Powers delivered to

[1] See *The Times* of April 7, 1920, and following days.

[2] *Parliamentary Debates*, House of Commons, Vol. CXXXIII, c. 1922.

[3] Belgium and Italy took similar steps in 1921 (See Fauchille: *op. cit.*, § 1708 and *Le Temps* of February 10, 1921).

[4] Bluntschli: *Droit International* (Lardy's translation), § 453.

[5] Keynes: *A Revision of the Treaty*, p. 198.

Germany an ultimatum threatening to occupy the Ruhr Valley unless she accepted the Allied demands in respect of instalments of reparation, disarmament, and the trial of war criminals.

(*f*) In answer to a question in the House of Commons on May 24, 1922, as to the meaning of paragraph 18 of Annex II the Chancellor of the Exchequer stated [1] in the course of his reply that:

"paragraph 18 is understood by His Majesty's Government as conferring upon the individual Governments the right to take action independently, but the action taken must be of the nature contemplated by the paragraph, namely, economic and financial prohibitions and reprisals, and in general such measures as it is proper for Governments to take individually."

With respect, I cannot accept this interpretation of paragraph 18 for the reasons indicated earlier. He added that:

"by paragraph 12 of the same Annex the right to interpret the provisions of the Reparation Section of the Treaty is conferred upon the Reparation Commission, and that the views of His Majesty's Government on the subject have therefore no binding character."

It will be noticed that the grounds of these various occupations and threats of occupation differed, and only the threat which secured the German acceptance of the Spa Agreement can be said to relate solely to reparation. My own view is that though some of the occupations and threats of occupation might have been justified *dehors* the Treaty, for Germany was undoubtedly a defaulter in many respects, they cannot be justified within it. Oppenheim,[2] drawing a distinction between a violation of a peace treaty "during the period in which the conditions of the peace treaty have to be fulfilled, and a violation afterwards," states that: "in the first case, the other party may at once recommence hostilities, the war being considered not to have terminated through the violated peace treaty." But it is of the essence of the French case that France is acting within the Treaty and applying measures "which Germany agrees not to regard as acts of war." The Allies have not cancelled the Treaty of Versailles on the ground of Germany's violations of its provisions, and, so long as they maintain the Treaty by claiming to act under it, it seems to me that they are bound by its terms. To use a legal expression they cannot both "approbate and reprobate."

[1] *Parliamentary Debates*, House of Commons, Vol. CLIV, c. 1246 cited in *Right and Wrong in the Ruhr Valley*, p. 16.

[2] *Op. cit.*, Vol. II, § 278.

(ii) Estoppel has been defined as "not a cause of action" but "a rule of evidence which precludes a person from denying the truth of some statement previously made by himself;" [1] and the English lawyer is accustomed to regard it as arising (*a*) from a judgment, (*b*) from matter in a deed, i. e. a writing under seal, or (*c*) from conduct. We are not concerned with (*a*) and (*b*). The *locus classicus* for estoppel by conduct is *Pickard* v. *Sears*,[2] where Lord Denman C.J. stated the rule thus:

"Where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time."

It is also well put as follows:

"A man cannot at the same time blow hot and cold. He cannot say at one time that the transaction is valid, and thereby obtain some advantage, to which he would only be entitled on the footing that it is valid, and at another time say it is void for the purpose of securing some further advantage." [3]

Further it is essential that the party setting up the estoppel should prove prejudice, that is, that he acted or abstained from action upon it to his detriment. As James L.J. put it in *Ex P. Adamson*: [4]

"Nobody ought to be estopped from averring the truth or asserting a just demand, unless by his acts or words or neglect his now averring the truth or asserting the demand would work some wrong to some other person who has been induced to do something or to abstain from doing something by reason of what he had said or done, or omitted to say or do."

The doctrine of estoppel does not appear to have received much attention in the sphere of international law. That branch of it which is known as *res judicata* receives recognition in the

[1] Per Lindley L.J. in *Low* v. *Bouverie* [1891] 3 Ch. at p. 101.

[2] (1837) 6 A. & E. at p. 474.

[3] Per Honyman J. in *Smith* v. *Baker* (1873) L.R. 8 C.P. at p. 357.

[4] 8 Ch. D. 817. See also the statement by Lord Campbell L.C. in *Cairncross* v. *Lorimer*, 3 Macq. 827: "The doctrine . . . is to be found, I believe, in the laws of all civilized nations, that if a man, either by words or by conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they might otherwise have abstained, he cannot question the legality of the act he has so sanctioned, to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct." (I have not been able to find a case of an estoppel arising from concurrence in an erroneous interpretation of words in a document, and am doubtful whether it would arise in such a case.)

Pious Fund Arbitration,[1] and two authorities may be mentioned which throw some light upon the position of estoppel by conduct in this field. In the *Fur Seal Arbitration* [2] it was demonstrated that some advantage is to be gained by one State, party to a dispute, by convicting the other State of inconsistency with an attitude previously adopted. In that case the United States, having succeeded by cession in 1867 to all the rights of Russia in the Behring Sea, strenuously urged that Great Britain had recognized and conceded in and after 1821 Russia's claim to exclusive jurisdiction over the seal fisheries outside territorial waters, and the arbitrators considered the point of sufficient importance to make an express finding of fact to the contrary. On the other hand, Great Britain was at pains to point out that both she *and the United States* had emphatically protested against the Russian ukase of 1821 advancing these territorial claims. This is not estoppel *eo nomine*, but it shows that international jurisprudence has a place for some recognition of the principle that a State cannot blow hot and cold—*allegans contraria non audiendus est.* In a recent award by Honourable Chief Justice Taft in an arbitration between Great Britain and Costa Rica the doctrine of estoppel by conduct is recognized by implication though not applied in the circumstances of the case, and we find the statement that:

> " An equitable estoppel to prove the truth must rest on previous conduct of the person to be estopped, which has led the person claiming the estoppel into a position in which the truth will injure him." [3]

(iii) It is not easy in the dearth of authority in international law upon the nature and effect of estoppel to say how far the hands of Great Britain are tied by her conduct since 1920 in some of the incidents recorded above, albeit the issue of reparation has only once been so clear cut as on the present occasion and then no actual occupation took place. Nor do I think that too much weight can be attributed to the Roumanian incident referred to earlier [4] which did not arise upon the Treaty of Versailles and which bears the stamp not merely of isolated action in collecting reparation but also of an intention of isolated enjoyment of such reparation as might be collected. I have quoted elsewhere [5] Hall's warning against introducing " the refine-

[1] Moore: *International Arbitrations*, pp. 1349 *et seq.* [2] *Ibid.*, pp. 755 *et seq.*
[3] Printed in *American Journal of International Law*, January, 1924, p. 157.
[4] p. 24. [5] See Note on p. 182.

ments of the courts " into " the rough jurisprudence of nations." With that warning in mind, the broad view seems to be that Great Britain has been guilty of inconsistency upon the question of the legality of the occupation of Germany east of the Rhine, even in one case on a pure question of reparation, and also upon the interpretation of paragraph 18; and that an international tribunal could hardly fail to be unfavourably impressed by those inconsistencies in the event of a direct juridical issue being raised between Great Britain and France.

But there are in addition to France and Great Britain twenty-five other parties to the Treaty of Versailles. For many of them that contact with European politics was purely temporary, and no concurrence in the execution of the Treaty was to be expected from them. I do not overlook the fact that Italy and Belgium concurred in the French occupation of the Ruhr in January, 1923, and that the Principal Allied Powers were parties to some of the other occupations and threats of occupations, but the only other one of the signatories whose position will be examined here is Germany. Granted that a signatory of a Treaty which is accepted under coercion and after protest is bound by it, for herein international law does not recognize the necessity of full and free consent so vital to the ordinary municipal contract, I cannot see how the views of Great Britain and other States as to the interpretation of the Treaty can affect the rights of Germany, more particularly when the latter protested against occupations of territory carried out in pursuance of that interpretation.

In the sphere of English municipal law, whatever may be the effect of an estoppel as between the party against whom and the party by whom it is set up, it is a well recognized rule that " estoppel binds parties and privies, but not strangers." And this is merely a particular and local application of a general principle to the effect that, apart from agency, *pacta tertiis nec nocent nec prosunt*,[1] or *res inter alios acta alteri nocere non debet*, and that admissions only bind the party making them. On that point it seems to me that Germany has the law on her side, namely that as between her and France (the parties principally concerned) the legality or illegality of the occupation of the Ruhr must be judged without reference to the interpretations

[1] For the application of this principle in international law, see Roxburgh: *International Conventions and Third States.*

which other signatories may have given to the Treaty. And it will be noted that the line adopted by the British Note[1] to France of August 11, 1923, is that " the highest legal authorities in Great Britain have advised His Majesty's Government that the contention *of the German Government* is well founded."

I have not attempted to deal with the legality of the ordinances of the Rhineland Commission issued during and for the purposes of the occupation of the Ruhr Valley.

VII.—Summary of Conclusions.

I venture to sum up my conclusions as follows, and in so difficult a matter I do not want brevity of statement to be mistaken for a desire to be dogmatic.

(i) Annex II to Part VIII (Reparation) constitutes the Reparation Commission as the authority charged with the duty of interpreting Part VIII of the Treaty, and requires unanimity in giving interpretations—referring to arbitration any disputes on " the question whether a given case is one which requires a unanimous vote for its decision or not."

(ii) " The interested Powers " in paragraph 17 are Great Britain, France, Italy and Belgium.

(iii) " The respective Governments " in paragraph 18 whose duty it is to " determine . . . such other measures " are the Governments of " the interested Powers."

(iv) The measures once determined, it is for the Allied Powers acting through some common organ such as the Reparation Commission or the Supreme Council to " take " them.

(v) The expression " and in general such other measures," read in the light of the necessity of construing the Treaty as a whole and particularly in view of Part XIV (Guarantees), excludes military occupation of territory east of the Rhine and the bridgeheads.

(vi) Great Britain has by her previous declarations and conduct seriously prejudiced her right to complain as between herself and France of the illegality of the present occupation of the Ruhr Valley under the Treaty.

(vii) Germany on the other hand labours under no such point of prejudice, and her contention that this occupation is not a sanction permitted by the Treaty is well founded.

[1] *Cmd.* 1943.