THE BOYCOTT IN INTERNATIONAL LAW.

Due to the need of some means for compelling a nation to adjust a dispute which will be efficacious, and, will at the same time fall short of actual warfare, international law has sanctioned the four practices known, as, retorsion, reprisals, pacific blockade, and intervention. In the last thirty years this class has been seemingly augmented by the practice of severing, in a more or less complete degree, relations between the offended and the offending States. And although such a practice apparently seems to partake of the nature of a forcible measure short of war, it has been in vogue for too short a time to deserve a definite classification.

This method had formerly been confined to the settlement of municipal or domestic disputes, and was made famous by the excommunication of Captain James Boycott, a wealthy Irish landowner, by Parnell and the land league. The practice, thereafter known as boycotting, was only extended to the international sphere in a general way in the beginning of the twentieth century, and on its appearance it provoked a great deal of curious and excited speculation. Thus in 1909, a French writer, in commenting on the Turkish boycott of Austria-Hungarian goods, said "For the first time in Europe, there has appeared on the field of international battle, a new weapon, whose use has disconcerted diplomats and defeated the chanceries of the world."[1] Attention was chiefly drawn by the plainly satisfactory results attained by what amounted merely to a state of passivity, and in the early years of this century, the device was frequently employed by those communities whose military strength was not adequate for the enforcement of their claim by more compelling means.

Thus in 1908, following the annexation of Bosnia-Herzegovina by Austria, a rigid boycott of the goods of the latter country prevailed in the Ottoman Empire. A complete system of boycott committees was established with the tacit complicity of the government, and practically the entire Austrian trade in Turkey was interrupted. Despite the frequent protests of Austria they could do nothing against a movement in which the public authorities had not participated, and who denied that it was incumbent on them to suppress the movement. The boycott proved so disastrous to Austrian trade that she was finally forced to consider the Turkish claims, and the movement ended with the signing of the Austria-Turkish Accord of the twenty-seventh of February.

[1] Leon Pinon "Le Boycottage," Revue des Deux Mondes. 1er Mai, 1909.

In China this method had been frequently employed in domestic disputes, and the necessity for frequent boycotts by exacting mandarins had been responsible for strong guild organization. However these efforts were transferred to the international sphere when, in 1904, due to indignation following the stringent immigration regulations placed on Chinese entering the United States, a boycott in China of American goods and traders followed. The boycott was initiated as a result of a meeting held in Shanghai on May tenth, 1905, and due to the vigorous discipline of the guild the movement, though purely private and unofficial, was a complete success. Anti-American feeling ran high, and the Secretary of State Mr. Taft, and Miss Roosevelt, the President's daughter, were accorded an enthusiastic reception with rotten eggs and equally mature vegetables.

The United States government, through Mr. Taft, protested that the boycott was illegal, and contrary to treaties, but the Chinese authorities refused to assume any responsibility. The Government at Peking certainly did not discourage the boycott, and in some cases secretly encouraged it. The best that could be said was that a general feeling of benevolent neutrality prevailed among the officials. However, at Shanghai, an official of the Minister of Commerce was discovered to have conspired with Chinese merchants to continue the boycott, and upon proof of the complicity of the Chinese government, President Roosevelt wrote to Mr. Rockhill, the United States minister at Peking, declaring that he would hold the government responsible for the damage to Americans. Accordingly Prince Ching, in several proclamations, forbade the boycott, but his efforts were in fact ineffectual; and the further interesting problem was raised as to responsibility in such a case. The European diplomatic corps at Shanghai protested, and at Peking the German minister proposed collective intervention founded on Article 12 of the Chinese-French treaty of Tien-Tsin, the terms of which had been reproduced in all the European treaties with China. But they were faced with the hazard of intervening in an affair which was the result, not of the acts of the Chinese government, but of the decisions of commercial Associations over which the foreigners had no authority, and so they wisely abstained. The boycott continued, and the United States President was finally forced to amend the Chinese immigration regulations in America.

The Chinese later on employed the same weapon, this time against the Japanese, as a result of the Tatsu-Maru incident of 1908. The Japanese steamer of that name had been seized by Chinese officials for attempting to smuggle arms into the hands of Chinese Revolutionists, but, on the technical ground that the vessel had been over-

hauled in Portuguese waters, the Japanese government demanded and obtained an indemnity, the punishment of the Chinese customs officials, and an apology from Peking. Feeling ran high in China, and commercial interests declared a boycott until the damage done to Japanese trade should amount to ten thousand dollars for every dollar of indemnity paid. Neither the repeated efforts of the government nor of the Japanese could stop the movement, and in a year of general depression imports from Japan declined four-and-a-half times as much as imports from the rest of the world.

The incident was, however, but an indication of the rise of Chinese nationalism, and Japanese boycotts have continued intermittently ever since. Thus a six months boycott of Japanese goods followed in 1915, when Japan, under cover of the European war, forced the 'Twenty-One Demands' on China. A similar boycott was maintained in 1919 when the other nations at the Peace Conference accepted Japan's claim to Shantung, and as a result Shantung was returned in February of 1922. Boycotts occurred in 1923, because of the refusal of Japan to rescind the second lease on the Kwantung peninsula, and in 1927 and 1928, because of the landing of Japanese troops in Tsingtao and Tsinan respectively. The boycott of Japanese goods was then temporarily ended in May, 1929.

The Chinese exercised this economic weapon yet another time, in 1925. Due to unrest, attributed to numerous causes, such as the extra-territorial rights and the exclusion of Chinese taxpayers from direct representation in the municipal councils of the international settlements, striking, rioting and the inevitable boycott became the rule, especially in Hong-Kong and Canton. The government of Hong-Kong, as an emergency measure, passed a series of regulations prohibiting the export of various commodities, but unfortunately this was interpreted by the Cantonese as an economic blockade of Canton, which had depended on Hong-Kong for supplies. As a result the entire force of the boycott which had been declared by the All China General Labour Union was centered upon the British and Hong-Kong. The British Consul General wrote to the Chinese government and demanded to know whether or not the boycott was official, for it constituted, as he claimed, the violation of rights of every foreign nation which had treaty relations with China. The government of Canton, however, denied any responsibility for the boycott, and any dependence on legal principles proved fruitless. A settlement was finally reached and the boycott was ended in October, 1926, by a proclamation from the Canton government, after approximately three hundred million dollars damage had been inflicted on the trade of Hong-Kong.

During the Great War a variation of this weapon appeared in the form which became known as the scientific boycott, that is, the interruption of scientific relations between the scientists and the scientific institutions of the boycotting States and those of the offending States. Because of the participation of the scientific men of the Central Empire in the alleged atrocities of the war, the conference of the allied scientific academies, held in London in October, 1918, declared further personal relations with such scientists impossible, and analogous steps were taken by the Academies of Science and Medicine in France, and by the Royal Academy of Belgium.

It may be seen from the above examples that where the boycotting is limited to one State, there is little certainty as to the legal position of such a measure. Most of the confusion is of course due to the fact that the boycott is a comparatively recent innovation in the sphere of international law, and custom and long usage has not yet hedged it in with definite accepted rules. But the fundamental difficulty seems to lie in the type of action which it involves. When a State or a party takes direct positive action in any matter it is a comparatively simple problem to determine legal responsibility; for there are at hand tangible results which furnish a suitable basis upon which to arrive at a decision. But the boycott is essentially a passive measure, and instead of being a certain type of action it is rather the lack of any action at all. In ordinary circumstances it is always difficult to see, in the absence of a positive obligation to the contrary, why a forbearance from intercourse should constitute a breach of law, and this is the fundamental difficulty that has been felt in this phase of international law.

In a boycott which has become more or less official, that is, in which the government has participated, there seems to be little doubt that some responsibility attaches. Thus, during the Chinese boycott of American goods, President Roosevelt was quick to seize on any evidence of the complicity of the Chinese government. But the extent of the responsibility is another matter. Drawing on the analogy of strikes in municipal law, the government certainly would be liable for damage to foreign goods resulting from acts of violence and rioting; but, on the more interesting question as to State responsibility for the damage to the commerce of the boycotted State resulting from the abstention from intercourse, there seems to be no settled rule, and in general the text-book writers deny the existence of any responsibility. Fauchille says:

> The responsibility of the State will only be involved in the case of a boycott in which its functionaries or agents take part directly or indirectly; it would exist equally in conformity with common law principles for acts

of violence to the persons or goods of foreigners committed in the course of the boycott.[2]

but from this ambiguous statement it is difficult to ascertain whether he would confine the responsibility to damage resulting from violence, or whether he would admit a more extensive liability.

The problem becomes even more difficult in the case of a private boycott, in which the abstention from intercourse is the sole result of the work of private citizens and involves no action on the part of the government. The United States certainly claimed, in the affair with China, that such a responsibility existed, and Austria-Hungary expressed the same opinion in its protestations to Turkey; but dispassionate critics have not generally supported their claims. It has seemed difficult to admit State responsibility, for in such a case only certain private individuals participate, and most people have denied that a State can force its nationals or inhabitants to trade with the citizens of a given country when the former do not wish to do so. Even when treaties exist which permit commercial relations between the two countries, such treaties cannot be construed as guaranteeing that commercial relations will be established and will continue. Wheaton expresses himself on this subject in the following terms:

> To boycott the goods of a State which has seemed unfriendly is a procedure often adopted by private persons without government instigation; such action cannot be ground for international claims as no State can claim in law (apart from treaty) that another shall forbid its subjects to refuse to deal with its subjects by way of trade.[3]

It will be noticed from the examples cited that the economic boycott has been extremely effective for the most part, and in the present state of international economic interdependence a boycott of any dimensions is bound to have serious effect on the country against which it is directed. National States may no longer be considered as isolated units but rather, at least for some purposes, as members of an international community among whom a certain comity prevails and on the strength of which each country has, to a certain extent, based its economic existence and the stability of its trade relations with the other member States. Thus in one sense of the civilized world may be viewed as a network of relationships based on trust, and it is rather difficult to see how any progressive rule of international law could consider a sudden and vigorous boycott in a particular country as anything but a serious breach by that country of its friendly relations with the boycotted States. M. Sériades, in his *Réflexions Sur le Boycottage en Droit International,* is of the

[2] Fauchille, 1 part 3, p. 698 *et seq.*
[3] Wheaton, International Law (sixth edition) II, p. 623.

opinion that the State which tolerates or fails to repress acts of boycott committed in its territory against the products or merchandise of a foreign nation should be held to be internationally responsible, and although Séfériades is alone in this contention, yet it seems to be a saner opinion than that commonly held. In view of the fact that such an action undoubtedly has extremely grave consequences, should not the country in whose territory the boycotting takes place, if not guilty of an act of war, as the phrase was understood by nineteenth century jurists, at least be held sufficiently responsible to warrant that country being summoned as a party to an international adjudication of the dispute?

At this point the problem of prohibitory tariffs, undoubtedly complicates the issue, but there is at least this much difference between them and the boycott, namely, that while the process of the enactment of a tariff gives the commercial interests of another nation some kind of warning and furnishes some indication of a future rule or policy by which to govern their actions, a boycott is a sudden breach of relations on the strength of which much capital may have been invested by the merchants of the boycotted State in the industries or commerce of the offending State. Under the present rules of international law individuals as such can scarcely be called to account, and it is unreasonable to assume that the culpables may hide themselves behind such a technicality.

A similar idea, but one which entails considerations which place it on a different plane, is that of the collective boycott. This is in essence the isolation of a State which has committed a breach of international law, and is executed in unison by all the other States of the society of nations. It might be either in the form of a complete boycott, which would entail the complete suspension of all intercourse, and the placing in abeyance of all treaties, with the offending States; or it may be a partial boycott, effective only as regards certain relations. In the present development of commercial and economic life the exclusion of a State from the economic community would suffice to overcome that State's resistance, and the value of such a collective practice has been realized in the last decade; as Oppenheim says "The experiences of the World War revealed the potentialities of a new form of pressure, the so-called economic boycott or blockade."[4]

The collective boycott is not, however, solely the result of the World War, and it had often been suggested during the early years of the century. Thus it was suggested at the World Peace Congress of 1906 and again at the French Peace Congress in 1911. In the same

[4] Oppenheim, International Law, II, p. 612.

year Leon Bollack, in an article in *la Paix par la Droit*[5] recommended an official boycott as a means of preventative justice for those who refuse to submit to arbitration etc., and his suggestion was utilized at the World's Peace Conference in Geneva in 1912. It was recommended also at the Lake Mohonk Conference in 1915, and at the same time fifty-five American Chambers of Commerce expressed themselves in favour of it.

As a result Article 16 of the Covenant of the League of Nations is the formal recognition of international ostracism and joint boycott as a legitimate means of dealing with recalcitrant States. This practice clearly goes beyond the range of international law as hitherto recognized, and is in a sense a measure of self-help, which signifies the opposite of law. But just as in municipal law, self-help loses its character as such when it is based on the collective intervention of the members of the State as a whole, so must the collective boycott of Article 16, based on the combined action of a large number of States united by treaty-agreement, be regarded as a valid means of suppressing breaches of international peace. Then, too, it must be remembered that since the law would exist in advance the recalcitrant State must be taken to be aware beforehand of the probable consequences of its action, and thus, at least, one of the circumstances which might invalidate private boycotts is absent in this situation. It is still a debatable question as to whether such suggested economic pressure is to be considered as an act of war, or as a measure short of war. It is certainly an unfriendly measure but in view of the fact that in most circumstances its purpose is to bring to a close war begun in violation of the Covenant, it would probably be considered as a measure short of war. The economic boycott of a non-member State, and therefore not a signatory of Section 16, seems to be a violation of the sovereignty of that State, but due to her probable knowledge of Article 16, and the sanction attached to collective action, it probably would constitute merely a measure short of war.

The value of the proposal voiced in Article 16 has been much debated and the report of the Dutch Commission on collective boycott offers a few suggestions which are applicable to the section in question. The report, with much justification, lays great stress on the great sacrifices which the application of the boycott entails, and advises great circumspection in exercising it. Accordingly it suggests that in arbitral awards it should be left to the discretion of the Judge to decide whether or not there should be a boycott in case of a refusal to carry out the arbitral award. Also, since the resulting injury to the boycotting States would be unequally divided it sug-

[5] June, 1911.

gested that an international commission be appointed to apportion the varying damage, among them. It wisely points out also that a State, should it contemplate war, might prepare beforehand for a boycott, and thus occasion an extended boycott which would probably be ineffectual in the end. Danger also lies in the fact that it might strengthen the present-day tendency to become independent of the international community, which would certainly operate against any policy of reconciliation and co-operation.

Considerable doubt has been expressed both as to the efficacy and the advisability of the measure, and although the section has never been utilized there is an abundance of opinion on these points. Thus Mr. Chamberlain, in his speech before the Council, on March 12, 1925, expressed grave doubts as to the form of this sanction, weakened as it is by the absence of the United States and other economically powerful countries from the league, and President Wilson frequently cautioned extreme care in the use of it.[6]

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[6] See an interesting article by Professor Kenzo Takayanagi on "The Legality of the Chinese Boycott" in "Pacific Affairs," Vol. V, p. 855.