

service at the present time, and his untimely loss must therefore be doubly deplored. The eminent publicist, Dr. A. Pearce Higgins, has been chosen to fill the chair at Cambridge vacated by his death.

CHARLES NOBLE GREGORY.

#### THE SOLUTION OF THE SPITSBERGEN QUESTION

In the early part of the present year, representatives of the United States, Great Britain, Denmark, France, Italy, Japan, Norway, the Netherlands and Sweden signed at Paris a treaty relating to Spitsbergen. This action doubtless almost brought to a final solution certain questions discussed by the Honorable Robert Lansing in this JOURNAL in the number for October, 1917, as "A Unique International Problem." Under the provisions of this agreement the contracting parties recognize the sovereignty of Norway over the archipelago of Spitsbergen, including Bear Island, which has for centuries been in the anomalous situation of being *terra nullius*.

The Government of Norway being particularly interested in an early international understanding respecting the archipelago, and being of the opinion that the Peace Conference at Paris afforded an opportune occasion for dealing with this question, requested the Conference to consider it. Action was taken in accordance with the desire of the Norwegian Government on the initiative of the five Powers designated in the treaties of peace as the "Five Principal Allied and Associated Powers." The complete success of such action was assured by the friendly coöperation of certain interested neutral nations, namely, Denmark, the Netherlands and Sweden. These nations, which were not represented at the Peace Conference, were invited to offer suggestions. The fact that such suggestions as they saw fit to present were accepted doubtless in some measure accounts for the considerable length of a treaty which is concerned with comparatively few important subjects.

An attempt to solve the Spitsbergen question was made in the year 1914 at an international conference at Christiania, called by the Government of Norway, which was attended by representatives of Germany, the United States, Denmark, France, Great Britain, Norway, the Netherlands, Russia and Sweden. The conference in its endeavor to frame an administration for the archipelago, to preserve

order and to define the relative rights of persons therein resident, proceeded on the understanding, which had been accepted by the countries represented, that the islands should remain *terra nullius*. A basis for the establishment of such an administration would have been found in the authority which nations are conceded to have over their nationals wherever they may be. And the affairs of the necessary governmental machinery would have been conducted by the several governments acting in concert through joint agencies.

The treaty which the conference attempted to draft, and which it as a matter of fact almost completed, embraced a comprehensive scheme of civil and criminal jurisprudence; and provision was made for a recognition of the rights of persons who had asserted claims to lands in the islands and for the adjustment of differences growing out of conflicting claims to the same territory. Underlying this unique scheme of government were many finely spun theories—some of them doubtless a bit too fine. Its practical operation would probably have been fraught with many difficulties. And it is obviously fortunate that a more practicable solution has been found.

The Government of the United States, having no political interest in the archipelago, participated in the conference solely with a view to the protection of rather extensive American mining interests therein. It was interested in bringing about international recognition of the inviolability of private rights in the islands and in securing the establishment of an administration thereover under which such rights would be safeguarded.

The commission which framed the treaty recently signed at Paris discarded previously considered schemes of an international administration or of a mandatory government. Political considerations affecting this relatively unimportant territory which had previously necessitated the consideration of somewhat fantastic plans did not stand in the way of a practical solution of the question which has frequently in the past been the cause of international complications. It was deemed unnecessary to take into account ancient claims of certain governments which had never been perfected and accorded international recognition. An understanding was readily reached among interested nations to recognize the sovereignty of Norway in view of the interests of that country in Spitsbergen, its proximity to the archipelago and the desirability of an early definitive solution.

Former proposals with regard to an international administration

having been discarded, it was of course proper that the incorporation into the treaty of stipulations which would in effect result in a limited sovereignty being vested in Norway should be avoided. And certain provisions in the treaty which define the rights of nationals of the contracting parties in the islands are apparently not at variance with that idea. These provisions may be said to fall into two general classes.

Following the first article of the treaty in which the contracting parties recognize the full sovereignty of Norway over the archipelago, there is a series of provisions which may be said to be in the nature of such as are found in the so-called treaties of commerce and navigation, securing to nationals of contracting parties equality in matters relating to commerce and industry.

An annex to the treaty contains provisions in respect of rights acquired in the islands prior to the signing of the treaty. These provisions embody a definitive recognition of private rights and an equitable and efficient procedure for the adjustment of conflicting claims to lands in the archipelago.

Claims that do not conflict will be passed upon in the first instance by a single "Commissioner." The Norwegian Government undertakes to confer a title on persons whose claims shall be recognized by the Commissioner. When undisputed claims shall have been disposed of, the more difficult question of conflicting claims will be taken up by this Commissioner acting in conjunction with other Commissioners designated by interested governments, that is, governments whose nationals have claims to land in the archipelago. The Norwegian Government will confer title on persons whose claims shall be recognized by the tribunal of commissioners.

In this annex to the treaty is found an interesting and important precedent. Of course, it cannot be regarded as a precedent of importance in its possible future application to private rights in lands having the status of *terra nullius*. But it is important to the persons who have been the pioneers in the development of the natural resources of Spitsbergen. The provisions of the annex properly accord international recognition to rights which have heretofore been legally undefined, since, of course, claimants to land in a *terra nullius* could have no title under municipal laws where such laws did not exist, and since such rights were evidently not defined by any generally recognized principle of international law. Norway as the future

sovereign authority in the archipelago, is obligated to give effect by appropriate municipal enactment to such international recognition of private rights.

The treaty contains provisions to enable non-signatory Powers to give adherence thereto, and provisions for the protection of the interests of Russian nationals until the recognition by the contracting parties of a Russian Government permits Russia to adhere to the treaty.

FRED K. NIELSEN.

#### SELF-DETERMINATION IN CENTRAL EUROPE

The "right of self-determination" has never been clearly defined, nor have rules been formulated for the practical application of this fundamental principle of international law and order.

It is true that there was a qualification of this right in President Wilson's statement "that all well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently of the world." Unfortunately, there is room for controversy as to what constitutes "*well-defined* national aspirations," and as to just what "elements" may create or perpetuate "discord and antagonism." Each claimant for recognition naturally believes his aspirations are well defined, and resents the idea that anybody else should exercise for him his own right of self-determination. Among these "nations crowding to be born" are Egypt, Arabia, Syria, Armenia, Azerbaijan, Kurdistan, Ukraina, Latvia and Esthonia.

As a matter of fact, infelicitous experimentations in self-determination by the Peace Conference have revealed some of the serious limitations to this principle. First of all, it is plain, as set forth in the Covenant of the League of Nations, that there are backward peoples in so primitive a stage of development as to render them as incapable of national existence as a child is incapable of legal or moral responsibility. The status of such peoples—whether they shall be governed absolutely or be conceded some degree of self-government—cannot be determined by themselves.

Secondly, there is a logical limitation on the right of a minority