THE "GOOD OFFICES" OF SWITZERLAND

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"Good Offices" and Permanent Neutrality

I. The term "good offices" - as understood in this paper - implies an extensive range of the most diverse endeavours, initiatives and actions undertaken by Switzerland as a sovereign State, by Swiss authorities and some of their individual members, and also by private persons, who may act with or without the explicit approbation of the Government. All these actions, however, have one thing in common, and this is to promote harmony among nations, the peaceful settlement of differences, or at least the attenuation of conflicts, also in the interest of the individual human being. This definition is of so general a meaning that it leaves room for a number of interpretations of widely different content. Apart from the special procedures for arbitration and settlement as practised in international law, and apart from the institution of the protecting power, actions for the maintenance of peace and for arbitration between hostile parties, even the mere readiness for taking over such duties, are to be mentioned in this connexion. Divergencies duly taken into account, the common factor is the willingness of the State to render "good offices" in order to bridge the gap between controversies and to smooth out the difficulties resulting therefrom.

II. Experience shows that the permanently neutral State is very frequently in a position to assist other nations in settling their conflicts. There is, without doubt, a close connexion between the "good offices" which Switzerland may render and its status as a permanently neutral State. Various elements inherent to neutrality contribute to this fact. In the first place, the permanent neutrality of a State - and especially the kind of neutrality Switzerland has developed - constitutes in itself a factor of peace : such a State is a priori beyond future conflicts. To preserve this character, permanent neutrality must not be allowed to lead to a political or military vacuum. It presupposes the will to put up a defence against attack and to

provide for adequate military means. The armed neutrality of Switzerland gives expression to this determination. It bestows authenticity on our principles. Further, permanent neutrality adds an element of stability to world politics. It is a well-known fact that unstable conditions easily lead to international conflicts or contribute to their widening because they introduce factors of uncertainty into the political calculations of the Powers. The policy of the permanently neutral State - as the term implies - is characterized by its continuity and differs therefore from the only occasionally neutral and even more so from the essentially different "neutralistic" State. Stability and continuity as calculable factors in the policy of a neutral State are thus a guarantee of security to the other Powers. These elements are of the greatest value for a lasting international cooperation, built on solid foundations. In their totality the above-mentioned factors create the necessary atmosphere of confidence for the neutral State, singling it out as particularly suitable for the rendering of "good offices" in many cases.

III. In particular since the end of the Second World War, sense and justification of neutrality have not been unchallenged. After the triumph of the ideals for which they had fought, the illusion of the victorious States to be able to set up a new and peaceful world order in which neutrality would only look like an anachronism - doomed to fade out altogether sooner or later - soon vanished when they were confronted with the reality of an early formation of blocks separating East and West. The tendency - arisen from the philosophical substructure of to-day's world-wide issues - of bringing upon the official policy of neutrality almost the odium of immorality was also short-lived. In the course of the last years neutrality did benefit from a considerable revalorization by both blocks of our divided world. In the era

of the League of Nations already the prestige of neutrality was on the increase at the same rate at which the authority of the League was decreasing. A similar change appears to be operating to-day : there seems to be a greater consciousness of the value which lies in the certainty factor provided by the consequent policy of neutrality as practised by some countries.

More careful consideration has to be given, however, to the thought voiced in certain quarters, according to which Swiss neutrality, which originally had the function - as Professor Edgar Bonjour pointed out - to keep together the heterogeneous part of the old Confederation and which developed in the course of the centuries into a component part of the traditional European balance of power, lost its significance through the breaking up of this balance. The hostile blocks confront each other no longer on our frontiers but on a world-wide scene and are divided by ideological issues in which our country has taken sides. This, however, is no reason for giving up our maxim of State. Swiss neutrality - contrary to claims made in integration debates - cannot be explained out of a bygone European constellation only, although this factor undoubtedly carries great weight. Swiss neutrality has its roots in its own soil, in the diversity of the country, in federalism, national conciousness, in the special State structure and spiritual climate which have at all times been the essential ingredients which went to the making of our country. As time progressed, neutrality gained international stature, keeping pace with the rapid growth of the political consciousness of the nations which spread even beyond Europe and America to englobe the whole world. In the past already Switzerland had considered neutrality not only as a basis of its foreign policy but also as an instrument of solidarity with other countries. This solidarity consisted above all in humanitarian actions, in the protection of foreign interests in war-times, and in assuming conciliation and arbitration tasks. It is the merit of

Federal Councillor Max Petitpierre to have shown anew the link between neutrality and solidarity in order to give a fresh and positive impetus to neutrality and to make us again conscious of the fact that neutrality also implies taking on responsibilities. These responsibilities, however, cannot be forced upon a neutral State. They are taken on voluntarily. They are entirely different from those incumbent on States involved in international conflicts. "Good offices" are a constructive element and an expression of solidarity. The constant readiness of Switzerland to perform such services is not confined to Europe only. It is resorted to from all over the world; even up to the most recent times we have been entrusted with various mandates. Switzerland enjoys a special prestige with the new States emerging in quick succession in Africa, Asia, and elsewhere, all of them endeavouring to keep away from conflicts between the power blocks. As was pointed out in the declaration of Switzerland to the Council of Ministers of the European Economic Community of September 24th, 1962, the upheavals which have changed Europe and the world in the course of our century, introducing entirely new developments, have endowed Swiss neutrality with a new and much wider international meaning. In this new context Swiss neutrality retains its sense and asserts its rights as was shown by a variety of examples. Neutrality gives Switzerland the opportunity to fulfil tasks in Europe and in other continents which, in order to have some prospect of success, can only be entrusted to a permanently neutral State.

IV. It would be wrong, however, to draw the conclusion that Switzerland has opted for neutrality in order to render services to foreign States. On the contrary, permanent neutrality as a maxim of foreign policy was chosen by Switzerland in its <u>own interest</u>. It was and still is considered the most suitable means to preserve the country's independence. "Good offices" are thus the effect

and not the cause of neutrality. However, there is no reproach in this; every State, the Great Powers not excluded, is guided in the first place by its own interests. The permanent neutrality of Switzerland is based on a political decision of the country's own choosing and is a fact which needs no justification. Moreover, permanent neutrality as a legal concept is to-day part of international law (especially since it has been incorporated in 1815 into the Treaties and Acts of Vienna and Paris and into the Treaty of Versailles in 1919). However, Switzerland, who gets the benefit of neutrality, is ready to render "good offices" in a spirit of international solidarity wherever these are asked for and can be rendered without prejudice.

V. The capability to render "good offices" - <u>legally</u> speaking - is not restricted to the neutral nor even to the permanently neutral State only. This fact is being stressed here in order to avoid misunderstandings. The possibilities offered by international law to individual States in order to enable them to intervene in international conflicts are open to non-neutrals just as well. Apart from cases where a solution is sought by the intervention of international organizations, the consent of the conflicting parties is a prerequisite to the rendering of "good offices"; the international statute of the State ready to give help is quite irrelevant from the legal point of view. A politically leading Great Power can also use its initiative and does so quite often - sometimes even by applying some pressure.

<u>In fact</u>, however, the larger part of the "good offices" - in the widest sense of the word - devolves on States which kept neutral in conflicts. The presumptive candour of the neutral State, the assumption that there is no national interest of its own at stake, facilitates the intercession of a neutral country. These prerequisites are fulfilled in a specific way by the <u>permanently</u> neutral State. The permanent and consequent nature of its policy of neutrality, its objectivity and impartiality which can be

looked upon as correlates of permanent neutrality, its general availability for the rendering of "good offices" favour a climate of confidence and can be the basis for a potential success. Such confidence is probably less frequently placed in a State which opts for reasons of opportunity - as the case may be - either for a neutral attitude or for a participation in conflict, as opposed to the permanently neutral State with whom both parties can rest assured that it will under all circumstances act as a trustee to both sides. Such a neutral State must, of course, pursue a free and independent foreign policy, free from outside influence and considerations. Added to this we have, in the case of Switzerland, the elements of tradition, of long experience in international negotiation, a favourable geographical position, an affinity with various cultures, an understanding of their mutual relations, and a policy of neutrality which proved valuable for centuries.

Are there, apart from all this, any "good offices" which essentially belong to the sphere of the permanently neutral State and which are only to be rendered by such a State ? There can hardly be a straightforward answer. In theory it would probably be a negative one but in practice there are situations when "good offices" can only be rendered successfully by the permanently neutral State. The special position - one is almost tempted to say the "position of reserve" - of Switzerland as a State which is a member of the specialised institutions of UNO but not a member of the World Organization itself, plays its part here. As a non-member of UNO Switzerland avoids hurting the one or other party's feelings by its vote (also, abstention from voting is often not appreciated by either party); thus Switzerland retains confidence on a general basis which may be put to good use when opportunities for arbitration arise.

VI. It can therefore be assumed that there is a certain reciprocity between the concepts of permanent neutrality and "good offices".

The following pages give a summary of the good offices rendered by Switzerland and by some individual Swiss citizens. This summary, which does not claim to be complete, dates back to approximately 1870, when the young Swiss Confederation started taking a more active part in international affairs. It is not our intention to establish a complete catalogue but to present a review of the nature and diversity of the services rendered.

The "Good Offices" of Switzerland

A) "Good Offices" rendered by the State and its executive organs

I. Mediation, Settlement of differences

1) In a tense situation between nations, endeavours of one or several States tending to re-establish peaceful relations between the conflicting parties or to induce them to take up negotiations are called "good offices" in the proper sense of the term. (This precise legal expression is not to be mistaken for the wide and general concept of "good offices" as given in the opening pages of this study.) Mediation (intercession) - going beyond mere "good offices" - by third States (or other juridical bodies such as for instance international organizations or even private individuals) consists in trying to induce the conflicting parties not only to come to terms but in submitting to these parties concrete proposals with regard to a settlement of the conflict. However, in practice both methods interpenetrate. Many authors hold therefore the view that there is only a theoretical difference, especially since the Hague Peace Conferences have established uniform regulations with regard to the definition of good offices and arbitration. [1]

The States can either put their good offices and mediation at the disposal of the conflicting parties upon the latters' request or act on their own initiative. Even when using their own initiative, this does not constitute a case of prohibited intervention. Article 3 of the Hague Convention explicitly states : "Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative,

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1) Convention for the Pacific Settlement of International Disputes (1907), Art. 2-8.

and as far as circumstances may allow, offer their good offices or mediation to the States at variance. Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities. The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act." According to the prevailing circumstances the arbitration offer may look like assuming a political character and in certain cases such an offer may be considered an interference. [1] Fauchille [2] points to the fact that some authors - whose opinions, by the way, dissent - have raised the question whether it is appropriate for a neutral to offer his mediation to States already at war. "Pas de principe absolu; pure question de tact politique" is his final conclusion.

2) Experience has shown that possibilities of political mediation are rather limited. Neither in the "Boer War" when, in March 1900, the Presidents of the South African Republic and of the Orange Free State placed a request for an amicable settlement with a number of European States, among them Switzerland, in the interest of the restoration of peace [3] nor in the First World War (interpellation Greulich) [4] such suggestions proved to be practicable. The Grimm/Hoffmann affair of 1917 caused quite a stir in its time when an exchange of cables between National Councillor Robert Grimm, on a visit to Petrograd, and the then Federal Councillor Arthur Hoffmann was considered by the Entente as an act by which Hoffmann committed himself in favour of a separate peace

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1) cf. Lammasch : "Die Lehre von der Schiedsgerichtsbarkeit" (Stier-Somlo, "Handbuch des Völkerrechts", 1914) page 13, and Schindler, "Die Schiedsgerichtsbarkeit seit 1914" (Stier-Somlo, "Handbuch des Völkerrechts", 1938) page 183.

2) Fauchille, "Traité de Droit international public"(1926) I/3 page 518.

3) cf. von Salis, "Schweiz. Bundesrecht" (1904) Nr. 2500

4) cf. Burckhardt, "Schweiz. Bundesrecht" (1930/32) Nr. 41 I

treaty between Germany and Russia. This brought about tensions which led to Hoffmann's resignation. This example clearly shows the risks involved in endeavours of this kind.[1)]

3) Among the lesser known "good offices" of the early period of the League of Nations we mention the intervention - requested by all parties concerned - by Federal Councillor Motta, made with the utmost discretion and for that reason perhaps with effective results, in the critical moments of the Italo-Greek conflict on Corfu. This action has served the cause of peace to a great extent.

4) Many examples can be cited from the Second World War. The endeavours of Major Max Waibel spring to mind who - in common with another Swiss citizen - secretly brought into contact on Swiss territory the German SS-General Karl Wolff in February, 1945, with a representative of President Roosevelt. The direct negotiations resulting from this encounter eventually led to the capitulation of the German armed forces in Northern Italy. War and its aftermath in Italy, and probably in Europe, could therefore be considerably shortened, many human lives be spared, and the "scorched earth" plan, which would have meant the destruction of the whole industry of Northern Italy, be thwarted. Waibel acted as a private individual; but being at the same time a member of the Swiss armed forces, Switzerland would have been responsible for his actions under international law.

Apart from these instances, mediatory actions of Swiss diplomatic and consular representatives deserve to be mentioned who succeeded in mediating on a local basis between allied commanding officers and civilian authorities during the allied advance in Europe in order to avoid loss of life and unnecessary destruction. The efforts of Minister Walter

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1) Burckhardt op.cit. Nr. 40

Stucki, then Swiss representative with the Vichy-Government, led to the pacific surrender of Vichy to the forces of Free France (FFI) in August 1944 [1)] and similar endeavours made by the Swiss Consul General in Cologne, F.R. von Weiss, saved Bad Godesberg from destruction. Previously, Consul Steinhäuslin's courageous action preserved human life and cultural values in Florence. The fact that the Swiss representatives were legitimately entitled to protect foreign interests gave them the necessary opportunity for action without creating the impression of improper intervention.

5) In early November, 1956, when the international tension reached an ominous climax in the wake of the Hungarian uprising and the Suez crisis, the Swiss Government decided to take an initiative in favour of the maintenance of peace. To this purpose the Federal Council appealed on November 6th to the President of the United States and to the Prime Ministers of France, Great Britain, the Soviet Union, and India to hold a Summit Conference in Switzerland, offering its assistance for the organization of this Conference. The Secretary General of UNO was notified at the same time of this appeal. This step represented a typical case of an offer of "good offices" in the more explicit interpretation of the term. Its sole purpose was the reconciliation of States at variance. Although the Summit Conference was never held and the crisis was overcome by other means, the sincerity of the Swiss appeal was generally recognized.

II. International Mandates

1) On a number of occasions Switzerland has given proof of its readiness to assume international mandates of some general importance. We have to revert to the beginning of this

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1) More details with regard to this dramatic negotiation can be found in : Stucki, "Von Pétain zur Vierten Republik", especially pages 97-136

century to come across a first instance of this kind when the International Conference of Algeciras for the settlement of conditions in Morocco entrusted the Swiss Federal Court of Justice by the General Act of April 7th, 1906, with an unusual triple competence with regard to the concession granted to the State Bank of Morocco :

- the Swiss Federal Court of Justice was appointed Court of appeal for legal proceedings instituted against the Bank in Morocco, whereby the application of substantive and procedural law, as practised in France for commercial matters, was stipulated;
- the Court had to give judgement in lawsuits concerning the regulations of the Concession and other disagreements which might arise between the Moroccan Government and the State Bank, without right of appeal or recourse;
- it had to act likewise on all disagreements liable to arise between the shareholders of the Bank with regard to the application of the statutes or to the conduct of business.

After examination of the legal aspects, the Federal Council informed the Government of Spain in the latter's capacity of spokesman of the Algeciras-Powers, to be willing to accept the proposed jurisdiction on behalf of the Federal Court of Justice subject to official sanction by the Federal Chambers. In its message to the Federal Assembly the Federal Council pointed to the fact that it could not have denied a Swiss co-operation in this Moroccan settlement, not only because of the great trust placed in our institutions but because a rejection of the mandate might have had incalculable effects and might have jeopardized the work of peace and reform so laboriously achieved in Algeciras. Sanction was given by the Federal Assembly on June 19th, 1907. In the thirties the

Federal Court of Justice was twice in a position to exercise the jurisdiction it had been entrusted with.[1] In 1956 this mandate ceased with the granting of independence to Morocco.

2) The tasks assumed by Switzerland in Corea show the critical developments which international mandates can take at times. On the 27th July, 1953, an armistice to end the Corean conflict was concluded between the UNO forces on the one hand and the North Corean People's Army plus the so-called Chinese Voluntary Forces on the other hand. At the same time an agreement on prisoners of war, signed on June 8th, came into force which had been declared an integral part of the armistice. This agreement stipulated the formation of two Commissions of neutral States : a Neutral Nations Supervisory Commission which was to control the application of the armistice regulations by both parties, and a Neutral Nations Repatriation Commission whose task consisted in implementing the regulations with regard to prisoners of war unwilling to return to their homeland.

In an early phase of the negotiations between the belligerents already, a participation of Switzerland had been taken into consideration. First approaches as to the conclusion of an armistice go back to 1951. In April, 1953, it became evident that Switzerland was also meant to play an active part in the solution of the thorny problem of the prisoners of war reluctant to be repatriated. In June, 1953, the American and the Chinese Governments officially appealed to the Federal Council asking for Swiss cooperation in the two neutral Commissions which were to be set up. The Federal Council, after having made sure that the nature and the range of the mandates in question and the conditions under which these were to be carried out took into account the special position of Switzer-

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1) cf. op.cit. Burckhardt, Nr. 96

land and its statute of permanent neutrality, decided on June 13th, 1953, to approve of the dispatch of Swiss delegations to each of the two neutral Commissions. Although these Commissions constituted a novelty hitherto quite unknown in the practice of international law - they could at best be compared, and even this with reservation, to the mandates entrusted to the Neutral Military Commission and to the Commission for the Repatriation of Refugees in the days of the Chaco Conflict [1] in 1935/36 - and participation implied considerable political risk, the Federal Council was guided by the wish to promote the restoration of peace. The antecedents of this decision, the considerations taken into account, the positive and negative points compared, are exhaustively presented in the Report of the Federal Council to the Federal Assembly of April 26th, 1955.[2] Although Switzerland's formal task only consisted in nominating delegates for the Commissions without becoming itself a member and although the Federal Council could be charged at the utmost with a "culpa in eligendo", its responsibility was practically implicated to a great extent.[3]

The Neutral Nations Repatriation Commission consisted of one delegate each of Sweden, Switzerland, Poland, Czechoslovakia, and India, who were designated in common by the partners of the Treaty within the framework of the Prisoners-of-war Convention. Minister Armin Daeniker was in charge of the Swiss Delegation. The Commission completed its task and dissolved at the end of February, 1954, without, however, having been able to settle fully the problem of repatriation and of

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1) Bindschedler-Robert, "Les Commissions neutres instituées par l'armistice en Corée", "Schweiz. Jahrbuch für internationales Recht" 1953 (X), pages 124 ff.

2) "Bericht des Bundesrates an die Bundesversammlung über die Mitwirkung schweizerischer Delegierter bei der Durchführung des am 27. Juli 1953 in Korea abgeschlossenen Waffenstillstandsabkommens", BBI 1955 I pages 697 ff.

3) cf. also Bindschedler-Robert op.cit. pages 99 ff.

liberation of the prisoners of war, according to the modalities of the regulations of the armistice.

In contrast to the Neutral Nations Repatriation Commission, the Neutral Nations Supervisory Commission whose leaders, to start with Major-Generals Rihner and Wacker, relieve one another regularly, still functions ten years after its institution. It has, however, never been in a position to exercise its control effectively. Quite apart from exterior obstacles, the accomplishment of its task was obstructed by the very composition of this Commission : Two of its four members, i.e. Sweden and Switzerland, being nominated by the Commander-in-chief of the UNO Forces and two, i.e. Poland and Czechoslovakia, by the Commander-in-chief of the Corean People's Army and by the Commander of the Voluntary Forces of the Chinese people, although Switzerland had declared from the start that it did not consider itself the mandatary of one belligerent party but to act only as an independent and impartial member within the Commission charged with the objective supervision of the armistice regulations.

Today the presence of the Commission in Corea has only symbolic value. Its activity of control, for which it was originally intended, is practically no longer of any consequence. The Swiss Delegation melted down to a minimum strength of nine members, aids included, after having comprised a total of 140 members in the initial phase (in both Commissions). In spite of this, the continuation of the activity of the Neutral Nations Supervisory Commission in Corea is still of political significance. The withdrawal of the Swiss Delegation would jeopardize its existence and could cause the whole armistice structure, so painfully erected in 1953, to crumble. Both parties have repeatedly stressed the value they attach to the continued presence of the Commission and to the Swiss participation.

3) In August, 1955, the Parliament of the Sudan decided, conform to the Anglo-Egyptian Agreement of 1953, to submit the then impending procedures, which were to lead to the independence of the Sudan, to an International Commission to supervise the process of self-determination. This International Commission should have comprised Switzerland, Sweden, Norway, Czechoslovakia, Yugoslavia, India, and Pakistan. As its name implied, the Commission's essential task would have consisted in a supervision of the elections for the Constituant Assembly, thus securing an atmosphere free from partiality and exterior influences for the plebiscite. Egypt and Great Britain as Condominium Powers invited Switzerland in the autumn of 1955 to take part in this Commission. The Federal Council decided, after careful consideration, to comply with the request and designated Minister J. F. Wagnière, then Swiss envoy to Belgrade, for its delegate. Meanwhile Egypt and Great Britain agreed, before the end of the year, to recognize the independence of the Sudan per 1st January, 1956, and to end their condominium - in force since 1899 - without fully applying the arrangements previously agreed upon to make the country ready for independence, whereby the International Commission to supervise the process of self-determination in the Sudan became superfluous.

III. Protection of Foreign Interests

1) The protection of foreign interests, or, in other words, the activity of Switzerland as a protecting power, has greatly increased during both world wars and again in the last few years.[1] The task of the protecting power consists in maintaining a minimum of contact between belligerents or between States which have broken off their diplomatic relations for other reasons until hostilities cease or until diplomatic relations are taken up again. On the basis of experience gained in two world wars, it is now an established custom that upon rupture of diplomatic relations each State recognized as such by its opponents is, in principle, entitled to have its interests protected by a third power. It has become common usage that the protecting power designate, apart from its own willignness to assume this duty, has also to be acceptable to the State where the protecting power is to act as an intermediary. These rules have since been codified in the Vienna Convention on Diplomatic Relations of 1961 (articles 45 and 46). The protecting power in charge of foreign interests does not act in its own name. It acts in the name of another State as its voluntary representative and, consequently, has no arbitral function proper. The protecting power either fulfils tasks set by the State it represents or duties imposed upon it by collective conventions, to which all three, the protected, the protecting, and the receiving States are a party, and by international usage.

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1) With regard to the term "protecting power" and to the part played by Switzerland during the Second World War, we are indebted to the treatise by Janner : "La puissance protectrice en droit international d'après les expériences faites par la Suisse pendant la seconde guerre mondiale", Bâle, 1948, and to the essay by Bindschedler : "Die guten Dienste der Schweiz 1939-1945" published in the memorial edition "Die Schweiz im Zweiten Weltkrieg" (Thun 1959), pages 127 ff. Compare also, in particular with regard to the First World War, Escher : "Der Schutz der Staatsangehörigen im Ausland durch fremde Gesandtschaften und Konsulate" (Aarau, 1929), pages 73 ff.

2) During the First World War already the activity of Switzerland as a protecting power which looked after the interests of approximately 25 States had assumed wide scope. The part that devolved upon Switzerland in view of the cessation of the hostilities may also be mentioned here. The Swiss Federal Council transmitted to the French Government the diplomatic note of the Austro-Hungarian Government of September 14th, 1918, which was addressed to the Governments of all countries at war with Austro-Hungary and to the neutral Governments with a view to holding preliminary talks on the terms of a possible peace. On October 28th, 1918, the Federal Council transmitted a communication to the French Government, stating that Austro-Hungary accepted the concept of the President of the United States with regard to the rights of the Austro-Hungarian peoples and was willing to start negotiations for an armistice and for the restoration of peace without waiting for the result of other pending negotiations. The German appeal to President Wilson of October 4th, 1918, to arrange for a general armistice and to restore peace, as well as further communications of the German Government and President Wilson's replies were also transmitted by means of the neutral channel serving the protection of foreign interests.[1)]

3) During the Second World War which spread over the globe without leaving hardly anybody uninvolved, Switzerland became - thanks to its policy of neutrality - the protecting power "par excellence". 1943/44 the country exercised its protecting activity at the same time for as many as 35 States. It was remarkable that Switzerland was not only called upon to represent most belligerents of the Second World War but that amongst those were to be found almost all the great powers

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1) Burckhardt, op.cit. Nr. 42

engaged in the hostilities. As before, i.e. in 1914/18, Switzerland was often requested by the hostile parties on both sides to look after each other's reciprocal interests which increased possibilities for moderating influences. The tendency of several States to entrust the same protecting power with the protection of their interests in all their enemy States became increasingly noticeable. The mandates on behalf of some States had to be continued for some time even after the cessation of hostilities owing to the lack of provisions for a peace settlement. - This extensive activity called for a special administrative apparatus. At the beginning of the war already the Federal Political Department (Foreign Office) in Berne set up a Division for Foreign Interests with a staff exceeding at times 150 people. In foreign countries this Division had at its service a personnel of over a thousand. The legations and consulates were provided with special services according to their requirements.

Materially, one of the foremost tasks of the protecting power is its activity in the diplomatic and consular sectors. This implies the protection - and especially also the exchange - of officials living in enemy territory, taking care of the nationals of the sending State, making provision for a social welfare service for the people whose protection is to be assured, especially also for civilian internees, the organization of the repatriation or the exchange of internees (from 1939 to 1945 Switzerland contributed to the successful completion of over 50 exchange operations involving about 50 000 people), and the protection of foreign public and private property.

A second range of action was provided by the two Geneva Conventions of 1929 relative to the Treatment of Prisoners of War and for the Amelioration of the Condition of the Wounded

and Sick in Armed Forces in the Field, and from the 10th Convention of the Second Hague Peace Conference of 1907 with regard to the extension of the regulations provided for the land-forces to the Wounded and Sick of Armed Forces at Sea. The task incumbent on the protecting power - sometimes coinciding with the mission of the International Committee of the Red Cross - consisted mainly in supervising the application of these conventions by the hostile parties, in implementing, if necessary, their observance, in securing the contact of the prisoners of war with the outside world, and in interceding time and again between the belligerents. Between the Western powers on the one hand and Germany and Italy on the other hand, the exchange of sizable contingents of severely wounded and dangerously ill prisoners of war and of medical personnel could be carried out in several operations. In the Geneva Conventions for the Protection of War Victims of 1949 this field of activity of the protecting power was further enlarged.

Within the framework of Switzerland's activity as a protecting power, the Federal Political Department eventually passed on, in autumn 1945, to the United States Government on behalf of the Allied Forces, the offer of surrender of the Government of Japan. The Department acted as a technical intermediary in the subsequent negotiations between the belligerent parties which were terminated on September 2nd, 1945, with the surrender of Japan.[1)]

4) A decline in Switzerland's activity as a protecting power set in after the end of the Second World War but this activity gained momentum with the growing international tension. At the end of 1962 Switzerland was again entrusted with the

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1) "Geschäftsbericht des Bundesrates 1945", page 106

protection of twelve nations' interests. The best-known among them are the protection of American interests in Havanna but also of Argentina's and Guatemala's interests in the aforesaid capital; these mandates grew in importance particularly during the Cuba crisis. Further, there was the protection of French, Belgian and Turkish interests in Cairo. Rumania, a Communist State, is represented by Switzerland in Spain. An exceptional case is the protection of the interests of Togo in Nigeria in October 1961. There was no tension between these two African States. The fact that the diplomatic apparatus of the young Togo Republic was just in the process of building up made the Federal Council accept the appeal to assist Togo by taking over the protection of its interests in Nigeria until the young State would be in a position to open a diplomatic representation of its own in Lagos.

IV. Hospitality to International Organizations and Conferences

1) It is well-known that Switzerland gives hospitality to numerous international organizations. The League of Nations took up residence in Geneva and the European seat of UNO followed. Some special agencies of UNO, partly already existing in pre-UNO times such as the International Labour Office (ILO), the International Telecommunication Union (ITU), the World Health Organization (WHO), the World Meteorological Organization (WMO), all of them in Geneva, and the Universal Postal Union (UPU) in Berne have their central office in Switzerland. Several intergovernmental institutions such as the Bank for International Settlements (BIS) in Basle, the European Organization for Nuclear Research (CERN) in Geneva, the United International Offices for the Protection of Intellectual Property etc. and a great number of non-governmental organizations are further examples of a list far from

being complete. The reason for this concentration - apart from a favourable geographical position and the technical facilities available - lies probably above all in the congenial atmosphere and in the security which a permanently neutral State is in a position to provide for the benefit of the activities of international organizations.

2) The same applies to the numerous international conferences which are held in Switzerland. Here, too, the country can offer a "neutral climate" resulting from its tradition and function which make it a favourite meeting-place. Besides Lausanne (peace treaty concluded between Italy and Turkey in 1912; peace conference leading to the peace treaty between Turkey on the one hand and the Entente and Greece on the other hand, held in 1923), Locarno (Locarno Pact 1925), and other towns, Geneva is again in the foreground as a meeting-place. It would be an exacting task to make a comprehensive list of all the conferences which were held in that city. As an illustration of recent years, only some of the most significant may be mentioned here, such as the Summit Conference of 1955 which made attempts at a world-wide political easing of tension, and the Laos Conference of 1961/62 which succeeded, after many months' negotiations, in neutralizing a menacing political crisis.

3) We may mention, as an example from the recent past, the French/Algerian negotiations (end of 1960 to mid-1962) which led to the solution of the Algerian problem. The importance and the topicality of these negotiations, the special part played by Switzerland in creating - on the request of both parties - the exterior conditions for their meetings, exceeding by far a mere offer of hospitality, while abstaining from any interference with the talks in progress, deserve to be looked at more closely.

The beginning of this development, preceded by long-drawn violent disturbances, is probably still in everybody's memory. After the French Government as well as the Provisional Government of the Algerian Republic (GPRA) came round to the conclusion to attempt solving the conflict by direct negotiation, the wish was expressed by both sides in 1960 to be assisted by Switzerland in its realization. The Federal Council deemed it its duty not to shirk this mission upon which the mere possibility of a negotiation seemed to depend altogether. The Swiss cooperation consisted mainly in accommodating the Algerian delegation on Swiss territory as its members were unwilling to stay in France, to look after their security (apart from considerable police contingents troops had to be brought into readiness in view of the danger of OAS actions), to organize transport to the meeting-place on French territory (during the negotiations proper mostly by Swiss helicopters), and in putting at the disposal of the Algerian Delegation means of communication and information. All these tasks required a considerable amount of organizing.

Our cooperation evolved in several phases. First, the emissaries of both sides had to be given an opportunity to meet in a safe place in order to make preparations for the negotiations without any disturbance. Between November, 1960, and May, 1961, several secret meetings on Swiss soil served this purpose. Then, on the occasion of the official negotiations at Evian and Lugrin in spring and summer of 1961, provisions had to be made to accommodate the Algerian Delegation at Bois d'Avault near Geneva. These negotiations having failed, a second attempt was made in 1962. The first aim, in February of that year, was again to arrange for a secret meeting between the emissaries of both parties in order to bridge the gulf of distrust and to enucleate the main points

of the armistice aspired to, and of a future French/Algerian cooperation. Once this being achieved, renewed attempts at negotiation could be made. These negotiations took place in Evian from March 7th to 18th, the Algerian delegation being housed in the mountain hotel of Signal de Bougy above Lake Geneva. To the satisfaction of all concerned the armistice of Evian was signed on March 18th and soon led to the independence of Algiers. By agreement, the Algerian leader (today President) Ben Bella and his four companions who had fallen into French hands more than five years previously, were liberated at the same time. On Ben Bella's request his group also moved to Switzerland and was accommodated for a few days at the Signal de Bougy. All Algerian representatives left our country in the night of March 20th.

These negotiations gave Switzerland the opportunity to make a substantial contribution to the maintenance of peace by its good offices. Our endeavours met with general approval. Both partners, the French Government and its Algerian counterpart, expressed their sincere gratitude.

V. Tasks carried out on behalf of international organizations

1) The most appropriate examples with regard to the fulfilment of tasks taken on by request of international organizations are the missions Switzerland was entrusted with by the United Nations. Twice since its existence and up to 1963 UNO has been in a position to intervene in menacing situations with its own troops and resources, viz. in the Suez crisis and in the Congo disturbances. In both instances the Secretary General of UNO has approached Switzerland for support although Switzerland is not a member of UNO. The "reserve position" of Switzerland - a result of its non-membership as mentioned in a previous chapter - , which enables the country to render

particularly delicate "good offices", has become evident on these occasions.

2) As may be remembered, the General Assembly of UNO decided at the height of the Suez crisis (beginning of November 1956) and within the framework of its endeavours for peace to dispatch an international police force (UNEF : United Nations Emergency Force) to the fighting zone. Whilst these forces were assembled in Naples, the Secretary General of UNO inquired of the Federal Council whether it was disposed to start negotiations for the transport of these forces to Egypt by Swissair in the latter's capacity of a neutral State's airline. The Federal Council replied that there were no objections, provided the Egyptian Government approved of the transport and issued the relevant landing permits. Upon receipt of the Egyptian consent, Swissair transported from November 13th to 25th, 1956, a total of 1253 men of the International Police Force and 155 tons of luggage and material to Egypt. The Confederation took charge of transport costs.[1)]

3) When, after independence in July, 1960, grave disorders broke out in the Congo Republic, UNO decided, on the basis of a resolution of the Security Council of July 14th, 1960, to intervene in the Congo. On July 17th Secretary General Hammarskjöld called upon Switzerland to participate in the supply of foodstuffs to the Congo and in the transport of these goods by air. Swiss cooperation was immediately granted and the Swiss contribution even increased subsequently. A Swiss aircraft transported foodstuffs to the Central Congo. A medical team of 25 was sent to the Kintambo hospital in Leopoldville where it has since been in action for the benefit of the

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1) Geschäftsbericht des Bundesrates 1956, page 149

Congolese. In addition, Swiss experts, some of them outstanding specialists, have been put at the disposal of UNO on the most diverse sectors or have been directly engaged by this organization; the greatest number of experts in January, 1961, was 112 (at present they still number over 50); this figure was not reached by any other European country and was only surpassed by Tunesia.

VI. Arbitration

1) The Federal Council and the Federal Court of Justice as well as the President of the Confederation, the President of the Federal Court of Justice and individual Federal Judges have pronounced awards in numerous inter-state law cases upon request of the conflicting parties. This activity still preserves some of its significance although it receded somewhat into the background since the creation of the International Court of Justice at the beginning of the twenties. The federal authorities are often, the Swiss representatives abroad occasionally, approached with regard to the nomination of arbitrators. Quite frequently Swiss officials as well as diplomatic and consular representatives - sanctioned by their superior authority - were entrusted with arbitral functions. In the following mention is made of the most important only of these mandates :[1)]

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1) The notes on arbitration are mainly based on the following works : Schindler, "Die Schiedsgerichtsbarkeit seit 1914" (Stier-Somlo 1938); Schindler, "Die Schweiz und die internationale Gerichtsbarkeit 1848-1948", in the year-book of the New Helvetic Society "Die Schweiz", pages 76 ff. (subsequently referred to as "Schindler Jahrbuch") and in the posthumous compilation "Recht-Staat-Völkergemeinschaft", pages 355 ff.; Stuyt, "Survey of international arbitrations" (1939); Burckhardt, "Bundesstaatsrecht" (1930/32); Guggenheim, "Traité de droit international public" (1953/54); "Recueil des sentences arbitrales", published by the United Nations; Guggenheim, review of the above mentioned "Recueil" in "Zeitschrift für schweiz. Recht" NF 69 (1950), pages 236 ff; Weyeneth, "Die Rolle der Schweiz in der Entwicklung der Schiedsgerichtsidee" (1919); "Recueil des décisions des tribunaux arbitraux mixtes institués par les traités de paix"; Geschäftsberichte des Bundesrates".

2) The Federal Council was asked four times in all to act as an arbitrator. In 1890 it proclaimed its readiness, upon request of Portugal and of the independent Congo State, to accept the function of arbitrator in differences that might arise during the settlement of the frontiers between Congo and Portugal in Africa; the mandate, however, did not have to be carried out as the differences were overcome by direct negotiation and settled in the Brussels Convention of May 25th, 1891. By agreement of April 10th, 1897, Brazil and France called upon the Federal Council to arbitrate in their difference on the boundary question between French-Guiana and Brazil; the Federal Council decided to accept the "honourable mission" and made an arbitral award on December 1st, 1900. A subsidiary mandate (primarily the British Government was designated arbitrator) with which Argentine and Chile wished to entrust the Federal Council in 1902 - concerning all the differences which might arise between those two States - was, however, not accepted; in its decision the Federal Council was guided by its principle to decline arbitral mandates of a general, permanent, and comprehensive nature, the consequences of which appeared difficult to assess. On the basis of an agreement between Columbia and Venezuela of 1916, the Federal Council made an award in 1922 - prepared by Minister Charles Lardy - which settled a century-old boundary dispute. The on-the-spot rectification of the boundary was carried out by a commission of 13 experts appointed by the Federal Council.

3) In five cases the Federal Council appointed arbitrators upon request of the conflicting parties to help them settle their differences. The choice fell always on prominent Swiss personalities. In autumn 1899 an arbitral tribunal thus appointed by the Federal Council, composed of the President of the Federal Court of Justice, a high-ranking official, and

an expert on railroads made an arbitral award in the dispute between Great Britain and Columbia with regard to the Antioquia Railroad. In the spring of 1900 an arbitral tribunal - consisting of the Vice-President of the Federal Court of Justice, a Federal Court judge, and a professor of law - made an award in the dispute between Great Britain and the United States on the one hand and Portugal on the other hand in consequence of the recession of the Lourenzo Marques Railroad concession (Delagoa Bay) in Portuguese East Africa. When the national arbitrators in a disagreement between Russia and Turkey on account of Turkish war reparations, dating from the Russo/Turkish war of 1877/78, did not come to a solution on the appointment of the chairman, the Swiss Federal Council was asked to nominate a candidate; its choice fell again on Minister Charles Lardy; the award was made in November, 1912. In 1921 an International Commission of Inquiry was appointed (in accordance with the Hague Convention of 1907) in order to clarify the circumstances which had led to the torpedoing of the Dutch steamer "Tubantia" by a German submarine; the Federal Council had been asked by the parties involved to appoint the chairman; ex-Federal Councillor Arthur Hoffmann was selected; the report of the Commission of Inquiry of February 27th, 1922, subsequently led to a settlement. The treaty between Germany and Lithuania, signed on February 10th, 1925, which was to carry into effect the Memel Convention of May 8th, 1924, stipulated that differences of opinion on nationality issues at the time of the change-over of sovereignty in the Memel region from Germany to Lithuania were, in the last resort, to be submitted to a neutral arbitrator to be appointed by the Swiss Government; when such a case actually arose, the Federal Council appointed ex-Federal Judge Victor Merz who settled the case in 1937. In the British/Cypriot

Agreements of 1960, establishing the Republic of Cyprus, it was provided that each party might, if necessary, ask the Swiss Government to appoint an expert for determining the exact boundary of the United Kingdom Sovereign Base areas.

4) The President of the Confederation was twice asked to accept arbitral mandates. This occurred for the first time at the end of the 19th century in a dispute between France and Venezuela on a denial of justice in the case of a French national (Fabiani case); the then President of the Confederation, Adrien Lachenal, made his award in December, 1896. The second case is of a more recent date; it concerns the still unsettled frontier problems between Argentine and Chile. Upon becoming independent States, some sections of their frontier had not been definitely determined. In spring 1960 the Presidents of Argentina and Chile agreed to entrust - as before - the British Crown with the conciliation in their dispute in one particular border section, to leave the solution of the unsettled frontier problems in another section to the International Court of Justice at the Hague, and to submit all the differences which might still arise in the Cordilleras border section to the arbitration of the President of the Swiss Confederation.

5) The President of the Confederation is frequently - and the head of a Department occasionally - asked to cooperate in appointing arbitrators. In over forty treaties of conciliation, judicial settlement and arbitration between third States and in a number of other bilateral conventions there are clauses to that effect. The treaties of Locarno of 1925 can also be ranged into this category : the President of the Swiss Confederation is asked, in default of other arrangements, to make the required appointments in so far as no such appointments have been made by the Conciliation Commission

within three months. There are, in addition, approximately 20 concrete individual cases; one of the best-known among them being the dispute between the United States and Great Britain in connexion with the armament of the privateer "Alabama" during the American Civil War; the appointment of the five members to the arbitral tribunal whose task it was to settle this case was incumbent on the President of the United States, the Queen of England, the King of Italy, the Emperor of Brazil, and the President of the Swiss Confederation who nominated Mr. Jakob Stämpfli, ex-President of the Confederation and at that time National Councillor; the arbitral award made in Geneva in 1872, which represents the first important arbitral award of recent times, brought to an end a threatening tension between the Great Powers and has a fundamental bearing on the shaping of the law of neutrality. Among other cases in which personalities of Swiss nationality were appointed single arbitrators by the President of the Confederation, or chairmen of arbitral tribunals or of conciliation commissions, we mention the dispute between the USA and Chile arisen out of an incident involving the American warship "Baltimore" (1894), the dispute between Norway and the USA which developed after requisition by the USA of Norwegian ships in 1917 (upon America's entering the war), the demarcation of a frontier between Turkey and Iraq on the basis of a British-Iraqi-Turkish Treaty (1926), the difference of opinion between Greece and the International Commission of Finance, set up in 1897 after the war between Greece and Turkey (1928). The mandates which were assigned to the President of the Confederation of 1919, Gustave Ador, within the framework of the Treaties of Versailles, Saint-Germain, Neuilly, and Trianon must also be mentioned in this context. These mandates implied two courses of action : in a period of transition, and in

case the governments concerned did not come to an agreement, Mr. Ador had 1) to appoint the neutral chairman of the "Tribunaux mixtes" (which latter were to be set up between each individual State of the Central Powers and the Allied Powers for the purpose of settling economic claims); 2) he had to appoint the arbitrators whose task it was to make their awards in cases of damages sustained by allied nationals as a consequence of measures taken by the Central Powers. Eleven Swiss personalities (mostly judges or other magistrates) presided over several "Tribunaux mixtes" whilst four others acted as arbitrators. A most recent case dates from 1955 when the U.N. General Assembly decided to replace the U.N. Court of Justice in Lybia by an Italo-Lybian arbitral commission which was to consist of three members, one of each to be appointed by both parties involved and the third by the U.N. Secretary General, with the consent of both parties. Thereupon the ground was explored by the Lybians and the Italians in order to find a Swiss personality to function as third arbitrator; eventually, of three candidates proposed, ex-Federal Judge Georg Leuch was chosen. The arbitral tribunal, however, was not to be summoned at all as the differences pending between Lybia and Italy could be settled amicably.

6) Apart from the judicial mandate assigned to the Federal Court of Justice by the General Act of Algeciras in 1906, our highest judicial authority was called upon to give its verdict in a dispute reverting to the war between Chile and Peru of 1879-83 over Peruvian guano sediments. With the approbation of all the States involved (France, Chile, Peru, Great Britain), the Federal Court made its judicial decision in July, 1901.

7) The President of the Federal Court of Justice had to make an award either as arbitrator or as chairman of the arbitral

tribunal in a difference between Italy and Peru concerning a treaty interpretation (1903), in a dispute between Austria and Hungary with regard to the determination of a frontier at the so-called "Meerauge" Peak in the Tatra Mountains (locally called Rysy-Peak) (1902), in a dispute between France and Peru concerning the compensation of French creditors (1921), and in differences between Rumania and Germany dating from the times of the First World War (Junghans and Deutsche Bank cases). In several international agreements the task to make primary or subsidiary appointments of arbitrators was assigned to the President of the Federal Court of Justice (as for instance in the Treaty between Iran and the International Oil Syndicate which put an end to the Iranian Oil Conflict in 1954, and in the Convention of August 3rd, 1957, on the foundation of the "Société irano-italienne des pétroles").

8) There were also numerous cases in which members of the Federal Court of Justice or of the Federal Insurance Court have been asked to assume arbitral functions. By federal order of 19th December, 1924, the approbation of the Court has to be obtained prior to the acceptance of such an appointment, and an arbitral function with any bearing on the political relations between Switzerland and foreign countries can only be exercised after agreement between the Court and the Federal Council.

VII. Humanitarian Actions

The permanently neutral State has, of course, many opportunities for humanitarian actions. Without examining this vast subject more closely, attention may be drawn to the task accomplished by the Swiss Legation in Budapest during the Second World War in behalf of Hungarian Jews.[1] This task became particularly acute

1) For further references on Swiss endeavours to protect Jews v. Bindschedler, op.cit., page 130

when, in 1944, the systematic deportation of Jews started in Hungary. By distributing many British immigration certificates for Palestine and declarations of citizenship of the State of El Salvador - declarations made available specially for that purpose - the Legation had to make this procedure acceptable to the Hungarian authorities and to the German occupation officials and thus, as well as by the use of other devices, succeeded in saving the lives of tens of thousands of Hungarian Jews. This activity was carried out within the framework of the protection of interests of Great Britain and Salvador; the protection of interests of this latter country was a scheme - devised by the United States - to save Jews. This represented a new type of mission which went far beyond the limits of the usual activity of the protecting power.

B) Actions of individuals and private organizations

I. Arbitral Functions :

1) The number of Swiss personalities appointed in their private capacity to arbitral or similar functions on an international basis is quite considerable. Although many arbitral cases have been absorbed by the International Court of Justice at the Hague, prominent Swiss lawyers have lent their cooperation up to the most recent times to international arbitral tribunals or have even made awards as single arbitrators. In eight out of over twenty cases settled by the Permanent Court of Arbitration at the Hague created by the Peace Conferences of 1899 and 1907 - or at least under the auspices of this institution and in cooperation with its Secretariat - Swiss arbitrators have made their contribution. Even more frequent were arbitration cases outside the procedure of the Permanent Court of Arbitration in which Swiss personalities were consulted. Apart from

being nationals of a neutral State, the vital impulses imparted to the development of international jurisdiction by such outstanding lawyers as Max Huber (who acted as a Judge of the International Court of Justice at the Hague from 1922 to 1930, over which he presided from 1925 to 1927) have contributed to the appointment of Swiss nationals. It may be of interest, as a marginal note, that Max Huber figured as president or as neutral chairman in fifteen international conciliation commissions.[1)]

2) In the following only some of the best-known examples of arbitral functions of Swiss lawyers are being mentioned :[2)]

Some of the most significant awards are those made by Max Huber as single judge in the difference between Great Britain and Spain concerning British claims for damage to life and property in the Spanish Zone of Morocco (1925), and between the United States and the Netherlands concerning the sovereignty over the island of Palmas (1928). In the first award, the definition of the responsibility of the State is of general juridical value. In the second case Professor Huber's extensively motivated award is regarded as a substantial contribution to the doctrine on the occupation of territory and on the acquisition of sovereignty. Finally, Professor Huber was a member of the International Committee of three jurists appointed by the Council of the League of Nations on July 12, 1920, for the purpose of submitting a report on the dispute between Sweden and Finland concerning the Aaland Islands (report of September 5th, 1920); the recommendations contained therein constituted the basis for the subsequent settlement.

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1) Schindler, Jahrbuch, pages 85 and 87 ff.

2) On the whole the same sources as mentioned on page 26, footnote 1)

Hardly less important was the arbitral function of Professor Eugène Borel (who also presided over two "Commissions mixtes" set up on the basis of the Treaty of Versailles). There are to be mentioned above all the awards he made as single arbitrator on the apportionment of the Ottoman Public Debt to the successor States of the Ottoman Empire (1925) and on the dispute between Sweden and the USA concerning Swedish claims for losses incurred as a result of the detention in ports of the USA of two Swedish motorships (1932). The first mandate, founded on the Treaty of Lausanne of 1923, had been assigned to him by the Council of the League of Nations, the second on the basis of an agreement between the parties involved.

In the mid-twenties Professor Walther Burckhardt presided over a sub-committee, instituted by the League of Nations, which had to examine a dispute between Great Britain, France, and Italy on the one hand, and Rumania on the other hand, with regard to the competence of the European Danube Commission; the sub-committee presented its final report, which also contained conciliation proposals, in July 1925. Professor Burckhardt also presided over a Rumanian-German arbitral tribunal in connexion with pending financial claims of the First World War and made an award in 1935 in the Schlessiger case.

Several arbitral missions were assigned to Professor Georges Sauser-Hall in the post-war years. Especially well-known is his award of 1953 in the ownership case of the Albanian gold, confiscated by the Germans in Rome during the war. In 1954, he was chairman of an arbitral tribunal between the Federal Republic of Germany and Israel concerning certain Jewish property rights in Germany. On French initiative and with British, American and German consent he was appointed, in

1956, as one of the three neutral members to the Arbitration Tribunal and the Arbitral Commission on Property, Rights and Interests in Germany, with seat at Koblenz. In the same year he was appointed third neutral member of the British/Italian conciliation commission convened on the basis of the Peace Treaty of 1947 between the Allies and Italy. Besides, he was chairman of an arbitration tribunal concerned with the differences between the Kingdom of Saudi Arabia and the Arabian American Oil Company (ARAMCO) which made its arbitral award on August 23rd, 1958.

In May, 1949, France and Italy jointly appointed federal judge Plinio Bolla member of the French/Italian conciliatory commission on the basis of the Peace Treaty of 1947. Since 1949, when he resigned from the Federal Court of Justice, Mr. Bolla has been appointed to the five-man arbitral tribunal concerned with the dispute between France and Spain on the utilization of the water of Lake Lanoux in the Pyrenees - which was settled in 1957 - and was entrusted with a mandate concerning the determination of the frontier between Ethiopia and Somaliland (1957).

In the post-war years Professor Paul Guggenheim and Professor Hans Huber have been entrusted with important arbitral mandates of international stature. (In 1960 Professor Guggenheim chaired the Italo-French conciliation commission according to the Peace Treaty with Italy in a dispute concerning requisitions in the ports of Somaliland and Eritrea.) To cite an example of the most recent times, the International Labour Office (ILO) asked Ambassador Paul Rüegger to preside over a commission of investigation on a Ghanaian complaint accusing Portugal of insufficient application of the 1957 Convention on the abolition of forced labour in her African territories;

the final conclusions and recommendations of the Commission (February 21st, 1962) won the approval of both parties.

II. International Mandates

1) Based on the Acts of Algeciras of 1906, for which the Federal Court of Justice had held a mandate, a Swiss army instruction officer served for five years as inspector general of police in Morocco.[1)]

2) Some very delicate functions of a highly political nature were assigned to some Swiss personalities in connexion with the Peace Treaties concluded after the First World War. A first such big scale task was to be accomplished by ex-Federal Councillor Felix Calonder at a time and in a place of most acute political tension, namely in Upper Silesia. First, by mandate of the League of Nations (1921/22), a German/Polish Agreement on the statute of divided Upper Silesia was worked out under his chairmanship which was to put an end to the complications and the violence arisen out of the frontier demarcations stipulated by the Treaty of Versailles. By a convention, in force until 1937, a mixed commission was set up consisting of two members each of German and Polish nationality and presided over by a national of a neutral country. On the joint proposition of Germany and Poland, Felix Calonder was appointed president of this commission. In his new capacity he had to find a way of safeguarding the rights of the national minorities. Besides, the commission was entrusted with a number of arbitral competences in the economic field. It is remarkable that the German and the Polish governments both accepted, on the whole, the solutions recommended by Mr. Calonder. It can be said, in retrospect,

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1) Burckhardt, op.cit. No. 96 I, II, V

that the international protection of minorities - upon which great hopes had been set after the First World War - has only found a satisfactory expression in Upper Silesia thanks to the activity of Mr. Calonder.[1)]

3) The Treaty of 1920 between Poland and the Free City of Dantzig, which latter had been placed under the protection of the League of Nations according to the Treaty of Versailles, stipulated i.a. the setting up of a Mixed Port Council whose president was to be elected by mutual consent between the Polish Governor and the Government of the Free City; should no appointment come about, the Council of the League of Nations would designate a president of Swiss nationality. The strained German/Polish relations regularly made the second electoral procedure a necessity. Three Swiss personalities thus succeeded each other in this difficult mission from 1922 - 1934.

4) The most intricate task to be performed in the interest of the maintenance of peace, which was ever assigned to a Swiss national, was probably the mission Professor Carl J. Burckhardt was entrusted with as High Commissioner of the League of Nations in Dantzig. This is not the place to look more closely into the details of this historical mission with its political emphasis which lasted from 1937 to the outbreak of the Second World War. Professor Burckhardt has given a detailed account of the depth and wide range of his high endeavour to avert the outbreak of war in his book : "Meine Danziger Mission".

5) In several cases Swiss personalities were appointed presidents of commissions for the demarcation of frontiers (Turkey-Iraq 1926; Syria-Iraq 1932/33; Burma-China 1935/37).

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1) Schindler, "Schiedsgerichtsbarkeit", op.cit., pages 35 ff., and Schindler, "Jahrbuch", op.cit., page 86.

In 1936 a conflict broke out between Turkey and France in the latter's capacity as a mandatary power for Syria concerning the régime of the Sanjaq of Alexandretta after termination of the French mandate. The Council of the League of Nations then decided to send three neutral observers to the Sanjaq; one of these observers was a Swiss officer. In October, 1937, the Council of the League of Nations appointed Professor Roger Secrétan of Lausanne member of a five-man international commission whose task it was to organize and control the first elections in the Sanjaq. In 1937/38 the conflict could be settled under the auspices of the League of Nations by direct agreement between Turkey and France.

With reference to the period between the two world wars, the Saar plebiscite of 1935 may be mentioned where a Dutchman, a Swede and a Swiss acted as members of the three-man election commission appointed by the Council of the League of Nations; two Swiss nationals had also been appointed members of the "Tribunal supérieur du plébiscite" at Saarbrücken whilst many others acted as presidents of the polling-stations.

6) It is noteworthy that Swiss nationals have twice been appointed High Commissioners for Refugees by the United Nations, viz. the then Swiss Minister August Lindt who held this high office from 1957 to 1960, and his successor, Minister Felix Schnyder, who is still in charge. Minister Eduard Zellweger was named representative of the Secretary General of UNO in Laos in a critical phase; a mission which was terminated in 1961.

III. Humanitarian Actions

In the sphere of humanitarian actions a vast field of activity is open to the individual. The mere attempt at presenting a survey of humanitarian actions carried out by individual Swiss citizens and by private organizations would go beyond the limits

of this paper. Mention may be made here - in a wider sense of the term - of the world-wide beneficial activity of the International Committee of the Red Cross. The Red Cross was created on private initiative by five Geneva citizens in 1863, headed by Henry Dunant as its inspirator and by General Dufour. It may be recalled that - notwithstanding its name and its exclusively international mission - the International Committee only consists of Swiss citizens who are appointed to the Committee in their individual capacity. Without exaggeration it may be said that the whole range of action of the Committee rests on this structure which keeps it free from political influences; the belligerents are thus given the indispensable guarantee for absolute impartiality by neutral persons operating from neutral territory.

C) Other Possibilities of Action

I. Active Treaty Policy

The neutral State can contribute to the consolidation of international law by pursuing an active treaty policy. Switzerland has twice taken initiatives on a larger scale in order to put into practice the concepts of mediation, of arbitration, and of international jurisdiction for the peaceful settlement of inter-state differences. A rich and centuries-old experience in settling differences by arbitration between the cantonal governments of the ancient Federation provided a suitable background. Switzerland having previously lent its active cooperation in working out arbitration procedures, launched a first initiative in 1919 when the Federal Council in its "Report on International Arbitration Treaties" - presented by Professor Max Huber in his capacity as legal adviser to the Federal Political Department and unanimously approved of by the Federal Assembly - announced a modern policy of arbitration which was to culminate in the conclusion of the

greatest possible number of bilateral treaties of jurisdiction and arbitration on a mandatary basis. Within a decade this initiative led to the conclusion of 23 such treaties, most of which are still in force. Their importance manifested itself above all in their serving as examples for many similar agreements between third States. Taking up the threads of 1919 again, the Federal Council took another initiative in summer 1960 by proposing anew the conclusion of bilateral arbitration treaties to a great number of States. The object of this initiative is to consolidate and to perfect the work started in 1919. The aim is not only to fill the still existing gaps in this network of treaties but to extend the Swiss arbitration treaty system to the numerous new States in Asia and Africa which have gained their independence in quick succession since the end of the Second World War. Experience has shown that these States are rather inclined to conclude bilateral arbitration treaties with neutral Switzerland, which has no colonial past and with which differences of a political nature are hardly to be expected, instead of submitting themselves unconditionally to a mandatary jurisdiction of a general nature, the consequences of which may appear more difficult to assess. The first success of these endeavours, by which the young States are at the same time brought into close contact with prevailing international law in their own but also in the general interest, is encouraging.[1] - Treaties with regard to the protection of private property but also with regard to extradition, judicial assistance, and double taxation are other subject matters Switzerland is at pains to settle in the interest of a well-ordered inter-state relationship.

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1) For more details with regard to the historical part played by Switzerland in arbitration questions and the present endeavours of the Federal Council v. Probst : "Die Schweiz und die internationale Schiedsgerichtsbarkeit", Schweiz. Jahrbuch für internationales Recht, 1960 (XVII) pages 99 ff.

II. Participation in International Organizations and Conferences

1) Although the permanent neutrality of Switzerland runs counter to participation in political organizations such as represented by UNO or in assemblies like the Disarmament Conference, there remains - as experience shows - full scope and a vast field of action outside the political sphere. Conferences on the codification of international law are of particular importance as they permit Switzerland to cooperate without misgivings, to act as a mediator and to make its contribution in objectifying the discussions. An example to the point is the part played by our country at the United Nations Conference on the Law of the Sea, held in Geneva in 1958. Switzerland took her stand on two significant issues, namely on arbitration and on the formulation of the rights of the landlocked States. The conciliatory, well-founded propositions of the Swiss delegation, which showed a way out of a rather confused situation, were eventually accepted unchanged in their main aspects. The arbitration settlement thereby achieved served as an example to the United Nations Conference on Diplomatic Intercourse and Immunities in Vienna of March/April 1961.[1)]

2) Switzerland has been set a special task of an institutional nature as the promotor and depositary of the Geneva Red Cross Conventions. On the Federal Council in its governmental capacity devolves the now century-old tradition to convene the diplomatic Red Cross Conferences. At the 1949 Conference, presided over by Federal Councillor Max Petitpierre, the new Conventions were drawn up which gave expression to the bitter experiences of the Second World War; they are still considered the most universal and most comprehensive codification of international law of the post-war period. The task, by the

1) v. above all Rüegger : "Die Schweiz und die Genfer Seerechtskonventionen", Schweiz. Jahrbuch für internationales Recht 1958 (XV) pages 9 ff., and Probst, op.cit., pages 139 ff.

way, is not accomplished yet. The protection of war victims must be further consolidated. In this age of atomic and nuclear weapons the problems of the civilian population still wait for a solution.

Final Considerations

As was shown in the previous chapters, Switzerland rendered a great many "good offices", both directly and indirectly, in order to promote international good will. Permanent neutrality was not only no impediment to this activity but even instrumental to the performance of these good offices. From the legal point of view we have to remember that the neutral State - as already mentioned - can offer its good offices or its arbitration without the initiative being regarded by either of the parties as an unfriendly act. The destructive effects of modern war techniques which go far beyond anything hitherto known and the consequences - difficult to assess - of the use of nuclear weapons may help a neutral State in its endeavours in the cause of peace. These imponderables also deepen the neutral State's own interest in the maintenance of peace and in an active peace policy : the world's cause and the cause of peace have, in a sense, become indivisible; the interdependence of the nations has increased, the possibility of localizing conflicts has decreased.[1)]

This, however, does not imply an indiscriminate acceptance of international mandates by Switzerland. From the legal aspect of neutrality Switzerland would, on principle, be entitled to such acceptance; yet, the neutral State is not under an obligation to do so. Moreover, permanent neutrality - as opposed to ordinary neutrality which presupposes a state of war between third countries -

1) Bindschedler, "Die Neutralität im modernen Völkerrecht", Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, Vol. 17, Nr. 1 (June 1956), especially page 15

has its rights and its obligations already in times of peace; the State is asked, inter alia, to do everything in its power to keep out of armed conflicts and to omit everything which could lead to such entanglements, in short, not to take sides in conflicts between third States, which amounts to the pursuit of a policy of neutrality. How this policy of neutrality is to be applied is a matter of judgement and discretion. The "good offices" - as long as they are rendered in a spirit of objectivity - will find their adequate place in this system : they are part and parcel of the Swiss policy of neutrality which is by no means indifferent to whatever happens in the world. However, the risks involved for the neutral when accepting such tasks and the danger of abuse of its "good offices" have to be taken into account. The attempt to place neutrality as such at the service of power politics is by no means a rare occurrence. A one-sided rendering of "good offices" by the neutral in favour of a certain power group should also be avoided; this would run counter to the very nature of neutrality. Notwithstanding its constant readiness to act in a spirit of international solidarity, Switzerland reserves its right to examine international mandates carefully before deciding autonomously on their acceptance.

Political considerations are normally of no avail in the case of individual appointments of private Swiss personalities to international courts of arbitration, permanent mediatory commissions or similar bodies. Moreover, these bodies are concerned with questions of law and equity; Switzerland's political responsibility is not at stake for the decisions to be worked out. The acceptance by private persons of mandates which serve the purpose of eliminating interstate differences according to objective criteria can, on principle, always be recommended.

The acceptance of <u>missions of a political nature</u>, however, depends

on the fulfilment of certain preconditions. Experience points to the following guiding principles with regard to the rendering of "good offices" :

1) The appeal has to be made jointly by all parties involved in a conflict. Uncertainty on this point is apt to make Switzerland look like the mandatary of one single State or of a group of States and could lead to a depreciation of Swiss neutrality.

2) There ought to be complete agreement among all parties concerned with regard to content and extent of the mandate.

3) The mandate is to be given an unequivocal wording a priori.

4) It has to be unobjectionable from the point of view of neutral policy.

5) It has to be materially practicable; there have to be concrete possibilities of success. If a failure of the mission were to be foreseen, the mandate had better be declined.

6) Freedom of action is to be granted to the neutral power which renders "good offices".

7) A time-limit should be set to the duration of the mandate.

The guiding principles mentioned above are not meant to be obstructive to the "good offices" of Switzerland. They only aim at safeguarding the higher interests of the country and at creating at the same time the most favourable conditions for a successful termination of the mandates with which the country may be entrusted. The readiness to cooperate on principle in missions of international solidarity is thereby not diminished. The participation of our country in such endeavours - provided the necessary safeguards are being taken - will also in future be a reliable contribution to the cause of peace; it will strengthen

the international position of Switzerland and deepen the general understanding of the world around us for the established principle of our permanent neutrality.