

international control has been suggested. Failing that, the only possibility seems to be "direct action," for there is no law to cover the case.

In the law and procedure of diplomatic protection today, as in other fields, foreign offices are being confronted with strange and incredible situations. If conventional and accepted methods of procedure and settlement are disregarded to our injury, it is not necessary to cling to established etiquette. It would seem reasonable to employ new and impressive measures in defense of rights when such measures are used to attack rights. CLYDE EAGLETON

#### THE CLOSE OF A CHAPTER IN THE HISTORY OF TRANSISTHMIAN TRANSIT

The termination of Article VIII of the Boundary Treaty between the United States and Mexico, concluded December 30, 1853 [Gadsden Treaty], is significant of the changes in international relations following changes in methods of transportation. This Article VIII stated that

The Mexican Government having on the 5th of February 1853 authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States by its agents shall have the right to transport across the Isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States Government and its citizens, which may be intended for transit, and not for distribution on the Isthmus, free of customhouse or other charges by the Mexican Government. Neither passports nor letters of security will be required of persons crossing the Isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican Government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican Government having agreed to protect with its whole power the prosecution, preservation and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

That some means of convenient transisthmian transit should be devised had been advocated for more than three hundred years. During the nineteenth century three routes were under particular consideration, the Tehuantepec, Nicaragua, and Panama routes. The support for each route enlisted able engineers and varied arguments. For the Tehuantepec as regards the

East and West Coast of the United States, such arguments as reduction of distance from New York to California by 1,250 miles as compared with the Panama route, the generally favorable winds at the termini of the interoceanic ship railway, the economy of construction of the railway both in money and time as compared with water routes, were advanced. Even in the message of President Cleveland of December 8, 1885, it was said "The Tehuantepec route is declared, by engineers of the highest repute and by competent scientists, to afford an entirely practicable transit for vessels and cargoes, by means of a ship railway, from the Atlantic to the Pacific."

When the treaty was negotiated, the United States was to enter into an arrangement with Mexico for the transit of troops and munitions from one side to the other side of the continent via Tehuantepec and the "construction of a plank and railroad" was to be "early." After more than eighty years it seems just that the rights of the United States, which have not been exercised, in the Tehuantepec area should be terminated. One chapter of the history of the transisthmian projects and controversies has been brought to an end on December 21, 1937, by the exchange of ratifications of the treaty signed at Washington on April 13, 1937.\*

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#### RESERVATIONS TO MULTIPARTITE INTERNATIONAL INSTRUMENTS

It is only in recent years that formal articles in multipartite international instruments, upon which the effectiveness of international legislation frequently depends, have begun to receive the attention which they deserve. The drafting of the conventions which were opened for signature at the Peace Conferences at The Hague in 1899 and 1907 has been widely praised; yet if those texts are compared with the texts of some recent conventions, it will at once be seen that great progress has been made in this field. A marked tendency towards standardization of formal articles in current international instruments is noticeable, and on the whole the prevailing forms are giving little difficulty.

In spite of the progress made, however, solutions have not yet been provided for all of the problems which occasionally arise. One of these problems is connected with the necessity of consent to reservations which a state may wish to make in signing or ratifying or acceding to a multipartite international instrument. Attention was attracted to this problem some years ago, in connection with the Austrian reservations to the Convention on Traffic in Opium and Drugs, of February 19, 1925.<sup>1</sup> That convention was open to signature by any member of the League of Nations until September 30, 1925; on the latter date, it was signed on behalf of Austria with certain reservations, without any notice to or assent by other signatories. Austria had not been represented at the conference which drafted the convention. Great Britain

\* United States Treaty Series, No. 932.

<sup>1</sup> 81 League of Nations Treaty Series, p. 317; 3 Hudson, *International Legislation*, p. 1589.