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# THE OCCUPATION OF THE RUHR

DAVID HUNTER MILLER

It is not my purpose to consider exhaustively the question whether the Treaty of Versailles authorizes the occupation of the Ruhr by the French, a question which some time ago was raised by the British Government, and one which prior to that time was made the subject of protest by Germany. Recently, in a more or less popular article,<sup>1</sup> I endeavored to sum up the contentions in the matter, and therein expressed the definite opinion that the occupation of the Ruhr by the French was unauthorized by the provisions of the Treaty of Versailles. A recent comment<sup>2</sup> reviews the question. The writer thereof comes to a different conclusion from that which I expressed, and while, as I said, I do not intend to consider the question exhaustively, I submit some observations on the editorial comment mentioned. Paragraphs 17 and 18 of Annex II, Part VIII, of the Treaty of Versailles read as follows:

"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 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."

There is no doubt that the Reparation Commission has declared Germany in voluntary default within the meaning of this Paragraph 18.

The occupation of the Ruhr was participated in by France and Belgium, and technically also by Italy.<sup>3</sup> The first point made against the occupation has been that even if such an occupation were permitted by the Treaty, it could not be applied except by the Allies as a whole, or at least by the "interested Powers" to whom notice of default is to be given under Paragraph 17. If the contention be that the words "respective Governments" mean any one of the "interested Powers" acting by itself, we are led to very extraordinary conclusions as to what

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<sup>1</sup> *Is the Occupation of the Ruhr Legal?* The New York Evening Post, August 21, 1923.

<sup>2</sup> Finch, *The Legality of the Occupation of the Ruhr Valley*, 17 AM. JOUR. INT. L. 724-733.

<sup>3</sup> The French note of January 10, 1923, contained this expression: "The Italian Government has also decided that Italian engineers shall participate." (Current History, February, 1923, p. 718.) See, however, the Italian note of August 2, 1923, and the speech of Mussolini of November 18, 1923, as reported in the New York Times of the following day.

might legally happen.<sup>4</sup> In the present case we have France and Belgium acting together, with perhaps Italy; the British hold aloof. Very serious and complicated questions have arisen even from this fact, owing to the continued occupation by the British of part of the Rhineland and the necessary British control of communications around Cologne.<sup>5</sup>

However, if the interpretation of the permissibility of single action be admitted to its full extent, there might result a situation of affairs so extraordinary as to be impossible. Different Allied governments might decide to take separate measures which conflicted with one another. What would the legal situation be then? As Sir John Simon has pointed out, suppose that one power decided to blockade Hamburg, and another to collect customs duties there. What would Germany's duty be in such a case,—to facilitate the collection of customs duties and thus oppose the blockade, or to facilitate the blockade and thus prevent the collection of customs duties? It could hardly be contended that it was Germany's duty to do both.<sup>6</sup>

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<sup>4</sup> There is no doubt that in general the Treaty of Versailles contemplates that action thereunder by the Allied and Associated Governments is to be taken by "common accord." Compare the comment of Holland (*The European Concert in the Eastern Question*, 221) regarding the rights of the Powers in relation to the eastern question under the Treaties of Paris and Berlin. See also the decision of the Arbitrator of a case under the General Act of Berlin of June 14, 1899, mentioned in Crandall, *Treaties* (2d ed. 1916) 385.

<sup>5</sup> See in this connection the London Times Cologne dispatch printed in the New York Times of January 16, 1924.

<sup>6</sup> The comment of Sir John Simon on this point is so valuable that I reproduce it in full from The London Times of August 17, 1923:

"(1) Paragraph 18 consists of a single sentence which describes 'the measures which the Allied and Associated Powers shall have the right to take in case of voluntary default by Germany.' This expression 'the Allied and Associated Powers' appears again and again in the Treaty, and everywhere it is used to describe a single body, acting together. Thus, the Treaty itself is a Treaty between the Allied and Associated Powers 'of the one part' and Germany 'of the other part.' It would be strange if a sentence which sets out to define the measures which the body of Allies may take should end by authorizing the invasion of Germany by one Allied Power without regard to the views of others."

"(2) Part VIII of the Treaty confers upon the Reparation Commission authority to act on behalf of the Allies and gives it 'wide latitude as to its control and handling of the whole reparation problem as dealt with in this Part of the present Treaty.' If the contention of France is correct, the views of the Commission, as representing the Allied body, might be completely disregarded by a single Government acting alone."

"(3) Some only of the Allied and Associated Powers are interested in reparations, and by Paragraph 17, in the case of Germany's default, the Reparation Commission is to give notice of such default 'to each of the interested Powers.' When Paragraph 18 goes on to provide that in case of voluntary default, the measures which the Allied and Associated Powers shall have the right to take 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,' surely 'respective Governments' mean the Governments of the interested powers, whose joint determination is then put in force by or on behalf of the Allies as a whole. Any other view leads to the absurdity that each interested Power may determine the matter for itself, with the result that contradictory courses may be decided upon, all of which have to be followed by the body of Allies at the same time."

As the view that the Treaty permits separate and conflicting actions by different Powers against Germany leads to an absurdity, it is opposed to an elementary rule of construction, thus stated by Vattel:<sup>7</sup>

"Every interpretation that leads to an absurdity ought to be rejected."

Indeed, as Sir John Simon remarked in the letter above mentioned:

"Principles of construction . . . are nothing more than considerations of good sense."

The writer in *The American Journal of International Law* seems to think that because the British, acting alone, relinquished any right to seize the property of German nationals in Great Britain in the case of voluntary default by Germany, the British Government is "estopped" from supporting the German contention on the foregoing point. Of course, if there were such an estoppel, it would have not the slightest bearing on the rights of Germany under the Treaty. There is, however, no such estoppel. The right to seize the property of German nationals in Great Britain is a right which can be exercised only by the British Government; it is a right which is exercisable only on British territory; consequently, and of course, if and when the British Government decides that such a right shall not be exercised, that is an end of the matter under any possible construction of the Treaty; for even if the Treaty requires the joint action or agreement of the interested Allies under Paragraph 18, there could be no such joint action or agreement without the consent of the British Government.

The main question, however, is whether the occupation of the Ruhr is authorized by the Treaty at all, the German claim being that the Treaty of Versailles does not admit any territorial sanctions. As the writer in *The American Journal of International Law* remarked, there is consequently a difference of opinion as to the meaning of the Treaty. I point out that this difference of opinion, whatever may be or may have been the views of the British Government, is a difference of opinion between Germany on the one hand and the Allied Powers (or some of them) on the other. This is a question which, if not determined by consent of the parties, is to be determined by a resort to the rules of

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"(4) If, when Germany makes default in reparation payments, in which Britain and Italy are interested as well as France and Belgium, one Power can invade Germany on its own account, so can each of the others. Not only so, but the action taken by one Power may nullify the action taken by another. For example, one Power might impose blockade, while another Power claimed to collect Customs duties at German ports. All this seems wholly contrary to the general scheme of the Treaty, which contemplates that the Allies shall act together. Indeed (to quote the language of the Note addressed by M. Clemenceau to Rumania on August 23, 1919), 'it is obvious that if the collection of reparations 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 uncoördinated action, the enemy would either evade or be incapacitated from making the maximum of reparation.'"

<sup>7</sup> Vattel, *Law of Nations* (Carnegie Inst. ed. 1916) sec. 282; (Chitty's ed. 1853) 251.

interpretation and construction which are applicable; in other words, the scientific grounds provided by jurisprudence.<sup>8</sup>

As introduction to the discussion, it is well to remember that the terms of the Treaty of Versailles were entirely drafted by the Allied and Associated Powers and were presented to Germany as thus written. In this connection, I refer to one of the elementary and universal rules of jurisprudence which has perhaps been nowhere better stated than by Vattel<sup>9</sup> as follows:

"In case of doubt, the interpretation goes against him who prescribed the terms of the treaty: for as it was in some measure dictated by him, it was his own fault if he neglected to express himself more clearly: and by extending or restricting the signification of the expressions to that meaning which is least favourable to him, we either do him no injury, or we only do him that to which he has wilfully exposed himself; whereas, by adopting a contrary mode of interpretation, we would incur the risk of converting vague or ambiguous terms into so many snares to entrap the weaker party in the contract, who has been obliged to subscribe to what the stronger had dictated."

Any right to occupy the Ruhr under Paragraph 18 above quoted rests on the last words of that Paragraph:

". . . and in general such other measures as the respective Governments may determine to be necessary in the circumstances."

I shall later on have something to say about the rule of *ejusdem generis* in connection with the construction of this language of the Treaty; but I point out here that it is only by completely ignoring legal history that one can suppose, as does the writer in *The American Journal of International Law*, that this rule "was originated by Lord Tenterden." Lord Tenterden applied the rule in 1827 in a case often cited,<sup>10</sup> but before that date the rule was familiar law under its name of *ejusdem generis* as earlier cases show;<sup>11</sup> and as a rule of construction it is very ancient. Indeed, Lord Tenterden himself must have deemed the rule an old one; for in the case cited, he applied it in the construction of two statutes of the seventeenth century.

In English law, the rule goes back at least to Coke:<sup>12</sup>

"When the statute speaks of dissolution, renouncing, relinquishing, forfeiture, giving up, etc. which are inferior means, by which such religious houses came to the King, then the said latter words 'or by any

<sup>8</sup> 1 Oppenheim, *International Law* (3d ed. 1920) 700.

<sup>9</sup> 4 Vattel, *op. cit. supra* note 7, sec. 32; (Chitty's ed. 1853) 443; see Bacon, *Elements of the Common Law of England* (1630) Regula III.

<sup>10</sup> *Sandiman v. Breach* (1827, K. B.) 7 B. & C. 96.

<sup>11</sup> *Thompson v. Lady Lawley* (1800, C. P.) 2 B. & P. 303, 309; *Rex v. Joseph Norris* (1804, Cr. Cas.) Rus. and R. 69; *Stuart v. The Marquis of Bute* (1806, Ch.) 11 Ves. Jr. 657; *Rawlings v. Jennings* (1806, Ch.) 13 Ves. Jr. 39, 45; *Hoitham v. Sutton* (1808, Ch.) 15 Ves. Jr. 319; *Builer v. Wildman* (1820, K. B.) 3 Barn. and Ald. 398; *Phillips v. Barber* (1821, K. B.) 5 Barn. and Ald. 161.

<sup>12</sup> *Archbishop of Canterbury's Case* (1596) Part II, Coke 46a; see 1 Blackstone, *Commentaries* (1852) 88.

other means' cannot be intended of an Act of Parliament: which is the highest manner of conveyance that can be; and therefore the makers of the Act would have put that in the beginning, and not in the end, after other inferior conveyances, if they intended to extend the Act thereunto. But these words 'by any other means' are to be so expounded, *scil.* by any other such inferior means. As it hath been adjudged, that bishops are not included within the statute of 13 Eliz. cap. 10., for the statute beginneth with colleges, deans and chapters, parsons, vicars, and concludes with these words, 'and others having spiritual promotions'; these latter words do not include bishops, *causa qua supra*. So the statute of West. 2. cap. 41, the words which are, '*statuit Rex, quod si abbates, priores, custodes hospital' & aliarum domorum religiosarum, &c.*' These latter words do not include bishops, as it is holden 1 and 2 Phil. and Mary, Dyer, 100.109. for the cause aforesaid."

In the construction of treaties, as in the construction of other written agreements and papers of various kinds, the main problem is to find out the intent of those, or, as in the case of a will, of that one, who used the language. The rules which have grown up about this problem in the course of centuries are rules which are intended to aid in solving it. They are not to be applied arbitrarily, but only according to the circumstances and the language of the particular document, keeping always in view the main question of intent.

A peculiar branch of difficulty arises in connection with certain words that are sometimes called general words. I refer to such words as "all," "other," "every," "always," etc. Standing alone, in what one may call a dictionary sense, each of these words has quite a definite and precise meaning. But ordinarily words do not stand alone in a paper. They are used in groups; and it is a matter of common knowledge, and has been a matter of common knowledge for centuries, that such general words as I have mentioned, when used in sentences, are often used in a sense other than what I have called their dictionary sense, that is to say, in a loose or restricted sense. Now it has been found as a matter of common sense that when a question arises as to the meaning of a particular word or particular words in a paper, it is often very helpful to look at other words near by, which we may call neighboring words, which is a part of the common sense idea of looking at the context. This rule of neighboring words is called *noscitur a sociis*. Of course, this rule is no more conclusive than any other rule; but it is often helpful in solving the problem of intent, because in many cases a word which, standing alone, might mean any one of three or four things, obviously, by reference to neighboring words or to the context generally, can mean only one thing. The rule of *ejusdem generis* is only a sub-division of the *noscitur a sociis* rule<sup>13</sup>—part of the idea of looking at the context which indeed is itself a part of the universal principle that in trying to find out the meaning and intent of any part of a paper, we

<sup>13</sup> 1 Pope, *Legal Definitions* (1919) 449; Broom, *Legal Maxims* (8th ed. 1911) 447.

must look at the whole paper, whether it be a will, a private agreement or a treaty. Accordingly, it is not necessary to go into a detailed review of cases applying the rule of *ejusdem generis*. Contrary to the statement in *The American Journal of International Law*, the rule is, of course, in a proper case, applied to treaties;<sup>14</sup> and while the point is of little consequence, I do not agree that there is any "modern tendency" in the application of the rule to the word "other."<sup>15</sup> It is also erroneous to think that the "rule has but little, if any, value in the interpretation of statutes conferring discretionary powers on the judiciary or public functionaries."<sup>16</sup> I repeat that the rule of *ejusdem generis* is only one of the rules of construction, and that, of course, like every other rule of construction, it never has an arbitrary application.<sup>17</sup> It is a part of a general principle of common sense of looking at everything that was written and not only at part of what was written, and whether in any particular case the rule is or is not to be applied is a matter of reason and judgment in that very case. A host of authorities might be cited to show how ancient almost all the modern principles and rules of construction are, including this rule of *ejusdem generis*.<sup>18</sup>

I now refer to two cases in the Supreme Court of the United States relating to treaties. In *Fabre v. United States*<sup>19</sup> the Court was called upon to construe the words "other countries" in Article VIII of the Commercial Convention of 1903 with Cuba, the question being whether

<sup>14</sup> See discussion *infra* and cases cited; see also 2 Vattel, *op. cit.* sec. 270; (Chitty's ed. 1853) 247, 8.

<sup>15</sup> This idea of a "modern tendency" is doubtless based on an expression of the Master of the Rolls in a case of a post-nuptial settlement where the question of construction concerned a demise by a husband for the benefit of his wife; *Anderson v. Anderson* [1895] 1 Q. B. 749, 752. That no such "modern tendency" exists in England is shown by a case in the Court of Appeals in 1908 which reviews at length the *Anderson* case and numerous other English cases, *Tillmans & Co. v. S.S. Knutsford, Ltd.* [1908] 2 K. B. 385 (affirmed in the House of Lords [1908] A. C. 406). In that case, the rule was applied to the words "or any other cause," and one of the judges cited cases which, he said at page 401, "go to show that the true rule is that the restricted meaning is the one which primarily applies." The whole discussion of the subject in the case cited is illuminating. A long list of American cases will be found in 19 C. J. 1225.

<sup>16</sup> The statement to this effect in *The American Journal of International Law* is quoted from 2 Stroud's *Judicial Dictionary*, 1267. The two cases cited by Stroud for his statement do not support the view.

<sup>17</sup> A curious illustration of this principle may be found in a case in the Court of Appeal (*S. S. Magnhild v. McIntyre Brothers & Co.* [1921] 2 K. B. 97). In discussing two expressions in the same clause of a charter party, one of the Judges said (pp. 103, 105) that the *ejusdem generis* rule did not apply to one of those expressions ("or other accident") but that the rule "should be strictly applied" to the other expression ("or otherwise").

<sup>18</sup> 2 Grotius, *The Rights of War and Peace* (Campbell's transl. 1814) 155; 1 Digest of Justinian (Monroe's transl. 1904) Title III, 20, 21; Bacon, *Elements of the Common Law of England*, Regula III.

<sup>19</sup> (1911) 221 U. S. 649, 31 Sup. Ct. 659.

the Philippine Islands were or were not within this expression "other countries." Obviously, the Philippine Islands, under a broad use of the word "other," may very properly be said to constitute a country "other" than the United States, just as they may be said to constitute a country "other" than Cuba. The Court first examined the question in the light of United States Statute Law and decisions; recognizing, however, that United States Statutes and decisions might not be conclusive on the understanding of *Cuba* as to the meaning of the treaty, the Court then went on to look at the context, and found in that context the word "imports"; and because of this word "imports" the Court gave a restricted meaning to the words "other countries" and excluded the Philippine Islands therefrom. The discussion on this point is at pages 659 and 660 of the opinion, and is very illuminating. Here is a restricted construction of the word "other" in a treaty, announced by one of the highest authorities in questions of international law. It is a modern case, and a very strong case on the question of construction, for the reason that it finds a restricted construction of the word "other," not even from preceding particular expressions, but merely from one preceding word—"imports." Of course the rule of construction applied in this case by the Supreme Court of the United States here goes farther even than the rule of *ejusdem generis*.

Let us look at another treaty case in the Supreme Court of the United States, *United States v. Percheman*.<sup>20</sup> The case turned upon a proper construction of the treaty of 1819 between the United States and Spain and the opinion was delivered by Chief Justice Marshall. In construing the clause of cession in the treaty, Marshall wrote as follows:<sup>21</sup>

"The language of the second article conforms to this general principle: 'His Catholic Majesty cedes to the United States in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, by the name of East and West Florida.' A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The king cedes that only which belonged to him; lands he had previously granted, were not his to cede. Neither party could so understand the cession; neither party could consider itself as attempting a wrong to individuals, condemned by the practice of the whole civilized world. The cession of a territory, by its name, from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property. *If this could be doubted*, the doubt would be removed by the particular enumeration which follows: 'The adjacent island, dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other buildings which are not private property, archives and documents which relate directly to the property and sovereignty of the said provinces, are included in this article.' This special enumeration could not have been made, had the first clause of the article been

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<sup>20</sup> (1833, U. S.) 7 Pet. 51.

<sup>21</sup> *Supra* note 20, at p. 87.



supposed to pass not only the objects thus enumerated, but private property also. The grant of buildings could not have been limited by the words 'which are not private property,' had private property been included in the cession of the territory." (*Italics mine.*)

In other words, Marshall said, first, that under the general principles of international law the sweeping language of the treaty which he quotes would not pass the property belonging to the inhabitants of the ceded territory. Then he goes on to say, in effect, that even if this general principle of international law does not apply, the rule of *ejusdem generis* does, and that the general description is limited by what he calls "the particular enumeration." A clearer statement of the applicability of this rule to a treaty could hardly be made than was made by Chief Justice Marshall.

Now let us look at the Treaty of Versailles and see from it the meaning of Paragraph 18 above quoted. If the language of that Paragraph 18 is to be given the French interpretation, it means that by two words "other measures" the Allies had the right under the Treaty to occupy the whole of Germany upon Germany's default in the payment of money. Now I point out that such an interpretation makes the previous language in this Paragraph 18 meaningless. Of course, it is not to be supposed that the Allies were doing a vain thing when they wrote the words "economic and financial prohibitions and reprisals," but the broad interpretation suggested for the words "other measures" would render these previous words of not the remotest consequence. If the Treaty in two words says that the Allies can do anything at all, why say they may take economic measures, and why say that they may take financial measures, of prohibitions and reprisals? This Paragraph 18 mentions four particular measures which the Allies may take, namely, economic prohibitions, financial prohibitions, economic reprisals and financial reprisals.<sup>22</sup> Why are these four measures mentioned if the words of mention do not have the slightest effect whatever? Why, I ask, did M. Klotz request to have the word "financial" put into this paragraph if it already included the whole dictionary?

It is to be pointed out that this Paragraph 18 is a paragraph of an Annex to Part VIII of the Treaty, and, in general, this Annex relates to the powers of the Reparation Commission. Indeed, one of these powers of the Reparation Commission is to make recommendations as to the actions to be taken under Paragraph 18 (see Paragraph 17). It is not to be supposed that the actions to be taken under Paragraph 18 are any different in character, or any greater in degree, than the actions which *might* be recommended under Paragraph 17 by the Reparation Commission; and certainly, the recommendations to be made by the

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<sup>22</sup> The words "economic and financial" qualify the word "reprisals" as well as the word "prohibitions." I think this would be so if the English text stood alone, but the French text "de prohibitions et de représailles économiques et financières" makes it unquestionable.

Reparation Commission are very naturally to be economic and financial recommendations, and not political recommendations. The whole duties of the Reparation Commission are economic and financial. The whole Annex, and, indeed, the whole part of the Treaty to which it is an annex, relates to economic and financial matters: such provisions as that for the determination of Germany's capacity to pay, for the issuance of bonds, for the acceptance of payment in kind, illustrate this point; the Commission, under Paragraph 12, has a wide latitude as to its control of handling the whole reparation problem. It is an economic and financial body.

It may indeed well be argued that without resort to any rule of construction and under the precise words of the Treaty, the occupation of the Ruhr by the French is unauthorized by the Treaty. It is specifically provided in Paragraph 12 of this Annex 2 that the Reparation Commission "shall have authority to interpret its provisions," that is to say, the provisions of "this Part" of the present Treaty which is Part VIII, and which includes the Annex 2 of which Paragraph 18 above quoted is one paragraph. I note incidentally that by Paragraph 11, in coming to decisions the Reparation Commission shall be guided "by justice, equity and good faith." Now turning to Paragraph 13, we find the rules of voting in the Commission. In general, the Commission decides by a majority vote,<sup>23</sup> but on certain specified questions, "unanimity is necessary." One of these questions is sub-division of Paragraph 13, which reads as follows: "Questions of the interpretation of the provisions of this Part of the present Treaty."

Now the British Government and its representative on the Reparation Commission, as well as the German Government, have dissented from the view that under Paragraph 18, which is one of the paragraphs which the Reparation Commission has express authority to interpret, the French can go into the Ruhr. Accordingly, there has not yet been any interpretation of this paragraph of the Treaty by the Reparation Commission. In a case such as this, when the interpretation of a treaty is in dispute, and where the body which has been given the right to interpret a particular paragraph of the Treaty has *not* interpreted it, it cannot be supposed that each one of the Powers having different views may proceed according to its own interpretation. Such a construction again might lead to contradictory and perhaps impossible results. Moreover, it cannot be said that these provisions for the interpretation of this part of the Treaty by the Reparation Commission are provisions *merely* for the benefit of the Allies. They are provisions for the benefit of the Allies and for the benefit of Germany as well, because they are in a Treaty which binds Germany; and Germany has the right to insist that there be an interpretation of this Treaty in accordance with its terms before any action is taken under a disputed clause of the Treaty.

<sup>23</sup> Thus, a majority vote of the Commission is sufficient to declare Germany in voluntary default.

In this connection it may be well to quote the remarks of the Allied Powers in regard to the Reparation Commission generally.

I quote from the reply of the Allied and Associated Powers included with M. Clemenceau's letter of June 16, 1919, under the heading Part VIII—Reparation:

"In short the observations of the German Delegation present a view of this 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 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; it cannot, as is suggested, direct or control the educational or other systems of the country. 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. If Germany raises the money required in her own way, the Commission cannot order that it shall be raised in some other way; if Germany offers payment in kind, the Commission may accept such payment, but, except as specified in the Treaty itself, the Commission cannot require such a payment."

Let us look still further, however, at the question of construction, aside from the powers of interpretation given to the Reparation Commission. The broad construction of the two words "other measures" would not only exclude the prior words of Paragraph 18 from having any meaning in the Treaty, but would, in effect, to a large extent, make superfluous the territorial guarantees of Part XIV of the Treaty. Article 430, for example, relates to a finding by the Reparation Commission under Paragraph 17 of Annex 2 of Part VIII, and it says that if the Reparation Commission makes such a finding, any part of the Rhineland which has been evacuated may be reoccupied. Article 430 does not give this right of reoccupation of the Rhineland except in regard to Germany's refusal to execute the Treaty in respect of *reparations*. Clearly, this Article is a superfluous piece of writing if the matter was already covered by two words in Paragraph 18 of Annex 2 of Part VIII. It is not a question, as the writer in *The American Journal of International Law* seems to think, of restricting one paragraph of the Treaty by looking at another. The question is to determine the meaning of the whole Treaty by looking at it all, and to look at it all so as to give effect to all of it; not to make some of it superfluous and unnecessary.

The writer in *The American Journal of International Law* cites indirectly, through a State Department note, a remark of Vattel to the effect that the interpretation which would render a treaty null cannot be admitted. To say that the interpretation of a treaty which restricts the occupation of German territory to that in which are only seven millions of Germans instead of territory in which there are eleven millions renders it null, is to use language which I do not comprehend. However, as the writer relies upon Vattel, I refer here to a few of the expres-

sions of Vattel concerning what are called "odious"<sup>24</sup> provisions in a treaty:

"... everything that is not for the common advantage, everything that tends to destroy the equality of a contract, everything that onerates only one of the parties, or that onerates the one more than the other, is odious. . . ."

"... Everything that contains a penalty is odious. . . ."

"... although neither absurdity nor injustice results from the proper meaning of the terms,—if, nevertheless, manifest equity or a great common advantage requires their restriction, we ought to adhere to the most limited sense which the proper signification will admit, even in an affair that appears favourable in its own nature, . . ."

"... we should, when there is question of odious things, interpret the terms in the most limited sense: we may even to a certain degree adopt a figurative meaning, in order to avert the oppressive consequences of the proper and literal sense, or any thing of an odious nature, which it would involve: . . ."<sup>25</sup>

I quote also from Grotius on the same point:

"... Treaties of an odious kind are those which lay greater burdens on one party than on the other, which contain penalties for non-performance, or which lead to an abrogation or infraction of former treaties. . . ."<sup>26</sup>

The writer in *The American Journal of International Law* mentions the views of M. Tardieu in this matter. The eminent position of M. Tardieu is familiar to all and no one has more respect for him and for his views than I; but the opinion of any framer of the Treaty is not here conclusive of a legal question. If it were, I could cite as against the view of M. Tardieu the expressions of one who had an even greater part than he in making the Treaty;<sup>27</sup> in my opinion, however, the discussion is not advanced by such expressions on either side. Looking at the whole Treaty, it seems clear to me that the words "and in general such other measures as the respective Governments may determine to be necessary in the circumstances" should properly be construed only to include such other measures as are similar to those of the preceding enumeration. For this case, I think we may rightly adopt the words

<sup>24</sup> While this word "odious" is not now in common use in reference to treaties, the principles of the older writers in connection with it are recognized by the later authorities. For example, one leading authority states that: "whenever, or in so far as a state does not contract itself out of its fundamental legal rights by express language, a treaty must be so construed as to give effect to those rights. Thus, for example, no treaty can be taken to restrict by implication the exercise of rights of sovereignty or property or self-preservation. Any restriction of such rights must be effected in a clear and distinct manner. . . ." Hall, *International Law* (7th ed. 1917) 348. See also the reasoning of the decision in *The North Atlantic Fisheries Case*, 4 AM. JOUR. INT. L., 956, 958.

<sup>25</sup> 2 Vattel, *op. cit. supra* note 7, secs. 299-308; (Chitty's ed. 1853) 263-7.

<sup>26</sup> Grotius, *op. cit. supra* note 18, 149.

<sup>27</sup> I refer to Woodrow Wilson and his Armistice Day address reported in the *New York Times* of November 11, 1923.

of a case in the House of Lords: "When a specific enumeration concludes with a general term, that term is, by a well known canon of construction, held to be limited to *alia similia*."<sup>28</sup>

I confess my inability to comprehend an argument as to the meaning of the Treaty based upon the practical interpretation thereof *by the Allies*. It is news to me that an act by one party to an agreement, which has been constantly denounced and disputed by the other party, is a practical interpretation of an agreement. I never before heard of an argument which would lead to the conclusion that the German invasion of Belgium in 1914 was a "practical interpretation" of the Treaty of 1839; and I point out here that the author in *The American Journal of International Law* refers to the Protocol of Spa on July 16, 1920, as signed by Germany, but omits the significant fact that it was signed by Germany *under reserve of Article 7*<sup>29</sup> which is the very Article in the Protocol which contains the words quoted by the writer regarding the occupation of the Ruhr. An argument has been based by the writer in *The American Journal of International Law* on the provisions of Article 248 of the Treaty, reading as follows:

"Subject to such exceptions as the Reparation Commission may approve, a first charge upon all the assets and revenues of the German Empire and its constituent States shall be the cost of reparation and all other costs arising under the present Treaty or any treaties or agreements supplementary thereto or under arrangements concluded between Germany and the Allied and Associated Powers during the Armistice or its extensions. . . ."

The idea that this Article 248 has the slightest reference to territorial sanctions has been answered, and has been answered conclusively and officially by the Allies themselves. In the reply of the Allied and Associated Powers transmitted to the German Government with the note of M. Clemenceau, of June 16, 1919, is contained the following under the heading, Part IX, Financial Clauses, making specific reference to Article 248:

". . . Within the Empire the Allied and Associated Powers have claimed a charge only on the property and resources of the Empire and the German states. Their right in this regard, resulting from the financial clauses, has been limited as far as possible, and an effort has been made to avoid giving it any vexatious character. Finally, all exceptions compatible with the rights of the Allied and Associated Powers have been granted, and these will permit the economic interests and credit of Germany to be protected as far as possible.

In a word, in view of the burdens that Germany must assume, the financial provisions adopted by the Allied and Associated Powers spare the essential interests of Germany as far as possible.

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<sup>28</sup> Lord Watson in *Countess of Rothes v. Kirkcaldy Waterworks Commissioners* (1882, H. L.) L. R. 7, A. C. 694 at p. 706. The case turned on the language of a Scotch statute and the Judge pointed out that that Statute did not contain a "general term" such as the word "other."

<sup>29</sup> 16 AM. JOUR. INT. L., Supplement, 205-206.

1. The Allied and Associated Powers again assert their right to obtain the payment of reparations and other charges resulting from the Treaty, in priority to the settlement of all other debts of the Empire or of the German States.

Nevertheless, they consider it proper to provide, in certain special cases, for the granting of exceptions to the general principle thus laid down, and they are ready to insert at the beginning of Article 248 the following sentence:

'Subject to such exceptions as the Reparation Commission may approve a first charge.'

This new stipulation will permit measures to be taken with a view to protecting Germany's credit as far as possible."

It is, of course, made certain by this language that the provisions in Article 248 were intended merely to provide for the payment of reparations and other Treaty charges *in priority to the debts of Germany and of the States of Germany*. It is nearly five years too late to claim that Article 248 has other meaning.

The author in *The American Journal of International Law* mentions the declaration signed by Mr. Wilson, Mr. Lloyd George and M. Clemenceau, on June 16, 1919, published by Mr. Baker,<sup>30</sup> and says that this declaration "appears to have been the result of French dissatisfaction with the guarantee clauses."

No authority is cited for this statement, and it is directly contrary to all the known evidence on the subject. Baker says about it that the declaration was suggested by Mr. Wilson on June 12 for the purpose of "getting out of the threatening impasse between Lloyd George and Clemenceau."<sup>31</sup> He adds that it "satisfied neither the British, for whom it was too mild, nor the French, for whom it was too strong." Then he makes this important statement:

"Some of its terms were known, however, and made Poincaré rage and attack Clemenceau for betraying France to Lloyd George."

It would be interesting to know the basis for the statement in *The American Journal of International Law* that this declaration was the "result of French dissatisfaction with the guarantee clauses," for the declaration, so far as it goes, weakens these very clauses. Finally, if there could remain any doubt as to whether the Treaty ought to be interpreted in favor of the occupation of the Ruhr or against it, I refer to the fact that there is an official basis for the construction of this Treaty, which does not ordinarily exist in the case of treaties. This basis of construction was stated by the Allied Powers in their reply to Germany included in the note of M. Clemenceau of June 16, 1919, which I have mentioned above, and reads as follows:

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<sup>30</sup> 2 Baker, *Woodrow Wilson and World Settlement*, 117. Mr. Baker is mistaken in thinking that the declaration was published for the first time by him. It was printed in 1919 by the British Government as Command 240.

<sup>31</sup> *Supra* note 28, at p. 116.

"The Allied and Associated Powers are in complete accord with the German Delegation in their insistence that the basis for the negotiation of the Treaty of Peace is to be found in the correspondence which immediately preceded the signing of the Armistice on November 11, 1918. It was there agreed that the Treaty of Peace should be based on the Fourteen Points of President Wilson's address of January 8, 1918, as they were modified by the Allies' memorandum included in the President's note of November 5, 1918; and upon the principles of settlement enunciated by President Wilson in his later addresses, and particularly in his address on September 27, 1918. These are the principles upon which hostilities were abandoned in November, 1918, these are the principles upon which the Allied and Associated Powers agreed that peace might be based, these are the principles which have guided them in the deliberations which have led to the formulation of the Conditions of Peace."

So if there is still any doubt in this matter as to how the Treaty should be construed, and I do not think there is, we have simply to ask the question as to whether the occupation of the Ruhr by the French is in accordance with the principles and declarations of President Wilson. I need not cite any of these at length except the following expressions from the above mentioned speech of September 27, 1918:

"Shall the military power of any nation or group of nations be suffered to determine the fortunes of peoples over whom they have no right to rule except the right of force?"

"Shall strong nations be free to wrong weak nations and make them subject to their purpose and interests?"

"Shall peoples be ruled and dominated, even in their own internal affairs, by arbitrary and irresponsible force or by their own will and choice?"

"Shall there be a common standard of right and privilege for all peoples and nations or shall the strong do as they will and the weak suffer without redress?"