RECOGNITION
IN
INTERNATIONAL LAW

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to non-recognition of changes resulting from a revolution. The obligations of non-recognition as expressed in the Resolution of the Assembly and in the American Treaties of 1933 and 1938 can, as a rule, have no bearing on the question of recognition of States or governments. A State cannot come into existence contrary to a treaty; there is no rule of international law prohibiting secession from the parent State. If, to give a concrete example, Manchuria had voluntarily seceded from China in 1932 and formed a new State, there would have been no question of non-recognition as intended by these instruments. The proper legal basis of non-recognition of Manchukuo as a State in the years after 1932 was probably the fact that it was not a State inasmuch as, in view of its relations with Japan, it lacked actual independence.[1] In so far as the doctrine of non-recognition applied in that case it was an announcement of the intention or the acceptance of the obligation of non-recognition of any future situation amounting either to a formal incorporation of Manchuria as part of Japan or to a relationship involving the actual overlordship of Japan.

§ 124. *The Jurisprudential Basis of the Principle of Non-Recognition.* Neither the announcement of non-recognition by the United States in January 1932, nor the Resolution of the Assembly of the League of Nations of March of that year, nor the American Treaties of 1933 and 1938 were intended to have or could have the effect of invalidating any act, or the results thereof, which but for the declaration of non-recognition would have been legally valid. Their effect and, probably, their intention were of a different nature. They constitute, as in the case of the United States, either a unilateral announcement or, as in the other cases, the assumption of an obligation or the declaration of an already existing duty not to contribute by a positive act to rendering valid the results of an act which is in itself devoid of legal force. This construction of non-recognition is based on the view that acts contrary to international law are invalid and cannot become a source of legal rights for the wrongdoer. That view applies to international law one of 'the general principles of law recognized by civilized nations'.[2] The principle *ex injuria jus non oritur* is one of the fundamental maxims of jurisprudence. An illegality cannot, as a rule, become a source of legal right to the wrongdoer. This does not mean that it cannot produce any legal results at all. For it gives rise to a legal liability of the law-breaker; it may become, in the interests of intercourse and general security, a source of rights for third persons acting in good faith; it may,

1 See above, p. 47.
2 Article 38 (3) of the Statute of the International Court of Justice.

temporarily and provisionally, confer upon the wrongdoer a measure of protection of his possession; it may, if the rigid conditions of lapse of time and of other requirements have been complied with, crystallize into a legal right as the result of the operation of prescription. But to admit that, apart from well-defined exceptions, an unlawful act, or its immediate consequences, may become *suo vigore* a source of legal right for the wrongdoer is to introduce into the legal system a contradiction which cannot be solved except by a denial of its legal character.[1] International law does not and cannot form an exception to that imperative alternative.

§ 125. *The Maxim* ex injuria jus non oritur *in International Law.* For reasons connected with the substantive and procedural weakness of international law the operation of the principle *ex injuria jus non oritur* is, in the sphere of international relations, exposed to considerable strain and to wide exceptions. On the other hand, the absence of more direct means of enforcement tends to endow the principle of nullity of illegal acts with particular importance in the international sphere. It is of interest to note the way in which the Permanent Court of International Justice has given expression, on a number of occasions, to the principle that no rights can be derived from an illegality. Thus in the *Free Zones* dispute between Switzerland and France the Court pointed out in its Order of 6 December 1930

1 By an interesting coincidence, in May 1938, on the day of the opening of the meeting of the Council of the League of Nations whose main business was to endow with a semblance of legality the impending recognition by the principal Powers of the League of a situation brought about in violation of international law, namely, the annexation of Abyssinia, the House of Lords gave, *per* Lord Atkin, a decision which was based on the following passage from another judgment: 'It is clear that the law is that no person can obtain or enforce any rights resulting to him from his own crime; neither can his representative claiming under him obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence.' *In the Estate of Cora Crippen* (27 T.L.R. 258; [1911] P. 108), cited in *Beresford* v. *Royal Insurance Company, Ltd.* (1938) 54 T.L.R. 789. See also, decided in the same year, *Geo, Legge and Sons* v. *Wenlock Corporation*, [1938] A.C. 204, in which it was held that the 'pollution of a natural stream in contravention of statute cannot make it in law a "sewer"'. *Per* Lord Maugham: 'there is no case... in which repeated violation of the express terms of a modern statute passed in the public interest has been held to confer rights on the wrongdoer' (at p. 222). And see *R.* v. *Lynch*, [1903] 1 K.B. 444, to the effect that no rights can be derived from an act which is in itself an act of treason. As to Roman Law, see D. 47 . 2 . 12 . 1: 'sed nemo de improbitate sua consequitur actionem'; D. 47 . 2 . 14 . 3: 'sed non debet ex dolo suo furti quaerere actionem'; D. 24 . 1 . 3 . 1: 'sed fas non est eas donationes ratas esse ne melior sit conditio eorum qui deliquerunt'; D. 50 . 17 . 134 . 1: 'Nemo ex suo delicto meliorem suam conditionem facere potest'; less explicitly, in D. 4 . 3 . 1 pr.; D. 10 . 4 . 3 . 11; and, in the view of the late Professor Buckland, to whom I am indebted for these references, no doubt elsewhere.